

2008-2009

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Fair Work (Transitional Provisions and  
Consequential Amendments) Bill 2009**

**No.     , 2009**

*(Education, Employment and Workplace Relations)*

**A Bill for an Act to amend laws, and deal with  
transitional matters, in connection with the *Fair  
Work Act 2009*, and for other purposes**



---

## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
4	Regulations.....	2
<b>Schedule 1—Repeals</b>		4
	<i>Workplace Relations Act 1996</i>	4
<b>Schedule 2—Overarching Schedule about transitional matters</b>		5
	Part 1—Interpretation of the transitional Schedules	5
	Part 2—Regulations about transitional matters	11
	Part 3—Conduct before WR Act repeal day etc.	14
<b>Schedule 3—Continued existence of awards, workplace agreements and certain other WR Act instruments</b>		16
	Part 1—Preliminary	16
	Part 2—Continued existence of WR Act instruments as transitional instruments	17
	Part 3—Variation and termination of transitional instruments	23
	Part 4—Transitional instruments and the Australian Fair Pay and Conditions Standard	31
	Part 5—Transitional instruments and the FW Act	32
	Division 1—Interaction between transitional instruments and the National Employment Standards	32
	Division 2—Interaction between transitional instruments and FW Act modern awards, enterprise agreements and workplace determinations	34
	Division 3—Other general provisions about how the FW Act applies in relation to transitional instruments	36
	Part 6—Preservation of redundancy provisions in agreements etc.	40
<b>Schedule 4—National Employment Standards</b>		45

---

---

Part 1—Preliminary	45
Part 2—Continued application of WR Act minimum entitlements provisions (other than wages) during bridging period	46
Part 3—Operation of the National Employment Standards	47
<b>Schedule 5—Modern awards (other than enterprise awards)</b>	52
Part 1—Preliminary	52
Part 2—The WR Act award modernisation process	53
Part 3—Avoiding reductions in take-home pay	58
<b>Schedule 6—Modern enterprise awards</b>	62
Part 1—Preliminary	62
Part 2—The enterprise instrument modernisation process	63
Division 1—Enterprise instruments	63
Division 2—The enterprise instrument modernisation process	64
Division 3—Avoiding reductions in take-home pay	70
Division 4—Application of the FW Act	73
Part 3—Amendments	74
<i>Fair Work Act 2009</i>	74
<b>Schedule 7—Enterprise agreements and workplace determinations made under the FW Act</b>	82
Part 1—Preliminary	82
Part 2—Transitional provisions relating to the application of the no-disadvantage test to enterprise agreements made and varied during bridging period	83
Division 1—Enterprise agreements and variations made during bridging period must pass no-disadvantage test	83
Division 2—The no-disadvantage test	83
Part 3—Other requirements and modifications applying to making and varying enterprise agreements during the bridging period	91

---

---

Division 1—Requirements relating to approval	91
Division 2—Base rate of pay	92
Division 3—No extensions of time	92
Division 4—State and Territory laws dealing with long service leave	93
Part 4—Transitional provisions to apply the better off overall test after end of bridging period if award modernisation not yet completed	94
Part 5—Transitional provisions relating to workplace determinations made under the FW Act	98
Part 6—Interaction with Australian Fair Pay and Conditions Standard during bridging period	101
<b>Schedule 8—Workplace agreements and workplace determinations made under the WR Act</b>	<b>103</b>
Part 1—Preliminary	103
Part 2—Transitional provisions relating to workplace agreements	104
Division 1—Transitional provisions relating to collective agreements made before the WR Act repeal day	104
Division 2—Transitional provisions relating to variations of collective agreements made before the WR Act repeal day	107
Division 3—Transitional provisions relating to pre-WR Act repeal day terminations of collective agreements	109
Division 4—Transitional provisions relating to ITEAs made before the WR Act repeal day	111
Division 5—Transitional provisions relating to variations of ITEAs made before the WR Act repeal day	113
Division 6—Transitional provisions relating to pre-WR Act repeal day terminations of ITEAs	115
Division 7—Transitional provisions relating to making ITEAs during the bridging period	117
Division 8—Applying the no-disadvantage test where there is a transmission or transfer of business	120
Division 9—Miscellaneous	123

---

---

Part 3—Transitional provisions relating to workplace determinations made under the WR Act	125
<b>Schedule 9—Minimum wages</b>	128
Part 1—Preliminary	128
Part 2—Special provisions relating to FWA’s first annual wage review	129
Part 3—Continued application of WR Act provisions about minimum wages	131
Division 1—General provisions	131
Division 2—Special provisions about transitional APCs	133
Division 3—Special provisions about the FMW, special FMWs and the default casual loading	134
Part 4—Universal application of minimum wages to employees	136
<b>Schedule 10—Equal remuneration</b>	139
Part 1—Preliminary	139
Part 2—Equal remuneration orders under the FW Act	140
Part 3—Equal remuneration orders under the WR Act	141
<b>Schedule 11—Transfer of business</b>	142
Part 1—Preliminary	142
Part 2—Transmissions of business occurring before WR Act repeal day	143
Part 3—Transfers of business occurring on or after WR Act repeal day	149
Division 1—General	149
Division 2—Transfer of preserved redundancy provisions during bridging period	150
Division 3—Transfer of entitlements under the AFPCS during bridging period	153
<b>Schedule 12—General protections</b>	156

---

---

<b>Schedule 13—Bargaining and industrial action</b>	158
Part 1—Preliminary	158
Part 2—Bargaining	159
Part 3—Industrial action	161
Part 4—Protected action ballots	165
Part 5—Effect of conduct engaged in while bargaining for WR Act collective agreement	167
Part 6—Payments relating to periods of industrial action	168
<b>Schedule 14—Right of entry</b>	169
<b>Schedule 15—Stand down</b>	172
<b>Schedule 16—Compliance</b>	173
<b>Schedule 17—Amendments relating to the Fair Work Divisions         of the Federal Court and the Federal Magistrates         Court</b>	188
Part 1—Amendments to the Federal Court of Australia Act 1976	188
<i>Federal Court of Australia Act 1976</i>	188
Part 2—Amendments to the Federal Magistrates Act 1999	192
<i>Federal Magistrates Act 1999</i>	192
Part 3—Other amendments	196
<i>Administrative Decisions (Judicial Review) Act 1977</i>	196
Part 4—Application and transitional provisions	197
Part 5—Jurisdiction of courts	199
<b>Schedule 18—Institutions</b>	202
Part 1—Initial appointment of FWA Members	202
Part 2—WR Act bodies and WR Act offices	205
Part 3—Transitional role for Fair Work Ombudsman and Inspectors	209

---

---

Part 4—Miscellaneous	212
<i>Fair Work Act 2009</i>	213
<b>Schedule 19—Dealing with disputes</b>	214
<b>Schedule 20—WR Act transitional awards etc.</b>	215
<b>Schedule 21—Clothing Trades Award 1999</b>	217
<b>Schedule 22—Registered organisations</b>	218
Part 1—Main amendments	218
<i>Workplace Relations Act 1996</i>	218
Part 2—State and federal organisations	227
<i>Workplace Relations Act 1996</i>	227
Part 3—Representation orders	237
<i>Workplace Relations Act 1996</i>	237
Part 4—References to Schedules to the Workplace Relations Act	242
<i>Fair Work Act 2009</i>	242
<i>Workplace Relations Act 1996</i>	242
Part 5—References to the Workplace Relations Act etc.	251
<i>Workplace Relations Act 1996</i>	251
Part 6—References to the Commission etc.	259
<i>Workplace Relations Act 1996</i>	259
Part 7—References to the Registrar etc.	273
<i>Fair Work Act 2009</i>	273
<i>Workplace Relations Act 1996</i>	273
Part 8—References to awards and collective agreements	289
<i>Fair Work Act 2009</i>	289
<i>Workplace Relations Act 1996</i>	289
Part 9—Transitional provisions etc.	293

---



1     **A Bill for an Act to amend laws, and deal with**  
2     **transitional matters, in connection with the *Fair***  
3     ***Work Act 2009*, and for other purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Fair Work (Transitional Provisions*  
7                     *and Consequential Amendments) Act 2009*.

8     **2 Commencement**

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

13

---



---

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1 to 5	The day on which Part 2-4 of the <i>Fair Work Act 2009</i> commences.	
3. Schedule 6, Parts 1 and 2	At the same time as the provision(s) covered by table item 2.	
4. Schedule 6, Part 3	Immediately after the commencement of Part 2-3 of the <i>Fair Work Act 2009</i> .	
5. Schedules 7 to 21	At the same time as the provision(s) covered by table item 2.	
6. Schedule 22, items 1 to 90	At the same time as the provision(s) covered by table item 2.	
7. Schedule 22, item 91	Immediately after the commencement of the provisions covered by table item 8.	
8. Schedule 22, items 92 to 627	At the same time as the provision(s) covered by table item 2.	

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

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

### 7 **3 Schedule(s)**

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

### 12 **4 Regulations**

13 The Governor-General may make regulations prescribing matters:

---

1  
2  
3

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

1  
2  
3

## **Schedule 1—Repeals**

4

### ***Workplace Relations Act 1996***

5

#### **1 Sections 3 to 18**

6

Repeal the sections.

7

#### **2 Parts 2 to 23**

8

Repeal the Parts.

9

#### **3 Schedules 2 to 9**

10

Repeal the Schedules.

1  
2 **Schedule 2—Overarching Schedule about**  
3 **transitional matters**

4 **Part 1—Interpretation of the transitional Schedules**

5 **1 What are the transitional Schedules?**

6 The *transitional Schedules* are the following (including any regulations  
7 made for the purposes of any of the following):

- 8 (a) this Schedule; and  
9 (b) Schedules 2 to 22, other than:  
10 (i) Part 3 of Schedule 6; and  
11 (ii) Parts 1, 2 and 3 of Schedule 17; and  
12 (iii) items 21 and 22 of Schedule 18; and  
13 (iv) Parts 1 to 8 of Schedule 22.

14 **2 The dictionary**

15 In the transitional Schedules:

16 *AFPCS interaction rules*: see subitem 22(4) of Schedule 3.

17 *agreement-based transitional instrument*: see subitem 2(5) of  
18 Schedule 3.

19 *applies*, in relation to a transitional instrument: see subitem 3(2) of  
20 Schedule 3.

21 *award-based transitional instrument*: see subitem 2(5) of Schedule 3.

22 *bridging period* means the period:

- 23 (a) starting on the WR Act repeal day; and  
24 (b) ending immediately before the FW (safety net provisions)  
25 commencement day.

26 *collective agreement-based transitional instrument*: see subitem 2(5)  
27 of Schedule 3.

28 *conditional termination*, in relation to an individual agreement-based  
29 transitional instrument: see subitem 18(1) of Schedule 3.

30 *continued AFPCS wages provisions*: see subitem 5(1) of Schedule 9.

31 *continued Schedule 6*: see subitem 1(1) of Schedule 20.

32 *continuing Schedule 6 instruments*: see subitem 1(2) of Schedule 20.

33 *covers*:

---

**Schedule 2** Overarching Schedule about transitional matters  
**Part 1** Interpretation of the transitional Schedules

---

- 1 (a) in relation to a transitional instrument: see subitem 3(1) of  
2 Schedule 3; and
- 3 (b) in relation to a transitional minimum wage instrument: see  
4 item 6 of Schedule 9.
- 5 **enterprise award-based instrument**: see subitem 2(2) of Schedule 6.  
6 **enterprise instrument**: see subitem 2(1) of Schedule 6.  
7 **enterprise instrument modernisation process**: see subitem 4(1) of  
8 Schedule 6.  
9 **enterprise preserved collective State agreement**: see subitem 2(3) of  
10 Schedule 6.  
11 **FW Act**: see item 3 of this Schedule.  
12 **FW (safety net provisions) commencement day** means the day on  
13 which Parts 2-2, 2-3 and 2-6 of the FW Act commence.  
14 **individual agreement-based transitional instrument**: see subitem 2(5)  
15 of Schedule 3.  
16 **instrument content rules**: see subitem 4(2) of Schedule 3.  
17 **instrument interaction rules**: see subitem 5(2) of Schedule 3.  
18 **lodged**:  
19 (a) in relation to a workplace agreement—means lodged with the  
20 Workplace Authority Director under section 344 of the WR  
21 Act; and  
22 (b) in relation to a variation of a workplace agreement—means  
23 lodged with the Workplace Authority Director under  
24 section 346N or 377 of the WR Act, as the case may be; and  
25 (c) in relation to a termination of a workplace agreement—  
26 means lodged with the Workplace Authority Director under  
27 section 389 of the WR Act.  
28 **made**:  
29 (a) in relation to a workplace agreement—has the meaning given  
30 by section 333 of the WR Act; and  
31 (b) in relation to a variation of a workplace agreement—has the  
32 meaning given by section 368 of the WR Act.  
33 **modern enterprise award**: see subitem 4(2) of Schedule 6.  
34 **modern enterprise awards objective**: see subitem 6(2) of Schedule 6.  
35 **modernisation-related reduction in take-home pay**:
-

- 1 (a) in relation to the Part 10A award modernisation process—see  
2 subitems 8(3) and (4) of Schedule 5; and  
3 (b) in relation to the enterprise instrument modernisation  
4 process—see subitem 11(3) of Schedule 6.
- 5 **modify** includes make additions, omissions and substitutions.
- 6 **Part 10A award modernisation process**: see subitem 2(1) of  
7 Schedule 5.
- 8 **part of a single enterprise**: see subitem 3(4) of Schedule 6.
- 9 **single enterprise**: see item 3 of Schedule 6.
- 10 **take-home pay**: see subitem 8(2) of Schedule 5 and subitem 11(2) of  
11 Schedule 6.
- 12 **take-home pay order**: see subitems 9(1) and (2) of Schedule 5 and  
13 subitem 12(1) of Schedule 6.
- 14 **this Act** includes the regulations.
- 15 **transitional APCS**: see subitem 5(3) of Schedule 9.
- 16 **transitional default casual loading**: see subitem 5(3) of Schedule 9.
- 17 **transitional instrument**: see subitems 2(3) and (4) of Schedule 3.
- 18 **transitional minimum wage instrument**: see subitem 5(3) of  
19 Schedule 9.
- 20 **transitional national minimum wage order**: see subitem 12(2) of  
21 Schedule 9.
- 22 **transitional Schedules**: see item 1 of this Schedule.
- 23 **transitional special FMW**: see subitem 5(3) of Schedule 9.
- 24 **transitional standard FMW**: see subitem 5(3) of Schedule 9.
- 25 **unlodged collective agreement** means a collective agreement that, as at  
26 the WR Act repeal day, has not been lodged.
- 27 **unlodged termination**, in relation to a workplace agreement, means a  
28 termination of a workplace agreement approved in accordance with  
29 section 386 of the WR Act, but not lodged as at the WR Act repeal day.
- 30 **unlodged variation**, in relation to a workplace agreement, means a  
31 variation of the workplace agreement under Division 8 of Part 8 of the  
32 WR Act approved in accordance with section 373 of the WR Act, but  
33 not lodged as at the WR Act repeal day.
- 34 **workplace agreement that operates from approval** means a workplace  
35 agreement to which Subdivision C of Division 5A of Part 8 of the WR  
36 Act applies (see subsection 346K(1) of that Act).
-

1            **WR Act:** see item 3 of this Schedule.

2            **WR Act instrument:** see subitem 2(2) of Schedule 3.

3            **WR Act repeal** means the commencement of Schedule 1.

4            **WR Act repeal day** means the day on which the WR Act repeal  
5 commences.

### 6            **3 Meaning of WR Act and FW Act**

#### 7            *Meaning of WR Act*

8            (1)        **WR Act** means the *Workplace Relations Act 1996* and, unless the  
9 contrary intention appears, means that Act as in force immediately  
10 before the WR Act repeal day.

11          (2)        Unless a contrary intention appears, a reference to the WR Act, or to a  
12 provision or provisions of the WR Act, includes a reference to  
13 regulations made for the purposes of the WR Act, or for the purposes of  
14 the provision or provisions of the WR Act.

15          (3)        If an item of the transitional Schedules provides for the WR Act, or a  
16 provision or provisions of the WR Act, to continue to apply on and after  
17 the WR Act repeal day (or during the bridging period), the WR Act, or  
18 the provision or provisions, continue to so apply despite the WR Act  
19 repeal.

#### 20          *Meaning of FW Act*

21          (4)        **FW Act** means the *Fair Work Act 2009*.

22          (5)        Unless a contrary intention appears, a reference to the FW Act, or to a  
23 provision or provisions of the FW Act, includes a reference to  
24 regulations made for the purposes of the FW Act, or for the purposes of  
25 the provision or provisions of the FW Act.

### 26          **4 Expressions defined in the WR Act or the FW Act**

27          (1)        Unless a contrary intention appears:

28                  (a) expressions used in a transitional Schedule that were defined  
29                  in the WR Act (other than Schedule 1 to that Act) have the  
30                  same meanings in that transitional Schedule as they had in  
31                  that Act; and



1 (b) expressions used in a transitional Schedule that are defined in  
2 the FW Act have the same meanings in that transitional  
3 Schedule as they have in that Act.

4 (2) If:

5 (a) a provision of a transitional Schedule uses an expression  
6 defined in both the WR Act and the FW Act; and

7 (b) it is clear from the context of the provision which of those  
8 meanings is intended to apply in that provision;

9 the expression has that meaning.

10 (3) The regulations may define, or clarify the meaning of, an expression  
11 used in a transitional Schedule.

12 (4) This item does not apply to expressions defined in item 2.

### 13 **5 Provisions that apply repealed provisions of the WR Act**

14 (1) If a provision of a transitional Schedule provides for provisions (the  
15 *applied WR Act provisions*) of the WR Act to apply on and after the  
16 WR Act repeal day, any other provisions of the WR Act, and any  
17 regulations or other instruments made under that Act, that are necessary  
18 for the effectual operation of the applied WR Act provisions also apply  
19 on and after that day.

20 (2) This item has effect:

21 (a) subject to a contrary intention in a provision of a transitional  
22 Schedule; and

23 (b) subject to the regulations.

### 24 **6 Effect of Part 21 of the WR Act to be taken into account**

25 (1) To avoid doubt, in interpreting provisions of the transitional Schedules,  
26 the effect on the WR Act of Part 21 of that Act (which deals with  
27 matters referred by Victoria) before the WR Act repeal day is to be  
28 taken into account.

29 Note: For example, a reference in Schedule 3 to a workplace agreement includes a reference  
30 to a workplace agreement made under Part 8 of the WR Act, as that Part had effect  
31 because of Part 21.

32 (2) If a provision of the transitional Schedules provides for the application  
33 or continued application of provisions of the WR Act on and after the

**Schedule 2** Overarching Schedule about transitional matters  
**Part 1** Interpretation of the transitional Schedules

---

- 1                   WR Act repeal day, those provisions also have the effect they would  
2                   have if Part 21 of that Act were still in force.
- 3       Note:       For example, item 2 of Schedule 4 provides for the continued application during the  
4                   bridging period of Divisions 3, 4, 5 and 6 of Part 7 of the WR Act. The continued  
5                   application of those Divisions also includes the extended effect those Divisions would  
6                   have if Part 21 were still in force.
- 7       (3)       This item has effect:
- 8                   (a) subject to a contrary intention; and
- 9                   (b) subject to the regulations.

1

2 **Part 2—Regulations about transitional matters**

3 **7 General power for regulations to deal with transitional**  
4 **matters**

- 5 (1) The regulations may make provisions of a transitional, application or  
6 saving nature in relation to any of the following:
- 7 (a) the transition from the regime provided for by the old WR  
8 Act (and any Acts that amended that Act) to the regime  
9 provided for by the FW Act;
  - 10 (b) the amendments and repeals made by the Schedules to this  
11 Act.
- 12 (2) Without limiting subitem (1), regulations made for the purpose of that  
13 subitem may do any of the following:
- 14 (a) modify provisions of the FW Act, or provide for the  
15 application (with or without modifications) of provisions of  
16 the FW Act to matters to which they would otherwise not  
17 apply;
  - 18 (b) provide for the application (with or without modifications) of  
19 provisions of the WR Act on and after the WR Act repeal  
20 day.

21 **8 Regulations relating to matters dealt with in the transitional**  
22 **Schedules**

- 23 (1) The regulations may modify provisions of the transitional Schedules.
- 24 (2) If a provision of a transitional Schedule provides for repealed provisions  
25 of the WR Act to apply on and after the WR Act repeal day, the  
26 regulations may:
- 27 (a) modify the provisions; or
  - 28 (b) make other provision relating to the application of the  
29 provisions.
- 30 (3) If a provision of a transitional Schedule provides for provisions of the  
31 FW Act to apply in relation to matters to which they would otherwise  
32 not apply, the regulations may:
- 33 (a) modify the provisions; or

1 (b) make other provision relating to the application of the  
2 provisions.

3 (4) The regulations may make other provision in relation to the matters  
4 dealt with in the transitional Schedules.

5 (5) The transitional Schedules have effect subject to regulations made for  
6 any of the purposes of this item.

## 7 **9 Limitation on power to make regulations**

8 (1) The regulations must not:

9 (a) modify provisions of Part 3-4 of the FW Act (which deals  
10 with right of entry); or

11 (b) modify provisions of the transitional Schedules that deal with  
12 right of entry.

13 (2) The regulations must not confer compliance powers on an inspector that  
14 are additional to the compliance powers under Part 5-2 of the FW Act.

15 (3) This item has effect despite items 7 and 8.

## 16 **10 Other general provisions about regulations**

17 (1) This item applies to regulations made for the purpose of any of the  
18 provisions of the transitional Schedules (including this Part).

19 (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003* and  
20 subject to subitem (3), regulations may be expressed to take effect from  
21 a date before the regulations are registered under that Act.

22 (3) If:

23 (a) regulations are expressed to take effect from a date (the  
24 **registration date**) before the regulations are registered under  
25 the *Legislative Instruments Act 2003*; and

26 (b) a person engaged in conduct before the registration date; and

27 (c) but for the retrospective effect of the regulations, the conduct  
28 would not have contravened a provision of:

29 (i) the WR Act (as it continues to apply because of this  
30 Act); or

31 (ii) this Act; or

32 (iii) the FW Act;

- 1 then a court must not convict the person of an offence, or order the  
2 person to pay a pecuniary penalty, in relation to the conduct on the  
3 grounds that it contravened a provision of any of those Acts.
- 4 (4) The provisions of the transitional Schedules (including this Part) that  
5 provide for regulations to deal with matters do not limit each other.

1

2 **Part 3—Conduct before WR Act repeal day etc.**

3 **11 Conduct before repeal—WR Act continues to apply**

4 (1) The WR Act continues to apply, on and after the WR Act repeal day, in  
5 relation to conduct that occurred before the WR Act repeal day.

6 Note: For continuation and cessation of WR Act bodies and offices on and after the WR Act  
7 repeal day, see item 7 of Schedule 18.

8 (2) To avoid doubt, the WR Act continues to apply, on and after the WR  
9 Act repeal day, in relation to orders made under that Act, including as it  
10 continues to apply under subitem (1).

11 (3) Subitems (1) and (2) apply subject to this Act.

12 Note: For the purposes of transition from the WR Act to the FW Act, other provisions of this  
13 Act:

14 (a) modify or exclude the operation of the WR Act as it continues to  
15 apply under subitem (1); and

16 (b) provide for the continued operation of the WR Act (including in  
17 modified form) in relation to conduct that occurs on or after the  
18 WR Act repeal day.

19 **12 FWA to take over some processes**

20 (1) On and after the WR Act repeal day:

21 (a) an application that could have been made to any of the  
22 following because of item 11 may be made only to FWA:

23 (i) the Commission;

24 (ii) the President;

25 (iii) a member of the Commission;

26 (iv) a Registrar; and

27 (b) an appeal to the Commission that could have been instituted  
28 because of item 11 may be instituted only as an appeal to  
29 FWA; and

30 (c) a process (however described) that could have been initiated  
31 by the Commission on its own motion because of item 11  
32 may be initiated only by FWA; and

33 (d) a matter that could have been referred to the Commission  
34 under section 46PW of the *Human Rights and Equal*

1                                    *Opportunity Commission Act 1986* because of item 11 is to  
2                                    be referred only to FWA.

- 3        (2)        For the purposes of subitem (1), a law of the Commonwealth that  
4                                    relates to an application, appeal, process or matter referred to in that  
5                                    subitem is to be read:  
6                                    (a) as if a reference to a WR Act body or WR Act office were a  
7                                    reference to FWA, as necessary; and  
8                                    (b) with any other necessary modifications.

9        Note:        For *WR Act body* and *WR Act office*: see subitem 7(1) of Schedule 18.

10        (3)        Subitems (1) and (2) apply subject to this Act.

11        **13 Regulations—conduct before repeal**

- 12                                    The regulations may do one or more of the following:  
13                                    (a) modify the operation of the WR Act as it applies under  
14                                    item 11;  
15                                    (b) provide for any other matter that, because of item 11, could  
16                                    have been dealt with by a WR Act body or a person holding a  
17                                    WR Act office to be dealt with by FWA, or by FWA only.

**Schedule 3** Continued existence of awards, workplace agreements and certain other  
WR Act instruments

**Part 1** Preliminary

---

1

2

**Schedule 3—Continued existence of awards,  
workplace agreements and certain  
other WR Act instruments**

3

4

5

**Part 1—Preliminary**

6

**1 Meanings of *employee* and *employer***

7

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



1

2

## **Part 2—Continued existence of WR Act instruments as transitional instruments**

3

4

### **2 WR Act instruments that continue in existence as transitional instruments**

5

6

- (1) Each WR Act instrument (see subitem (2)) that becomes a transitional instrument (see subitems (3) and (4)) continues in existence in accordance with this Schedule from when it becomes a transitional instrument, despite the WR Act repeal.

7

8

9

10

Note: In addition to provisions of this Schedule, the following other provisions affect the continued existence of transitional instruments:

11

12

- (a) Part 2 of Schedule 5 (which deals with the WR Act award modernisation process);

13

14

- (b) Division 2 of Part 2 of Schedule 6 (which deals with the enterprise instrument modernisation process);

15

16

- (c) Schedule 8 (which deals with workplace agreements and workplace determinations made under the WR Act, including the making of ITEAs during the bridging period);

17

18

19

- (d) Schedule 11 (which deals with transfer of business);

20

21

- (e) Part 3 of Schedule 2 (which deals with conduct before the WR Act repeal day).

22

- (2) Each of the following instruments is a **WR Act instrument**:

23

- (a) an award;

24

- (b) a notional agreement preserving State awards;

25

- (c) a workplace agreement;

26

- (d) a workplace determination;

27

- (e) a preserved State agreement;

28

- (f) an AWA;

29

- (g) a pre-reform certified agreement;

30

- (h) a pre-reform AWA;

31

- (i) an old IR agreement;

32

- (j) a section 170MX award.

33

Note 1: Workplace agreements are either collective agreements or ITEAs.

34

Note 2: Preserved State agreements are either preserved collective State agreements or preserved individual State agreements.

35

**Schedule 3** Continued existence of awards, workplace agreements and certain other WR Act instruments

**Part 2** Continued existence of WR Act instruments as transitional instruments

---

1 Note 3: For transitional provisions relating to Division 2 of Part 7 of the WR Act (which deals  
2 with wages), see Schedule 9.

3 Note 4: For transitional provisions relating to Schedule 6 to the WR Act (which deals with  
4 transitional awards etc.), see Schedule 20.

5 (3) The following WR Act instruments become *transitional instruments* on  
6 the WR Act repeal day:

7 (a) each WR Act instrument that was in operation immediately  
8 before the WR Act repeal day;

9 (b) each workplace agreement or workplace determination made  
10 before the WR Act repeal day but that had not yet come into  
11 operation by that day;

12 (c) any other WR Act instrument that, although not in operation  
13 immediately before the WR Act repeal day, could come into  
14 operation after that day because of an instrument interaction  
15 rule.

16 (4) If an ITEA is made during the bridging period under Division 7 of  
17 Part 2 of Schedule 8, the ITEA becomes a *transitional instrument* when  
18 it is made.

19 (5) Transitional instruments are classified as follows:

20 (a) awards, and notional agreements preserving State awards, are  
21 *award-based transitional instruments*;

22 (b) all other kinds of transitional instruments are  
23 *agreement-based transitional instruments*;

24 (c) agreement-based transitional instruments of the following  
25 kinds are *collective agreement-based transitional*  
26 *instruments*:

27 (i) collective agreements;

28 (ii) workplace determinations;

29 (iii) preserved collective State agreements;

30 (iv) pre-reform certified agreements;

31 (v) old IR agreements;

32 (vi) section 170MX awards;

33 (d) agreement-based transitional instruments of the following  
34 kinds are *individual agreement-based transitional*  
35 *instruments*:

36 (i) ITEAs;

37 (ii) preserved individual State agreements;

38 (iii) AWAs;

---

1 (iv) pre-reform AWAs.

2 **3 The employees, employers etc. who are covered by a**  
3 **transitional instrument and to whom it *applies***

4 (1) A transitional instrument *covers* the same employees, employers and  
5 any other persons that it would have covered (however described in the  
6 instrument or WR Act) if the WR Act had continued in operation.

7 Note 1: The expression *covers* is used to indicate the range of employees, employers etc. to  
8 whom the instrument potentially *applies* (see subitem (2)). The employees, employers  
9 etc. who are within this range will depend on terms of the instrument, and on any  
10 relevant provisions of the WR Act.

11 Note 2: Depending on the terms of a transitional instrument and any relevant provisions of the  
12 WR Act, the instrument's coverage may extend to people who become employees after  
13 the instrument becomes a transitional instrument.

14 (2) A transitional instrument *applies* to the same employees, employers and  
15 any other persons the instrument covers as would, if the WR Act had  
16 continued in operation, have been:

17 (a) required by the WR Act to comply with terms of the  
18 instrument; or

19 (b) entitled under the WR Act to enforce terms of the instrument.

20 Note: The expression *applies* is used to indicate the range of employees, employers etc. who  
21 are required to comply with, or can enforce, the terms of a transitional instrument.

22 (3) However, an award-based transitional instrument does not apply to an  
23 employee (or to an employer, or an employee organisation, in relation  
24 to the employee) at a time when the employee is a high income  
25 employee (see section 329 of the FW Act).

26 Note: Item 35 deals with the application of section 329 of the FW Act to award-based  
27 transitional instruments.

28 (4) This item has effect subject to:

29 (a) the instrument interaction rules (see item 5); and

30 (b) the variation or termination of transitional instruments as  
31 referred to in item 9;

32 (c) Division 2 of Part 5 (which deals with interaction between  
33 transitional instruments and FW Act modern awards,  
34 workplace determinations and enterprise agreements); and

35 (d) Schedule 11 (which deals with transfer of business); and

36 (e) Part 3 of Schedule 2 (which deals with conduct before the  
37 WR Act repeal day).

---

1     **4 Transitional instruments continue to be subject to the same**  
2             **instrument content rules**

3     (1)     The same instrument content rules that applied in relation to WR Act  
4             instruments of a particular kind immediately before the WR Act repeal  
5             day continue to apply in relation to instruments of that kind that become  
6             transitional instruments.

7     Note:    Certain instrument content rules relating to the standing down of employees do not  
8             continue to apply in relation to WR Act instruments that become transitional  
9             instruments (see item 3 of Schedule 15).

10    (2)     ***Instrument content rules*** are provisions of a law of the  
11             Commonwealth, as in force immediately before the WR Act repeal day,  
12             of any of the following kinds:

- 13             (a) provisions about what may, must or must not be included in  
14                 an instrument;
- 15             (b) provisions to the effect that a particular term of an instrument  
16                 is of no effect (however described):
- 17                 (i) either completely or to a limited extent; and  
18                 (ii) either permanently or for a limited period;
- 19             (c) provisions to the effect that a particular term is taken to be  
20                 included in an instrument.

21    Note:    Most of the instrument content rules were in the WR Act.

22     **5 Transitional instruments continue to be subject to the same**  
23             **instrument interaction rules**

24     (1)     The same instrument interaction rules that applied in relation to WR Act  
25             instruments of a particular kind immediately before the WR Act repeal  
26             day continue to apply in relation to instruments of that kind that become  
27             transitional instruments.

28     (2)     ***Instrument interaction rules*** are provisions of a law of the  
29             Commonwealth, as in force immediately before the WR Act repeal day,  
30             the effect of which is that:

- 31             (a) one instrument has priority over, or excludes, another  
32                 instrument:
- 33                 (i) either completely or to a particular extent; and  
34                 (ii) either permanently or for a particular period; or
- 35             (b) one instrument ceases to operate because of another  
36                 instrument:
-

- 1 (i) either completely or to a particular extent; and  
2 (ii) either permanently or for a particular period.

3 Note: Most of the instrument interaction rules were in the WR Act.

4 **6 References in transitional instruments to the Australian**  
5 **Industrial Relations Commission etc.**

- 6 (1) If a provision of a transitional instrument confers a power or function on  
7 the Australian Industrial Relations Commission, that provision has  
8 effect on and after the WR Act repeal day as if references in it to the  
9 Commission were instead references to FWA.
- 10 (2) If a provision of a transitional instrument confers a power or function on  
11 the Industrial Registrar or a Deputy Industrial Registrar, that provision  
12 has effect on and after the WR Act repeal day as if references in it to the  
13 Industrial Registrar or a Deputy Industrial Registrar were instead  
14 references to the General Manager of FWA.
- 15 (3) This item has effect subject to:  
16 (a) a contrary intention in this Act; and  
17 (b) the regulations.

18 **7 No loss of accrued rights or liabilities when transitional**  
19 **instrument terminates or ceases to apply**

- 20 (1) If a transitional instrument terminates, or ceases to apply in relation to a  
21 person, that does not affect:  
22 (a) any right or liability that a person acquired, accrued or  
23 incurred before the transitional instrument terminated or  
24 ceased to apply; or  
25 (b) any investigation, legal proceeding or remedy in respect of  
26 any such right or liability.
- 27 (2) Any such investigation, legal proceeding or remedy may be instituted,  
28 continued or enforced as if the transitional instrument had not  
29 terminated or ceased to apply.
- 30 (3) This item has effect subject to a contrary intention in this Act or in the  
31 FW Act.

32 **8 Certain transitional instruments displace certain**  
33 **Commonwealth laws**

---

**Schedule 3** Continued existence of awards, workplace agreements and certain other  
WR Act instruments

**Part 2** Continued existence of WR Act instruments as transitional instruments

---

- 1 (1) To the extent of any inconsistency, the following transitional  
2 instruments displace prescribed conditions of employment specified in a  
3 Commonwealth law that is prescribed by the regulations:  
4 (a) a workplace agreement;  
5 (b) a pre-reform certified agreement;  
6 (c) an AWA;  
7 (d) a pre-reform AWA.
- 8 (2) In subitem (1):
- 9 ***Commonwealth law*** means an Act or any regulations or other  
10 instrument made under an Act.
- 11 ***prescribed conditions*** means conditions that are identified by the  
12 regulations.
- 13 (3) If, immediately before the WR Act repeal day, regulations made under  
14 section 350 of the WR Act, or that continued to apply under subclause  
15 2(2) or 17(2) of Schedule 7 to the WR Act:  
16 (a) identified a condition as a prescribed condition in relation to  
17 an instrument referred to in paragraph (1)(a), (b), (c) or (d);  
18 or  
19 (b) prescribed an Act or any regulations or other instrument  
20 made under an Act as a Commonwealth law in relation to  
21 such an instrument;
- 22 those regulations continue to have effect on and after that day as if  
23 made for the purposes of this item.
- 24 (4) Subitem (3) has effect subject to any regulations made for the purposes  
25 of subitem (1) or (2).

1

2

## **Part 3—Variation and termination of transitional instruments**

3

4

### **9 Transitional instruments can only be varied or terminated in limited circumstances**

5

6

(1) A transitional instrument cannot be varied except under:

7

(a) a provision of this Part or the regulations; or

8

(b) item 26 (which deals with resolving difficulties with the interaction between transitional instruments and the National Employment Standards); or

9

10

(c) Part 2 of Schedule 5 (which deals with the WR Act award modernisation process); or

11

12

(d) Division 2 of Part 2 of Schedule 6 (which deals with the enterprise instrument modernisation process); or

13

14

(e) Schedule 8 (which deals with workplace agreements and workplace determinations made under the WR Act); or

15

16

(f) Schedule 11 (which deals with transfer of business); or

17

18

(g) Part 3 of Schedule 2 (which deals with conduct before the WR Act repeal day).

19

20

(2) A transitional instrument cannot be terminated (or otherwise brought to an end) except under:

21

22

(a) a provision of this Part or the regulations; or

23

(b) Part 2 of Schedule 5; or

24

(c) Division 2 of Part 2 of Schedule 6; or

25

(d) Schedule 8; or

26

(e) Schedule 11; or

27

(f) Part 3 of Schedule 2.

28

Note: The references in paragraphs (1)(a) and (2)(a) to a provision of this Part or the regulations includes a reference to a provision of the WR Act or the FW Act as it applies because of a provision of this Part.

29

30

31

### **10 All kinds of transitional instrument: variation to remove ambiguities etc.**

32

33

(1) On application by a person covered by a transitional instrument, FWA may make a determination varying the instrument:

34

**Schedule 3** Continued existence of awards, workplace agreements and certain other WR Act instruments

**Part 3** Variation and termination of transitional instruments

---

- 1 (a) to remove an ambiguity or uncertainty in the instrument; or  
2 (b) to resolve an uncertainty or difficulty relating to the  
3 interaction between the instrument and a modern award; or  
4 (c) to remove terms that are inconsistent with Part 3-1 of the FW  
5 Act (which deals with general protections), or to vary terms  
6 to make them consistent with that Part.

7 Note: For variation of a transitional instrument to resolve an uncertainty or difficulty relating  
8 to the interaction between the instrument and the National Employment Standards, see  
9 item 26.

- 10 (2) A variation of a transitional instrument operates from the day specified  
11 in the determination, which may be a day before the determination is  
12 made.

13 **11 All kinds of transitional instrument: variation on referral**  
14 **by HREOC**

- 15 (1) This item applies if a transitional instrument is referred to FWA under  
16 section 46PW of the *Human Rights and Equal Opportunity Commission*  
17 *Act 1986* (which deals with discriminatory industrial instruments).  
18 (2) If the instrument is an award-based transitional instrument, section 161  
19 of the FW Act applies in relation to the referral of the instrument as if  
20 the instrument were a modern award.  
21 (3) If the transitional instrument is an agreement-based transitional  
22 instrument, section 218 of the FW Act applies in relation to the referral  
23 of the instrument as if the instrument were an enterprise agreement.

24 **12 Awards: continued application of WR Act provisions**  
25 **about variation and revocation**

- 26 (1) Subject to this item, Divisions 5 (other than subsections 554(1) to (4))  
27 and 6 of Part 10 of the WR Act continue to apply on and after the WR  
28 Act repeal day in relation to transitional instruments that are awards as  
29 if references to the Commission were instead references to FWA.  
30 Note: Items 10 and 11 apply instead of subsections 554(1) to (4) of the WR Act.  
31 (2) FWA must perform its powers and functions under Divisions 5 and 6 in  
32 a way that furthers the objects of Part 10 of the WR Act.  
33 (3) An award cannot be varied or revoked under Division 5 or 6 after the  
34 end of the bridging period, except as follows:
-



- 1 (a) an award can be varied after the end of the bridging period  
2 under section 553 of the WR Act;  
3 (b) an award can be varied or revoked after the end of the  
4 bridging period as a result of FWA continuing to deal with a  
5 matter that it was dealing with before the end of the bridging  
6 period.

7 **13 Pre-reform certified agreements: continued application of**  
8 **WR Act provisions about variation**

- 9 (1) Subject to this item, clause 2A of Schedule 7 to the WR Act continues  
10 to apply on and after the WR Act repeal day in relation to transitional  
11 instruments that are pre-reform certified agreements as if references to  
12 the Commission were instead references to FWA.  
13 Note: This subitem has effect subject to Part 3 of Schedule 2 (which deals with conduct before  
14 the WR Act repeal day).  
15 (2) An application under clause 2A cannot be made after the end of the  
16 bridging period.

17 **14 Preserved collective State agreements: continued**  
18 **application of WR Act provisions about variation**

- 19 (1) Subject to this item, clause 16A of Schedule 8 to the WR Act continues  
20 to apply on and after the WR Act repeal day in relation to transitional  
21 instruments that are preserved State agreements as if references to the  
22 Commission were instead references to FWA.  
23 Note: This subitem has effect subject to Part 3 of Schedule 2 (which deals with conduct before  
24 the WR Act repeal day).  
25 (2) An application under clause 16A cannot be made after the end of the  
26 bridging period.

27 **15 Collective agreement-based transitional instruments:**  
28 **termination by agreement**

- 29 Subdivision C of Division 7 of Part 2-4 of the FW Act (which deals  
30 with termination of enterprise agreements by employers and employees)  
31 applies in relation to a collective agreement-based transitional  
32 instrument as if a reference to an enterprise agreement included a  
33 reference to a collective agreement-based transitional instrument.

1     **16 Collective agreement-based transitional instruments:**  
2             **termination by FWA**

- 3     (1)     Subdivision D of Division 7 of Part 2-4 of the FW Act (which deals  
4             with termination of enterprise agreements after their nominal expiry  
5             date) applies in relation to a collective agreement-based transitional  
6             instrument as if a reference to an enterprise agreement included a  
7             reference to a collective agreement-based transitional instrument.
- 8     (2)     For the purpose of the application of Subdivision D to an old IR  
9             agreement, the agreement's nominal expiry date is taken to be the end  
10            of the period of the agreement.

11     **17 Individual agreement-based transitional instruments:**  
12             **termination by agreement**

- 13     (1)     The employee and employer covered by an individual agreement-based  
14             transitional instrument may make a written agreement (a *termination*  
15             *agreement*) to terminate the agreement in accordance with the  
16             following requirements:
- 17             (a) the termination agreement must be signed by the employee  
18                 and the employer;
- 19             (b) if the employee is under 18, it must also be signed by a  
20                 parent or guardian of the employee;
- 21             (c) the signatures must be witnessed.
- 22     (2)     The termination has no effect unless it has been approved by FWA.
- 23     (3)     The employer or employee may apply to FWA for approval of the  
24             termination agreement. The application must be made:
- 25             (a) within 14 days after the termination agreement was made; or  
26             (b) if in all the circumstances FWA considers it fair to extend  
27                 that period—within such further period as FWA allows.
- 28     (4)     If an application for FWA to approve the termination agreement is  
29             made under subitem (3), FWA must approve the termination of the  
30             instrument if:
- 31             (a) FWA is satisfied that the requirements of subitem (1) have  
32                 been complied with; and
- 33             (b) FWA is satisfied that there are no other reasonable grounds  
34                 for believing that the employee has not agreed to the  
35                 termination.

- 1 (5) If the termination is approved under subitem (4), the termination  
2 operates from the day specified in the decision to approve the  
3 termination.

4 **18 Individual agreement-based transitional instruments:**  
5 **termination conditional on enterprise agreement**

- 6 (1) This item provides for the making of an instrument (a *conditional*  
7 *termination*) that will have the effect of terminating an individual  
8 agreement-based transitional instrument if:  
9 (a) an enterprise agreement (the *proposed enterprise agreement*)  
10 is made that covers the employee and the employer; and  
11 (b) the proposed enterprise agreement comes into operation.
- 12 (2) If the transitional instrument has not passed its nominal expiry date, the  
13 conditional termination must be a written agreement signed by the  
14 employer and the employee. The signatures must be witnessed.
- 15 (3) If the transitional instrument has passed its nominal expiry date, the  
16 conditional termination must be in writing and signed either by the  
17 employee or the employer. The signature must be witnessed.
- 18 (4) If the conditional termination is signed by the employee, and the  
19 employee is under 18, it must also be signed by a parent or guardian of  
20 the employee.
- 21 (5) Any other requirements of the regulations relating to the form, content  
22 or making of the conditional termination must also be complied with.
- 23 (6) The employer must give the employee a copy of the conditional  
24 termination if:  
25 (a) the conditional termination is an agreement signed by the  
26 employee and the employer in the circumstances covered by  
27 subitem (2); or  
28 (b) the conditional termination is signed by the employer in the  
29 circumstances covered by subitem (3).
- 30 Note 1: For compliance with this obligation, see subitem 3(1) of Schedule 16.
- 31 Note 2: Failure to comply with this obligation does not affect the operation of subitem (8).
- 32 (7) The conditional termination must accompany any application to FWA  
33 for approval of the proposed enterprise agreement under section 185 of  
34 the FW Act.
-

**Schedule 3** Continued existence of awards, workplace agreements and certain other  
WR Act instruments

**Part 3** Variation and termination of transitional instruments

---

1 Note 1: For compliance with this obligation, see subitem 3(2) of Schedule 16.

2 Note 2: Failure to comply with this obligation does not affect the operation of subitem (8), or  
3 the validity of an approval by FWA of the proposed enterprise agreement.

4 (8) If the requirements of subitems (2) to (5) have been complied with in  
5 relation to the conditional termination, the transitional instrument  
6 terminates when the proposed enterprise agreement comes into  
7 operation.

8 **19 Individual agreement-based transitional instruments:**  
9 **unilateral termination with FWA's approval**

10 (1) This item applies to an employer or employee:

11 (a) to whom an individual agreement-based transitional  
12 instrument that has passed its nominal expiry date applies;  
13 and

14 (b) who wants to terminate the transitional instrument.

15 (2) The employer or employee may:

16 (a) make a written declaration that identifies the transitional  
17 instrument and that states that the employer or employee  
18 wants to terminate the transitional instrument; and

19 (b) apply to FWA for the approval of the termination.

20 (3) The employer or employee cannot make an application as mentioned in  
21 paragraph (2)(b) unless, at least 14 days before the day on which the  
22 application is made, the employer or employee gives the other of them a  
23 notice complying with the following requirements:

24 (a) the notice must identify the transitional instrument;

25 (b) the notice must state that the employer or employee intends  
26 to apply to FWA for approval of the termination of the  
27 instrument;

28 (c) the notice must state that, if FWA approves the termination,  
29 the transitional instrument will terminate on the 90th day  
30 after the day on which FWA makes the approval decision;

31 (d) if the notice is given by the employer:

32 (i) the notice must state whether, if the instrument  
33 terminates during the bridging period, one or more  
34 redundancy provisions in the instrument will continue to  
35 apply to the employee as provided for by item 38; and

36 (ii) if one or more redundancy provisions in the instrument  
37 will so continue to apply to the employee—the notice

---

- 1 must include or be accompanied by a copy of the  
2 provision or provisions;  
3 (e) the notice must comply with any other requirements of the  
4 regulations.
- 5 (4) FWA must approve the termination if FWA is satisfied that:  
6 (a) the transitional instrument applies to the employer and the  
7 employee; and  
8 (b) the requirements of subitems (2) and (3) have been complied  
9 with.
- 10 (5) If FWA approves the termination, the transitional instrument terminates  
11 on the 90th day after the day on which FWA makes the approval  
12 decision.

## 13 **20 Sunsetting rules for various transitional instruments**

### 14 *Notional agreements preserving State awards*

- 15 (1) A notional agreement preserving State awards (other than a notional  
16 agreement that is an enterprise instrument) terminates:  
17 (a) on the 4th anniversary of the FW (safety net provisions)  
18 commencement day; or  
19 (b) if the regulations prescribe a later day—on that later day.

### 20 *Division 3 pre-reform certified agreements*

- 21 (2) If the employer in relation to a Division 3 pre-reform certified  
22 agreement is not a national system employer, the agreement terminates  
23 on the earlier of the following:  
24 (a) 27 March 2011;  
25 (b) when both of the following conditions are satisfied:  
26 (i) the agreement has passed its nominal expiry date;  
27 (ii) it has been replaced by a State employment agreement.
- 28 (3) However, if the employer becomes a national system employer before  
29 27 March 2011, subitem (2) does not apply after that time.

### 30 *Old IR agreements*

- 31 (4) If the employer in relation to an old IR agreement is not a national  
32 system employer, the agreement terminates on the earlier of the  
33 following:
-

**Schedule 3** Continued existence of awards, workplace agreements and certain other  
WR Act instruments

**Part 3** Variation and termination of transitional instruments

---

- 1 (a) 27 March 2011;  
2 (b) when it has been replaced by a State employment agreement.

- 3 (5) However, if the employer becomes a national system employer before  
4 27 March 2011, subitem (4) does not apply after that time.

5 *Section 170MX awards*

- 6 (6) If:  
7 (a) the employer in relation to a section 170MX award is not a  
8 national system employer; and  
9 (b) the section 170MX award:  
10 (i) was in force just before 27 March 2006; or  
11 (ii) was made on or after that day because of Part 8 of  
12 Schedule 7 to the WR Act;  
13 the award terminates on the earlier of the following:  
14 (c) 27 March 2011;  
15 (d) when it has been replaced by a State employment agreement.

- 16 (7) However, if the employer becomes a national system employer before  
17 27 March 2011, subitem (6) does not apply after that time.

18 **21 Effect of termination**

19 If a transitional instrument terminates, it ceases to cover (and can never  
20 again cover) any employees, employers or other persons.

1  
2 **Part 4—Transitional instruments and the Australian**  
3 **Fair Pay and Conditions Standard**

4 **22 Same AFPCS interaction rules continue to apply**

- 5 (1) Subject to this item, the same AFPCS interaction rules that applied in  
6 relation to WR Act instruments of a particular kind immediately before  
7 the WR Act repeal day continue to apply in relation to instruments of  
8 that kind that become transitional instruments.

9 Note 1: Schedule 4 provides for the continued application of the Australian Fair Pay and  
10 Conditions Standard (other than minimum wages provisions) during the bridging  
11 period.

12 Note 2: Schedule 9 provides for the continued application of the minimum wages provisions of  
13 the Australian Fair Pay and Conditions Standard on and after the WR Act repeal day.

- 14 (2) AFPCS interaction rules of the kind referred to in paragraph (4)(b) do  
15 not continue to apply after the end of the bridging period.

16 Note: This may result in an employee becoming entitled to a rate of pay under a transitional  
17 APCS that is higher than was required to be paid to the employee under a transitional  
18 instrument during the bridging period. If that occurs, the employer may apply to FWA  
19 for a determination to phase-in the effect of the increase (see item 14 of Schedule 9).

- 20 (3) If, immediately before the end of the bridging period, an AFPCS  
21 interaction rule of the kind referred to in paragraph (4)(b) produced the  
22 result that an employee to whom a transitional instrument applied was  
23 not covered by the obligation in subsection 182(1) or (2) of the WR Act  
24 in relation to a transitional APCS, the employee becomes covered by  
25 that obligation in relation to that transitional APCS from the end of the  
26 bridging period.

- 27 (4) ***AFPCS interaction rules*** are provisions of a law of the  
28 Commonwealth, as in force immediately before the WR Act repeal day,  
29 the effect of which is that:

- 30 (a) the Australian Fair Pay and Conditions Standard prevails  
31 over an instrument (or an instrument is of no effect because  
32 of the Standard) either completely or to a particular extent; or  
33 (b) an instrument prevails over the Australian Fair Pay and  
34 Conditions Standard (or the Standard does not apply because  
35 of the instrument) either completely or to a particular extent.

36 Note: Most of the AFPCS interaction rules were in the WR Act.

1

2 **Part 5—Transitional instruments and the FW Act**

3 **Division 1—Interaction between transitional instruments**  
4 **and the National Employment Standards**

5 **23 The no detriment rule**

- 6 (1) To the extent that a term of a transitional instrument is detrimental to an  
7 employee, in any respect, when compared to an entitlement of the  
8 employee under the National Employment Standards, the term of the  
9 transitional instrument is of no effect.

10 Note 1: A term of a transitional instrument that provides an entitlement that is at least as  
11 beneficial to an employee as a corresponding entitlement of the employee under the  
12 National Employment Standards will continue to have effect.

13 Note 2: Division 3 (which contains other general provisions about how the FW Act applies in  
14 relation to transitional instruments) is also relevant to how the National Employment  
15 Standards apply in relation to employees to whom transitional instruments apply.

16 Note 3: References to the National Employment Standards include a reference to the extended  
17 parental leave provisions and the extended notice of termination provisions (see  
18 sections 746 and 761 of the FW Act).

- 19 (2) Subitem (1) does not affect a term of a transitional instrument that is  
20 permitted by a provision of the National Employment Standards as it  
21 has effect under item 24.

- 22 (3) The regulations may make provisions that apply to determining, for the  
23 purpose of this item, whether terms of a transitional instrument are, or  
24 are not, detrimental in any respect when compared to entitlements under  
25 the National Employment Standards.

26 **24 Provisions of the NES that allow instruments to contain**  
27 **particular kinds of terms**

28 The following provisions of the National Employment Standards have  
29 effect, on and after the FW (safety net provisions) commencement day,  
30 as if a reference to a modern award or an enterprise agreement included  
31 a reference to a transitional instrument:

- 32 (a) section 63 (which allows terms dealing with averaging of  
33 hours of work);  
34 (b) section 93 (which allows terms dealing with cashing out and  
35 taking paid annual leave);
-



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

## 14 **25 Shiftworker annual leave entitlement**

- 15 (1) If:  
16 (a) a transitional instrument applies to an employee; and  
17 (b) the employee is a shift worker as defined in section 228 of  
18 the WR Act;  
19 the employee is taken to qualify for the shiftworker annual leave  
20 entitlement for the purposes of section 87 of the FW Act.  
21 (2) This item has effect subject to subsection 87(4) of the FW Act.

## 22 **26 Resolving difficulties about application of this Division**

- 23 (1) On application by a person covered by a transitional instrument, FWA  
24 may make a determination varying the transitional instrument:  
25 (a) to resolve an uncertainty or difficulty relating to the  
26 interaction between the instrument and the National  
27 Employment Standards; or  
28 (b) to make the instrument operate effectively with the National  
29 Employment Standards.  
30 (2) A variation of a transitional instrument operates from the day specified  
31 in the determination, which may be a day before the determination is  
32 made.

## 33 **27 Division does not affect transitional instruments before** 34 **NES commencement**

---

1           This Division (including determinations under item 26) does not affect  
2           the operation of a transitional instrument at any time before the FW  
3           (safety net provisions) commencement day.

4           **Division 2—Interaction between transitional instruments**  
5                                   **and FW Act modern awards, enterprise**  
6                                   **agreements and workplace determinations**

7           **28 Modern awards and agreement-based transitional**  
8                                   **instruments**

9           (1)     While an agreement-based transitional instrument of any of the  
10           following kinds applies to an employee, or to an employer or other  
11           person in relation to the employee:

- 12                   (a) a workplace agreement;
- 13                   (b) a workplace determination;
- 14                   (c) a preserved State agreement;
- 15                   (d) an AWA;
- 16                   (e) a pre-reform AWA;

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

19           Note 1: However, a modern award can continue to cover the employee while the  
20           agreement-based transitional instrument continues to apply.

21           Note 2: This subitem has effect subject to item 13 of Schedule 9 (which requires that the base  
22           rate of pay under an agreement-based transitional instrument must not be less than the  
23           relevant modern award rate).

24           (2)     If:

- 25                   (a) an agreement-based transitional instrument of any of the  
26                   following kinds:
  - 27                           (i) a pre-reform certified agreement;
  - 28                           (ii) an old IR agreement;
  - 29                           (iii) a section 170MX award; and
- 30                   (b) a modern award;

31           both apply to an employee, or to an employer or other person in relation  
32           to the employee, the agreement-based transitional instrument prevails  
33           over the modern award, to the extent of any inconsistency.

34           Note: This subitem has effect subject to item 13 of Schedule 9 (which requires that the base  
35           rate of pay under an agreement-based transitional instrument must not be less than the  
36           relevant modern award rate).

---

---

1 **29 Modern awards and award-based transitional instruments**

2 *Modern awards other than the miscellaneous modern award*

- 3 (1) If a modern award (other than the miscellaneous modern award) that  
4 covers an employee, or an employer or other person in relation to the  
5 employee, comes into operation, then an award-based transitional  
6 instrument ceases to cover (and can never again cover) the employee, or  
7 the employer or other person in relation to the employee.

8 Note: A modern award cannot be expressed to cover an employee who is covered by a  
9 transitional instrument that is an enterprise instrument (see subsection 143(8) of the FW  
10 Act).

11 *The miscellaneous modern award*

- 12 (2) While an award-based transitional instrument that covers an employee,  
13 or an employer or other person in relation to the employee, is in  
14 operation, the miscellaneous modern award does not cover the  
15 employee, or the employer or other person in relation to the employee.

16 *Outworker entities*

- 17 (3) If a modern award (other than the miscellaneous modern award) that  
18 contains outworker terms that cover an outworker entity comes into  
19 operation, then outworker terms in an award-based transitional  
20 instrument cease to cover (and can never again cover) the outworker  
21 entity.
- 22 (4) While outworker terms in an award-based transitional instrument that is  
23 in operation cover an outworker entity, any outworker terms in the  
24 miscellaneous modern award do not cover the outworker entity.
- 25 (5) *Outworker terms* in an award-based transitional instrument are terms  
26 that would be outworker terms as defined in the FW Act if they were in  
27 a modern award.

28 **30 FW Act enterprise agreements and workplace**  
29 **determinations, and agreement-based transitional**  
30 **instruments**

31 *Individual agreement-based transitional instruments*

- 32 (1) While an individual agreement-based transitional instrument applies to  
33 an employee, or to an employer in relation to the employee, an

**Schedule 3** Continued existence of awards, workplace agreements and certain other  
WR Act instruments

**Part 5** Transitional instruments and the FW Act

---

1 enterprise agreement or workplace determination (under the FW Act)  
2 does not apply to the employee, or the employer in relation to the  
3 employee.

4 *Collective agreement-based transitional instruments*

5 (2) If an enterprise agreement or workplace determination (under the FW  
6 Act) starts to apply to an employee, or an employer or other person in  
7 relation to the employee, then a collective agreement-based transitional  
8 instrument ceases to cover (and can never again cover) the employee, or  
9 the employer or other person in relation to the employee.

10 Note 1: The fact that a collective agreement-based transitional instrument applies to employees  
11 does not prevent those employees and their employer from replacing that transitional  
12 instrument at any time with an enterprise agreement, regardless of whether the  
13 transitional instrument has passed its nominal expiry date.

14 Note 2: Industrial action must not be taken before the nominal expiry date of an  
15 agreement-based transitional instrument, even if it is being replaced by an enterprise  
16 agreement (see item 4 of Schedule 13).

17 **31 FW Act enterprise agreements and workplace**  
18 **determinations, and award-based transitional**  
19 **instruments**

20 If an enterprise agreement or workplace determination (under the FW  
21 Act) applies to an employee, or an employer or other person in relation  
22 to the employee, then:

- 23 (a) an award-based transitional instrument ceases to apply to the  
24 employee, and the employer or other person in relation to the  
25 employee; but  
26 (b) the award-based transitional instrument can (subject to the  
27 other provisions of this Part) continue to cover the employee,  
28 and the employer or other person in relation to the employee.

29 Note: Subject to the other provisions of this Part, the award-based transitional instrument can  
30 again start to apply to the employee, and the employer or other person in relation to the  
31 employee, if the enterprise agreement or workplace determination (under the FW Act)  
32 ceases to apply to the employee.

33 **Division 3—Other general provisions about how the FW**  
34 **Act applies in relation to transitional**  
35 **instruments**

36 **32 Employee not award/agreement free if transitional**  
37 **instrument applies**

---

- 
- 1 (1) An employee is not an award/agreement free employee for the purposes  
2 of the FW Act if a transitional instrument applies to the employee.
- 3 (2) The regulations may make provision in relation to any of the following  
4 in relation to employees to whom transitional instruments apply:
- 5 (a) what is the base rate of pay of such an employee for the  
6 purposes of the FW Act (either generally or for the purposes  
7 of entitlements under the National Employment Standards);
- 8 (b) what is the full rate of pay of such an employee for the  
9 purposes of the FW Act (either generally or for the purposes  
10 of entitlements under the National Employment Standards);
- 11 (c) whether such an employee is a pieceworker for the purposes  
12 of the FW Act.

### 13 **33 Employee's ordinary hours of work**

14 *Item applies for purpose of determining employee's ordinary*  
15 *hours of work for the FW Act*

- 16 (1) For the purposes of the FW Act, the ordinary hours of work of an  
17 employee to whom a transitional instrument applies are to be  
18 determined in accordance with this item.

19 *Ordinary hours as specified in transitional instrument*

- 20 (2) If a transitional instrument that applies to the employee specifies, or  
21 provides for the determination of, the employee's ordinary hours of  
22 work, the employee's **ordinary hours of work** are as specified in, or  
23 determined in accordance with, that instrument.

24 *If subitem (2) does not apply and there is agreement*

- 25 (3) If subitem (2) does not apply, the employee's **ordinary hours of work**  
26 are the hours agreed by the employee and his or her employer as the  
27 employee's ordinary hours of work.

28 *If subitem (2) does not apply and there is no agreement*

- 29 (4) If subitem (2) does not apply but there is no agreement under  
30 subitem (3), the **ordinary hours of work** of the employee in a week are:
- 31 (a) if the employee is a full time employee—38 hours; or  
32 (b) if the employee is not a full-time employee—the lesser of:  
33 (i) 38 hours; and
-

1 (ii) the employee's usual weekly hours of work.

2 *If subitem (2) does not apply: agreed hours are less than usual*  
3 *weekly hours*

4 (5) If:

- 5 (a) subitem (2) does not apply; and  
6 (b) the employee is not a full-time employee; and  
7 (c) there is an agreement under subitem (3) between the  
8 employee and his or her employer, but the agreed ordinary  
9 hours of work are less than the employee's usual weekly  
10 hours of work;

11 the *ordinary hours of work* of the employee in a week are the lesser of:

- 12 (d) 38 hours; and  
13 (e) the employee's usual weekly hours of work.

14 *Regulations may prescribe usual weekly hours*

15 (6) For an employee who is not a full-time employee and who does not  
16 have usual weekly hours of work, the regulations may prescribe, or  
17 provide for the determination of, hours that are taken to be the  
18 employee's usual weekly hours of work for the purposes of subitems (4)  
19 and (5).

## 20 **34 Payment of wages**

21 Division 2 of Part 2-9 of the FW Act (which deals with payment of  
22 wages) applies, on and after the WR Act repeal day, in relation to a  
23 transitional instrument as if:

- 24 (a) a reference to an enterprise agreement included a reference to  
25 an agreement-based transitional instrument; and  
26 (b) a reference to a modern award included a reference to an  
27 award-based transitional instrument.

## 28 **35 Guarantee of annual earnings**

29 Division 3 of Part 2-9 of the FW Act (which deals with the guarantee of  
30 annual earnings) applies, on and after the FW (safety net provisions)  
31 commencement day, as if:

- 32 (a) a reference to an enterprise agreement included a reference to  
33 an agreement-based transitional instrument; and

1 (b) a reference to a modern award included a reference to an  
2 award-based transitional instrument and a transitional APCS.

3 Note: For provisions about transitional APCSs, see Schedule 9.

### 4 **36 Application of unfair dismissal provisions**

5 Part 3-2 of the FW Act (which deals with unfair dismissal) applies, on  
6 and after the WR Act repeal day, as if:

7 (a) the reference in subparagraph 382(b)(i) and paragraph  
8 389(1)(b) of that Act to a modern award included a reference  
9 to an award-based transitional instrument; and

10 (b) the reference in subparagraph 382(b)(ii) and paragraph  
11 389(1)(b) of that Act to an enterprise agreement included a  
12 reference to an agreement-based transitional instrument.

### 13 **37 Regulations may deal with other matters**

14 The regulations may deal with other matters relating to how the FW Act  
15 applies in relation to transitional instruments.

1

2

## Part 6—Preservation of redundancy provisions in agreements etc.

3

4

### 38 Preservation of redundancy provisions when agreement-based transitional instrument terminates

5

6

#### *When this item applies*

7

(1) This item applies if a termination of an agreement-based transitional  
instrument (the *terminated instrument*) takes effect during the bridging  
period in either of the following circumstances:

8

9

10

11

12

13

(a) the instrument is a preserved collective State agreement or a  
pre-reform certified agreement that is terminated by FWA as  
provided for by item 16 because of an application made by an  
employer covered by the agreement;

14

15

16

17

(b) the instrument is an individual agreement-based transitional  
instrument that terminates under item 19 because FWA  
approves a termination of the instrument by an employer  
covered by the instrument.

18

#### *Continuation of redundancy provisions*

19

(2) Any redundancy provision that was in the terminated instrument  
continues to apply to any person to whom the terminated instrument  
applied immediately before the termination took effect, as if the  
terminated instrument had continued operating.

20

21

22

23

Note: For how long the redundancy provision continues to apply, see subitem (6).

24

(3) A redundancy provision that continues to apply to a person under  
subitem (2) is taken, for the purpose of this Act, to be a transitional  
instrument of the same kind as the terminated instrument. However, this  
does not apply for the purpose of:

25

26

27

28

29

30

(a) the provisions of Parts 2, 3, 4 and 5 of this Schedule, other  
than subitem 20(2) and item 23; or  
(b) any other provisions prescribed by the regulations.



1 *Continued redundancy provisions generally prevail over other*  
2 *instruments*

3 (4) Subject to subitem (5), a redundancy provision that continues to apply  
4 to a person under subitem (2) prevails over any other redundancy  
5 provision included in any other instrument that would otherwise apply  
6 (even if the provisions in that other instrument might be more beneficial  
7 to the employee).

8 Note: For how long the redundancy provision continues to apply, see subitem (6).

9 (5) However, if:

- 10 (a) an industry-specific redundancy scheme in a modern award  
11 applies to an employee; and  
12 (b) a redundancy provision that continues to apply to an  
13 employee under subitem (2) is detrimental to the employee,  
14 in any respect, when compared to the scheme in the modern  
15 award;

16 then the scheme in the modern award prevails over the redundancy  
17 provision, to the extent that the redundancy provision is detrimental to  
18 the employee.

19 *Period for which redundancy provisions are continued*

20 (6) A redundancy provision continues under subitem (2) to apply to a  
21 person, in relation to an employee to whom the provision applies, until  
22 the earliest of the following:

- 23 (a) the end of the period of 24 months from the time the  
24 termination took effect;  
25 (b) the time when the employee ceases to be employed by the  
26 employer (otherwise than in circumstances covered by the  
27 provision);  
28 (c) the time when an enterprise agreement, workplace  
29 determination or ITEA starts to apply to the employee.

30 *Definitions*

31 (7) In this item:

32 *instrument* means:

- 33 (a) an award-based transitional instrument; or  
34 (b) a collective agreement; or  
35 (c) a collective preserved State agreement; or
-

- 1 (d) a pre-reform certified agreement; or  
2 (e) an old IR agreement.

3 **redundancy provision** means any of the following kinds of provisions:

- 4 (a) a provision relating to redundancy pay in relation to a  
5 termination of employment;  
6 (b) a provision that is incidental to a provision relating to  
7 redundancy pay in relation to a termination of employment;  
8 (c) a machinery provision that is in respect of a provision  
9 relating to redundancy pay in relation to a termination of  
10 employment;

11 where the termination is at the initiative of the employer and on the  
12 grounds of operational requirements, or because the employer is  
13 insolvent.

### 14 **39 Notification of preservation of redundancy provisions**

15 *When this item applies*

- 16 (1) This item applies if:  
17 (a) FWA makes a decision (a **termination decision**) of either of  
18 the following kinds:  
19 (i) a decision to terminate a transitional instrument as  
20 referred to in paragraph 38(1)(a);  
21 (ii) a decision to approve a termination of a transitional  
22 instrument as referred to in paragraph 38(1)(b); and  
23 (b) when the termination takes effect, one or more redundancy  
24 provisions in the instrument will continue to apply to persons  
25 (**affected persons**) in accordance with item 38.

26 *Notification requirements if the transitional instrument is a  
27 preserved collective State agreement or a pre-reform certified  
28 agreement*

- 29 (2) If the transitional instrument is a preserved collective State agreement  
30 or a pre-reform certified agreement:  
31 (a) the termination decision must:  
32 (i) identify the redundancy provision or the redundancy  
33 provisions; and  
34 (ii) state that the provision or provisions will continue to  
35 apply to the affected persons; and
-

- 1 (iii) specify the date that is 24 months after the time when  
2 the termination takes effect; and  
3 (iv) state that the provision or provisions will continue to  
4 apply until that date, or an earlier date, in accordance  
5 with subitem 38(6); and  
6 (b) FWA must give a copy of the termination decision to each  
7 affected person that is:  
8 (i) an employer; or  
9 (ii) an employee organisation.
- 10 (3) An employer that has, under subitem (2), received a copy of a  
11 termination decision must take reasonable steps to ensure that all  
12 employees to whom the instrument applied immediately before the  
13 termination takes effect are given a copy of the decision within 21 days  
14 of the employer receiving a copy of the decision.

15 Note: For compliance with this obligation, see item 4 of Schedule 16.

16 *Notification requirements if the transitional instrument is an*  
17 *individual agreement-based transitional instrument*

- 18 (4) If the transitional instrument is an individual agreement-based  
19 transitional instrument, the termination decision must:  
20 (a) identify the redundancy provision or the redundancy  
21 provisions; and  
22 (b) state that the provision or provisions will continue to apply to  
23 the affected persons; and  
24 (c) specify the date that is 24 months after the time when the  
25 termination takes effect; and  
26 (d) state that the provision or provisions will continue to apply  
27 until that date, or an earlier date, in accordance with subitem  
28 38(6).

29 **40 Redundancy provisions that were already preserved as at**  
30 **the WR Act repeal day**

- 31 (1) This item applies if, immediately before the WR Act repeal day,  
32 redundancy provisions that were in a WR Act instrument (the  
33 *terminated instrument*) that was terminated before that day (the *actual*  
34 *termination*) were continuing to bind persons under any of the  
35 following provisions:  
36 (a) section 399A of the WR Act;
-

**Schedule 3** Continued existence of awards, workplace agreements and certain other  
WR Act instruments

**Part 6** Preservation of redundancy provisions in agreements etc.

---

- 1 (b) section 399A of the pre-transition Act (within the meaning of  
2 Schedule 7A to the WR Act);  
3 (c) clause 6A of Schedule 7 to the WR Act;  
4 (d) clause 20A of Schedule 7 to the WR Act;  
5 (e) clause 21A of Schedule 8 to the WR Act;  
6 (f) clause 21D of Schedule 8 to the WR Act.
- 7 (2) Item 38 applies as if:  
8 (a) the redundancy provisions were a transitional instrument of  
9 the same kind as the terminated instrument; and  
10 (b) a termination of that transitional instrument took effect on the  
11 WR Act repeal day as referred to in subitem 38(1); and  
12 (c) the reference in paragraph 38(6)(a) to 24 months were instead  
13 a reference to the unexpired part of the period of 24 months  
14 that started on the actual termination.
- 15 (3) Item 39 does not apply to the termination referred to in  
16 paragraph (2)(b).

1  
2  
3  
4  
5

## **Schedule 4—National Employment Standards**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

1

2

## **Part 2—Continued application of WR Act minimum entitlements provisions (other than wages) during bridging period**

3

4

5

### **2 Continued application of the Australian Fair Pay and Conditions Standard leave and work hours provisions**

6

7

Divisions 3, 4, 5 and 6 of Part 7 of the WR Act continue to apply during the bridging period.

8

9

10

11

Note 1: Part 7 of the WR Act contains the Australian Fair Pay and Conditions Standard. Part 3 of Schedule 9 to this Act provides for the continued application of Division 2 of Part 7 (which deals with wages).

12

13

14

Note 2: Part 4 of Schedule 3 to this Act provides for the continued application of the rules about the interaction between transitional instruments and the Australian Fair Pay and Conditions Standard.

15

### **3 Continued application of entitlements to meal breaks, public holidays and parental leave**

16

17

Divisions 1, 2 (other than sections 615 to 618) and 6 of Part 12 of the WR Act continue to apply during the bridging period.

18

19

### **4 Continued application of notice of termination provisions**

20

21

The following provisions of the WR Act continue to apply in relation to terminations of employment that occur during the bridging period, or notice of which is given during the bridging period:

22

23

(a) section 661;

24

(b) the following other provisions, as they relate to section 661:

25

(i) subsections 637(3), (4) and (5);

26

(ii) section 638;

27

(iii) section 640;

28

(iv) section 642;

29

(v) section 662.

1

2 **Part 3—Operation of the National Employment**  
3 **Standards**

4 **5 Non-accruing entitlements: counting service before the FW**  
5 **(safety net provisions) commencement day**

6 *General rule*

7 (1) An employee's service with an employer before the FW (safety net  
8 provisions) commencement day counts as service of the employee with  
9 the employer for the purpose of determining the employee's  
10 entitlements under the National Employment Standards, other than  
11 entitlements to:

- 12 (a) paid annual leave; and  
13 (b) paid personal/carer's leave.

14 Note 1: References to the National Employment Standards include a reference to the extended  
15 parental leave provisions and the extended notice of termination provisions (see  
16 sections 746 and 761 of the FW Act).

17 Note 2: Interaction between the National Employment Standards and transitional instruments is  
18 dealt with in Division 1 of Part 5 of Schedule 3.

19 *No double entitlement*

20 (2) If, before the FW (safety net provisions) commencement day, the  
21 employee has already had the benefit of an entitlement, the amount of  
22 which was calculated by reference to a period of service, subitem (1)  
23 does not result in that period of service with the employer being counted  
24 again when calculating the employee's entitlements of that kind under  
25 the National Employment Standards.

26 (3) To avoid doubt, subitem (2) does not require an employee to serve any  
27 initial qualifying period of service for long service leave again.

28 *Limitation on application of general rule to redundancy pay*

29 (4) Subitem (1) does not apply in relation to an employee and an employer  
30 for the purposes of Subdivision B of Division 11 of the National  
31 Employment Standards (which deals with redundancy pay) if the terms  
32 and conditions of employment that applied to the employee's  
33 employment by the employer immediately before the FW (safety net

1 provisions) commencement day did not provide for an entitlement to  
2 redundancy pay.

3 **6 Accruing entitlements: leave accrued immediately before**  
4 **the FW (safety net provisions) commencement day**

- 5 (1) This item applies if, immediately before the FW (safety net provisions)  
6 commencement day, an employee has an accrued entitlement to an  
7 amount of paid annual leave or paid personal/carer's leave, whether the  
8 leave accrued under Part 7 of the WR Act, a transitional instrument or  
9 otherwise.
- 10 (2) The provisions of the National Employment Standards relating to taking  
11 that kind of leave (including rates of pay while taking leave), or  
12 cashing-out that kind of leave, apply, as a minimum standard, to the  
13 accrued leave as if it had accrued under the National Employment  
14 Standards.

15 **7 Leave that, immediately before the FW (safety net**  
16 **provisions) commencement day, is being, or is to be,**  
17 **taken under Part 7 of the WR Act**

- 18 (1) If:  
19 (a) immediately before the FW (safety net provisions)  
20 commencement day, an employee is taking a period of a type  
21 of leave under Part 7 of the WR Act; and  
22 (b) there is an equivalent type of leave under the National  
23 Employment Standards;  
24 the employee is entitled to continue on leave of the equivalent type  
25 under the National Employment Standards for the remainder of the  
26 period.

27 Note: For example, if an employee is taking paid annual leave under Part 7 of the WR Act  
28 immediately before the FW (safety net provisions) commencement day, the employee is  
29 entitled to continue on paid annual leave under the National Employment Standards.

- 30 (2) If an employee, or his or her spouse or de facto partner (if the spouse or  
31 de facto partner is also an employee), continues on leave under the  
32 National Employment Standards in accordance with subitem (1), the  
33 employee is entitled to adjust any of the following consistently with the  
34 provisions of the National Employment Standards in relation to that  
35 type of leave:  
36 (a) the amount of leave the employee is taking or will take;
-



- 1 (b) the time at which the leave is taken;  
2 (c) the arrangements for taking the leave.

3 Note: If the employee's spouse or de facto partner is also an employee, the employees will be  
4 an employee couple for the purposes of the parental leave provisions of the National  
5 Employment Standards.

- 6 (3) If, before the FW (safety net provisions) commencement day:  
7 (a) an employee has taken a step that the employee is required to  
8 take so that the employee can, on or after the FW (safety net  
9 provisions) commencement day, take a type of leave referred  
10 to in subitem (1); and  
11 (b) an equivalent step is required under the National  
12 Employment Standards;

13 the employee is taken to have taken the step under the National  
14 Employment Standards.

15 Note: For example, if an employee has given the employer an application under section 271 of  
16 the WR Act so that the employee can take ordinary maternity leave, the employee is  
17 taken to have given the employer notice under section 74 of the FW Act of the taking of  
18 unpaid parental leave.

- 19 (4) If an employee is taken, by subitem (3), to have taken a step, in relation  
20 to leave, under the National Employment Standards, the employee is  
21 entitled to adjust the step consistently with the provisions of the  
22 National Employment Standards in relation to that type of leave.

23 Note: For example, an employee could vary the content of a notice given to the employer in  
24 relation to the leave, or vary the amount of leave the employee has notified the  
25 employer that the employee intends to take.

- 26 (5) The regulations may deal with other matters relating to how the  
27 National Employment Standards apply to leave that, immediately before  
28 the FW (safety net provisions) commencement day, is being, or is to be,  
29 taken under Part 7 of the WR Act.

## 30 **8 Community service leave**

- 31 (1) An employee may, on or after the FW (safety net provisions)  
32 commencement day, be absent from his or her employment under  
33 Division 8 of the National Employment Standards even if the period of  
34 absence began before that day.

- 35 (2) If an employee is absent from his or her employment in accordance with  
36 subitem (1), subsection 111(5) of the National Employment Standards  
37 applies as if a reference to the first 10 days of absence were a reference

1 to the first 10 days of absence occurring on or after the FW (safety net  
2 provisions) commencement day.

### 3 **9 Notice of termination**

4 (1) Subdivision A of Division 11 of the National Employment Standards  
5 applies only to terminations of employment occurring on or after the  
6 FW (safety net provisions) commencement day.

7 (2) However, that Subdivision does not apply to a termination if notice of  
8 the termination was given before the FW (safety net provisions)  
9 commencement day.

### 10 **10 Redundancy pay**

11 Subdivision B of Division 11 of the National Employment Standards  
12 applies only to terminations of employment occurring on or after the  
13 FW (safety net provisions) commencement day, even if notice of the  
14 termination was given before that day.

### 15 **11 References to transfers of employment**

16 References to a transfer of employment in:

- 17 (a) provisions of the National Employment Standards; and  
18 (b) subsections 22(5) and (6) of the FW Act, as those provisions  
19 apply for the purposes of the National Employment  
20 Standards;

21 do not cover a situation where the employee became employed by the  
22 second employer (within the meaning of subsection 22(7) of the FW  
23 Act) at a time before the FW (safety net provisions) commencement  
24 day.

### 25 **12 Recognised emergency management bodies**

26 A body that was established, or continued in existence, for the purpose,  
27 or for purposes that include the purpose, of enabling one or more  
28 employees to obtain the protection of subsection 659(2) of the WR Act  
29 (which dealt with unlawful termination) is not a recognised emergency  
30 management body for the purposes of the FW Act.

### 31 **13 Fair Work Information Statement**

1           The obligation in section 125 of the National Employment Standards for  
2           an employer to give an employee the Fair Work Information Statement  
3           only applies to an employee who starts employment with the employer  
4           on or after the FW (safety net provisions) commencement day.

5           **14 Regulations**

6           The regulations may make provision in relation to how the National  
7           Employment Standards apply to, or are affected by, things done or  
8           matters occurring before the FW (safety net provisions) commencement  
9           day.

1  
2  
3  
4  
5  
6  
7

## **Schedule 5—Modern awards (other than enterprise awards)**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

1

2 **Part 2—The WR Act award modernisation process**

3 **2 AIRC to continue and complete the award modernisation**  
4 **process**

5 (1) The Australian Industrial Relations Commission is to continue and  
6 complete the award modernisation process provided for by Part 10A of  
7 the WR Act (the *Part 10A award modernisation process*).

8 Note: Enterprise award etc. modernisation is provided for in Schedule 6.

9 (2) For that purpose, Part 10A of the WR Act continues to apply on and  
10 after the WR Act repeal day in accordance with this Part.

11 (3) Without limiting subitem (2), the request under section 576C of the WR  
12 Act continues to apply on and after the WR Act repeal day, and may be  
13 varied in accordance with that section.

14 (4) The Australian Industrial Relations Commission’s power under  
15 section 576H of the WR Act to vary a modern award cannot be  
16 exercised after the modern award has come into operation.

17 **3 Variation and termination of certain transitional**  
18 **instruments etc. to take account of Part 10A award**  
19 **modernisation process**

20 (1) FWA must, as soon as practicable after a modern award (other than the  
21 miscellaneous modern award) made in the Part 10A award  
22 modernisation process comes into operation (and subject to  
23 subitem (3)):

24 (a) terminate any of the following (*modernisable instruments*)  
25 that FWA considers are completely replaced by the modern  
26 award:

27 (i) award-based transitional instruments;

28 (ii) transitional APCSs; and

29 (b) if FWA considers that the modern award only partly replaces  
30 a modernisable instrument—vary the coverage terms of the  
31 modernisable instrument accordingly.

32 Note 1: The main provisions about transitional instruments are in Schedule 3, and the main  
33 provisions about transitional APCSs are in Schedule 9.

## **Schedule 5** Modern awards (other than enterprise awards)

### **Part 2** The WR Act award modernisation process

---

- 1 Note 2: This item does not limit the effect of any other provision of this Act under which a  
2 modernisable instrument ceases to cover a person from a time earlier than when the  
3 instrument is terminated or varied under this item.
- 4 (2) As soon as practicable after all modern awards made in the Part 10A  
5 modernisation process have come into operation, FWA must (subject to  
6 subitem (3)) terminate any remaining modernisable instruments.
- 7 (3) However, FWA must not, under this item:
- 8 (a) terminate a modernisable instrument that is an enterprise  
9 instrument, or that covers employees who are also covered by  
10 an enterprise instrument; or
- 11 (b) vary a modernisable instrument that is an enterprise  
12 instrument; or
- 13 (c) vary a modernisable instrument so that it ceases to cover  
14 employees who are also covered by an enterprise instrument.
- 15 Note: Item 9 of Schedule 6 deals with termination and variation of modernisable instruments  
16 to take account of the enterprise instrument modification process.
- 17 (4) FWA may establish a process for making decisions under this item to  
18 terminate or vary one or more modernisable instruments.
- 19 (5) FWA may advise persons or bodies about that process in any way FWA  
20 considers appropriate.
- 21 (6) Section 625 of the FW Act (which deals with delegation by the  
22 President of functions and powers of FWA) has effect as if  
23 subsection (2) of that section included a reference to FWA's powers  
24 under subitem (5).

#### **4 How the FW Act applies to modern awards made in the Part 10A award modernisation process**

- 25  
26
- 27 (1) A modern award made in the Part 10A award modernisation process is,  
28 for the purposes of the FW Act (and any other law), taken to be a  
29 modern award within the meaning of that Act from the later of the  
30 following days:
- 31 (a) the day on which the award is made;
- 32 (b) the FW (safety net provisions) commencement day.
- 33 (2) Section 49 of the FW Act does not apply for the purpose of determining  
34 when the modern award comes into operation. Instead, the modern  
35 award comes into operation on the day on which it is expressed to  
36 commence (in accordance with section 576Y of the WR Act).
-

- 1 (3) The regulations may deal with other matters relating to how the FW Act  
2 applies in relation to modern awards made in the Part 10A award  
3 modernisation process.

4 **5 Variations to deal with minor problems attributable to**  
5 **award modernisation starting before enactment of FW**  
6 **Act**

- 7 (1) If FWA considers that there is a minor or technical problem with a  
8 modern award that is attributable to the fact that the Part 10A award  
9 modernisation process started before the enactment of the FW Act,  
10 FWA may make a determination varying the modern award to resolve  
11 the problem.

12 Note: Certain modern awards may, for example, contain references to concepts or provisions  
13 that are not consistent with the FW Act as enacted. This variation power allows FWA to  
14 fix such references.

- 15 (2) FWA may make the determination:  
16 (a) on its own initiative; or  
17 (b) on application by an employer, employee, organisation or  
18 outworker entity covered by the modern award; or  
19 (c) on application by an organisation that is entitled to represent  
20 the industrial interests of one or more employers or  
21 employees that are covered by the modern award; or  
22 (d) if the variation is of outworker terms in the modern award—  
23 on application by an organisation that is entitled to represent  
24 the industrial interests of one or more outworkers to whom  
25 the terms relate.

26 **6 Review of all modern awards (other than modern enterprise**  
27 **awards) after first 2 years**

- 28 (1) As soon as practicable after the second anniversary of the FW (safety  
29 net provisions) commencement day, FWA must conduct a review of all  
30 modern awards, other than modern enterprise awards.

31 Note: The review required by this item is in addition to the annual wage reviews and 4 yearly  
32 reviews of modern awards that FWA is required to conduct under the FW Act.

- 33 (2) In the review, FWA must consider whether the modern awards:  
34 (a) achieve the modern awards objective; and
-

**Schedule 5** Modern awards (other than enterprise awards)

**Part 2** The WR Act award modernisation process

---

1 (b) are operating effectively, without anomalies or technical  
2 problems arising from the Part 10A award modernisation  
3 process.

4 (3) FWA may make a determination varying any of the modern awards in  
5 any way that FWA considers appropriate to remedy any issues  
6 identified in the review.

7 Note: Any variation of a modern award must comply with the requirements of the FW Act  
8 relating to the content of modern awards (see Subdivision A of Division 3 of Part 2-3 of  
9 the FW Act).

10 (4) The modern awards objective applies to FWA making a variation under  
11 this item, and the minimum wages objective also applies if the variation  
12 relates to modern award minimum wages.

13 (5) FWA may advise persons or bodies about the review in any way FWA  
14 considers appropriate.

15 (6) Section 625 of the FW Act (which deals with delegation by the  
16 President of functions and powers of FWA) has effect as if  
17 subsection (2) of that section included a reference to FWA's powers  
18 under subitem (5).

19 **7 Review of transitional arrangements included in modern**  
20 **awards**

21 (1) If:  
22 (a) a modern award includes terms (*review terms*) under which  
23 FWA may review transitional arrangements included in the  
24 award; and  
25 (b) the review terms, and the transitional arrangements, were  
26 included in the award in the Part 10A award modernisation  
27 process;

28 FWA may:

29 (c) review the award in accordance with the review terms; and  
30 (d) make a determination varying the award in any way it  
31 considers necessary, having regard to that review.

32 Note: Any variation of the modern award must comply with the requirements of the FW Act  
33 relating to the content of modern awards (see Subdivision A of Division 3 of Part 2-3 of  
34 the FW Act).



- 1 (2) The review terms are taken to be terms that are permitted to be included  
2 in the modern award by Subdivision B of Division 3 of Part 2-3 of the  
3 FW Act.

1

2 **Part 3—Avoiding reductions in take-home pay**

3 **8 Part 10A award modernisation process is not intended to**  
4 **result in reduction in take-home pay**

5 (1) The Part 10A award modernisation process is not intended to result in a  
6 reduction in the take-home pay of employees or outworkers.

7 (2) An employee's or outworker's *take-home pay* is the pay an employee  
8 or outworker actually receives:

9 (a) including wages and incentive-based payments, and  
10 additional amounts such as allowances and overtime; but

11 (b) disregarding the effect of any deductions that are made as  
12 permitted by section 324 of the FW Act.

13 Note: Deductions permitted by section 324 of the FW Act may (for example) include  
14 deductions under salary sacrificing arrangements.

15 (3) An employee suffers a *modernisation-related reduction in take-home*  
16 *pay* if, and only if:

17 (a) a modern award made in the Part 10A award modernisation  
18 process starts to apply to the employee when the award  
19 comes into operation; and

20 (b) the employee is employed in the same position as (or a  
21 position that is comparable to) the position he or she was  
22 employed in immediately before the modern award came into  
23 operation; and

24 (c) the amount of the employee's take-home pay for working  
25 particular hours or for a particular quantity of work after the  
26 modern award comes into operation is less than what would  
27 have been the employee's take-home pay for those hours or  
28 that quantity of work immediately before the award came  
29 into operation; and

30 (d) that reduction in the employee's take-home pay is  
31 attributable to the Part 10A award modernisation process.

32 (4) An outworker who is not an employee suffers a *modernisation-related*  
33 *reduction in take-home pay* if, and only if:

34 (a) when a modern award that contains outworker terms comes  
35 into operation, the outworker is a person to whom outworker  
36 terms in the modern award relate; and

---

- 1 (b) the outworker is performing the same work as (or work that  
2 is similar to) the work he or she was performing immediately  
3 before the modern award came into operation; and  
4 (c) the amount of the outworker's take-home pay for working  
5 particular hours or for a particular quantity of work after the  
6 modern award comes into operation is less than what would  
7 have been the outworker's take-home pay for those hours or  
8 that quantity of work immediately before the award came  
9 into operation; and  
10 (d) that reduction in the outworker's take-home pay is  
11 attributable to the Part 10A award modernisation process.

## 12 **9 Orders remedying reductions in take-home pay**

### 13 *Employees*

- 14 (1) If FWA is satisfied that an employee, or a class of employees, to whom  
15 a modern award applies has suffered a modernisation-related reduction  
16 in take-home pay, FWA may make any order (a *take-home pay order*)  
17 requiring, or relating to, the payment of an amount or amounts to the  
18 employee or employees that FWA considers appropriate to remedy the  
19 situation.

### 20 *Outworkers*

- 21 (2) If FWA is satisfied that an outworker, or a class of outworkers, to  
22 whom outworker terms in a modern award relate has suffered a  
23 modernisation-related reduction in take-home pay, FWA may make any  
24 order (a *take-home pay order*) requiring, or relating to, the payment of  
25 an amount or amounts to the outworker or outworkers that FWA  
26 considers appropriate to remedy the situation.

### 27 *General provisions*

- 28 (3) FWA may make a take-home pay order only on application by:  
29 (a) an employee or outworker who has suffered a  
30 modernisation-related reduction in take-home pay; or  
31 (b) an organisation that is entitled to represent the industrial  
32 interests of such an employee or outworker; or  
33 (c) a person acting on behalf of a class of such employees or  
34 outworkers.

- 1 (4) If FWA is satisfied that an application for a take-home pay order has  
2 already been made in relation to an employee or a class of employees,  
3 or an outworker or a class of outworkers, FWA may dismiss any later  
4 application that is made under these provisions in relation to the same  
5 employee or employees, or the same outworker or outworkers.

6 **10 Ensuring that take-home pay orders are confined to the**  
7 **circumstances for which they are needed**

- 8 (1) FWA must not make a take-home pay order in relation to an employee  
9 or class of employees, or an outworker or a class of outworkers, if:  
10 (a) FWA considers that the modernisation-related reduction in  
11 take-home pay is minor or insignificant; or  
12 (b) FWA is satisfied that the employee or employees, or  
13 outworker or outworkers, have been adequately compensated  
14 in other ways for the reduction.
- 15 (2) FWA must ensure that a take-home pay order is expressed so that:  
16 (a) it does not apply to an employee or outworker unless the  
17 employee or outworker has actually suffered a  
18 modernisation-related reduction in take-home pay; and  
19 (b) if the take-home pay payable to the employee or outworker  
20 under the modern award increases after the order is made,  
21 there is a corresponding reduction in any amount payable to  
22 the employee or outworker under the order.

23 **11 Take-home pay order continues to have effect so long as**  
24 **modern award continues to cover the employee or**  
25 **employees**

26 A take-home pay order made in relation to an employee or class of  
27 employees to whom a particular modern award applies continues to  
28 have effect in relation to those employees (subject to the terms of the  
29 order) for so long as the modern award continues to cover the employee  
30 or employees, even if it stops applying to the employee or employees  
31 because an enterprise agreement starts to apply.

32 **12 Inconsistency with modern awards and enterprise**  
33 **agreements**

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

5           **13 Application of provisions of FW Act to take-home pay**  
6           **orders**

7           The FW Act applies as if the following provisions of that Act included a  
8           reference to a take-home pay order:

- 9                   (a) subsection 675(2);  
10                   (b) subsection 706(2).

11          Note:    For compliance with take-home pay orders, see item 7 of Schedule 16.

1

2

## **Schedule 6—Modern enterprise awards**

3

### **Part 1—Preliminary**

4

#### **1 Meanings of *employee* and *employer***

5

In this Schedule, *employee* means a national system employee and

6

*employer* means a national system employer.

1

2 **Part 2—The enterprise instrument modernisation**  
3 **process**

4 **Division 1—Enterprise instruments**

5 **2 Enterprise instruments**

- 6 (1) Each of the following is an *enterprise instrument*:
- 7 (a) an enterprise award-based instrument;
- 8 (b) an enterprise preserved collective State agreement.
- 9 (2) An *enterprise award-based instrument* is an award-based transitional
- 10 instrument that regulates the terms and conditions of employment in:
- 11 (a) a single enterprise (or a part of a single enterprise) only; or
- 12 (b) one or more enterprises, if the employers all carry on similar
- 13 business activities under the same franchise and are:
- 14 (i) franchisees of the same franchisor; or
- 15 (ii) related bodies corporate of the same franchisor; or
- 16 (iii) any combination of the above.
- 17 (3) An *enterprise preserved collective State agreement* is a transitional
- 18 instrument that is a preserved collective State agreement in relation to
- 19 which the following paragraphs are satisfied:
- 20 (a) a State or Territory law had, on the day before the
- 21 commencement of Part 2 of Schedule 4 to the *Workplace*
- 22 *Relations Amendment (Work Choices) Act 2005*, the effect
- 23 (however described) of converting a State award into the
- 24 relevant State employment agreement;
- 25 (b) if the State award had continued to have effect in relation to
- 26 employees, a notional agreement preserving State awards to
- 27 which subitem (2) applies would have been taken to come
- 28 into operation in relation to those employees.

29 **3 Meaning of *single enterprise* and *part of a single enterprise***

- 30 (1) A *single enterprise* is:
- 31 (a) a business, project or undertaking that is carried on by an
- 32 employer; or
- 33 (b) the activities carried on by:

**Schedule 6** Modern enterprise awards

**Part 2** The enterprise instrument modernisation process

---

- 1 (i) the Commonwealth, a State or a Territory; or  
2 (ii) a body, association, office or other entity established for  
3 a public purpose by or under a law of the  
4 Commonwealth, a State or a Territory; or  
5 (iii) any other body in which the Commonwealth, a State or  
6 a Territory has a controlling interest.
- 7 (2) For the purposes of subitem (1), if 2 or more employers carry on a  
8 business, project or undertaking as a joint venture or common  
9 enterprise, the employers are taken to be one employer.
- 10 (3) For the purposes of subitem (1), if 2 or more related bodies corporate  
11 each carry on a single enterprise:  
12 (a) the bodies corporate are taken to be one employer; and  
13 (b) the single enterprises are taken to be one single enterprise.
- 14 Note: However, an enterprise instrument or a modern enterprise award could just relate to a  
15 part of that single enterprise.
- 16 (4) A *part of a single enterprise* includes, for example:  
17 (a) a geographically distinct part of the single enterprise; or  
18 (b) a distinct operational or organisational unit within the single  
19 enterprise.

20 **Division 2—The enterprise instrument modernisation**  
21 **process**

22 **4 The enterprise instrument modernisation process**

- 23 (1) The *enterprise instrument modernisation process* is the process of  
24 making modern awards under this Division to replace enterprise  
25 instruments.
- 26 (2) On application, FWA may make a modern award (a *modern enterprise*  
27 *award*) to replace an enterprise instrument.
- 28 (3) The application may be made only:  
29 (a) by a person covered by the enterprise instrument; and  
30 (b) during the period starting on the FW (safety net provisions)  
31 commencement day and ending at the end of 31 December  
32 2013.
- 33 (4) A modern enterprise award must be made by a Full Bench.
-



- 1 (5) In deciding whether or not to make a modern enterprise award, and in  
2 determining the content of that award, FWA must take into account the  
3 following:
- 4 (a) the circumstances that led to the making of the enterprise  
5 instrument rather than an instrument of more general  
6 application;
  - 7 (b) whether there is a modern award (other than the  
8 miscellaneous modern award) that would, but for the  
9 enterprise instrument, cover the persons who are covered by  
10 the instrument;
  - 11 (c) the content of the modern award referred to in paragraph (b);
  - 12 (d) the terms and conditions of employment applying in the  
13 industry in which the persons covered by the enterprise  
14 instrument operate, and the extent to which those terms and  
15 conditions are reflected in the instrument;
  - 16 (e) the extent to which the enterprise instrument provides  
17 enterprise-specific terms and conditions of employment;
  - 18 (f) the likely impact on the persons covered by the enterprise  
19 instrument, and the persons covered by the modern award  
20 referred to in paragraph (b), of a decision to make, or not  
21 make, the modern enterprise award, including any impact on  
22 the ongoing viability or competitiveness of any enterprise  
23 carried on by those persons;
  - 24 (g) the views of the persons covered by the enterprise  
25 instrument;
  - 26 (h) any other matter prescribed by the regulations.
- 27 (6) The regulations may deal with other matters relating to the enterprise  
28 instrument modernisation process.

## 29 **5 Enterprise instruments: termination by FWA**

- 30 (1) A person covered by an enterprise instrument may apply to FWA for  
31 FWA to terminate the instrument.
- 32 (2) The application may be made only during the period starting on the FW  
33 (safety net provisions) commencement day and ending at the end of  
34 31 December 2013.
- 35 (3) If an application for FWA to terminate the enterprise instrument is  
36 made under subitem (1), FWA may:
- 37 (a) terminate the enterprise instrument; or
-

- 1 (b) decide that the enterprise instrument should not be  
2 terminated; or  
3 (c) decide to treat the application as if it were an application  
4 under item 4.
- 5 (4) In making a decision under subitem (3), FWA must take into account  
6 the following:
- 7 (a) the circumstances that led to the making of the enterprise  
8 instrument rather than an instrument of more general  
9 application;
- 10 (b) whether there is a modern award (other than the  
11 miscellaneous modern award) that would, but for the  
12 enterprise instrument, cover the persons who are covered by  
13 the instrument;
- 14 (c) the content of the modern award referred to in paragraph (b);
- 15 (d) the terms and conditions of employment applying in the  
16 industry in which the persons covered by the enterprise  
17 instrument operate, and the extent to which those terms and  
18 conditions are reflected in the instrument;
- 19 (e) the extent to which the enterprise instrument provides  
20 enterprise-specific terms and conditions of employment;
- 21 (f) the likely impact on the persons covered by the enterprise  
22 instrument, and the persons covered by the modern award  
23 referred to in paragraph (b), of a decision to terminate, or not  
24 terminate, the enterprise instrument, including any impact on  
25 the ongoing viability or competitiveness of any enterprise  
26 carried on by those persons;
- 27 (g) the views of the persons covered by the enterprise  
28 instrument;
- 29 (h) any other matter prescribed by the regulations.
- 30 (5) If FWA terminates the enterprise instrument, the termination operates  
31 from the day specified in the decision to terminate the instrument.

## 6 The modern enterprise awards objective

- 33 (1) The modern awards objective and the minimum wages objective apply  
34 to FWA making a modern enterprise award under this Division.
- 35 (2) However, in applying the modern awards objective and the minimum  
36 wages objective, FWA must recognise that modern enterprise awards  
37 may provide terms and conditions tailored to reflect employment
-

1 arrangements that have been developed in relation to the relevant  
2 enterprises. This is the *modern enterprise awards objective*.

3 Note: See also item 11 (enterprise instrument modernisation process is not intended to result  
4 in reduction in take-home pay).

## 5 **7 Terms of modern enterprise awards**

6 (1) Subject to this item and item 8, Division 3 of Part 2-3 of the FW Act  
7 (which deals with terms of modern awards) applies in relation to a  
8 modern enterprise award made under this Division.

### 9 *Increases in entitlements*

10 (2) If the making of a modern enterprise award results in an increase in an  
11 employee's entitlements, the modern enterprise award may provide for  
12 the increases to take effect in stages.

### 13 *Industry-specific redundancy schemes*

14 (3) If a modern award includes an industry-specific redundancy scheme in  
15 relation to a particular industry, and FWA makes a modern enterprise  
16 award that covers persons who operate in that industry, FWA may  
17 include the industry-specific redundancy scheme in the modern  
18 enterprise award.

## 19 **8 Coverage terms**

### 20 *Coverage terms must be included*

21 (1) A modern enterprise award must include terms (*coverage terms*) setting  
22 out, in accordance with this item:

- 23 (a) the enterprise or enterprises to which the modern enterprise  
24 award relates; and  
25 (b) the employer or employers, employees and organisations that  
26 are covered by the modern enterprise award.

### 27 *Enterprises*

28 (2) A modern enterprise award must be expressed to relate:

- 29 (a) to a single enterprise (or a part of a single enterprise) only; or  
30 (b) to one or more enterprises, but only if the employers all carry  
31 on similar business activities under the same franchise and  
32 are:

- 1 (i) franchisees of the same franchisor; or  
2 (ii) related bodies corporate of the same franchisor; or  
3 (iii) any combination of the above.

4 *Employers and employees*

- 5 (3) A modern enterprise award must be expressed to cover:  
6 (a) a specified employer that carries on, or specified employers  
7 that carry on, the enterprise or enterprises referred to in  
8 subitem (2); and  
9 (b) specified employees of the employer or employers covered  
10 by the modern enterprise award.

11 *Organisations*

- 12 (4) A modern enterprise award may be expressed to cover one or more  
13 specified organisations, in relation to:  
14 (a) all or specified employees covered by the award; or  
15 (b) the employer, or all or specified employers, covered by the  
16 award.

17 *Outworker entities*

- 18 (5) A modern enterprise award must not be expressed to cover outworker  
19 entities.

20 *How coverage etc. is expressed*

- 21 (6) For the purposes of subitem (2), an enterprise must be specified:  
22 (a) if paragraph (2)(a) applies to the enterprise—by name; or  
23 (b) if paragraph (2)(b) applies to the enterprise—by name, or by  
24 the name of the franchise.
- 25 (7) For the purposes of subitems (3) and (4):  
26 (a) an employer or employers may be specified by name or by  
27 inclusion in a specified class or specified classes; and  
28 (b) employees must be specified by inclusion in a specified class  
29 or specified classes; and  
30 (c) organisations must be specified by name.

1 *Employees not traditionally covered by awards etc.*

- 2 (8) A modern enterprise award must not be expressed to cover classes of  
3 employees:  
4 (a) who, because of the nature or seniority of their role, have  
5 traditionally not been covered by awards (whether made  
6 under laws of the Commonwealth or the States); or  
7 (b) who perform work that is not of a similar nature to work that  
8 has traditionally been regulated by such awards.

9 Note: For example, in some industries, managerial employees have traditionally not been  
10 covered by awards.

11 **9 Variation and termination of certain transitional**  
12 **instruments etc. to take account of enterprise**  
13 **instrument modernisation process**

- 14 (1) If FWA makes a modern enterprise award to replace an enterprise  
15 preserved collective State agreement, the agreement terminates when  
16 the modern award comes into operation.
- 17 (2) FWA must, as soon as practicable after a modern enterprise award that  
18 is made to replace an enterprise instrument comes into operation:  
19 (a) terminate the enterprise instrument (if it has not already  
20 terminated under subitem (1)); and  
21 (b) vary or terminate (as appropriate) any of the following  
22 *(modernisable instruments)*:  
23 (i) other award-based transitional instruments;  
24 (ii) transitional APCSs;  
25 so that employees who were covered by the enterprise  
26 instrument are no longer covered by those modernisable  
27 instruments.

28 Note 1: The main provisions about transitional instruments are in Schedule 3, and the main  
29 provisions about transitional APCSs are in Schedule 9.

30 Note 2: This item does not limit the effect of any other provision of this Act under which a  
31 modernisable instrument ceases to cover a person from a time earlier than when the  
32 instrument is terminated or varied under this item.

- 33 (3) If FWA decides not to make a modern enterprise award to replace an  
34 enterprise instrument, the instrument terminates when that decision  
35 comes into operation.

- 1 (4) If, by the end of the period specified in paragraph 4(3)(b), no  
2 application under item 4 or 5 has been made in relation to an enterprise  
3 instrument, the instrument terminates at the end of that period.
- 4 (5) As soon as practicable after all modern enterprise awards made in the  
5 enterprise instrument modernisation process have come into operation,  
6 FWA must terminate any remaining modernisable instruments.

7 **10 Notification of the cut-off for the enterprise instrument**  
8 **modernisation process**

- 9 (1) FWA must, at least 6 months before the end of the period specified in  
10 paragraph 4(3)(b), advise any persons still covered by an enterprise  
11 instrument:  
12 (a) that the period for making applications under items 4 and 5  
13 ends on 31 December 2013; and  
14 (b) of the consequences for the enterprise instrument if an  
15 application in relation to the instrument is not made.
- 16 (2) FWA may give that advice by any means it considers appropriate.
- 17 (3) Section 625 of the FW Act (which deals with delegation by the  
18 President of functions and powers of FWA) has effect as if  
19 subsection (2) of that section included a reference to FWA's functions  
20 and powers under this item.

21 **Division 3—Avoiding reductions in take-home pay**

22 **11 Enterprise instrument modernisation process is not**  
23 **intended to result in reduction in take-home pay**

- 24 (1) The enterprise instrument modernisation process is not intended to  
25 result in a reduction in the take-home pay of employees.
- 26 (2) An employee's *take-home pay* is the pay an employee actually receives:  
27 (a) including wages and incentive-based payments, and  
28 additional amounts such as allowances and overtime; but  
29 (b) disregarding the effect of any deductions that are made as  
30 permitted by section 324 of the FW Act.
- 31 Note: Deductions permitted by section 324 of the FW Act may (for example) include  
32 deductions under salary sacrificing arrangements.

- 1 (3) An employee suffers a *modernisation-related reduction in take-home*  
2 *pay* if, and only if:
- 3 (a) a modern enterprise award made in the enterprise instrument  
4 modernisation process starts to apply to the employee when  
5 the award comes into operation; and
- 6 (b) the employee is employed in the same position as (or a  
7 position that is comparable to) the position he or she was  
8 employed in immediately before the modern enterprise award  
9 came into operation; and
- 10 (c) the amount of the employee's take-home pay for working  
11 particular hours or for a particular quantity of work after the  
12 modern enterprise award comes into operation is less than  
13 what would have been the employee's take-home pay for  
14 those hours or that quantity of work immediately before the  
15 award came into operation; and
- 16 (d) that reduction in the employee's take-home pay is  
17 attributable to the enterprise instrument modernisation  
18 process.

## 19 **12 Orders remedying reductions in take-home pay**

- 20 (1) If FWA is satisfied that an employee, or a class of employees, to whom  
21 a modern enterprise award applies has suffered a modernisation-related  
22 reduction in take-home pay, FWA may make any order (a *take-home*  
23 *pay order*) requiring, or relating to, the payment of an amount or  
24 amounts to the employee or employees that FWA considers appropriate  
25 to remedy the situation.
- 26 (2) FWA may make a take-home pay order only on application by:
- 27 (a) an employee who has suffered a modernisation-related  
28 reduction in take-home pay; or
- 29 (b) an organisation that is entitled to represent the industrial  
30 interests of such an employee; or
- 31 (c) a person acting on behalf of a class of such employees.
- 32 (3) If FWA is satisfied that an application for a take-home pay order has  
33 already been made in relation to an employee or a class of employees,  
34 FWA may dismiss any later application that is made under these  
35 provisions in relation to the same employee or employees.

## 36 **13 Ensuring that take-home pay orders are confined to the** 37 **circumstances for which they are needed**

---

- 1 (1) FWA must not make a take-home pay order in relation to an employee  
2 or class of employees if:
- 3 (a) FWA considers that the modernisation-related reduction in  
4 take-home pay is minor or insignificant; or
- 5 (b) FWA is satisfied that the employee or employees have been  
6 adequately compensated in other ways for the reduction.
- 7 (2) FWA must ensure that a take-home pay order is expressed so that:
- 8 (a) it does not apply to an employee unless the employee has  
9 actually suffered a modernisation-related reduction in  
10 take-home pay; and
- 11 (b) if the take-home pay payable to the employee under the  
12 modern enterprise award increases after the order is made,  
13 there is a corresponding reduction in any amount payable to  
14 the employee under the order.

15 **14 Take-home pay order continues to have effect so long as**  
16 **modern enterprise award continues to cover the**  
17 **employee or employees**

18 A take-home pay order made in relation to an employee or class of  
19 employees to whom a particular modern enterprise award applies  
20 continues to have effect in relation to those employees (subject to the  
21 terms of the order) for so long as the modern enterprise award continues  
22 to cover the employee or employees, even if it stops applying to the  
23 employee or employees because an enterprise agreement starts to apply.

24 **15 Inconsistency with modern enterprise awards and**  
25 **enterprise agreements**

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

30 **16 Application of provisions of FW Act to take-home pay**  
31 **orders**

32 The FW Act applies as if the following provisions of that Act included a  
33 reference to a take-home pay order:

- 34 (a) subsection 675(2);  
35 (b) subsection 706(2).

36 Note: For compliance with take-home pay orders, see item 7 of Schedule 16.

---



1 **Division 4—Application of the FW Act**

2 **17 How the FW Act applies to modern awards made in the**  
3 **enterprise instrument modernisation process**

4 (1) A modern enterprise award made under Division 2 is, for the purposes  
5 of the FW Act (and any other law), taken to be a modern award (being a  
6 modern enterprise award) within the meaning of that Act from the day  
7 on which the modern enterprise award is made.

8 (2) Section 49 of the FW Act does not apply for the purpose of determining  
9 when the modern enterprise award comes into operation. Instead, the  
10 modern enterprise award comes into operation on the day on which it is  
11 expressed to commence, being a day that is not earlier than the day on  
12 which the modern enterprise award is made.

13 (3) The regulations may deal with other matters relating to how the FW Act  
14 applies in relation to modern enterprise awards.

1

2 **Part 3—Amendments**

3 ***Fair Work Act 2009***

4 **18 Section 12 (definition of *award modernisation process*)**

5 Repeal the definition, substitute:

6 ***award modernisation process*** means:

- 7 (a) the process of making modern awards under Part 10A of the  
8 *Workplace Relations Act 1996*, as continued by Part 2 of  
9 Schedule 5 of the *Fair Work (Transitional Provisions and*  
10 *Consequential Amendments) Act 2009*; and  
11 (b) the enterprise instrument modernisation process provided for  
12 by Part 2 of Schedule 6 of the *Fair Work (Transitional*  
13 *Provisions and Consequential Amendments) Act 2009*.

14 **19 Section 12 (definition of *coverage terms*)**

15 Repeal the definition, substitute:

16 ***coverage terms***:

- 17 (a) in relation to a modern award (other than a modern enterprise  
18 award): see section 143; and  
19 (b) in relation to a modern enterprise award: see section 143A.

20 **20 Section 12**

21 Insert:

22 ***modern enterprise award***: see subsection 168A(2).

23 **21 Section 12**

24 Insert:

25 ***modern enterprise awards objective***: see subsection 168B(1).

26 **22 Section 12**

27 Insert:

28 ***part of a single enterprise***: see subsection 168A(6).

1 **23 Section 12**

2 Insert:

3 *single enterprise*: see section 168A.

4 **24 Section 132 (after the paragraph relating to Division 6)**

5 Insert:

6 

Division 7 contains additional provisions relating to modern 7 enterprise awards.
--

8 **25 At the end of section 143**

9 Add:

10 *Modern enterprise awards*

11 (8) A modern award (other than a modern enterprise award) must be  
12 expressed not to cover employees who are covered by a modern  
13 enterprise award, or an enterprise instrument (within the meaning  
14 of the *Fair Work (Transitional Provisions and Consequential*  
15 *Amendments) Act 2009*), or employers in relation to those  
16 employees.

17 (9) This section does not apply to modern enterprise awards.

18 Note: The heading to section 143 is altered by adding at the end “**of modern awards other**  
19 **than modern enterprise awards**”.

20 **26 After section 143**

21 Insert:

22 **143A Coverage terms of modern enterprise awards**

23 *Coverage terms must be included*

24 (1) A modern enterprise award must include terms (*coverage terms*)  
25 setting out, in accordance with this section:

26 (a) the enterprise or enterprises to which the modern enterprise  
27 award relates; and

28 (b) the employers, employees and organisations that are covered  
29 by the modern enterprise award.

1                                    *Enterprises*

- 2                    (2) A modern enterprise award must be expressed to relate:  
3                                    (a) to a single enterprise (or a part of a single enterprise) only; or  
4                                    (b) to one or more enterprises, but only if the employers all carry  
5    on similar business activities under the same franchise and  
6    are:  
7    (i) franchisees of the same franchisor; or  
8    (ii) related bodies corporate of the same franchisor; or  
9    (iii) any combination of the above.

10                                   *Employers and employees*

- 11                    (3) A modern enterprise award must be expressed to cover:  
12                                    (a) a specified employer that carries on, or specified employers  
13    that carry on, the enterprise or enterprises referred to in  
14    subsection (2); and  
15                                    (b) specified employees of employers covered by the modern  
16    enterprise award.

17                                   *Organisations*

- 18                    (4) A modern enterprise award may be expressed to cover one or more  
19                                    specified organisations, in relation to:  
20    (a) all or specified employees covered by the award; or  
21    (b) the employer, or all or specified employers, covered by the  
22    award.

23                                   *Outworker entities*

- 24                    (5) A modern enterprise award must not be expressed to cover  
25                                    outworker entities.

26                                   *How coverage etc. is expressed*

- 27                    (6) For the purposes of subsection (2), an enterprise must be specified:  
28    (a) if paragraph (2)(a) applies to the enterprise—by name; or  
29    (b) if paragraph (2)(b) applies to the enterprise—by name, or by  
30    the name of the franchise.  
31                    (7) For the purposes of subsections (3) and (4):
-

- 1 (a) an employer or employers may be specified by name or by  
2 inclusion in a specified class or specified classes; and  
3 (b) employees must be specified by inclusion in a specified class  
4 or specified classes; and  
5 (c) organisations must be specified by name.

6 *Employees not traditionally covered by awards etc.*

- 7 (8) A modern enterprise award must not be expressed to cover classes  
8 of employees:  
9 (a) who, because of the nature or seniority of their role, have  
10 traditionally not been covered by awards (whether made  
11 under laws of the Commonwealth or the States); or  
12 (b) who perform work that is not of a similar nature to work that  
13 has traditionally been regulated by such awards.

14 Note: For example, in some industries, managerial employees have  
15 traditionally not been covered by awards.

16 **27 At the end of Part 2-3**

17 Add:

18 **Division 7—Additional provisions relating to modern**  
19 **enterprise awards**

20 **168A Modern enterprise awards**

- 21 (1) This Division contains additional provisions that relate to modern  
22 enterprise awards. The provisions in this Division have effect  
23 despite anything else in this Part.
- 24 (2) A *modern enterprise award* is a modern award that is expressed to  
25 relate to:  
26 (a) a single enterprise (or a part of a single enterprise) only; or  
27 (b) one or more enterprises, if the employers all carry on similar  
28 business activities under the same franchise and are:  
29 (i) franchisees of the same franchisor; or  
30 (ii) related bodies corporate of the same franchisor; or  
31 (iii) any combination of the above.
- 32 (3) A *single enterprise* is:

- 1 (a) a business, project or undertaking that is carried on by an  
2 employer; or  
3 (b) the activities carried on by:  
4 (i) the Commonwealth, a State or a Territory; or  
5 (ii) a body, association, office or other entity established for  
6 a public purpose by or under a law of the  
7 Commonwealth, a State or a Territory; or  
8 (iii) any other body in which the Commonwealth, a State or  
9 a Territory has a controlling interest.
- 10 (4) For the purposes of subsection (3), if 2 or more employers carry on  
11 a business, project or undertaking as a joint venture or common  
12 enterprise, the employers are taken to be one employer.
- 13 (5) For the purposes of subsection (3), if 2 or more related bodies  
14 corporate each carry on a single enterprise:  
15 (a) the bodies corporate are taken to be one employer; and  
16 (b) the single enterprises are taken to be one single enterprise.
- 17 Note: However, a modern enterprise award could just relate to a part of that  
18 single enterprise.
- 19 (6) A *part of a single enterprise* includes, for example:  
20 (a) a geographically distinct part of the single enterprise; or  
21 (b) a distinct operational or organisational unit within the single  
22 enterprise.

### 23 168B The modern enterprise awards objective

24 *What is the modern enterprise awards objective?*

- 25 (1) FWA must recognise that modern enterprise awards may provide  
26 terms and conditions tailored to reflect employment arrangements  
27 that have been developed in relation to the relevant enterprises.  
28 This is the *modern enterprise awards objective*.

29 *When does the modern enterprise awards objective apply?*

- 30 (2) The modern enterprise awards objective applies to the performance  
31 of FWA's functions or powers under this Act, so far as they relate  
32 to modern enterprise awards.

1 *References to the modern awards objective*

- 2 (3) A reference to the modern awards objective in this Act, other than  
3 section 134, is taken to include a reference to the modern enterprise  
4 awards objective.

5 **168C Rules about making and revoking modern enterprise awards**

6 *Making modern enterprise awards*

- 7 (1) FWA must not, under this Part:  
8 (a) make a modern enterprise award; or  
9 (b) make a determination varying a modern award so that it  
10 becomes a modern enterprise award.

11 Note: Modern enterprise awards can be made only in accordance with the  
12 enterprise instrument modernisation process provided for by Part 2 of  
13 Schedule 6 of the *Fair Work (Transitional Provisions and*  
14 *Consequential Amendments) Act 2009.*

15 *Revoking modern enterprise awards*

- 16 (2) FWA may make a determination revoking a modern enterprise  
17 award only on application under section 158.
- 18 (3) FWA must not make a determination revoking a modern enterprise  
19 award unless FWA is satisfied that:  
20 (a) the award is obsolete or no longer capable of operating; or  
21 (b) all the employees covered by the award will, when the  
22 revocation comes into operation, be covered by a different  
23 modern award (other than the miscellaneous modern award  
24 or a modern enterprise award) that is appropriate for them.
- 25 (4) In deciding whether to make a determination revoking a modern  
26 enterprise award FWA must take into account the following:  
27 (a) the circumstances that led to the making of the modern  
28 enterprise award;  
29 (b) the content of the modern award referred to in  
30 paragraph (3)(b);  
31 (c) the terms and conditions of employment applying in the  
32 industry in which the persons covered by the modern  
33 enterprise award operate, and the extent to which those terms  
34 and conditions are reflected in the modern enterprise award;

- 1 (d) the extent to which the modern enterprise award provides  
2 enterprise-specific terms and conditions of employment;
- 3 (e) the likely impact on the persons covered by the modern  
4 enterprise award, and the persons covered by the modern  
5 award referred to in paragraph (3)(b), of a decision to revoke,  
6 or not revoke, the modern enterprise award, including any  
7 impact on the ongoing viability or competitiveness of any  
8 enterprise carried on by those persons;
- 9 (f) the views of the persons covered by the modern enterprise  
10 award;
- 11 (g) any other matter prescribed by the regulations.

12 **168D Rules about changing coverage of modern enterprise awards**

- 13 (1) FWA must not make a determination varying a modern enterprise  
14 award so as to extend the coverage of the modern enterprise award  
15 so that it ceases to be a modern enterprise award.
- 16 (2) In deciding whether to make a determination varying the coverage  
17 of a modern enterprise award in some other way, FWA must take  
18 into account the following:
- 19 (a) the circumstances that led to the making of the modern  
20 enterprise award;
- 21 (b) whether there is a modern award (other than the  
22 miscellaneous modern award or a modern enterprise award)  
23 that would, but for the modern enterprise award, cover the  
24 persons covered, or proposed to be covered, by the modern  
25 enterprise award;
- 26 (c) the content of the modern award referred to in paragraph (b);
- 27 (d) the terms and conditions of employment applying in the  
28 industry in which the persons covered, or proposed to be  
29 covered, by the modern award operate, and the extent to  
30 which those terms and conditions are reflected in the modern  
31 enterprise award;
- 32 (e) the extent to which the modern enterprise award provides  
33 enterprise-specific terms and conditions of employment;
- 34 (f) the likely impact on the persons covered, or proposed to be  
35 covered, by the modern enterprise award, and the persons  
36 covered by the modern award referred to in paragraph (b), of  
37 a decision to make, or not make, the variation, including any



- 1 impact on the ongoing viability or competitiveness of any  
2 enterprise carried on by those persons;  
3 (g) the views of the persons covered, or proposed to be covered,  
4 by the modern enterprise award;  
5 (h) any other matter prescribed by the regulations.

6 **28 Subsection 292(1)**

7 Repeal the subsection, substitute:

- 8 (1) If FWA makes one or more determinations varying modern award  
9 minimum wages in an annual wage review, FWA must publish the  
10 rates of those wages as so varied:  
11 (a) for wages in a modern award (other than a modern enterprise  
12 award)—before 1 July in the next financial year; and  
13 (b) for wages in a modern enterprise award—as soon as  
14 practicable.

15 Note: FWA must also publish the modern award as varied (see section 168).

16 Note: The heading to section 292 is altered by omitting “**by 1 July**”.

1  
2  
3  
4  
5  
6  
7  
8

**Schedule 7—Enterprise agreements and workplace determinations made under the FW Act**

**Part 1—Preliminary**

**1 Meanings of *employer* and *employee***

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

1  
2 **Part 2—Transitional provisions relating to the**  
3 **application of the no-disadvantage test to**  
4 **enterprise agreements made and varied**  
5 **during bridging period**

6 **Division 1—Enterprise agreements and variations made**  
7 **during bridging period must pass**  
8 **no-disadvantage test**

9 **2 Approval of agreement or variation by FWA—passing the**  
10 **no-disadvantage test**

11 (1) Paragraph 186(2)(d) of the FW Act (including as that paragraph has  
12 effect under subsection 211(3) of that Act) and subsection 211(5) of that  
13 Act apply in relation to:

14 (a) an enterprise agreement made during the bridging period; and

15 (b) a variation of an enterprise agreement, if the variation was  
16 made during the bridging period;

17 as if the words “better off overall test” were omitted and the words  
18 “no-disadvantage test as set out in Division 2 of Part 2 of Schedule 7 to  
19 the *Fair Work (Transitional Provisions and Consequential*  
20 *Amendments) Act 2009*” were substituted.

21 (2) Paragraph 189(1)(b) of the FW Act applies in relation to an enterprise  
22 agreement made during the bridging period as if the words “better off  
23 overall test” were omitted and the words “no-disadvantage test as set  
24 out in Division 2 of Part 2 of Schedule 7 to the *Fair Work (Transitional*  
25 *Provisions and Consequential Amendments) Act 2009*” were  
26 substituted.

27 Note: This means that section 193 (which deals with passing the better off overall test) and  
28 subsections 211(4) and (5) (which deal with applying the better off overall test to  
29 agreements as proposed to be varied) of the FW Act will have no effect in relation to the  
30 approval by FWA of agreements and variations during the bridging period.

31 **Division 2—The no-disadvantage test**

32 **3 Definitions**

---

**Schedule 7** Enterprise agreements and workplace determinations made under the FW Act

**Part 2** Transitional provisions relating to the application of the no-disadvantage test to enterprise agreements made and varied during bridging period

- 
- 1 (1) In this Division:
- 2 ***designated award***, for an employee or employees who are or may be  
3 covered by an enterprise agreement, means an award determined by the  
4 FWA under item 8, and includes an award taken to be so designated in  
5 relation to the employee or employees under item 7 (unless a different  
6 award has been designated in relation to the employee or employees  
7 under item 8).
- 8 ***industrial instrument*** means any of the following:
- 9 (a) an AWA;
- 10 (b) a workplace agreement;
- 11 (c) a pre-reform AWA;
- 12 (d) a pre-reform certified agreement;
- 13 (e) a workplace determination (within the meaning of the WR  
14 Act);
- 15 (f) a section 170MX award;
- 16 (g) an old IR agreement;
- 17 (h) a preserved State agreement.
- 18 ***reference instrument*** has the meaning given by subitem 5(1).
- 19 ***relevant general instrument*** has the meaning given by subitem 5(2).
- 20 ***Application of this Division to variations***
- 21 (2) Unless the contrary intention appears, this Division applies to an  
22 enterprise agreement as proposed to be varied in a corresponding way to  
23 the way in which it applies to an enterprise agreement.
- 24 (3) For the purposes of subitem (2):
- 25 (a) a reference in a provision of this Division to an employee  
26 who is covered by the agreement is taken to be a reference to  
27 an employee who is one of the affected employees for the  
28 variation of the agreement (within the meaning of the FW  
29 Act); and
- 30 (b) a reference in a provision of this Division to the employees  
31 who are covered by the agreement is taken to be a reference  
32 to the affected employees for the variation; and
- 33 (c) a reference in a provision of this Division to an application  
34 for approval of the agreement under section 185 of the FW  
35 Act is taken to be a reference to an application for approval  
36 of a variation of the agreement under section 210 of that Act.
-

---

*Application of this Division to prospective employees*

- (4) For the purposes of applying this Division to an enterprise agreement, a reference to an employee who is covered by the enterprise agreement is, so far as the context permits, taken to include a reference to a person who may at a future time be covered by the enterprise agreement.

**4 When does an agreement pass the no-disadvantage test?**

- (1) An enterprise agreement passes the no-disadvantage test if FWA is satisfied that the agreement does not, or would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees who are covered by the agreement under any reference instrument relating to one or more of the employees.

- (2) For the purposes of subitem (1):

(a) a law of a State or Territory that:

(i) relates to long service leave; and

(ii) applied, immediately before the application was made for approval of the agreement under section 185 of the FW Act, to an employee referred to in that subitem, or would have applied to such an employee if he or she had been employed by the employer at that time;

is taken, to the extent that it provides for long service leave, to be a reference instrument relating to the employee; and

(b) if, apart from this subitem, the only reference instrument relating to the employee is a designated award for the employee—the designated award is to be disregarded to the extent (if any) that it provides for long service leave.

Note: An enterprise agreement made during the bridging period will prevail over a law of a State or Territory, to the extent of any inconsistency, so far as that law deals with long service leave (see item 17).

- (3) An enterprise agreement or a variation of an enterprise agreement is taken to pass the no-disadvantage test if there is no reference instrument in relation to any of the employees who are covered by the agreement.

- (4) To avoid doubt, if there is a reference instrument in relation to one or more, but not all, of the employees referred to in subitem (1):

(a) if the agreement passes the no-disadvantage test under subitem (1)—it passes the test in relation to all employees who are covered by the agreement; or

**Schedule 7** Enterprise agreements and workplace determinations made under the FW Act

**Part 2** Transitional provisions relating to the application of the no-disadvantage test to enterprise agreements made and varied during bridging period

---

1 (b) if the agreement does not pass the no-disadvantage test under  
2 subitem (1)—it does not pass the test in relation to any  
3 employees who are covered by the agreement.

4 Note 1: In addition to the no-disadvantage test, during the bridging period, the Australian Fair  
5 Pay and Conditions Standard prevails over an enterprise agreement to the extent to  
6 which the Australian Fair Pay and Conditions Standard provides a more favourable  
7 outcome for the employee or employees—see subitem 27(1).

8 Note 2: From the FW (safety net provisions) commencement day, a term of an enterprise  
9 agreement has no effect to the extent it excludes the National Employment Standards or  
10 any provision of the National Employment Standards (see sections 55 and 56 of the FW  
11 Act).

12 Note 3: This item applies to an enterprise agreement as proposed to be varied in a corresponding  
13 way to the way in which it applies to an enterprise agreement—see subitems 3(2) and  
14 (3).

15 Note 4: See item 10 for how FWA makes decisions under this item.

16 (5) For the purposes of determining whether an enterprise agreement as  
17 proposed to be varied passes the no-disadvantage test, FWA must  
18 disregard any individual flexibility arrangement that has been agreed to  
19 by an affected employee and his or her employer under the flexibility  
20 term in the agreement.

21 **5 Reference instruments etc.**

22 (1) A *reference instrument*, in relation to employees who are covered by  
23 an enterprise agreement, is:

- 24 (a) any relevant general instrument; or  
25 (b) if there is no relevant general instrument—any designated  
26 award;

27 for one or more of the employees.

28 (2) A *relevant general instrument*, for an employee who is covered by an  
29 enterprise agreement, is an award-based transitional instrument:

- 30 (a) that regulates, or would but for an enterprise agreement or  
31 another industrial instrument having come into operation  
32 regulate, any term or condition of employment of persons  
33 engaged in the same kind of work as that performed or to be  
34 performed by the employee under the enterprise agreement;  
35 and

- 36 (b) that applied, or would but for an enterprise agreement or  
37 another industrial instrument having come into operation  
38 have applied, to the employee's employer immediately
-

---

1 before the day on which the application for approval of the  
2 agreement was made under section 185 of the FW Act.

### 3 **6 Enterprise agreement to be tested as at test time**

4 (1) In deciding whether an enterprise agreement passes, or does not pass,  
5 the no-disadvantage test, FWA must consider it as in existence at the  
6 test time.

7 (2) The *test time* is the time when the application for approval of the  
8 agreement was made under section 185 of the FW Act.

### 9 **7 Designated awards—before application for FWA approval**

10 (1) FWA may, on application by an employer, determine that an award is a  
11 designated award for an employee or class of employees of the  
12 employer.

13 (2) FWA may make a determination under this item only if it is satisfied  
14 that:

15 (a) the employee or employees are or may be employed in an  
16 industry or occupation in which the terms and conditions of  
17 the kind of work performed or to be performed by the  
18 employee or employees:

19 (i) are usually regulated by an award; or

20 (ii) would, but for an enterprise agreement or another  
21 industrial instrument having come into operation,  
22 usually be regulated by an award; and

23 (b) unless there is a designated award for the employee or  
24 employees, there would be no reference instrument relating  
25 to the employee or employees; and

26 (c) there is an award that satisfies the requirements specified in  
27 subitem (3).

28 (3) An award or awards determined by FWA under this item:

29 (a) must be an award or awards regulating, or that would, but for  
30 an enterprise agreement or another industrial instrument  
31 having come into operation, regulate, terms or conditions of  
32 employment of employees engaged in the same kind of work  
33 as the work performed or to be performed by the employee or  
34 employees; and

**Schedule 7** Enterprise agreements and workplace determinations made under the FW Act

**Part 2** Transitional provisions relating to the application of the no-disadvantage test to enterprise agreements made and varied during bridging period

- 
- 1 (b) must, in the opinion of FWA, be an award or awards that  
2 would be appropriate for the purpose referred to in paragraph  
3 8(3)(b) if an application were made for approval of an  
4 enterprise agreement under section 185 of the FW Act; and  
5 (c) must not be an award that regulates the terms and conditions  
6 of employment in a single business only (being the single  
7 business specified in the award).
- 8 (4) An award determined under this item in relation to an employee or  
9 employees is taken to be the designated award determined by FWA  
10 under item 8 in relation to the employee or employees if, later, an  
11 application is made for approval of an enterprise agreement under  
12 section 185 of the FW Act, in relation to the employee or the  
13 employees.
- 14 (5) Despite subitem (4), FWA may determine under item 8 that another  
15 award is a designated award in relation to the employee, or in relation to  
16 some or all of the employees, if:  
17 (a) FWA becomes aware of information that was not available to  
18 it at the time of the determination under subitem (1); and  
19 (b) FWA is satisfied that, had that information been available to  
20 it at that time, FWA would have determined under  
21 subitem (1) the other award to be the designated award.
- 22 (6) FWA may determine different awards under subitem (1) in relation to  
23 different employees.
- 24 (7) In this item, a reference to an employee or employees of an employer  
25 includes a reference to a person or persons who may become an  
26 employee or employees of the employer.
- 27 (8) A determination made under this item is not a legislative instrument.

28 **8 Designated awards—after application for FWA approval**

- 29 (1) This item applies to an enterprise agreement if there is no relevant  
30 general instrument in relation to an employee who is, or a class of  
31 employees who are, covered by the agreement.
- 32 (2) FWA must determine that an award is a designated award for the  
33 employee or employees referred to in subitem (1), if it is satisfied that:  
34 (a) on the date on which the application for approval of the  
35 enterprise agreement was made under section 185 of the FW
-



- 
- 1 Act, the employee or employees are or would be employed in  
2 an industry or occupation in which the terms and conditions  
3 of the kind of work performed or to be performed by the  
4 employee or employees:  
5 (i) are usually regulated by an award; or  
6 (ii) would, but for an enterprise agreement or another  
7 industrial instrument having come into operation,  
8 usually be regulated by an award; and  
9 (b) there is an award that satisfies the requirements specified in  
10 subitem (3).
- 11 (3) An award or awards determined by FWA under this item:  
12 (a) must be an award or awards regulating, or that would, but for  
13 an enterprise agreement or another industrial instrument  
14 having come into operation, regulate, terms or conditions of  
15 employment of employees engaged in the same kind of work  
16 as the work performed by the employee or employees under  
17 the enterprise agreement concerned; and  
18 (b) must, in the opinion of FWA, be appropriate for the purpose  
19 of deciding whether an enterprise agreement passes the  
20 no-disadvantage test; and  
21 (c) must not be an award that regulates the terms and conditions  
22 of employment in a single business only (being the single  
23 business specified in the award).
- 24 (4) FWA may determine different awards under subitem (2) in relation to  
25 different employees.
- 26 (5) A determination made under this item is not a legislative instrument.

## 27 **9 Effect of State awards etc.**

- 28 For the purposes of paragraphs 7(2)(a) and 8(2)(a), an industry or  
29 occupation in which the terms and conditions of the kind of work  
30 performed or to be performed by an employee are usually regulated by  
31 an award is taken to include an industry or occupation in which the  
32 terms and conditions of the kind of work performed or to be performed  
33 by the employee:  
34 (a) were, immediately before the reform commencement, usually  
35 regulated by a State award; or

**Schedule 7** Enterprise agreements and workplace determinations made under the FW Act

**Part 2** Transitional provisions relating to the application of the no-disadvantage test to enterprise agreements made and varied during bridging period

- 
- 1 (b) would, but for an industrial instrument or a State employment  
2 agreement having come into operation, usually have been so  
3 regulated immediately before the reform commencement.

4 **10 Matters taken into account when testing agreement etc.**

- 5 (1) In deciding whether an enterprise agreement passes, or does not pass,  
6 the no-disadvantage test, FWA:
- 7 (a) must have regard to the work obligations of the employee or  
8 employees under the enterprise agreement; and
  - 9 (b) may inform itself in any way it considers appropriate  
10 including (but not limited to) contacting any of the following:
    - 11 (i) the employer;
    - 12 (ii) the employee, or some or all of the employees, who are  
13 covered by the enterprise agreement;
    - 14 (iii) a bargaining representative in relation to the agreement.
- 15 (2) In deciding whether to determine that an award is a designated award in  
16 relation to an employee or employees of an employer, FWA may inform  
17 itself in any way it considers appropriate including (but not limited to)  
18 contacting any of the following:
- 19 (a) the employer;
  - 20 (b) the employee or employees;
  - 21 (c) if the determination would be made under item 8—a  
22 bargaining representative in relation to the agreement.

1

2

## **Part 3—Other requirements and modifications applying to making and varying enterprise agreements during the bridging period**

3

4

5

### **Division 1—Requirements relating to approval**

6

#### **11 Approval of agreement by FWA—interaction with the National Employment Standards**

7

8

Paragraph 186(2)(c) of the FW Act (which deals with terms that  
contravene section 55 of that Act) does not apply in relation to:

9

10

(a) an enterprise agreement made during the bridging period; or

11

(b) a variation of an enterprise agreement, if the variation is  
made during the bridging period.

12

13

Note: Section 55 of the FW Act (which deals with the interaction between the National  
Employment Standards and enterprise agreements etc.) will apply after the end of the  
bridging period. Section 56 of that Act provides that a term of an enterprise agreement  
has no effect to the extent that it contravenes section 55.

14

15

16

17

#### **12 Approval of agreement by FWA—term about settling disputes**

18

19

Subparagraph 186(6)(a)(ii) of the FW Act (which deals with a  
requirement for an enterprise agreement to have a term about settling  
disputes in relation to the National Employment Standards) applies in  
relation to:

20

21

22

23

(a) an enterprise agreement made during the bridging period; or

24

(b) a variation of an enterprise agreement, if the variation is  
made during the bridging period;

25

26

as if the words “as those provisions apply after the end of the bridging  
period” were added after “National Employment Standards”.

27

28

Note: For disputes relating to the Australian Fair Pay and Conditions Standard as it applies  
during the bridging period, see item 27.

29

30

#### **13 Approval of agreement by FWA—requirements relating to particular kinds of employees**

31

32

(1) Subsection 187(4) of the FW Act (which deals with requirements  
relating to particular kinds of employees) does not apply in relation to:

33

**Schedule 7** Enterprise agreements and workplace determinations made under the FW Act

**Part 3** Other requirements and modifications applying to making and varying enterprise agreements during the bridging period

- 
- 1 (a) an enterprise agreement made during the bridging period; or  
2 (b) a variation of an enterprise agreement, if the variation is  
3 made during the bridging period;  
4 except in so far as that subsection requires FWA to be satisfied as  
5 referred to in section 200 of the FW Act.
- 6 (2) Section 200 of the FW Act (which deals with requirements relating to  
7 outworkers) applies in relation to the agreement or variation as if:  
8 (a) references in that section to a modern award were references  
9 to an award; and  
10 (b) references in that section to outworker terms were references  
11 to outworker terms as defined in section 564 of the WR Act.

12 **Division 2—Base rate of pay**

13 **14 Base rate of pay under enterprise agreements**

14 The FW Act applies during the bridging period as if section 206 (which  
15 deals with base rate of pay under enterprise agreements) were omitted.

16 **Division 3—No extensions of time**

17 **15 No extension of time to apply for approval of agreement  
18 made in final 14 days of bridging period**

19 Paragraph 185(3)(b) of the FW Act (which deals with extending the  
20 period within which an application must be made to FWA for approval  
21 of an enterprise agreement) does not apply in relation to an enterprise  
22 agreement made during the period of 14 days ending at the end of the  
23 bridging period.

24 Note: If an application for approval of an enterprise agreement referred to in this item is not  
25 made to FWA within 14 days of it being made:

- 26 (a) FWA cannot approve the enterprise agreement; but  
27 (b) another enterprise agreement may be made in accordance with  
28 Part 2-4 of the FW Act.

29 **16 No extension of time to apply for approval of variation of  
30 agreement made in final 14 days of bridging period**

---

1 Paragraph 210(3)(b) of the FW Act (which deals with extending the  
2 period within which an application must be made to FWA for approval  
3 of a variation of an enterprise agreement) does not apply in relation to a  
4 variation of an enterprise agreement, if that variation was made during  
5 the period of 14 days ending at the end of the bridging period.

6 **Note:** If an application for approval of a variation referred to in this item is not made to FWA  
7 within 14 days of it being made:

- 8 (a) FWA cannot approve the variation; but  
9 (b) another variation may be made in accordance with Part 2-4 of the  
10 FW Act.

11 **Division 4—State and Territory laws dealing with long**  
12 **service leave**

13 **17 Enterprise agreement made during the bridging period**  
14 **prevails over State and Territory laws dealing with long**  
15 **service leave**

16 Despite subsection 29(2) of the FW Act, an enterprise agreement made  
17 during the bridging period prevails over a law of a State or Territory, to  
18 the extent of any inconsistency, so far as that law deals with long  
19 service leave.

20 **Note:** A term of such an enterprise agreement will still apply subject to a law of a State or  
21 Territory so far as that law is otherwise covered by paragraph 29(2)(a) or (b) of the FW  
22 Act.

1

2

## **Part 4—Transitional provisions to apply the better off overall test after end of bridging period if award modernisation not yet completed**

3

4

5

### **18 Application of better off overall test to making of enterprise agreements that cover unmodernised award covered employees**

6

7

8

- (1) This item applies in relation to an enterprise agreement made after the end of the bridging period if one or more of the employees covered by the agreement is an unmodernised award covered employee.

9

10

11

#### *Non-greenfields agreements*

12

- (2) Despite section 193 of the FW Act, if the enterprise agreement is not a greenfields agreement, the agreement passes the better off overall test under that section only if:

13

14

15

- (a) FWA is satisfied as referred to in subsection (1) of that section in relation to the agreement; and

16

17

- (b) FWA is satisfied, as at the test time, that each unmodernised award covered employee, and each prospective unmodernised award covered employee, for the agreement would be better off overall if the agreement applied to the employee than if the relevant award-based transitional instrument and transitional APCS applied to the employee.

18

19

20

21

22

23

#### *Greenfields agreements*

24

- (3) Despite section 193 of the FW Act, if the enterprise agreement is a greenfields agreement, the agreement passes the better off overall test under that section only if:

25

26

27

- (a) FWA is satisfied as referred to in subsection (3) of that section in relation to the agreement; and

28

29

- (b) FWA is satisfied, as at the test time, that each prospective unmodernised award covered employee for the agreement would be better off overall if the agreement applied to the employee than if the relevant award-based transitional instrument and transitional APCS applied to the employee.

30

31

32

33

---

1 *FWA may assume employee better off overall in certain*  
2 *circumstances*

- 3 (4) For the purposes of determining whether an enterprise agreement passes  
4 the better off overall test, if a class of employees to which a particular  
5 employee belongs would be better off if the agreement applied to that  
6 class than if the relevant modern award or relevant award-based  
7 transitional instrument and transitional APCS applied to that class,  
8 FWA is entitled to assume, in the absence of evidence to the contrary,  
9 that the employee would be better off overall if the agreement applied to  
10 the employee.

11 **19 Application of better off overall test to variation of**  
12 **enterprise agreements that cover unmodernised award**  
13 **covered employees**

- 14 (1) This item applies in relation to a variation of an enterprise agreement if:  
15 (a) the variation is made after the end of the bridging period; and  
16 (b) one or more of the employees who are covered by the  
17 agreement is an unmodernised award covered employee.
- 18 (2) Despite subsections 211(4) and (5) of the FW Act, subitems (3) and (4)  
19 apply in relation to the variation for the purposes of FWA being  
20 satisfied that the agreement as proposed to be varied passes the better  
21 off overall test.

22 *Modification of the better off overall test*

- 23 (3) An enterprise agreement as proposed to be varied passes the better off  
24 overall test if FWA is satisfied, as at the test time, that:  
25 (a) each award covered employee, and each prospective award  
26 covered employee, for the agreement would be better off  
27 overall if the agreement applied to the employee than if the  
28 relevant modern award applied to the employee; and  
29 (b) each unmodernised award covered employee, and each  
30 prospective unmodernised award covered employee, for the  
31 agreement would be better off overall if the agreement  
32 applied to the employee than if the relevant award-based  
33 transitional instrument and transitional APCS applied to the  
34 employee.

**Schedule 7** Enterprise agreements and workplace determinations made under the FW Act

**Part 4** Transitional provisions to apply the better off overall test after end of bridging period if award modernisation not yet completed

---

*FWA may assume employee better off overall in certain circumstances*

- (4) For the purposes of determining whether the enterprise agreement as proposed to be varied passes the better off overall test, if a class of employees to which a particular employee belongs would be better off if the agreement applied to that class than if the relevant modern award or relevant award-based transitional instrument and transitional APCS applied to that class, FWA is entitled to assume, in the absence of evidence to the contrary, that the employee would be better off overall if the agreement applied to the employee.

*FWA must disregard individual flexibility arrangement*

- (5) For the purposes of determining whether an enterprise agreement as proposed to be varied passes the better off overall test, FWA must disregard any individual flexibility arrangement that has been agreed to by an award covered employee and his or her employer under the flexibility term in the agreement.

## **20 Definitions**

In this Part:

*prospective unmodernised award covered employee*, for an enterprise agreement, means a person who, if he or she were an employee at the test time of an employer covered by the agreement:

- (a) would be covered by the agreement; and
- (b) would be covered by an award-based transitional instrument (the *relevant award-based transitional instrument*) that:
  - (i) is in operation; and
  - (ii) would cover the person in relation to the work that he or she would perform under the agreement; and
  - (iii) covers the employer.

*test time*:

- (a) for the purposes of item 18—means the time the application for approval of the agreement by FWA was made under section 185 of the FW Act; and
- (b) for the purposes of item 19—means the time the application for approval of the variation of the enterprise agreement by FWA was made under section 210 of that Act.



- 
- 1            ***unmodernised award covered employee***, for an enterprise agreement,  
2            means an employee who:  
3            (a) is covered by the agreement; and  
4            (b) at the test time, is covered by an award-based transitional  
5            instrument (the ***relevant award-based transitional***  
6            ***instrument***) that:  
7            (i) is in operation; and  
8            (ii) covers the employee in relation to the work that he or  
9            she is to perform under the agreement; and  
10           (iii) covers his or her employer.

1

2 **Part 5—Transitional provisions relating to workplace**  
3 **determinations made under the FW Act**

4 **21 Application made during bridging period for special**  
5 **low-paid workplace determination—general**  
6 **requirement relating to minimum safety net**

7 Subsection 262(3) of the FW Act (which deals with a general  
8 requirement relating to the minimum safety net) applies in relation to an  
9 application for a special low-paid workforce determination made during  
10 the bridging period as if the words “modern awards together with the  
11 National Employment Standards” were omitted and the words “awards  
12 together with the Australian Fair Pay and Conditions Standard” were  
13 substituted.

14 **22 Special low-paid workplace determination—employer**  
15 **must not previously have been covered by**  
16 **agreement-based transitional instrument**

17 Subsection 263(3) of the FW Act (which deals with additional  
18 requirements for making a special low-paid workplace determination)  
19 applies in relation to a workplace determination, whether made during  
20 or after the bridging period, as if the reference in that subsection to an  
21 enterprise agreement included a reference to a collective  
22 agreement-based transitional instrument.

23 **23 Core terms of workplace determinations—assessment of**  
24 **determination made during bridging period against the**  
25 **no disadvantage test**

26 Subsection 272(4) of the FW Act (which deals with workplace  
27 determinations passing the better off overall test) applies in relation to a  
28 workplace determination made during the bridging period as if the  
29 words “better off overall test under section 193” were omitted and the  
30 words “no-disadvantage test as set out in Division 2 of Part 2 of  
31 Schedule 7 to the *Fair Work (Transitional Provisions and*  
32 *Consequential Amendments) Act 2009*” were substituted.

---

1 **24 Core terms of workplace determinations—assessment of**  
2 **determination made after bridging period that covers**  
3 **unmodernised award covered employees against the**  
4 **better off overall test**

5 (1) This item applies in relation to a workplace determination made after  
6 the end of the bridging period if one or more of the employees who will  
7 be covered by the determination is an unmodernised award covered  
8 employee (within the meaning of Part 4).

9 (2) Subsection 272(4) of the FW Act (which deals with workplace  
10 determinations passing the better off overall test) applies in relation to  
11 the workplace determination as if the words “under section 193” were  
12 omitted and the words “under item 18 of Schedule 7 to the *Fair Work*  
13 *(Transitional Provisions and Consequential Amendments) Act 2009*”  
14 were substituted.

15 **25 Core terms of workplace determinations—safety net**  
16 **requirements**

17 (1) This item applies in relation to a workplace determination made during  
18 the bridging period.

19 (2) Subsection 272(5) of the FW Act (which deals with terms relating to  
20 safety net requirements) does not apply in relation to the workplace  
21 determination, except in so far as that subsection prevents a workplace  
22 determination from including a term that would, if the determination  
23 were an enterprise agreement, mean that FWA could not approve the  
24 agreement because of the operation of section 200 of that Act (which  
25 deals with requirements relating to outworkers).

26 Note: Section 55 of the FW Act (which deals with the interaction between the National  
27 Employment Standards and workplace determinations etc.) will apply after the end of  
28 the bridging period. Section 56 of that Act provides that a term of a workplace  
29 determination has no effect to the extent that it contravenes section 55.

30 (3) Section 200 of the FW Act (which deals with requirements relating to  
31 outworkers) applies in relation to the workplace determination as if:  
32 (a) references in that section to a modern award were references  
33 to an award; and  
34 (b) references in that section to outworker terms were references  
35 to outworker terms as defined in section 564 of the WR Act.

**Schedule 7** Enterprise agreements and workplace determinations made under the FW Act

**Part 5** Transitional provisions relating to workplace determinations made under the FW Act

---

1 **26 Mandatory terms of workplace determinations—term**  
2 **about settling disputes**

3 (1) This item applies in relation to a workplace determination made during  
4 the bridging period.

5 (2) Paragraph 273(2)(b) of the FW Act (which deals with a requirement for  
6 a workplace determination to have a term about settling disputes in  
7 relation to the National Employment Standards) applies in relation to  
8 the workplace determination as if the words “as the National  
9 Employment Standards apply after the end of the bridging period” were  
10 added after “National Employment Standards”.

11 (3) Subsection 273(3) of the FW Act (which deals with a requirement for a  
12 workplace determination to have a term about settling disputes) applies  
13 in relation to the workplace determination as if the reference to  
14 paragraph 186(6)(a) of the FW Act were a reference to that paragraph in  
15 its application to an enterprise agreement made during the bridging  
16 period (see item 12).

17 Note: For disputes relating to the Australian Fair Pay and Conditions Standard as it applies  
18 during the bridging period, see item 27.

1  
2 **Part 6—Interaction with Australian Fair Pay and**  
3 **Conditions Standard during bridging period**

4 **27 Interaction with Australian Fair Pay and Conditions**  
5 **Standard during bridging period**

6 *Continued application of Australian Fair Pay and Conditions*  
7 *Standard*

- 8 (1) The Australian Fair Pay and Conditions Standard, in its application  
9 during the bridging period under item 2 of Schedule 4 and item 5 of  
10 Schedule 9 prevails over an enterprise agreement or a workplace  
11 determination that applies to an employee to the extent to which, in a  
12 particular respect, the Australian Fair Pay and Conditions Standard  
13 provides a more favourable outcome for the employee.

14 *Disputes about Australian Fair Pay and Conditions Standard to*  
15 *be resolved using the model dispute resolution process*

- 16 (2) A dispute about:  
17 (a) whether the Australian Fair Pay and Conditions Standard  
18 provides a more favourable outcome for an employee in a  
19 particular respect than an enterprise agreement or workplace  
20 determination that applies to that employee; or  
21 (b) what the outcome is for an employee in a particular respect  
22 under the Australian Fair Pay and Conditions Standard,  
23 where an enterprise agreement or a workplace determination  
24 applies to that employee;

25 is to be resolved using the model dispute resolution process referred to  
26 in Part 13 of the WR Act.

- 27 (3) For the purposes of subitem (2), Divisions 2 and 3 of Part 13 of the WR  
28 Act apply as if a reference in those Divisions to the Commission or the  
29 Industrial Registrar were a reference to FWA.

- 30 (4) The fact that the model dispute resolution process applies in relation to  
31 the dispute does not affect any right of a party to the dispute to take  
32 court action to resolve it.

- 33 (5) To avoid doubt, subitems (2) and (3) apply despite:
-

**Schedule 7** Enterprise agreements and workplace determinations made under the FW Act

**Part 6** Interaction with Australian Fair Pay and Conditions Standard during bridging period

- 
- 1 (a) subsection 694(2) of the WR Act (which deals with when the  
2 model dispute resolution process applies); and  
3 (b) subsection 595(1) of the FW Act (which deals with when  
4 FWA may deal with a dispute).

5 *Continued application of regulations*

- 6 (6) Despite the WR Act repeal, regulations made for the purposes of  
7 subsection 172(4) of the WR Act continue to apply during the bridging  
8 period as if a reference in those regulations to a workplace agreement  
9 were a reference to an enterprise agreement and a workplace  
10 determination.

11 *Australian Fair Pay and Conditions Standard cannot be excluded*

- 12 (7) A term of an enterprise agreement or a workplace determination has no  
13 effect to the extent to which it purports to exclude the Australian Fair  
14 Pay and Conditions Standard or any part of it.

15 *Meaning of workplace determination*

- 16 (8) In this item:  
17 *workplace determination* means a workplace determination made under  
18 the FW Act.

1

2

**Schedule 8—Workplace agreements and  
workplace determinations made under  
the WR Act**

3

4

5

**Part 1—Preliminary**

6

**1 Meanings of *employer* and *employee***

7

In this Schedule, *employee* means a national system employee, and

8

*employer* means a national system employer.

1

2 **Part 2—Transitional provisions relating to workplace**  
3 **agreements**

4 **Division 1—Transitional provisions relating to collective**  
5 **agreements made before the WR Act repeal day**

6 **2 Division applies to collective agreements made before WR**  
7 **Act repeal day**

8 This Division applies to a collective agreement made before the WR  
9 Act repeal day.

10 Note: Schedule 3 (which deals with transitional instruments) also contains rules that apply to  
11 such agreements.

12 **3 General rule—continued application of lodgment**  
13 **provisions, no-disadvantage test and prohibited**  
14 **content rules, etc.**

15 The following provisions of Part 8 of the WR Act continue to apply in  
16 relation to the collective agreement on and after the WR Act repeal day:

- 17 (a) subsections 337(8), (9), (10) and (11) (which deal with  
18 non-compliance with access and information requirements);  
19 (b) section 341 (which deals with lodging unapproved  
20 agreements);  
21 (c) Division 5 of Part 8 (which deals with lodgment);  
22 (d) Division 5A of Part 8 (which deals with the no-disadvantage  
23 test);  
24 (e) subsections 347(1) and (3) (which deal with when a  
25 workplace agreement comes into operation);  
26 (f) section 347A (which deals with the operation of workplace  
27 agreements);  
28 (g) Division 7 of Part 8 (which deals with content rules), other  
29 than sections 353 (which deals with dispute settlement) and  
30 358 (which deals with prohibited content being void);  
31 (h) subsection 401(1) and section 412A.

32 Note 1: The general effect of this provision is to preserve the Part 8 rules about lodgment, the  
33 no-disadvantage test and prohibited content for collective agreements made before the  
34 WR Act repeal day, subject to the modifications set out in this Division. The rules about  
35 variation and termination of such collective agreements, and certain other rules, are  
36 contained in Schedule 3 (which deals with transitional instruments).

---



1 Note 2: The rules requiring a collective agreement to include dispute settlement procedures and  
2 about prohibited content being void continue to apply under subitem 4(1) of Schedule 3  
3 (which deals with instrument content rules for transitional instruments).

4 **4 Modification—unlodged collective agreements must be**  
5 **lodged within 14 days**

- 6 (1) Despite item 3, if the collective agreement is an unlodged collective  
7 agreement:
- 8 (a) the Workplace Authority Director must not consider whether  
9 the agreement passes the no-disadvantage test under  
10 section 346D of the WR Act, as that section continues to  
11 apply because of item 3, unless the agreement is lodged  
12 before the end of the period (the *cut-off period*) of 14 days  
13 referred to in subsection 342(1) or (2) of that Act; and
  - 14 (b) if the agreement is not lodged before the end of the cut-off  
15 period, it does not come into operation; and
  - 16 (c) subsection 342(3) of the WR Act (which deals with a civil  
17 remedy for late lodgment), as that subsection continues to  
18 apply because of item 3, does not apply to the lodgment of  
19 the agreement.

20 Note: The general effect of this provision is that unlodged collective agreements must be  
21 lodged within 14 days of being made in order to come into operation. However, late  
22 lodgment will not give rise to a civil remedy.

- 23 (2) If the collective agreement is lodged after the end of the cut-off period,  
24 the Workplace Authority Director must give a written notice, stating  
25 that the agreement cannot come into operation because it was lodged  
26 after the end of the cut-off period, to the following:
- 27 (a) the employer to which the agreement would have applied if it  
28 had come into operation;
  - 29 (b) if the agreement is a union collective agreement or a  
30 multiple-business agreement that would be a union collective  
31 agreement but for subsection 331(1) of the WR Act—the  
32 organisation or organisations that would have been covered  
33 by the agreement if it had come into operation.

34 **5 Modification—limits on variation of a collective agreement**  
35 **that operates from approval for the purpose of passing**  
36 **the no-disadvantage test**

- 37 (1) Despite item 3, if the collective agreement is a workplace agreement  
38 that operates from approval, the rules in this item also apply.

**Schedule 8** Workplace agreements and workplace determinations made under the WR Act

**Part 2** Transitional provisions relating to workplace agreements

1 Note: The general effect of this item is that a collective agreement that operates from approval  
2 can only be varied for the purpose of passing the no-disadvantage test if a variation for  
3 that purpose is lodged within a specified period.

4 (2) If, as at the WR Act repeal day:

5 (a) a notice under section 346M of the WR Act about whether  
6 the agreement passes the no-disadvantage test has not been  
7 given; or

8 (b) a notice under subsection 346M(2) of the WR Act stating that  
9 the agreement does not pass the no-disadvantage test has  
10 been given but a variation of the agreement, for the purposes  
11 of passing that test, has not been made; or

12 (c) a notice under subsection 346M(2) of the WR Act stating that  
13 the agreement does not pass the no-disadvantage test has  
14 been given and a variation of the agreement, for the purposes  
15 of passing that test, has been made but has not been lodged;

16 then Division 5A of Part 8 of the WR Act, as that Division continues to  
17 apply because of item 3, has effect in relation to the collective  
18 agreement subject to subitems (3) and (5).

19 (3) Section 346N of the WR Act, as that section continues to apply because  
20 of item 3, has effect in relation to the agreement, on and after the WR  
21 Act repeal day, as if it provided that a variation for the purposes of  
22 passing the no-disadvantage test set out in section 346D of that Act  
23 must be lodged under section 346N of that Act before the end of:

24 (a) the period of 30 days beginning on the seventh day after the  
25 date of issue specified in the notice under subsection  
26 346M(2) of that Act in relation to the agreement; or

27 (b) if the period is extended under subitem (4)—the period as  
28 extended.

29 (4) The Workplace Authority Director may extend the period referred to in  
30 paragraph (3)(b) in relation to a particular agreement in circumstances  
31 prescribed by the regulations.

32 (5) Section 346Q of the WR Act, as that section continues to apply because  
33 of item 3, has effect in relation to the agreement, on and after the WR  
34 Act repeal day, as if it provided that the Workplace Authority Director  
35 must not consider under that section whether the agreement as varied  
36 passes the no-disadvantage test unless the variation is lodged within the  
37 period referred to in paragraph (3)(a) or (b).

1 **Division 2—Transitional provisions relating to variations**  
2 **of collective agreements made before the WR**  
3 **Act repeal day**

4 **6 Division applies to variations of collective agreements**  
5 **made before WR Act repeal day**

6 This Division applies to a variation of a collective agreement under  
7 Division 8 of Part 8 of the WR Act, if the variation is made before the  
8 WR Act repeal day.

9 **7 General rule—continued application of lodgment**  
10 **provisions and no-disadvantage test to ordinary**  
11 **variations**

12 The following provisions of Part 8 of the WR Act continue to apply in  
13 relation to the variation on and after the WR Act repeal day:

- 14 (a) Division 5A of Part 8 (which deals with the no-disadvantage  
15 test);  
16 (b) subsections 370(8), (9), (10) and (11) (which deal with  
17 non-compliance with access and information requirements);  
18 (c) section 374 (which deals with lodgment of unapproved  
19 variations);  
20 (d) Subdivision C of Division 8 of Part 8 (which deals with  
21 lodgment);  
22 (e) Subdivision D of Division 8 of Part 8 (which deals with when  
23 a variation comes into operation);  
24 (f) subsection 401(1) and section 412A.

25 Note: The general effect of this provision is to preserve the Part 8 rules about lodgment and  
26 the no-disadvantage test for variations under Division 8 made before the WR repeal day,  
27 subject to the modifications set out in this Division.

28 **8 Modification—unlodged variations must be lodged within**  
29 **14 days**

- 30 (1) Despite item 7, if the variation is an unlodged variation:  
31 (a) the Workplace Authority Director must not consider whether  
32 the varied agreement passes the no-disadvantage test under  
33 section 346D of the WR Act, as that section continues to  
34 apply because of item 7, unless the variation is lodged before  
35 the end of the period (the *cut-off period*) of 14 days referred  
36 to in subsection 375(1) of that Act; and
-

**Schedule 8** Workplace agreements and workplace determinations made under the WR Act

**Part 2** Transitional provisions relating to workplace agreements

---

1 (b) subsection 375(2) of the WR Act (which deals with a civil  
2 remedy for late lodgment), as that subsection continues to  
3 apply because of item 7, does not apply to the variation.

4 Note: The general effect of this provision is that unlodged variations of collective agreements  
5 must be lodged within 14 days of being made in order to come into operation. However,  
6 late lodgment will not give rise to a civil remedy.

7 (2) If the variation is lodged after the end of the cut-off period, the  
8 Workplace Authority Director must give a written notice, stating that  
9 the variation cannot come into operation because it was lodged after the  
10 end of the cut-off period, to the following:

- 11 (a) the employer to which the agreement applies;  
12 (b) if the agreement is a union collective agreement or a  
13 multiple-business agreement that would be a union collective  
14 agreement but for subsection 331(1) of the WR Act—the  
15 organisation or organisations covered by the agreement.

16 **9 Modification—limits on varying variations for the purpose**  
17 **of passing the no-disadvantage test**

18 (1) Despite item 7, if, as at the WR Act repeal day:

- 19 (a) a notice under section 346M of the WR Act about whether  
20 the agreement as varied passes the no-disadvantage test has  
21 not been given in relation to the variation; or  
22 (b) a notice under subsection 346M(2) of the WR Act stating that  
23 the agreement as varied does not pass the no-disadvantage  
24 test has been given in relation to the variation, but a variation,  
25 for the purposes of passing that test, has not been made; or  
26 (c) a notice under subsection 346M(2) of the WR Act stating that  
27 the agreement as varied does not pass the no-disadvantage  
28 test has been given in relation to the variation and a variation  
29 of the agreement, for the purposes of passing that test, has  
30 been made but has not been lodged;

31 then Division 5A of Part 8 of the WR Act, as that Division continues to  
32 apply because of item 7, has effect in relation to the variation, on and  
33 after the WR Act repeal day, subject to subitems (2) and (4).

34 (2) Section 346N of the WR Act, as that section continues to apply because  
35 of item 7, has effect in relation to the variation, on and after the WR Act  
36 repeal day, as if it provided that a variation for the purposes of passing  
37 the no-disadvantage test set out in section 346D of that Act must be  
38 lodged under section 346N of that Act before the end of:

---

- 1 (a) the period of 30 days beginning on the seventh day after the  
2 date of issue specified in the notice under subsection  
3 346M(2) of that Act in relation to the agreement as varied; or  
4 (b) if the period is extended under subitem (3)—the period as  
5 extended.
- 6 (3) The Workplace Authority Director may extend the period referred to in  
7 paragraph (2)(a) in relation to a particular variation in circumstances  
8 prescribed by the regulations.
- 9 (4) Section 346Q of the WR Act, as that section continues to apply because  
10 of item 7, has effect in relation to the variation, on and after the WR Act  
11 repeal day, as if it provided that the Workplace Authority Director must  
12 not consider under that section whether the agreement as varied passes  
13 the no-disadvantage test unless the variation for the purposes of passing  
14 that test is lodged within the period referred to in paragraph (2)(a) or  
15 (b).

16 **Division 3—Transitional provisions relating to pre-WR**  
17 **Act repeal day terminations of collective**  
18 **agreements**

19 **10 Termination by approval general rule—continued**  
20 **application of lodgment provisions**

- 21 (1) This item applies to a termination of a collective agreement, if the  
22 termination has been approved in accordance with section 386 of the  
23 WR Act (which deals with terminations by approval) before the WR  
24 Act repeal day, but not lodged in accordance with section 389 of that  
25 Act before that day.
- 26 (2) The following provisions of Part 8 of the WR Act continue to apply in  
27 relation to the termination on and after the WR Act repeal day:
- 28 (a) subsection 381(2) (which deals with when a workplace  
29 agreement is terminated);
- 30 (b) subsections 384(4), (5) and (6) (which deal with  
31 non-compliance with information requirements);
- 32 (c) section 387 (which deals with lodgment of unapproved  
33 terminations);
- 34 (d) Subdivision C of Division 9 of Part 8 (which deals with  
35 lodgment);
- 36 (e) section 398 (which deals with the effect of non-compliance);
-

1 (f) subsection 401(1) and section 412A.

2 Note: The general effect of this provision is to preserve the Part 8 rules in relation to  
3 terminations of workplace agreements approved before the WR Act repeal day, subject  
4 to the modifications set out in item 11. Terminations after that day are dealt with in  
5 Schedule 3 (which deals with transitional instruments).

6 **11 Modification—unlodged terminations must be lodged**  
7 **within 14 days**

8 (1) Despite item 10, if a termination to which that item applies is an  
9 unlodged termination:

- 10 (a) the termination does not come into operation unless it is  
11 lodged before the end of the 14 day period (the *cut-off*  
12 *period*) referred to in subsection 388(1) of the WR Act as that  
13 subsection continues to apply because of item 10; and  
14 (b) subsection 388(2) of the WR Act (which deals with a civil  
15 remedy for late lodgment), as that subsection continues to  
16 apply because of item 10, does not apply to the termination.

17 Note: The general effect of this provision is that unlodged terminations must be lodged within  
18 14 days of being made in order to come into operation. However, late lodgment will not  
19 give rise to a civil remedy.

20 (2) If the termination is lodged after the end of the cut-off period, the  
21 Workplace Authority Director must give a written notice, stating that  
22 the termination cannot come into operation because it was lodged after  
23 the end of the cut-off period, to the following:

- 24 (a) the employer to which the agreement applies;  
25 (b) if the agreement is a union collective agreement or a  
26 multiple-business agreement that would be a union collective  
27 agreement but for subsection 331(1) of the WR Act—the  
28 organisation or organisations covered by the agreement.

29 **12 Unilateral termination of collective agreement in manner**  
30 **provided for in agreement general rule—continued**  
31 **application of lodgment provisions**

32 (1) This item applies to a termination of a collective agreement if a  
33 declaration to terminate the agreement is lodged under subsection  
34 392(2) of the WR Act (which deals with unilateral termination in the  
35 manner provided in the agreement) before the WR Act repeal day.

36 (2) The following provisions of Part 8 of the WR Act continue to apply in  
37 relation to the termination on and after the WR Act repeal day:

---

- 1 (a) subsection 381(2) (which deals with when a workplace  
2 agreement is terminated);  
3 (b) section 396 (which deals with receipts for lodgment of  
4 declarations);  
5 (c) section 397 (which deals with giving notice after lodging  
6 notice of termination);  
7 (d) section 398 (which deals with the effect of non-compliance);  
8 (e) section 412A.

9 Note: The general effect of this provision is to preserve the Part 8 rules in relation to unilateral  
10 terminations of workplace agreements, if a declaration to terminate the agreement has  
11 been lodged before the WR Act repeal day. Terminations after that day are dealt with in  
12 Schedule 3 (which deals with transitional instruments).

13 **13 Termination by the Commission—Commission may**  
14 **continue to deal with applications made before the WR**  
15 **Act repeal day**

- 16 (1) This item applies to a collective agreement in relation to which an  
17 application has been made under subsection 397A(2) of the WR Act  
18 (which deals with termination by the Commission) before the WR Act  
19 repeal day.  
20 (2) The following provisions of Part 8 of the WR Act continue to apply in  
21 relation to the agreement on and after the WR Act repeal day:  
22 (a) subsection 381(2) (which deals with when a collective  
23 agreement is terminated);  
24 (b) subsections 397A(1) and (3) (which deal with when the  
25 Commission may terminate a collective agreement);  
26 (c) section 412A.

27 Note: The general effect of this provision is to preserve the Part 8 rules in relation to  
28 applications for terminations of workplace agreements by the Commission made before  
29 the WR Act repeal day. Terminations after that day are dealt with in Schedule 3 (which  
30 deals with transitional instruments).

31 **Division 4—Transitional provisions relating to ITEAs**  
32 **made before the WR Act repeal day**

33 **14 Continued application of Part 8 to ITEAs made before the**  
34 **WR Act repeal day**

- 35 (1) This item applies to an ITEA made before the WR Act repeal day.
-

**Schedule 8** Workplace agreements and workplace determinations made under the WR Act

**Part 2** Transitional provisions relating to workplace agreements

---

1 (2) The following provisions of Part 8 of the WR Act continue to apply in  
2 relation to the ITEA on and after the WR Act repeal day:

- 3 (a) Divisions 1 to 5A of Part 8 (which deal with the making and  
4 lodgment of workplace agreements and the no-disadvantage  
5 test);  
6 (b) subsection 347(1) (which deals with when a workplace  
7 agreement comes into operation);  
8 (c) section 347A (which deals with the operation of workplace  
9 agreements);  
10 (d) Division 7 of Part 8 (which deals with content rules), other  
11 than sections 353 (which deals with dispute settlement) and  
12 358 (which deals with prohibited content being void);  
13 (e) subsection 401(1) and section 412A.

14 Note 1: The general effect of this provision is to preserve the Part 8 rules about lodgment, the  
15 no-disadvantage test and prohibited content in relation to ITEAs made before the WR  
16 Act repeal day, subject to the modification set out in item 15. The rules about making  
17 ITEAs after that day are contained in Division 7 of this Part. The rules about variation  
18 and termination of ITEAs after that day, and some other rules, are contained in  
19 Schedule 3 (which deals with transitional instruments).

20 Note 2: The rules requiring an ITEA to include dispute settlement procedures and about  
21 prohibited content being void continue to apply under subitem 4(1) of Schedule 3  
22 (which deals with instrument content rules for transitional instruments).

23 **15 Modification—limits on variation of an ITEA that operates**  
24 **from approval for the purpose of passing the**  
25 **no-disadvantage test**

26 (1) Despite item 14, if the ITEA is a workplace agreement that operates  
27 from approval, the rules in this item also apply.

28 Note: The general effect of this item is that an ITEA that operates from approval can only be  
29 varied for the purpose of passing the no-disadvantage test if a variation for that purpose  
30 is lodged within a specified period.

31 (2) If, as at the WR Act repeal day:

- 32 (a) a notice under section 346M of the WR Act about whether  
33 the ITEA passes the no-disadvantage test has not been given;  
34 or  
35 (b) a notice under subsection 346M(2) of the WR Act stating that  
36 the ITEA does not pass the no-disadvantage test has been  
37 given but a variation of the ITEA, for the purposes of passing  
38 that test, has not been made; or



- 1 (c) a notice under subsection 346M(2) of the WR Act stating that  
2 the ITEA does not pass the no-disadvantage test has been  
3 given and a variation of the ITEA, for the purposes of  
4 passing that test, has been made but has not been lodged;  
5 then Division 5A of Part 8 of the WR Act, as that Division continues to  
6 apply because of item 14, has effect in relation to the collective  
7 agreement subject to subitems (3) and (5).
- 8 (3) Section 346N of the WR Act, as that section continues to apply because  
9 of item 14, has effect in relation to the ITEA, on and after the WR Act  
10 repeal day, as if it provided that a variation for the purposes of passing  
11 the no-disadvantage test set out in section 346D of that Act must be  
12 lodged under section 346N of that Act before the end of:
- 13 (a) the period of 30 days beginning on the seventh day after the  
14 date of issue specified in the notice under subsection  
15 346M(2) of that Act in relation to the ITEA; or  
16 (b) if the period is extended under subitem (4)—the period as  
17 extended.
- 18 (4) The Workplace Authority Director may extend the period referred to in  
19 paragraph (3)(a) in relation to a particular ITEA in circumstances  
20 prescribed by the regulations.
- 21 (5) Section 346Q of the WR Act, as that section continues to apply because  
22 of item 14, has effect in relation to the ITEA, on and after the WR Act  
23 repeal day, as if it provided that the Workplace Authority Director must  
24 not consider under that section whether the ITEA as varied passes the  
25 no-disadvantage test unless the variation is lodged within the period  
26 referred to in paragraph (3)(a) or (b).

27 **Division 5—Transitional provisions relating to variations**  
28 **of ITEAs made before the WR Act repeal day**

29 **16 General rule—continued application of lodgment**  
30 **provisions and no-disadvantage test to ordinary**  
31 **variations**

- 32 (1) This item applies to a variation of an ITEA under Division 8 of Part 8 of  
33 the WR Act, if the variation is made before the WR Act repeal day.
- 34 (2) The following provisions of Part 8 of the WR Act continue to apply in  
35 relation to the variation on and after the WR Act repeal day:
-

**Schedule 8** Workplace agreements and workplace determinations made under the WR Act

**Part 2** Transitional provisions relating to workplace agreements

---

- 1 (a) Division 5A of Part 8 (which deals with the no-disadvantage  
2 test);  
3 (b) subsections 370(8), (9), (10) and (11) (which deal with  
4 non-compliance with access and information requirements);  
5 (c) section 374 (which deals with lodgment of unapproved  
6 variations);  
7 (d) Subdivision C of Division 8 of Part 8 (which deals with  
8 lodgment);  
9 (e) Subdivision D of Division 8 of Part 8 (which deal with when  
10 a variation comes into operation);  
11 (f) subsection 401(1) and section 412A.

12 Note: The general effect of this provision is to preserve the Part 8 rules about lodgment and  
13 the no-disadvantage test for variations made before the WR Act repeal day of ITEAs,  
14 subject to the modification specified in item 17.

15 **17 Modification—limits on varying variations for the purpose**  
16 **of passing the no-disadvantage test**

- 17 (1) Despite item 16, if, as at the WR Act repeal day:  
18 (a) a notice under section 346M of the WR Act about whether  
19 the ITEA as varied passes the no-disadvantage test has not  
20 been given in relation to the variation; or  
21 (b) a notice under subsection 346M(2) of the WR Act stating that  
22 the ITEA as varied does not pass the no-disadvantage test has  
23 been given in relation to the variation, but a variation, for the  
24 purposes of passing that test, has not been made; or  
25 (c) a notice under subsection 346M(2) of the WR Act stating that  
26 the ITEA as varied does not pass the no-disadvantage test has  
27 been given in relation to the variation and a variation of the  
28 ITEA, for the purposes of passing that test, has been made  
29 but has not been lodged;

30 then Division 5A of Part 8 of the WR Act, as that Division continues to  
31 apply because of item 16, has effect in relation to the variation, on and  
32 after the WR Act repeal day, subject to subitems (2) and (4).

- 33 (2) Section 346N of the WR Act, as that section continues to apply because  
34 of item 16, has effect in relation to the variation, on and after the WR  
35 Act repeal day, as if it provided that a variation for the purposes of  
36 passing the no-disadvantage test set out in section 346D of that Act  
37 must be lodged under section 346N before the end of:

- 1 (a) the period of 30 days beginning on the seventh day after the  
2 date of issue specified in the notice under subsection  
3 346M(2) of that Act in relation to the variation; or  
4 (b) if the period is extended under subitem (3)—the period as  
5 extended.
- 6 (3) The Workplace Authority Director may extend the period referred to in  
7 paragraph (2)(a) in relation to a particular variation in circumstances  
8 prescribed by the regulations.
- 9 (4) Section 346Q of the WR Act, as that section continues to apply because  
10 of item 16, has effect in relation to the variation, on and after the WR  
11 Act repeal day, as if it provided that the Workplace Authority Director  
12 must not consider under that section whether the ITEA as varied passes  
13 the no-disadvantage test unless the variation for the purposes of passing  
14 that test is lodged within the period referred to in paragraph (2)(a) or  
15 (b).

16 **Division 6—Transitional provisions relating to pre-WR**  
17 **Act repeal day terminations of ITEAs**

18 **18 Termination by approval—continued application of**  
19 **lodgment provisions**

- 20 (1) This item applies to a termination of an ITEA, if the termination is  
21 approved in accordance with section 386 of the WR Act (which deals  
22 with terminations by approval) before the WR Act repeal day, but not  
23 lodged in accordance with section 389 of that Act by that time.
- 24 (2) The following provisions of Part 8 of the WR Act continue to apply in  
25 relation to the termination on and after the WR Act repeal day:
- 26 (a) subsection 381(2) (which deals with when a workplace  
27 agreement is terminated);
- 28 (b) subsections 384(4), (5) and (6) (which deal with  
29 non-compliance with information requirements);
- 30 (c) section 387 (which deals with lodgment of unapproved  
31 terminations);
- 32 (d) Subdivision C of Division 9 of Part 8 (which deals with  
33 lodgment);
- 34 (e) section 398 (which deals with the effect of non-compliance);
- 35 (f) subsection 401(1) and section 412A.

**Schedule 8** Workplace agreements and workplace determinations made under the WR Act

**Part 2** Transitional provisions relating to workplace agreements

---

1 Note: The general effect of this provision is to preserve the Part 8 rules in relation to  
2 terminations of ITEAs approved before the WR Act repeal day. Terminations after that  
3 day are dealt with in Schedule 3 (which deals with transitional instruments).

4 **19 Unilateral termination of ITEA in manner provided for in**  
5 **agreement—continued application of lodgment**  
6 **provisions**

7 (1) This item applies to a termination of an ITEA if a declaration to  
8 terminate the ITEA is lodged under subsection 392(2) of the WR Act  
9 (which deals with unilateral termination in the manner provided in the  
10 ITEA) before the WR Act repeal day.

11 (2) The following provisions of Part 8 of the WR Act continue to apply in  
12 relation to the termination on and after the WR Act repeal day:

- 13 (a) subsection 381(2) (which deals with when a workplace  
14 agreement is terminated);  
15 (b) section 396 (which deals with receipts for lodgment of  
16 declarations);  
17 (c) section 397 (which deals with giving notice after lodging  
18 notice of termination);  
19 (d) section 398 (which deals with effect of non-compliance).  
20 (e) section 412A.

21 Note: The general effect of this provision is to preserve the Part 8 rules in relation to  
22 terminations of ITEAs, if a declaration to terminate is lodged before the WR Act repeal  
23 day. Terminations after that day are dealt with in Schedule 3 (which deals with  
24 transitional instruments).

25 **20 Continued application of lodgment provisions where**  
26 **termination by written notice is given before the WR**  
27 **Act repeal day and lodged within 120 days**

28 (1) This item applies to an ITEA, if notice to terminate the ITEA is given in  
29 accordance with subsection 393(4) of the WR Act (which deals with  
30 unilateral termination by giving written notice) before the WR Act  
31 repeal day.

32 (2) The following provisions of Part 8 of the WR Act continue to apply on  
33 and after the WR Act repeal day in relation to the termination of the  
34 ITEA:

- 35 (a) subsection 381(2) (which deals with when an ITEA is  
36 terminated);
-

- 1 (b) sections 393, 394, 395, 396, 397, 397A, 398 and 399A  
2 (which deal with matters relating to lodgment of  
3 terminations, etc.);  
4 (c) section 412A.

5 Note: The general effect of this provision is to preserve the Part 8 rules in relation to  
6 terminations of ITEAs by written notice given before the WR Act repeal day, subject to  
7 the modifications set out in subitems (3) to (6). Terminations after that day are dealt  
8 with in Schedule 3 (which deals with transitional instruments).

9 *Modification—declaration to terminate must be lodged within 120*  
10 *days of WR Act repeal day*

- 11 (3) A declaration may only be lodged, in relation to the ITEA under  
12 subsection 393(2) of the WR Act, as that subsection continues to apply  
13 because of subitem (2), before the end of the period (the *cut-off period*)  
14 of 120 days beginning on the WR Act repeal day.
- 15 (4) Section 396 of the WR Act, as that section continues to apply because  
16 of subitem (2), does not apply in relation to the ITEA if the declaration  
17 is not lodged before the end of the cut-off period.
- 18 (5) Despite subsection 381(2) and section 398 of the WR Act, as those  
19 provisions continue to apply because of subitem (2), the termination of  
20 the ITEA does not take effect if the declaration is not lodged before the  
21 end of the cut-off period.
- 22 (6) If the termination is lodged after the end of the cut-off period, the  
23 Workplace Authority Director must give a written notice, stating that  
24 the termination cannot come into operation because the declaration was  
25 lodged after the end of the cut-off period, to the following:  
26 (a) the employer to which the agreement applies;  
27 (b) the employee to whom the agreement applies.

28 **Division 7—Transitional provisions relating to making**  
29 **ITEAs during the bridging period**

30 **21 General rule—continued application of Part 8 to making of**  
31 **ITEAs**

- 32 (1) Despite the repeal of Part 8 of the WR Act, an ITEA may, during the  
33 bridging period, be made under Division 2 of that Part as if that Part had  
34 not been repealed.

**Schedule 8** Workplace agreements and workplace determinations made under the WR Act

**Part 2** Transitional provisions relating to workplace agreements

- 
- 1 (2) The following provisions of Part 8 of the WR Act continue to apply in  
2 relation to the ITEA on and after the WR Act repeal day:
- 3 (a) Divisions 1 to 5A of Part 8 (which deal with the making and  
4 lodgment of workplace agreements and the no-disadvantage  
5 test), other than sections 346ZJ and 346ZK (which deal with  
6 dismissing an employee if an agreement does not pass that  
7 test);
- 8 (b) subsections 347(1) and (3) (which deal with when a  
9 workplace agreement comes into operation);
- 10 (c) section 347A (which deals with the operation of workplace  
11 agreements);
- 12 (d) Division 7 of Part 8 (which deals with content rules), other  
13 than sections 353 (which deals with dispute settlement) and  
14 358 (which deals with prohibited content being void);
- 15 (e) subsections 400(3) and (5), subsection 401(1) and  
16 section 412A.
- 17 Note 1: The general effect of this provision is to permit ITEAs to be made during the bridging  
18 period and to preserve the Part 8 rules about lodgment, the no-disadvantage test and  
19 prohibited content, subject to the modifications set out in this Division. The rules about  
20 variation and termination of ITEAs on and after the WR Act repeal day, and certain  
21 other rules, are contained in Schedule 3 (which deals with transitional instruments).
- 22 Note 2: The rules requiring an ITEA to include dispute settlement procedures and about  
23 prohibited content being void continue to apply under subitem 4(1) of Schedule 3  
24 (which deals with instrument content rules for transitional instruments).
- 25 (3) The provisions referred to in subitem (2) do not apply to an ITEA  
26 lodged after the end of the bridging period.
- 27 (4) If the ITEA is lodged after the end of the bridging period, the  
28 Workplace Authority Director must give a written notice, stating that  
29 the ITEA cannot come into operation because the ITEA was lodged  
30 after the end of the bridging period, to the following:
- 31 (a) the employer to which the ITEA would have applied if it had  
32 come into operation;
- 33 (b) the employee to whom the ITEA would have applied if it had  
34 come into operation.

35 **22 Modification—enterprise agreements and workplace**  
36 **determinations are taken to be instruments**

- 37 (1) This item applies to an ITEA made during the bridging period as  
38 referred to in subitem 21(1).

- 1 (2) For the purposes of the application to the ITEA of section 346E of the  
2 WR Act, as that section continues to apply because of item 21,  
3 enterprise agreements and workplace determinations are taken to be  
4 specified in subsection 346E(3) (in addition to the other instruments so  
5 specified).
- 6 (3) For the purposes of the application to the ITEA of section 346ZB of the  
7 WR Act, as that section continues to apply because of item 21,  
8 enterprise agreements and workplace determinations (within the  
9 meaning of the FW Act) are taken to be specified in subsection  
10 346ZB(5) (in addition to the other instruments so specified).

11 **23 Modification—limits on variation of an ITEA that operates**  
12 **from approval for the purpose of passing the**  
13 **no-disadvantage test**

- 14 (1) Despite item 21, if the ITEA is a workplace agreement that operates  
15 from approval, the rules in this item also apply.
- 16 (2) Section 346N of the WR Act, as that section continues to apply because  
17 of item 21, has effect in relation to the ITEA, on and after the WR Act  
18 repeal day, as if it provided that a variation for the purposes of passing  
19 the no-disadvantage test set out in section 346D of that Act must be  
20 lodged under section 346N of that Act before the end of:
- 21 (a) the period of 30 days beginning on the seventh day after the  
22 date of issue specified in the notice under subsection  
23 346M(2) of that Act in relation to the ITEA; or  
24 (b) if the period is extended under subitem (3)—the period as  
25 extended
- 26 (3) The Workplace Authority Director may extend the period referred to in  
27 paragraph (2)(a) in relation to a particular ITEA in circumstances  
28 prescribed by the regulations.
- 29 (4) Section 346Q of the WR Act, as that section continues to apply because  
30 of item 21, has effect in relation to the ITEA, on and after the WR Act  
31 repeal day, as if it provided that the Workplace Authority Director must  
32 not consider under that section whether the ITEA as varied passes the  
33 no-disadvantage test unless the variation is lodged within the period  
34 referred to in paragraph (2)(a) or (b).

35 **24 Modification—subsection 400(5)**

---

**Schedule 8** Workplace agreements and workplace determinations made under the WR Act

**Part 2** Transitional provisions relating to workplace agreements

---

- 1 (1) This item applies to an ITEA made during the bridging period as  
2 referred to in subitem 21(1).
- 3 (2) For the purposes of the application to the ITEA of subsection 400(5) of  
4 the WR Act, as that subsection continues to apply because of item 21,  
5 the circumstance referred to in subsection 400(6) of that Act is taken to  
6 include a reference to the circumstance referred to in subitem 25(2).

7 **25 Effect of section 342 of the FW Act during the bridging**  
8 **period**

- 9 (1) Despite section 342 of the FW Act, a prospective employer does not  
10 contravene subsection 340(1) of that Act if, during the bridging period,  
11 the person refuses to employ a person merely because the person  
12 requires another person to make an ITEA as a condition of engagement,  
13 other than in the circumstance referred to in subitem (2).
- 14 (2) The circumstance referred to in subitem (1) is that:  
15 (a) the first person mentioned in subitem (1) is a new employer;  
16 and  
17 (b) the new employer requires another person to make an ITEA;  
18 and  
19 (c) the other person would, if employed by the new employer, be  
20 a transferring employee; and  
21 (d) the requirement to make the ITEA is a condition of the other  
22 person becoming employed by the new employer.

23 **Division 8—Applying the no-disadvantage test where**  
24 **there is a transmission or transfer of business**

25 **26 Applying the no-disadvantage test where there is a**  
26 **transmission or a transfer of business**

- 27 (1) This item applies if the Workplace Authority Director is required,  
28 because of the application of this Schedule to a workplace agreement, to  
29 decide, on or after the WR Act repeal day, whether the workplace  
30 agreement passes the no-disadvantage test.
- 31 (2) Division 7A of Part 11 of the WR Act continues to apply, in relation to  
32 the workplace agreement, as if that Division had not been repealed, with  
33 the following modifications:



- 1 (a) references to a workplace agreement binding an employer or  
2 an employee are taken to include references to a workplace  
3 agreement that is a transitional instrument covering an  
4 employer or employee;
- 5 (b) references to sections 583 and 585 of the WR Act (other than  
6 in section 601D) are taken to include references to  
7 section 313 of the FW Act;
- 8 (c) enterprise agreements and workplace determinations (within  
9 the meaning of the FW Act) are taken to be specified in the  
10 definition of *instrument* in subsection 601D(5) (in addition  
11 to the other instruments so specified);
- 12 (d) the reference in subparagraph 601G(1)(b)(i) to the instrument  
13 described in paragraph 601D(2)(a) is taken to include a  
14 reference to the instrument described in paragraph 27(2)(a) of  
15 this Schedule;
- 16 (e) the reference in subparagraph 601G(1)(b)(ii) to section 598A  
17 or clause 27A of Schedule 9 is taken to include a reference to  
18 item 9 of Schedule 11;
- 19 (f) the reference in paragraph 601H(1)(b) to the time of  
20 transmission is taken to include a reference to the time when  
21 the new employer first employs a transferring employee;
- 22 (g) paragraph 601H(2)(d) does not apply if the workplace  
23 agreement applies to the new employer because of the  
24 operation of section 313 of the FW Act.

25 **27 Employment arrangements if there is a transfer of**  
26 **business and a workplace agreement ceases to operate**  
27 **because it does not pass the no-disadvantage test**

- 28 (1) This item applies if:
- 29 (a) on a particular day (the *cessation day*), a workplace  
30 agreement (the *original agreement*) ceases to operate under  
31 section 346W or 346ZA of the WR Act (as those provisions  
32 continue to apply because of the operation of this Schedule)  
33 because the original agreement does not pass the  
34 no-disadvantage test; and
- 35 (b) during the period beginning when the original agreement was  
36 lodged and ending on the cessation day, the original  
37 agreement started to cover a new employer and a transferring  
38 employee or transferring employees because of the operation  
39 of section 313 of the FW Act.
-

**Schedule 8** Workplace agreements and workplace determinations made under the WR Act

**Part 2** Transitional provisions relating to workplace agreements

---

- 1 (2) Despite subsection 346ZB(2) of the WR Act (as that provision  
2 continues to apply because of the operation of this Schedule), the new  
3 employer and the transferring employee or transferring employees who  
4 were covered by the original agreement immediately before the  
5 cessation day are taken, on and from the cessation day, to be covered  
6 by:
- 7 (a) the instrument:
- 8 (i) that, but for the original agreement having come into  
9 operation, would have covered the old employer and the  
10 transferring employee or transferring employees  
11 immediately before the termination of the employment  
12 of the transferring employee or transferring employees  
13 with the old employer; and
- 14 (ii) that was capable of covering the new employer after the  
15 time the transferring employee or transferring  
16 employees became employed by the new employer  
17 under Schedule 11; or
- 18 (b) if there is no instrument of a kind referred to in paragraph (a)  
19 in relation to the old employer and one or more of the  
20 transferring employees—the designated award (within the  
21 meaning of Division 5A of Part 8 of the WR Act) in relation  
22 to that employee or those employees.
- 23 (3) If, but for the original agreement having come into operation, a  
24 redundancy provision would, immediately before the termination of the  
25 employment of a transferring employee or transferring employees with  
26 the old employer, have applied to the old employer in relation to a  
27 transferring employee or transferring employees to who the original  
28 agreement applied because of a preservation item (within the meaning  
29 of item 9 of Schedule 11) relating to the agreement, the redundancy  
30 provision is taken:
- 31 (a) to apply to the new employer under item 9 of Schedule 11, on  
32 and from the cessation day, in relation to the transferring  
33 employee or transferring employees; and
- 34 (b) to continue to so apply to the employer, in relation to the  
35 transferring employee or transferring employees, until the  
36 earliest of the following:
- 37 (i) the end of the period of 24 months beginning on the first  
38 day on which the old employer became covered, under  
39 the preservation item, by the redundancy provision;
-

- 1 (ii) the time when the transferring employee ceases to be  
2 employed by the new employer;  
3 (iii) the time when an enterprise agreement, workplace  
4 determination or ITEA starts to apply to the transferring  
5 employee or transferring employees and the new  
6 employer.

7 (4) If the original agreement is a workplace agreement as varied under  
8 Division 8 of Part 8 of the WR Act, the workplace agreement as in force  
9 before the variation was lodged is, despite section 346ZE of that Act (as  
10 that section continues to apply because of the operation of this  
11 Schedule), capable of being an instrument described in paragraph (2)(a).

12 (5) In this item:

13 *instrument* means:

- 14 (a) if the termination of the employment of the transferring  
15 employee or transferring employees with the old employer  
16 occurred before the WR Act repeal day—any of the  
17 following:  
18 (i) a workplace agreement;  
19 (ii) an award;  
20 (iii) a pre-reform certified agreement;  
21 (iv) a preserved State agreement;  
22 (v) a notional agreement preserving State awards; and  
23 (b) if the termination of the employment of the transferring  
24 employee or transferring employees with the old employer  
25 occurred on or after the WR Act repeal day—any of the  
26 following:  
27 (i) an instrument referred to in subparagraph (a)(i), (ii),  
28 (iii), (iv) or (v) that is a transitional instrument;  
29 (ii) an enterprise agreement;  
30 (iii) a workplace determination made under the FW Act.

31 *redundancy provision* has the meaning given by subitem 38(7) of  
32 Schedule 3.

## 33 **Division 9—Miscellaneous**

### 34 **28 References to variations under Division 8**

---

**Schedule 8** Workplace agreements and workplace determinations made under the WR Act

**Part 2** Transitional provisions relating to workplace agreements

---

1                   To avoid doubt, a reference in this Part to a variation under Division 8  
2                   of Part 8 of the WR Act does not include a reference to a variation made  
3                   for the purposes of passing the no-disadvantage test.

4                   **29 Documents taken to be workplace agreements, etc.**

5                   To avoid doubt, sections 324A, 368A and 381A of the WR Act continue  
6                   to have effect for the purposes of a provision of the WR Act that  
7                   continues to apply because of this Act.

1

2

## **Part 3—Transitional provisions relating to workplace determinations made under the WR Act**

3

4

### **30 Continued application of WR Act prohibited content provisions**

5

6

(1) This item applies to a workplace determination made under the WR Act before the WR Act repeal day.

7

8

(2) Despite the repeal of section 506 of the WR Act, Subdivision B of Division 7 of Part 8 of that Act (which deals with prohibited content), other than section 358 (which deals with prohibited content being void), continues to apply in relation to the workplace determination on and after the WR Act repeal day as if that section had not been repealed.

9

10

11

12

13

Note 1: The general effect of this provision is to preserve the Part 8 rules about prohibited content for workplace determinations made before the WR Act repeal day. The rules about variation and termination of such workplace determinations, and certain other rules, are contained in Schedule 3 (which deals with transitional instruments).

14

15

16

17

Note 2: The rules about prohibited content being void continue to apply under subitem 4(1) of Schedule 3 (which deals with instrument content rules for transitional instruments).

18

19

### **31 Termination by approval general rule—continued application of lodgment provisions**

20

21

(1) This item applies to a termination of a workplace determination, if the termination has been approved in accordance with section 386 of the WR Act (which deals with terminations by approval) before the WR Act repeal day, but not lodged in accordance with section 389 of that Act before that day.

22

23

24

25

26

Note: Under subsection 506(3) of the WR Act, a workplace determination can only be terminated under Subdivision B of Division 9 of Part 8 of that Act after the determination has passed its nominal expiry date.

27

28

29

(2) Despite the repeal of section 506 of the WR Act, the following provisions of that Act continue to apply in relation to the termination on and after the WR Act repeal day, as if that section had not been repealed:

30

31

32

33

34

(a) subsection 381(2) (which deals with when a workplace determination is terminated);

**Schedule 8** Workplace agreements and workplace determinations made under the WR Act

**Part 3** Transitional provisions relating to workplace determinations made under the WR Act

- 
- 1 (b) subsections 384(4), (5) and (6) (which deal with  
2 non-compliance with information requirements);  
3 (c) section 387 (which deals with lodgment of unapproved  
4 terminations);  
5 (d) Subdivision C of Division 9 of Part 8 (which deals with  
6 lodgment);  
7 (e) section 398 (which deals with the effect of non-compliance);  
8 (f) subsection 401(1) and section 412A.

9 Note: The general effect of this provision is to preserve the Part 8 rules in relation to  
10 terminations of workplace determinations approved before the WR Act repeal day,  
11 subject to the modification set out in item 32. Terminations after that day are dealt with  
12 in Schedule 3 (which deals with transitional instruments).

13 **32 Modification—unlodged terminations must be lodged**  
14 **within 14 days**

- 15 (1) Despite item 31, if a termination to which that item applies is an  
16 unlodged termination:  
17 (a) the termination does not come into operation unless it is  
18 lodged before the end of the 14 day period (the *cut-off*  
19 *period*) referred to in subsection 388(1) of the WR Act as that  
20 subsection continues to apply because of item 31; and  
21 (b) subsection 388(2) of the WR Act (which deals with a civil  
22 remedy for late lodgment), as that subsection continues to  
23 apply because of item 31, does not apply to the termination.

24 Note: The general effect of this provision is that unlodged terminations must be lodged within  
25 14 days of being made in order to come into operation. However, late lodgment will not  
26 give rise to a civil remedy.

- 27 (2) If the termination is lodged after the end of the cut-off period, the  
28 Workplace Authority Director must give a written notice, stating that  
29 the termination cannot come into operation because it was lodged after  
30 the end of the cut-off period, to the following:  
31 (a) the employer to which the workplace determination applies;  
32 (b) the employees to which the workplace determination applies.
- 33 (3) In this item:

---

1            ***unlodged termination***, in relation to a workplace determination, means  
2            a termination of a workplace determination approved in accordance  
3            with section 386 of the WR Act, but not lodged with the Workplace  
4            Authority Director under section 389 of that Act as at the WR Act  
5            repeal day.

6            **33 Termination by the Commission—Commission may**  
7            **continue to deal with applications made before the WR**  
8            **Act repeal day**

9            (1)        This item applies to a workplace determination in relation to which an  
10            application has been made under subsection 397A(2) of the WR Act  
11            (which deals with termination by the Commission) before the WR Act  
12            repeal day.

13            (2)        Despite the repeal of section 506 of the WR Act, the following  
14            provisions of that Act continue to apply in relation to the workplace  
15            determination on and after the WR Act repeal day as if that section had  
16            not been repealed:

17                        (a) subsection 381(2) (which deals with when a workplace  
18                        determination is terminated);

19                        (b) subsections 397A(1) and (3) (which deal with when the  
20                        Commission may terminate a workplace determination).

21            Note:        The general effect of this provision is to preserve the Part 8 rules in relation to  
22            applications for terminations of workplace determinations by the Commission made  
23            before the WR Act repeal day. Terminations after that day are dealt with in Schedule 3  
24            (which deals with transitional instruments).

25            **34 Documents taken to be workplace determinations, etc.**

26            To avoid doubt, section 381A of the WR Act continues to apply for the  
27            purposes of a provision of that Act that continues to apply because of  
28            this Part.

1  
2  
3  
4  
5  
6

## **Schedule 9—Minimum wages**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

## **Part 2—Special provisions relating to FWA's first annual wage review**

### **2 Period to which first annual wage review relates**

FWA's first annual wage review is to be conducted and completed in the period:

- (a) starting on the FW (safety net provisions) commencement day; and
  - (b) ending at the end of the next 30 June;
- even if that period is not a full financial year.

### **3 Exercise of powers in advance of first annual wage review period**

FWA may, before the start of the period referred to in item 2, exercise powers for the purpose of obtaining information to be taken into account in its first annual wage review. Powers that may be exercised include:

- (a) inviting persons or bodies to make written submissions to FWA for consideration in the review; and
- (b) undertaking or commissioning research for the purposes of the review.

### **4 First national minimum wage order does not have to set full range of special national minimum wages**

- (1) In its first annual wage review, FWA does not have to set a full range of special national minimum wages covering all the classes of employees referred to in paragraph 294(1)(b) of the FW Act.
  - (2) However, FWA must set a special national minimum wage for a class or subclass of those employees in its first annual wage review if the transitional national minimum wage order sets a special national minimum wage order for those employees.
- Note: The transitional national minimum wage order is taken to have been made on the FW (safety net provisions) commencement day: see item 12.
- (3) If FWA does not set a full range of special national minimum wages in its first annual wage review, the President of FWA must establish a

**Schedule 9** Minimum wages

**Part 2** Special provisions relating to FWA's first annual wage review

---

- 1 process for the setting of the remaining special national minimum  
2 wages in FWA's second annual wage review.
- 3 (4) FWA may advise persons or bodies about that process in any way FWA  
4 considers appropriate.
- 5 (5) Section 625 of the FW Act (which deals with delegation by the  
6 President of functions and powers of FWA) has effect as if  
7 subsection (2) of that section included a reference to FWA's powers  
8 under subitem (4).

1  
2 **Part 3—Continued application of WR Act provisions**  
3 **about minimum wages**

4 **Division 1—General provisions**

5 **5 Continuation of Australian Fair Pay and Conditions**  
6 **Standard wages provisions**

7 (1) Division 2 (other than as provided in subitem (2)) of Part 7 of the WR  
8 Act continues to apply on and after the WR Act repeal day in  
9 accordance with this Part. That Division as it continues to apply is the  
10 ***continued AFPCS wages provisions***.

11 Note 1: Part 7 of the WR Act contains the Australian Fair Pay and Conditions Standard.  
12 Schedule 4 provides for the continued application of the rest of the Standard during the  
13 bridging period. The effect of this Division is not limited just to the bridging period.

14 Note 2: Schedule 3 provides for the continued application of the rules about the interaction  
15 between transitional instruments and the Australian Fair Pay and Conditions Standard.

- 16 (2) The continued application of Division 2 of Part 7 of the WR Act has  
17 effect subject to the following paragraphs:
- 18 (a) subsections 182(1) and (2), and Subdivisions H, I, L and M,  
19 cease to apply when there are no longer any employees  
20 covered by transitional APCSs (see also item 11);
  - 21 (b) subsections 182(3) and (4), section 185 and Subdivision G  
22 cease to apply at the end of the bridging period (see also  
23 item 12;
  - 24 (c) Subdivision D does not continue to apply at all;
  - 25 (d) Subdivisions E, F, K and N cease to apply after the AFPC  
26 has ceased to exist (see item 7 of Schedule 18).
- 27 (3) Without limiting subitem (1) (but subject to subitem (2)), each of the  
28 following, as it was under Division 2 of Part 7 of the WR Act  
29 immediately before the WR Act repeal day, continues to exist, as a  
30 ***transitional minimum wage instrument***, in accordance with this Part  
31 on and after that day:
- 32 (a) an APCS, which continues as a ***transitional APCS***;
  - 33 (b) the rate of the standard FMW, which continues as the  
34 ***transitional standard FMW***;

- 1 (c) a special FMW, which continues as a *transitional special*  
2 *FMW*;  
3 (d) the rate of the default casual loading, which continues as the  
4 *transitional default casual loading*.

5 Note: APCS is short for Australian Pay and Classification Scale. FMW is short for Federal  
6 Minimum Wage.

7 **6 The employees who are covered by transitional minimum**  
8 **wage instruments**

- 9 (1) Transitional minimum wage instruments *cover* employees as provided  
10 in the following paragraphs:  
11 (a) a transitional APCS covers an employee if, under  
12 sections 204 and 205 of the continued AFPCS wages  
13 provisions, the APCS covers the employment of the  
14 employee;  
15 (b) the transitional standard FMW covers an employee if, under  
16 section 194 of the continued AFPCS wages provisions, the  
17 FMW for the employee is the standard FMW;  
18 (c) a transitional special FMW covers an employee if, under  
19 section 194 of the continued AFPCS wages provisions, the  
20 FMW for the employee is that special FMW;  
21 (d) the transitional default casual loading covers an employee  
22 who is described in subsection 185(1) of the continued  
23 AFPCS wages provisions.
- 24 (2) However, a transitional APCS does not cover an employee (or an  
25 employer, or an employee organisation, in relation to the employee) at a  
26 time when the employee is a high income employee (see section 329 of  
27 the FW Act).

28 Note 1: Item 35 of Schedule 3 deals with the application of section 329 of the FW Act to  
29 transitional APCSs.

30 Note 2: Divisions 2 and 3 of this Part deal with when transitional minimum wage instruments  
31 cease to cover employees.

32 **7 Transitional minimum wage instruments can only be varied**  
33 **or terminated in limited circumstances**

- 34 (1) Despite anything in the continued AFPCS wages provisions, a  
35 transitional minimum wage instrument cannot be varied or terminated  
36 (or otherwise brought to an end) except as referred to in one of the  
37 following subitems.
-

- 1 (2) The AFPC can exercise its wage-setting powers to vary a transitional  
2 minimum wage instrument as necessary depending on the outcome of  
3 the AFPC's final wage review under the WR Act. Those exercises of  
4 wage-setting powers take effect at the time determined by the AFPC  
5 (which may be a time after the AFPC has ceased to exist).

6 Note: Schedule 18 provides for when the AFPC ceases to exist.

- 7 (3) A transitional APCS can be varied in an annual wage review under the  
8 FW Act as provided for in item 10.

- 9 (4) A transitional APCS can be varied or terminated under:  
10 (a) item 3 of Schedule 5 (which deals with variation and  
11 termination of transitional APCSs to take account of the  
12 Part 10A award modernisation process); or  
13 (b) item 9 of Schedule 6 (which deals with variation and  
14 termination of transitional APCSs to take account of the  
15 enterprise instrument modernisation process).

## 16 **8 Effect of termination**

17 If a transitional minimum wage instrument terminates, it ceases to cover  
18 (and can never again cover) any employees.

## 19 **9 No loss of accrued rights or liabilities when transitional** 20 **minimum wage instrument terminates or ceases to** 21 **cover an employee**

- 22 (1) If a transitional minimum wage instrument terminates, or ceases to  
23 cover a person, that does not affect:  
24 (a) any right or liability that a person acquired, accrued or  
25 incurred before the transitional minimum wage instrument  
26 terminated or ceased to cover the person; or  
27 (b) any investigation, legal proceeding or remedy in respect of  
28 any such right or liability.
- 29 (2) Any such investigation, legal proceeding or remedy may be instituted,  
30 continued or enforced as if the transitional minimum wage instrument  
31 had not terminated or ceased to cover the person.

## 32 **Division 2—Special provisions about transitional APCSs**

### 33 **10 Variation of transitional APCS in annual wage reviews** 34 **under the FW Act**

---

**Schedule 9** Minimum wages

**Part 3** Continued application of WR Act provisions about minimum wages

---

- 1 (1) In an annual wage review, FWA may make a determination varying a  
2 transitional APCS.
- 3 (2) For that purpose, Division 3 of Part 2-6 of the FW Act (other than  
4 section 292) applies to a transitional APCS in the same way as it applies  
5 to a modern award.

6 **11 Transitional APCS ceases to cover an employee if a**  
7 **modern award starts to cover the employee**

8 A transitional APCS ceases to cover an employee when a modern award  
9 that covers the employee comes into operation.

10 **Division 3—Special provisions about the FMW, special**  
11 **FMWs and the default casual loading**

12 **12 Cessation of coverage of transitional standard FMW etc.**

- 13 (1) On the FW (safety net provisions) commencement day, the transitional  
14 standard FMW, any transitional special FMWs and the transitional  
15 default casual loading cease to cover any employees. Subsections  
16 182(3) and (4), and section 185, of the continued AFPCS wages  
17 provisions also cease to cover any employees.
- 18 (2) On the FW (safety net provisions) commencement day, FWA is taken to  
19 have made a national minimum wage order (the *transitional national*  
20 *minimum wage order*) under Part 2-6 of the FW Act:
- 21 (a) that:
- 22 (i) sets the national minimum wage at the rate that was the  
23 transitional standard FMW immediately before that day;  
24 and
- 25 (ii) requires employers to pay employees to whom the  
26 national minimum wage applies (see subsection 294(3)  
27 of the FW Act) a base rate of pay that at least equals the  
28 national minimum wage; and
- 29 (b) if, immediately before that day, there was a transitional  
30 special FMW for a class of employees—that:
- 31 (i) sets a special national minimum wage for that class of  
32 employees that is the same as the transitional special  
33 FMW immediately before that day; and
- 34 (ii) requires employers to pay employees to whom that  
35 special national minimum wage applies (see subsection

- 1                                 294(4) of the FW Act) a base rate of pay that at least  
2                                 equals that special national minimum wage; and  
3                 (c) that:  
4                                 (i) sets the casual loading for award/agreement free  
5                                 employees at the rate that was the transitional default  
6                                 casual loading immediately before that day; and  
7                                 (ii) requires employers to pay, to award/agreement free  
8                                 employees who are casual employees, a casual loading  
9                                 that at least equals the casual loading for  
10                                 award/agreement free employees (as applied to the  
11                                 employees' base rates of pay).

12     Note:     The requirement in paragraph 294(1)(b) of the FW Act that a national minimum wage  
13                 order must set special national minimum wages for all award/agreement free employees  
14                 in the classes referred to in that paragraph does not apply to the transitional national  
15                 minimum wage order.

- 16     (3)     The hours for which a rate set in the transitional national minimum  
17                 wage order is payable are the same as the hours for which the  
18                 transitional standard FMW, transitional special FMW or transitional  
19                 default casual loading (as the case requires) would have been payable  
20                 under the continued AFPCS wages provisions.

1

2

## Part 4—Universal application of minimum wages to employees

3

4

### 13 Base rate of pay under agreement-based transitional instrument must not be less than the modern award rate or the national minimum wage order rate etc.

5

6

7

*If employee is covered by a modern award that is in operation*

8

(1) If, on or after the FW (safety net provisions) commencement day:

9

(a) an agreement-based transitional instrument applies to an employee; and

10

11

(b) a modern award that is in operation covers the employee;

12

the base rate of pay payable to the employee under the transitional instrument (the *instrument rate*) must not be less than the base rate of pay that would be payable to the employee under the modern award (the *award rate*) if the modern award applied to the employee.

13

14

15

16

(2) If the instrument rate is less than the award rate, the transitional

17

instrument has effect in relation to the employee as if the instrument rate were equal to the award rate.

18

19

*If employee is not covered by a modern award that is in operation*

20

(3) If, on or after the FW (safety net provisions) commencement day:

21

(a) an agreement-based transitional instrument applies to an employee; and

22

23

(b) the employee is not covered by a modern award that is in operation; and

24

25

(c) a national minimum wage order would, if the employee were an award/agreement free employee, require the employee's employer to pay the employee a base rate of pay (the *employee's order rate*) that at least equals the national minimum wage, or a special national minimum wage, set by the order;

26

27

28

29

30

31

the base rate of pay payable to the employee under the transitional instrument (the *instrument rate*) must not be less than the employee's order rate.

32

33



- 1 (4) If the instrument rate is less than the employee's order rate, the  
2 transitional instrument has effect in relation to the employee as if the  
3 instrument rate were equal to the employee's order rate.

4 **14 FWA may make determinations to phase-in the effect of**  
5 **rate increases resulting from item 13 etc.**

- 6 (1) On application by an employer to whom a transitional instrument  
7 applies, FWA may make a determination the effect of which is to  
8 phase-in the effect of increases in base rates of pay that would otherwise  
9 take effect on a particular day because of:  
10 (a) item 13; or  
11 (b) subitem 22(2) of Schedule 3.
- 12 Note: Under subitem 22(2) of Schedule 3, AFPCS interaction rules that provide for  
13 instruments to prevail over the Australian Fair Pay and Conditions Standard stop  
14 applying when the bridging period ends. That may result in an employee becoming  
15 entitled to a higher rate of pay under a transitional APCS.
- 16 (2) FWA must not make a determination under this item in relation to an  
17 employer unless it is satisfied that the determination is necessary to  
18 ensure the ongoing viability of the employer's enterprise.
- 19 (3) Item 13, and subitem 22(2) of Schedule 3, have effect in relation to an  
20 employer subject to any determinations FWA makes under this item.

21 **15 Enterprise agreement base rate of pay not to be less than**  
22 **transitional minimum wage instrument rate**

- 23 (1) If:  
24 (a) a transitional minimum wage instrument covers an employee;  
25 and  
26 (b) an enterprise agreement applies to the employee;  
27 the base rate of pay payable to the employee under the enterprise  
28 agreement (the *agreement rate*) must not be less than the base rate of  
29 pay that is payable to the employee under the transitional minimum  
30 wage instrument (the *instrument rate*).
- 31 (2) If the agreement rate is less than the instrument rate, the enterprise  
32 agreement has effect in relation to the employee as if the agreement rate  
33 were equal to the instrument rate.
- 34 Note: If a transitional instrument applies to an employee who is covered by a transitional  
35 minimum wage instrument, then (subject to the continued application of the AFPCS

**Schedule 9** Minimum wages

**Part 4** Universal application of minimum wages to employees

---

1 interaction rules) the employee must be paid at least the rate required by the continued  
2 AFPCS wages provisions.

1  
2  
3  
4  
5

## **Schedule 10—Equal remuneration**

### **Part 1—Preliminary**

#### **1 Meaning of *employee***

In this Schedule, *employee* means a national system employee.

1

2 **Part 2—Equal remuneration orders under the FW Act**

3 **2 FWA must take into account AFPC’s final wage review**

4 (1) This item applies in relation to a decision whether to make an equal  
5 remuneration order under Part 2-7 of the FW Act during the period:

- 6 (a) starting on the WR Act repeal day; and  
7 (b) ending on the day FWA completes its first annual wage  
8 review.

9 (2) In deciding whether to make the equal remuneration order, FWA must  
10 take into account the outcome of the AFPC’s final wage review under  
11 the WR Act.

12 **3 Inconsistency with certain instruments and orders**

13 (1) A term of an instrument or order referred to in subitem (2) has no effect  
14 in relation to an employee to the extent that it is less beneficial to the  
15 employee than a term of an equal remuneration order that:

- 16 (a) is made under Part 2-7 of the FW Act; and  
17 (b) applies to the employee.

18 (2) For the purposes of subitem (1), the instruments and orders are as  
19 follows:

- 20 (a) a transitional instrument;  
21 (b) an order of the Commission made under the WR Act;  
22 (c) a transitional APCS.

23 Note: A term of a modern award, an enterprise agreement or an FWA order also has no effect  
24 in relation to an employee to the extent that it is less beneficial to the employee than a  
25 term of an equal remuneration order that is made under Part 2-7 of the FW Act and  
26 applies to the employee (see section 306 of the FW Act).

1

2

## **Part 3—Equal remuneration orders under the WR Act**

3

### **4 Continued effect of equal remuneration orders**

4

(1) An order (a *WR Act equal remuneration order*) that was:

5

(a) made under Division 3 of Part 12 of the WR Act (as in force from time to time); and

6

7

(b) in force immediately before the WR Act repeal day;

8

continues to have effect on and after the WR Act repeal day.

9

(2) A WR Act equal remuneration order may be varied or revoked by FWA under subsections 603(1) and (2) of the FW Act as if it were an order made under Part 2-7 of the FW Act.

10

11

### **5 Inconsistency with certain instruments and orders**

12

(1) A term of an instrument or order referred to in subitem (2) has no effect in relation to an employee to the extent that it is less beneficial to the employee than a term of an order that:

13

14

15

(a) was made under Division 3 of Part 12 of the WR Act (as in force from time to time); and

16

17

(b) was in force immediately before the WR Act repeal day; and

18

(c) applies to the employee.

19

(2) For the purposes of subitem (1), the instruments and orders are as follows:

20

21

(a) a modern award;

22

(b) an enterprise agreement;

23

(c) an FWA order;

24

(d) a transitional instrument that is an award;

25

(e) a transitional instrument that is a workplace agreement;

26

(f) an order of the Commission made under the WR Act.

27

1  
2  
3  
4  
5

## **Schedule 11—Transfer of business**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

1  
2 **Part 2—Transmissions of business occurring before**  
3 **WR Act repeal day**

4 **2 General rule—continued application of WR Act**

- 5 (1) This Part applies if:
- 6 (a) at a time (the *time of transmission*), a person (the *new*  
7 *employer*) became the successor, transmittee or assignee of  
8 the whole, or a part, of a business of another person (the *old*  
9 *employer*); and  
10 (b) the time of transmission was before the WR Act repeal day.
- 11 (2) The following provisions of Part 11 of the WR Act (as modified by  
12 items 5 and 6 of this Schedule) continue to apply in relation to the  
13 transmission of business on and after the WR Act repeal day:
- 14 (a) Divisions 1 and 2 (which deal with introductory matters);  
15 (b) Division 3 (which deals with the transmission of ITEAs)  
16 (other than subsection 583(2) and section 584);  
17 (c) Division 4 (which deals with the transmission of collective  
18 agreements) (other than subsections 585(2), (3) and (5) and  
19 subsections 588(1) and (2));  
20 (d) Division 5 (which deals with the transmission of awards)  
21 (other than subsections 595(2), (3), (5) and (6));  
22 (e) Division 6 (which deals with the transmission of APCs)  
23 (other than subsection 598(2));  
24 (f) Division 6A (which deals with the transmission of preserved  
25 redundancy provisions) (other than subsection 598A(3));  
26 (g) Division 7 (which deals with entitlements under the  
27 Australian Fair Pay and Conditions Standard);  
28 (h) Division 8 (which deals with notice requirements and  
29 enforcement) (other than section 605).
- 30 (3) The following provisions of Schedule 9 to the WR Act (as modified by  
31 items 5 and 6 of this Schedule) continue to apply in relation to the  
32 transmission of business on and after the WR Act repeal day:
- 33 (a) Parts 1 and 2 (which deal with introductory matters);  
34 (b) Part 2A (which deals with the transmission of AWAs) (other  
35 than subclauses 6B(2) and (3) and clause 6C);

- 1 (c) Part 3 (which deals with the transmission of pre-reform  
2 AWAs) (other than subclause 7(2) and clause 9);  
3 (d) Part 4 (which deals with the transmission of pre-reform  
4 certified agreements) (other than subclauses 10(4), (5), (6)  
5 and (8) and clause 12);  
6 (e) Part 5 (which deals with the transmission of State transitional  
7 instruments) (other than subclauses 19(2), (3) and (5) and  
8 clause 21);  
9 (f) Part 5A (which deals with the transmission of preserved  
10 redundancy provisions) (other than subclause 27A(3));  
11 (g) Part 6 (which deals with notice requirements and  
12 enforcement) (other than clause 31).

13 **3 Period for which transmitted transitional instrument etc.**  
14 **continues to cover or apply to new employer**

15 *Transitional instrument covers new employer*

- 16 (1) If the new employer is covered by a transitional instrument in relation to  
17 a transferring employee because of a provision of Part 11 of the WR  
18 Act or Schedule 9 to that Act, the new employer remains covered by the  
19 transitional instrument, by force of this subitem, until whichever of the  
20 following first occurs:  
21 (a) the instrument is terminated;  
22 (b) the transmission period ends;  
23 (c) the instrument otherwise ceases to cover the new employer in  
24 relation to the transferring employee.
- 25 (2) However, paragraph (1)(b) does not apply in relation to a pre-reform  
26 certified agreement if:  
27 (a) the pre-reform certified agreement is a Division 3 pre-reform  
28 certified agreement; and  
29 (b) the old employer was not an employer within the meaning of  
30 subsection 6(1) of the WR Act immediately before the time  
31 of transmission; and  
32 (c) the new employer was an employer within the meaning of  
33 subsection 6(1) of the WR Act at the time of transmission;  
34 and  
35 (d) the transmission of business occurs as part of the process of  
36 the employer in relation to the business being transferred



1                                    becoming an employer within the meaning of subsection 6(1)  
2                                    of the WR Act.

3                                    *Transitional APCS covers new employer*

4                    (3)    If a transferring employee's employment with the new employer is  
5                    covered by a transitional APCS because of Division 6 of Part 11 of the  
6                    WR Act, the transferring employee's employment with the new  
7                    employer remains covered by that APCS until whichever of the  
8                    following first occurs:

- 9                                    (a) the transitional APCS is terminated;
- 10                                    (b) the transitional APCS otherwise ceases to cover the  
11                                    transferring employee.

12                                    *Preserved redundancy provisions apply to new employer*

13                    (4)    If a redundancy provision applies to the new employer and a  
14                    transferring employee because of Division 6A of Part 11 of the WR Act  
15                    or Part 5A of Schedule 9 to that Act, the redundancy provision  
16                    continues to apply to the new employer and the transferring employee  
17                    until the earliest of the following:

- 18                                    (a) the end of the period of 24 months from the time that the  
19                                    agreement that contained the redundancy provision ceased  
20                                    operating;
- 21                                    (b) the time when the transferring employee ceases to be  
22                                    employed by the new employer;
- 23                                    (c) the time when an enterprise agreement, workplace  
24                                    determination or ITEA starts to apply to the employee.

25                    **4 Effect of industry-specific redundancy scheme in modern**  
26                    **award in relation to preserved redundancy provisions**

27                    If:

- 28                                    (a) a redundancy provision applies to the new employer and a  
29                                    transferring employee because of Division 6A of Part 11 of  
30                                    the WR Act or Part 5A of Schedule 9 to that Act; and
- 31                                    (b) an industry-specific redundancy scheme in a modern award  
32                                    applies to the transferring employee; and
- 33                                    (c) the redundancy provision is detrimental to the transferring  
34                                    employee, in any respect, when compared to the scheme in  
35                                    the modern award;

1 then, despite subsection 598A(2) of the WR Act or subclause 27A(2) of  
2 Schedule 9 to that Act (as the case requires), the scheme in the modern  
3 award prevails over the redundancy provision, to the extent that the  
4 redundancy provision is detrimental to the transferring employee.

5 **5 Modification—applications to Commission in relation to**  
6 **transmission of certain transitional instruments**

7 *Certain provisions have effect subject to orders of the*  
8 *Commission*

- 9 (1) Subsection 585(1) of the WR Act (as it continues to apply because of  
10 subitem 2(2) of this Schedule) and subitem 3(1) of this Schedule (to the  
11 extent that it applies in relation to a transitional instrument that is a  
12 collective agreement) have effect subject to any order of the  
13 Commission under section 590 of the WR Act (as that section continues  
14 to apply because of subitem 2(2) of this Schedule).
- 15 (2) Subsection 595(1) of the WR Act (as it continues to apply because of  
16 subitem 2(2) of this Schedule) and subitem 3(1) of this Schedule (to the  
17 extent that it applies in relation to a transitional instrument that is an  
18 award) have effect subject to any order of the Commission (other than  
19 an order that would have the effect of extending the transmission  
20 period).
- 21 (3) Subclauses 10(1), (2) and (3) of Schedule 9 to the WR Act (as they  
22 continue to apply because of subitem 2(3) of this Schedule) and  
23 subitems 3(1) and (2) of this Schedule (to the extent that they apply in  
24 relation to a transitional instrument that is a pre-reform certified  
25 agreement) have effect subject to any order of the Commission under  
26 clause 14 of Schedule 9 to the WR Act (as that clause continues to  
27 apply because of subitem 2(3) of this Schedule).
- 28 (4) Subclause 19(1) of Schedule 9 to the WR Act (as it continues to apply  
29 because of subitem 2(3) of this Schedule) and subitem 3(1) of this  
30 Schedule (to the extent that it applies in relation to a transitional  
31 instrument that is a State transitional instrument) have effect subject to  
32 any order of the Commission under clause 23 of Schedule 9 to the WR  
33 Act (as that clause continues to apply because of subitem 2(3) of this  
34 Schedule).

- 1                    *Time within which application to Commission may be made*
- 2            (5)        The following provisions of the WR Act (as they continue to apply  
3                    because of item 2 of this Schedule) are modified by omitting “before, at  
4                    or after the transfer time” and substituting “not later than 90 days after  
5                    the WR Act repeal day”:
- 6                                (a) section 591 (which deals with collective agreements);  
7                                (b) clause 15 of Schedule 9 (which deals with pre-reform  
8    certified agreements);  
9                                (c) clause 24 of Schedule 9 (which deals with State transitional  
10     instruments).
- 11           (6)        An application for an order under subitem (2) may be made not later  
12                    than 90 days after the WR Act repeal day.

## 13        **6 Modification—civil remedy provisions**

### 14                    *Modifications of Part 11 of the WR Act*

- 15           (1)        The notes to the following provisions of the WR Act (as they continue  
16                    to apply because of subitem 2(2) of this Schedule) are modified by  
17                    omitting “section 605” and substituting “item 11 of Schedule 16”:
- 18                                (a) subsection 599(4);  
19                                (b) subsections 602(2) and (4);  
20                                (c) subsection 603A(2).
- 21           (2)        Note 1 to the following provisions of the WR Act (as they continue to  
22                    apply because of subitem 2(2) of this Schedule) is modified by omitting  
23                    “section 605” and substituting “item 11 of Schedule 16”:
- 24                                (a) subsections 603(1), (2) and (3);  
25                                (b) subsection 603B(1).

### 26                    *Modifications of Schedule 9 to the WR Act*

- 27           (3)        The notes to the following provisions of the WR Act (as they continue  
28                    to apply because of subitem 2(3) of this Schedule) are modified by  
29                    omitting “clause 31” and substituting “item 11 of Schedule 16”:
- 30                                (a) subclauses 28(2) and (3A) of Schedule 9;  
31                                (b) subclause 29A(2) of Schedule 9.

**Schedule 11** Transfer of business

**Part 2** Transmissions of business occurring before WR Act repeal day

---

- 1 (4) Note 1 to the following provisions of the WR Act (as they continue to  
2 apply because of subitem 2(3) of this Schedule) is modified by omitting  
3 “clause 31” and substituting “item 11 of Schedule 16”:  
4 (a) subclauses 29(1), (2) and (3) of Schedule 9;  
5 (b) subclause 29B(1) of Schedule 9.

1

2 **Part 3—Transfers of business occurring on or after**  
3 **WR Act repeal day**

4 **Division 1—General**

5 **7 Application of FW Act in relation to transferring employees**  
6 **covered by transitional instrument**

- 7 (1) This item applies if:
- 8 (a) there is a transfer of business from an employer (the *old*
- 9 *employer*) to another employer (the *new employer*), as
- 10 described in subsection 311(1) of the FW Act; and
- 11 (b) the connection between the old employer and the new
- 12 employer referred to in paragraph 311(1)(d) of the FW Act
- 13 occurs on or after the WR Act repeal day.
- 14 (2) This item applies regardless of whether:
- 15 (a) the termination of a transferring employee's employment
- 16 with the old employer occurs before, on or after the WR Act
- 17 repeal day; or
- 18 (b) the employment of a transferring employee by the new
- 19 employer occurs before, on or after the WR Act repeal day.
- 20 (3) Part 2-8 of the FW Act (as modified by item 8 of this Schedule) applies
- 21 in relation to the transfer of business.

22 **8 Modification—application of FW Act in relation to**  
23 **transitional instruments**

- 24 (1) Subsection 312(1) of the FW Act applies in relation to the transfer of
- 25 business as if the following paragraph were added at the end:
- 26 ; (d) a transitional instrument (other than a workplace agreement
- 27 or a workplace determination that has not yet come into
- 28 operation).
- 29 (2) Except as provided in subitems (3) to (5), Part 2-8 of the FW Act
- 30 applies in relation to the transfer of business as if:
- 31 (a) a reference to an enterprise agreement included a reference to
- 32 an agreement-based transitional instrument; and

- 1 (b) a reference to a modern award included a reference to an  
2 award-based transitional instrument.
- 3 (3) Paragraph (2)(a) does not apply in relation to the reference to an  
4 enterprise agreement in paragraph 312(1)(a) of the FW Act.
- 5 (4) Paragraph (2)(b) does not apply in relation to the reference to a modern  
6 award in subsection 312(2) of the FW Act.
- 7 (5) The following provisions of Part 2-8 of the FW Act apply in relation to  
8 the transfer of business as if a reference to an enterprise agreement  
9 included a reference to a collective agreement-based transitional  
10 agreement:
- 11 (a) subsection 315(3);  
12 (b) paragraphs 318(1)(b) and (2)(c);  
13 (c) paragraphs 319(1)(c) and (2)(c).
- 14 (6) Paragraph 319(1)(b) of the FW Act applies in relation to the transfer of  
15 business as if the words “(other than an individual agreement-based  
16 transitional instrument)” were inserted after the words “a transferable  
17 instrument”.

18 **Division 2—Transfer of preserved redundancy**  
19 **provisions during bridging period**

20 **9 Transfer of preserved redundancy provisions**

- 21 (1) This item applies if:
- 22 (a) there is a transfer of business from an employer (the *old*  
23 *employer*) to another employer (the *new employer*) as  
24 described in subsection 311(1) of the FW Act; and
- 25 (b) the connection between the old employer and the new  
26 employer referred to in paragraph 311(1)(d) of the FW Act  
27 occurs during the bridging period; and
- 28 (c) immediately before the termination of an employee’s  
29 employment with the old employer, a redundancy provision  
30 applied to the old employer and the employee because of a  
31 preservation item or a previous application of this item; and
- 32 (d) the employee is a transferring employee in relation to the  
33 transfer of business.
- 34 (2) This item applies regardless of whether:
-

- 1 (a) the termination of the transferring employee's employment  
2 with the old employer occurs before, on or after the WR Act  
3 repeal day; or  
4 (b) the employment of the transferring employee by the new  
5 employer occurs before, on or after the WR Act repeal day.
- 6 (3) The redundancy provision applies to the new employer and the  
7 transferring employee after the time the transferring employee becomes  
8 employed by the new employer.
- 9 (4) Subject to subitem (5), the redundancy provision prevails over any other  
10 redundancy provision included in any other instrument that would  
11 otherwise have effect, to the extent of any inconsistency (even if the  
12 provisions in that other instrument might be more beneficial to the  
13 transferring employee).
- 14 (5) However, if:  
15 (a) an industry-specific redundancy scheme in a modern award  
16 applies to the transferring employee; and  
17 (b) the redundancy provision is detrimental to the transferring  
18 employee, in any respect, when compared to the scheme in  
19 the modern award;  
20 then the scheme in the modern award prevails over the redundancy  
21 provision, to the extent that the redundancy provision is detrimental to  
22 the transferring employee.
- 23 (6) The redundancy provision continues to apply to the new employer and  
24 the transferring employee until the earliest of the following:  
25 (a) the end of the period of 24 months from the time that the  
26 agreement that contained the redundancy provision ceased  
27 operating;  
28 (b) the time when the transferring employee ceases to be  
29 employed by the new employer;  
30 (c) the time when an enterprise agreement, workplace  
31 determination or ITEA starts to apply to the transferring  
32 employee.
- 33 (7) In this item:  
34 **instrument** has the meaning given by subitem 38(7) of Schedule 3.  
35 **preservation item** means any of the following:  
36 (a) item 38 of Schedule 3;
-

- 1 (b) item 40 of Schedule 3;
- 2 (c) a provision of Division 6A of Part 11 of the WR Act or
- 3 Part 5A of Schedule 9 to that Act (as those provisions
- 4 continue to apply because of item 2 of this Schedule).
- 5 *redundancy provision* has the meaning given by subitem 38(7) of
- 6 Schedule 3.

7 **10 Notification of transfer of preserved redundancy**

8 **provisions**

- 9 (1) This item applies if one or more redundancy provisions apply to the
- 10 new employer and a transferring employee under item 9 of this
- 11 Schedule.
- 12 (2) Within 28 days after the time the transferring employee becomes
- 13 employed by the new employer, the new employer must take reasonable
- 14 steps to give the transferring employee a written notice that complies
- 15 with subitem (3).
- 16 Note: This is a civil remedy provision: see subitem 11(3) of Schedule 16.
- 17 (3) The notice must:
- 18 (a) identify the redundancy provision or the redundancy
- 19 provisions; and
- 20 (b) state that the provision or provisions apply to the new
- 21 employer and the transferring employee; and
- 22 (c) specify the date on which the period of 24 months, being the
- 23 period that applies in relation to the provision or provisions
- 24 under paragraph 9(6)(a) of this Schedule, ends; and
- 25 (d) state that the provision or provisions will continue to apply to
- 26 the new employer and the transferring employee until that
- 27 date, or an earlier date in accordance with subitem 9(6) of
- 28 this Schedule.
- 29 (4) Subitem (2) does not apply if an enterprise agreement, workplace
- 30 determination or ITEA starts to apply to the transferring employee
- 31 within 14 days after the time the transferring employee becomes
- 32 employed by the new employer.

33 **11 Lodging copy of notice about preserved redundancy**

34 **provisions with FWA**

---



1 (1) If the new employer gives a notice under subitem 10(2) of this Schedule  
2 to a transferring employee, the new employer must lodge a copy of the  
3 notice with FWA within the period specified in subitem (2). The copy  
4 must be lodged in accordance with subitem (3).

5 Note: This is a civil remedy provision: see subitem 11(4) of Schedule 16.

6 (2) The notice must be lodged within 14 days after the day specified in  
7 paragraph (a) or (b) (as the case requires):  
8 (a) if the new employer gives a notice to a transferring employee  
9 in respect of a redundancy provision that was included in an  
10 ITEA, a pre-reform AWA or a preserved individual State  
11 agreement—the day on which that notice is given; or  
12 (b) if the new employer gives one or more notices to one or more  
13 transferring employees in respect of a redundancy provision  
14 that was included in a collective agreement, a pre-reform  
15 certified agreement or a preserved collective State  
16 agreement—the earliest day on which a notice was given.

17 (3) A notice is lodged with FWA in accordance with this item only if it is  
18 actually received by FWA.

19 Note: This means that section 29 of the *Acts Interpretation Act 1901* (to the extent that it deals  
20 with the time of service of documents) does not apply to lodgment of a notice.

## 21 **12 FWA must issue receipt for lodgment**

22 (1) If a notice is lodged under item 11 of this Schedule, FWA must issue a  
23 receipt for the lodgment.

24 (2) The receipt must state that the notice was lodged under item 11 of this  
25 Schedule on a particular day.

26 (3) FWA must give a copy of the receipt to the person who lodged the  
27 notice under item 11 of this Schedule.

## 28 **Division 3—Transfer of entitlements under the AFPCS** 29 **during bridging period**

### 30 **13 Transfer of entitlements under the AFPCS**

31 (1) This item applies if:  
32 (a) there is a transfer of business from an employer (the *old*  
33 *employer*) to another employer (the *new employer*) as  
34 described in subsection 311(1) of the FW Act; and

---

**Schedule 11** Transfer of business

**Part 3** Transfers of business occurring on or after WR Act repeal day

---

- 1 (b) the connection between the old employer and the new  
2 employer referred to in paragraph 311(1)(d) of the FW Act  
3 occurs during the bridging period.
- 4 (2) This item applies regardless of whether:
- 5 (a) the termination of a transferring employee's employment  
6 with the old employer occurs before, on or after the WR Act  
7 repeal day; or
- 8 (b) the employment of a transferring employee by the new  
9 employer occurs before, on or after the WR Act repeal day.
- 10 (3) Despite the repeal of Division 7 of Part 11 of the WR Act (which deals  
11 with an employee's entitlements under the Australian Fair Pay and  
12 Conditions Standard), that Division applies in relation to the transfer of  
13 business as if:
- 14 (a) a reference in the following provisions to at the time of  
15 transmission were a reference to at the time the transferring  
16 employee becomes employed by the new employer:
- 17 (i) subsection 599(1);  
18 (ii) subsection 600(2);  
19 (iii) subsection 601(2); and
- 20 (b) a reference in the following provisions to before the time of  
21 transmission were a reference to before the termination of the  
22 transferring employee's employment with the old employer:
- 23 (i) subparagraph 599(1)(a)(ii);  
24 (ii) paragraphs 599(3)(a) and (b) and (4)(b);  
25 (iii) subparagraphs 600(2)(a)(i) and (iii);  
26 (iv) subparagraphs 601(2)(a)(i) and (iii); and
- 27 (c) a reference in subparagraph 599(4)(a)(ii) to at the time of  
28 transmission were a reference to at the time of termination of  
29 the transferring employee's employment with the old  
30 employer; and
- 31 (d) a reference in subsection 599(4) to after the time of  
32 transmission were a reference to after the time of termination  
33 of the transferring employee's employment with the old  
34 employer; and
- 35 (e) a reference in subsections 600(1) and 601(1) to before the  
36 time of transmission were a reference to before the time the  
37 transferring employee becomes employed by the new  
38 employer; and
-

- 1 (f) the reference to section 605 in the note to subsection 599(4)  
2 were a reference to subitem 11(5) of Schedule 16.

1  
2  
3  
**Schedule 12—General protections**

4  
5  
**1 Meanings of *employee* and *employer***

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

6  
7  
**2 Application in relation to Australian Fair Pay and Conditions Standard**

8 For the purposes of the operation of Part 3-1 of the FW Act in relation  
9 to the bridging period, a reference in that Part to the National  
10 Employment Standards is taken to include a reference to the Australian  
11 Fair Pay and Conditions Standard.

12 Note: References in Part 3-1 of the FW Act to the National Employment Standards are found  
13 in paragraph 344(a) and subparagraph 354(1)(a)(i) of that Act.

14  
15  
16  
**3 Application in relation to award-based transitional instruments and agreement-based transitional instrument**

17 (1) Part 3-1 of the FW Act has effect as if:

- 18 (a) a reference in that Part to an enterprise agreement included a  
19 reference to an agreement-based transitional instrument; and  
20 (b) a reference in that Part to a modern award included a  
21 reference to an award-based transitional instrument.

22 Note: References in Part 3-1 of the FW Act:

- 23 (a) to an enterprise agreement are found in paragraphs 341(2)(e) and  
24 (g), paragraph 344(b), subsection 353(3) and subparagraphs  
25 354(1)(a)(iii) and (b)(ii) of that Act; and  
26 (b) to a modern award are found in paragraphs 341(2)(g) and 344(b)  
27 of Part 3-1 of that Act.

28 (2) Without limiting subitem (1), paragraph 344(b) of the FW Act has  
29 effect in relation to the bridging period as if a term referred to in that  
30 paragraph were a term of an agreement-based transitional instrument or  
31 an award-based transitional instrument that dealt with:

- 32 (a) averaging of hours of work; or  
33 (b) cashing out paid annual leave; or  
34 (c) taking paid annual leave; or  
35 (d) cashing out paid personal/carer's leave; or

- 1 (e) the kind of evidence that an employee must provide in order  
2 to be entitled to paid personal/carer's leave, unpaid carer's  
3 leave or compassionate leave; or  
4 (f) the substitution of a day or part-day for a day or part-day that  
5 would otherwise be a public holiday; or  
6 (g) the period of notice an employee must give in order to  
7 terminate his or her employment; or  
8 (h) paid loadings for school-based apprentices and trainees in  
9 lieu of paid annual leave, paid annual leave or paid absence  
10 on public holidays.

11 Note: This means, for example, that an employer is prohibited from exerting undue influence  
12 or undue pressure on an employee to have the employee agree to a cashing out of annual  
13 leave arrangement under a term of a pre-reform certified agreement.

1  
2  
3  
4  
5  
6

## **Schedule 13—Bargaining and industrial action**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

1

2 **Part 2—Bargaining**

3 **2 Employee covered by individual agreement-based**  
4 **transitional instrument is taken not to be an employee**  
5 **who will be, or who is, covered by enterprise agreement**  
6 **in certain circumstances**

7 (1) This item applies to an employee at a particular time if, at that time, an  
8 individual agreement-based transitional instrument covers the  
9 employee.

10 (2) The employee is only taken, for the purposes of the FW Act, to be at  
11 that time an employee who is or will be covered by an enterprise  
12 agreement or a proposed enterprise agreement, if one of the following  
13 applies:

14 (a) the nominal expiry date of the individual agreement-based  
15 transitional instrument has passed;

16 (b) a conditional termination of the individual agreement-based  
17 transitional instrument has been made under subitem 18(2) of  
18 Schedule 3.

19 Note: The main effect of this subitem is that an employee who is covered by an individual  
20 agreement-based transitional instrument will not be able to do any of the following until  
21 the nominal expiry date of the instrument passes or a conditional termination of the  
22 instrument is made under subitem 18(2) of Schedule 3:

23 (a) be represented in bargaining for an enterprise agreement;

24 (b) vote on the agreement;

25 (c) be in a group of employees covered by a protected action ballot  
26 order in relation to the agreement;

27 (d) have the agreement apply to the employee.

28 (3) Despite subitem (2), an employer must give a notice of employee  
29 representational rights to an employee under section 173 of the FW Act,  
30 if the employer would have been required to give such a notice but for  
31 subitem (2). However, the notice must explain that a person can only  
32 become the employee's bargaining representative for the agreement  
33 when one of the following occurs:

34 (a) the nominal expiry date of the individual agreement-based  
35 transitional instrument passes;

1 (b) a conditional termination of the individual agreement-based  
2 transitional instrument is made under subitem 18(2) of  
3 Schedule 3.

4 **3 Application for bargaining order where certain collective**  
5 **agreement-based transitional instruments have not**  
6 **passed nominal expiry date**

7 Despite subsection 229(3) of the FW Act, if one or more of the  
8 following transitional instruments apply to an employee, or employees,  
9 who will be covered by a proposed enterprise agreement:

- 10 (a) a collective agreement;  
11 (b) a workplace determination;  
12 (c) a preserved collective State agreement;  
13 (d) a pre-reform certified agreement;  
14 (e) a section 170MX award;

15 an application for a bargaining order may only be made under  
16 subsection 229(1) of that Act:

- 17 (f) not more than 90 days before the nominal expiry date of the  
18 transitional instrument, or the latest nominal expiry date of  
19 those transitional instruments (as the case may be); or  
20 (g) after an employer that will be covered by the proposed  
21 enterprise agreement has requested under subsection 181(1)  
22 of that Act that employees approve the agreement, but before  
23 the agreement is so approved.



1

2 **Part 3—Industrial action**

3 **4 Industrial action must not be taken before the nominal**  
4 **expiry date of transitional instrument**

5 (1) The following provisions of the FW Act:  
6 (a) section 417 (which prohibits industrial action before the  
7 nominal expiry date of enterprise agreements etc.);  
8 (b) item 14 of the table in subsection 539(2) of the FW Act  
9 (which deals with civil remedies);  
10 apply, on and after the WR Act repeal day, in relation to an  
11 agreement-based transitional instrument, in a corresponding way to the  
12 way that those provisions apply in relation to an enterprise agreement.

13 (2) Subitem (1) does not apply to an individual agreement-based  
14 transitional instrument if the employee and employer covered by the  
15 instrument have made a conditional termination in relation to the  
16 instrument under subitem 18(2) of Schedule 3.

17 Note: The effect of this provision is that an employee who is covered by an agreement-based  
18 transitional instrument may not organise or engage in industrial action until after the  
19 nominal expiry date of the instrument has passed. However, this does not apply to an  
20 individual agreement-based transitional instrument in relation to which a conditional  
21 termination has been made.

22 (3) For the purposes of subitem (1), the reference in subsection 417(1) of  
23 the WR Act to the day on which an enterprise agreement was approved  
24 by FWA is taken to be a reference to the day on which the  
25 agreement-based transitional instrument became such an instrument.

26 **5 Applications on foot under sections 496 and 497 of the WR**  
27 **Act**

28 (1) Despite the repeal of sections 496 and 497 of the WR Act, if:  
29 (a) before the WR Act repeal day, an application was made to  
30 the Commission or the Court under either of those sections;  
31 and  
32 (b) the application had not been finally dealt with as at the WR  
33 Act repeal day;  
34 the Commission or the Court, as the case requires, must consider the  
35 application on or after that day as if the WR Act had not been repealed.

---

- 1 (2) To avoid doubt, if the Commission or the Court does not make an order,  
2 or grant an injunction, under section 496 or 497 of the WR Act, as those  
3 sections continue to apply because of subitem (1), the decision not to  
4 make the order or grant the injunction does not affect whether or not the  
5 industrial action concerned is protected industrial action under the FW  
6 Act.

7 **6 Continuation of section 496 and 497 orders and injunctions**

8 Despite the repeal of sections 496 and 497 of the WR Act:

- 9 (a) an order made, or an injunction granted, under either of those  
10 provisions that was in operation immediately before the WR  
11 Act repeal day continues to have effect on and after that day;  
12 and  
13 (b) a person who, immediately before the WR Act repeal day,  
14 was required to comply with the order or injunction must not  
15 breach the order or injunction on or after the WR repeal day.

16 **7 Civil remedy provisions of FW Act apply to section 496**  
17 **orders**

18 Subsections 421(1), (3) and (4) and item 15 of the table in subsection  
19 539(2) of the FW Act have effect, on and after the WR Act repeal day,  
20 as if:

- 21 (a) references in those provisions to an order under section 418  
22 included references to an order under subsection 496(1) of  
23 the WR Act as referred to in item 5 or 6 of this Schedule; and  
24 (b) references in those provisions to an order under section 419  
25 included references to an order under subsection 496(2) of  
26 the WR Act as referred to in item 5 or 6 of this Schedule; and  
27 (c) references in those provisions to an order under section 420  
28 included references to an order under subsection 496(6) of  
29 the WR Act as referred to in item 5 or 6 of this Schedule.

30 **8 Effect of orders terminating bargaining periods upon**  
31 **industrial action related workplace determinations**

- 32 (1) This item applies if one of the following is in force in relation to a  
33 proposed collective agreement under the WR Act immediately before  
34 the WR Act repeal day:  
35 (a) an order terminating a bargaining period under subsection  
36 430(1) of the WR Act that was made on the ground, or on

- 1 grounds including the ground, that the Commission was  
2 satisfied as mentioned in subsection 430(3) of that Act;
- 3 (b) a declaration by the Minister under section 498 of the WR  
4 Act (which deals with industrial action endangering life,  
5 etc.).
- 6 (2) Divisions 3 and 5 of Part 2-5 of the FW Act have effect, on and after the  
7 WR Act repeal day, in relation to the making of an industrial action  
8 related workplace determination, as if:
- 9 (a) references to a termination of industrial action instrument  
10 included references to the order or declaration referred to in  
11 subitem (1); and
- 12 (b) references to a proposed enterprise agreement included  
13 references to the proposed collective agreement; and
- 14 (c) references to the bargaining representatives for a proposed  
15 enterprise agreement included references to the persons who  
16 were, immediately before the WR Act repeal day, negotiating  
17 parties for the proposed collective agreement; and
- 18 (d) references to an employer or employee that would have been  
19 covered by a proposed enterprise agreement included  
20 references to an employer or employee, as the case requires,  
21 that would have been bound by the proposed collective  
22 agreement; and
- 23 (e) the reference in paragraph 275(g) to bargaining  
24 representatives complying with the good faith bargaining  
25 requirements included a reference to the negotiating parties  
26 genuinely trying to reach agreement in relation to the  
27 proposed collective agreement.

28 Note: The effect of this provision is that FWA may make an industrial action related  
29 workplace determination under the FW Act based on conduct, orders and declarations in  
30 relation to negotiations for a proposed collective agreement under the WR Act.

31 **9 Commission must not deal further with applications,  
32 appeals or reviews relating to bargaining periods**

33 If:

- 34 (a) before the WR Act repeal day, an application was made  
35 under Division 2 of Part 9 of the WR Act for the suspension  
36 or termination of a bargaining period; and
- 37 (b) the application had not been finally dealt with as at the WR  
38 Act repeal day;

1           the Commission must not, on or after that day, deal with or continue to  
2           deal with the application, or any appeal or review relating to the  
3           application.

4           **10 Effect of suspension or termination orders on or after the**  
5           **WR Act repeal day**

6           An order under Division 2 of Part 9 of the WR Act suspending or  
7           terminating a bargaining period is of no effect on or after the WR Act  
8           repeal day, other than as referred to in item 8.

9           **11 Notices of industrial action of no effect on or after WR Act**  
10          **repeal day**

11          A notice of intention to take industrial action given under section 441 of  
12          the WR Act before the WR Act repeal day is of no effect on or after that  
13          day.

1

2 **Part 4—Protected action ballots**

3 **12 Commission must not deal further with application, appeal**  
4 **or review relating to ballot order**

5 The Commission must not, on or after the WR Act repeal day, deal with  
6 or continue to deal with any application, appeal or review relating to a  
7 ballot order.

8 **13 Ballot orders and authorisations have no effect on or after**  
9 **WR Act repeal day**

10 (1) A ballot order under subsection 451(1) of the WR Act, or a ballot or  
11 authorisation under such an order, has no effect on or after the WR Act  
12 repeal day.

13 Note: This means that no protected action ballots can be conducted or continued on or after  
14 the WR Act repeal day, and any nomination in a ballot order of a person as an  
15 authorised ballot agent, or as an authorised independent adviser, will also have no  
16 effect.

17 (2) This item has effect subject to item 15.

18 **14 Continuation of sections 476, 477 and 479 of the WR Act**  
19 **for protected action ballots completed before WR Act**  
20 **repeal day**

21 The following provisions of Part 9 of the WR Act continue to apply in  
22 relation to a ballot completed before the WR Act repeal day as if that  
23 Part had not been repealed:

- 24 (a) section 476;  
25 (b) subsections 477(1) to (6);  
26 (c) section 479.

27 Note: A person must not contravene subsection 477(1) or (4) of the WR Act as those sections  
28 continue to apply because of this item (see item 14 of Schedule 16).

29 **15 Continuing liability for cost of protected action ballot**

30 Sections 482 and 483 of the WR Act continue to apply on and after the  
31 WR Act repeal day in relation to a ballot ordered under Division 4 of  
32 Part 9 of the WR Act.

1 **16 Record-keeping requirements relating to protected action**  
2 **ballot conducted under WR Act**

3 An authorised ballot agent in relation to a protected action ballot  
4 conducted before the WR Act repeal day must keep the following for a  
5 period of one year after the day on which the ballot closed:

- 6 (a) the roll of voters;  
7 (b) all the ballot papers, envelopes and other documents and  
8 records relevant to the ballot.

9 **17 Restriction on when protected action ballot orders may be**  
10 **made—certain agreement-based transitional**  
11 **instruments cover employees who will be covered by**  
12 **proposed enterprise agreement**

13 (1) This item applies if one or more of the following transitional  
14 instruments cover the employees who will be covered by a proposed  
15 enterprise agreement:

- 16 (a) a collective agreement;  
17 (b) a workplace determination;  
18 (c) a preserved collective State agreement;  
19 (d) a pre-reform certified agreement;  
20 (e) a section 170MX award.

21 (2) An application for a protected action ballot order must not be made  
22 under subsection 437(1) of the FW Act earlier than 30 days before the  
23 nominal expiry date of the transitional instrument, or the latest nominal  
24 expiry date of those transitional instruments (as the case may be).

25 (3) To avoid doubt, making an application for a protected action ballot  
26 order does not constitute organising industrial action.

1

2

## **Part 5—Effect of conduct engaged in while bargaining for WR Act collective agreement**

3

4

### **18 FWA may take into account conduct engaged in by bargaining representatives while bargaining for WR Act collective agreement**

5

6

7

(1) This item applies if:

8

(a) before the WR Act repeal day, a bargaining representative for a proposed enterprise agreement engaged in conduct in relation to a proposed collective agreement; and

9

10

11

(b) immediately before that day, the collective agreement had not been made; and

12

13

(c) the employment of the employees who would be covered by the proposed enterprise agreement would have been subject to the proposed collective agreement, had it been made; and

14

15

16

(d) the employers who would be covered by the proposed enterprise agreement would have been bound by the proposed collective agreement, had it come into operation.

17

18

19

(2) FWA may take into account that conduct:

20

(a) in deciding whether it is reasonable in all the circumstances to make a bargaining order or a scope order in relation to the proposed enterprise agreement; and

21

22

23

(b) in deciding which terms to include in a workplace determination that relates to the proposed enterprise agreement; and

24

25

26

(c) in deciding under Part 3-3 of the FW Act (which deals with industrial action) whether a bargaining representative is genuinely trying to reach an agreement in relation to the proposed enterprise agreement; and

27

28

29

(d) in deciding under subsection 423(2) or (3) of that Act whether protected industrial action that relates to the proposed enterprise agreement is causing, or threatening to cause, significant economic harm to a person.

30

31

32

33

1

2 **Part 6—Payments relating to periods of industrial**  
3 **action**

4 **19 Payments relating to pre-commencement periods of**  
5 **industrial action etc.**

- 6 (1) If industrial action (whether or not protected action) is engaged in  
7 before the commencement of Part 3-3 of the FW Act then:  
8 (a) Division 9 of Part 9 of the WR Act continues to apply, on  
9 and after the WR Act repeal day, in relation to the industrial  
10 action; and  
11 (b) Part 3-1 and Division 9 of Part 3-3 of the FW Act do not  
12 apply in relation to the industrial action.

- 13 (2) If:  
14 (a) industrial action (whether or not protected action) is engaged  
15 in during a shift or other period of work that is taken to be a  
16 day because of subsection 507(3) of the WR Act; and  
17 (b) Part 3-3 of the FW Act commences during that shift or other  
18 period;  
19 then:  
20 (c) Division 9 of Part 9 of the WR Act continues to apply, on  
21 and after the WR Act repeal day, in relation to the industrial  
22 action until the end of that shift or other period; and  
23 (d) Part 3-1 and Division 9 of Part 3-3 of the FW Act do not  
24 apply in relation to the industrial action engaged in during  
25 that shift or period.

26 **20 Application of Division 9 of Part 3-3 of the FW Act**

- 27 Division 9 of Part 3-3 of the FW Act applies as if:  
28 (a) the reference in paragraph 470(4)(c), subsection 471(2) and  
29 paragraph 474(2)(c) of that Act to a modern award included a  
30 reference to an award-based transitional instrument; and  
31 (b) the reference in those provisions to an enterprise agreement  
32 included a reference to an agreement-based transitional  
33 instrument.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

---

## **Schedule 14—Right of entry**

### **1 Entry permits**

A permit that is in force immediately before the WR Act repeal day under Part 15 of the WR Act, or that comes into force on or after that day under that Part, has effect:

- (a) as if it were an entry permit in force under the FW Act; and
- (b) subject to terms and conditions (including expiry date) like those to which it was subject under the WR Act.

### **2 Entry notices and exemption certificates**

- (1) An entry notice properly given:
  - (a) before the WR Act repeal day; and
  - (b) for an entry that has not occurred before that day;has effect after the repeal as if it were properly given under the FW Act.
- (2) An exemption certificate properly issued by a Registrar:
  - (a) before the WR Act repeal; and
  - (b) for an entry that has not occurred before the repeal;has effect after the repeal as if it were properly issued by FWA.

### **3 Contravention of Acts etc.**

The reference in subsection 481(1) of the FW Act to a suspected contravention of this Act or a term of a fair work instrument is taken to include a reference to a suspected contravention of any of the following:

- (a) the WR Act, as in force from time to time;
- (b) a WR Act instrument;
- (c) a transitional instrument.

### **4 Notice to produce documents**

- (1) A notice given under subsection 748(5) of the WR Act to produce, or allow access to, records on a day, or days, on or after the WR Act repeal day has effect, on and after the WR Act repeal day, as if it were given under subsection 483(1) of the FW Act.
- (2) An order made by the Commission under subsections 748(9) and (10) of the WR Act does not allow the exercise of powers as mentioned in

1 paragraph 748(9)(a) or (b) of that Act on or after the WR Act repeal  
2 day.

### 3 **5 Conscientious objection certificates**

4 If:

- 5 (a) the Registrar endorses a conscientious objection certificate  
6 under subsection 762(2) of the WR Act; and  
7 (b) the certificate, as endorsed, is in force immediately before the  
8 WR Act repeal day;

9 then the endorsement has effect, on and after that day, as if it were done  
10 by FWA under subsection 485(3) of the FW Act.

### 11 **6 Suspending or revoking entry permits**

12 The FW Act applies as if:

- 13 (a) the reference in paragraph 510(1)(a) of that Act to the permit  
14 holder being found, in proceedings under this Act, to have  
15 contravened subsection 503(1) included a reference to the  
16 permit holder being found, in proceedings under the WR Act,  
17 as in force from time to time, to have contravened  
18 section 768 of the WR Act; and  
19 (b) the reference in paragraph 510(1)(d) of the FW Act to “this  
20 Act” (being the FW Act) included a reference to the WR Act  
21 as in force from time to time and the reference in that  
22 paragraph to “this Part” (being Part 3-4 of the FW Act)  
23 included a reference to Part 15 of the WR Act; and  
24 (c) the reference in paragraph 510(4)(a) of the FW Act to FWA  
25 not having previously taken action under subsection (1)  
26 against the permit holder included a reference to the Registrar  
27 not having taken action against the permit holder under  
28 subsection 744(4) of the WR Act, as in force from time to  
29 time; and  
30 (d) the references in paragraphs 510(4)(b) and (c) of the FW Act  
31 to FWA having taken action under subsection (1) against the  
32 permit holder included a reference to the Registrar having  
33 taken action against the permit holder under subsection  
34 744(4) of the WR Act, as in force from time to time.

### 35 **7 Continued application of WR Act**

- 1 (1) An instrument that, because of this Schedule, has effect under the FW  
2 Act continues, in addition to that effect, to have effect under the WR  
3 Act for the purposes of item 11 of Schedule 2.
- 4 (2) Any suspension or revocation of, or imposition of conditions on, an  
5 entry permit under the WR Act (as it continues to apply because of  
6 item 11 of Schedule 2) is also taken to have been done under the FW  
7 Act.
- 8 (3) Despite item 11 of Schedule 2, disputes about the operation of Part 15  
9 of the WR Act that could, because of that item, have been dealt with  
10 under section 772 of that Act, may be dealt with only by FWA under  
11 section 505 of the FW Act.
- 12 (4) For the purposes of subitem (3), section 505 of the FW Act applies:  
13 (a) as if the reference in subsection (1) of that section to “this  
14 Part” (being Part 3-4 of the FW Act) were a reference to  
15 Part 15 of the WR Act; and  
16 (b) in a similar way to the way in which it applies for the  
17 purposes of the FW Act.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

## Schedule 15—Stand down

### 1 Meanings of *employee* and *employer*

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

### 2 Application of FW Act—stand down under transitional instruments

Subsection 524(2) of the FW Act (which deals with circumstances allowing stand down) applies in relation to a transitional instrument as if a reference to an enterprise agreement included a reference to a transitional instrument.

### 3 Transitional instruments providing for authorisation by third party

Despite item 4 of Schedule 3, subsection 691A(5) of the WR Act does not continue to apply in relation to WR Act instruments that become transitional instruments.

Note: This means that a provision of a transitional instrument that is a provision of the kind described in subparagraph 691A(1)(c)(ii) of the WR Act (being a provision requiring an employer to apply to a third party for authorisation to stand down employees in certain circumstances) has effect on and after the WR Act repeal day.

---

## Schedule 16—Compliance

### 1 Meanings of *employee* and *employer*

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

### 2 Compliance with transitional instruments

#### *Award-based transitional instruments*

- (1) A person must not contravene a term of an award-based transitional instrument that applies to the person.

Note 1: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

Note 2: An injunction may not be granted in relation to a contravention of an award-based transitional instrument (see item 17).

#### *Agreement-based transitional instruments*

- (2) A person must not contravene a term of an agreement-based transitional instrument that applies to the person.

Note 1: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

Note 2: An injunction may not be granted in relation to a contravention of an agreement-based transitional instrument (see item 17).

### 3 Compliance with obligations relating to conditional terminations of individual agreement-based transitional instruments

- (1) An employer must not contravene subitem 18(6) of Schedule 3.

Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

- (2) A bargaining representative who applies to FWA for approval of an enterprise agreement must not contravene subitem 18(7) of Schedule 3.

Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

### 4 Compliance with obligation to notify employees about preserved redundancy provisions

An employer must not contravene subitem 39(3) of Schedule 3.

Note: This item is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

---

1 **5 Compliance with transitional APCs, the transitional FMW**  
2 **and transitional special FMWs**

3 A person must not contravene section 182 or 185 of the WR Act as that  
4 section continues to apply under item 5 of Schedule 9.

5 Note 1: This item is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

6 Note 2: An injunction may not be granted in relation to a contravention of section 182 or 185 of  
7 the WR Act (see item 17).

8 **6 Compliance with minimum entitlements**

9 *Minimum entitlements*

10 (1) A person must not contravene any of the following provisions:

11 (a) Divisions 3, 4, 5, and 6 of Part 7 of the WR Act as they  
12 continue to apply under item 2 of Schedule 4;

13 (b) Divisions 1 and 2 of Part 12 of the WR Act as they continue  
14 to apply under item 3 of Schedule 4;

15 (c) section 661 of the WR Act as it continues to apply under  
16 item 4 of Schedule 4.

17 Note 1: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

18 Note 2: An injunction may not be granted in relation to a contravention of section 661 of the  
19 WR Act (see item 17).

20 *Extended operation of parental leave*

21 (2) A person must not contravene Division 6 of Part 12 of the WR Act as it  
22 continues to apply under item 3 of Schedule 4.

23 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

24 **7 Compliance with take-home pay orders**

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

27 Note: This item is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

28 **8 Compliance with continued provisions relating to**  
29 **workplace agreements**

30 (1) A person must not contravene any of the following provisions of the  
31 WR Act as the provision continues to apply because of Schedule 8:

32 (a) subsection 335(3);

- 
- 1 (b) subsection 337(8) or (9);  
2 (c) subsection 339(1);  
3 (d) subsection 342(1);  
4 (e) subsection 346(1);  
5 (f) subsection 346A(1);  
6 (g) subsection 346ZH(1);  
7 (h) subsection 362(1);  
8 (i) subsection 364(1);  
9 (j) subsection 370(8) or (9);  
10 (k) subsection 372(1);  
11 (l) subsection 375(1);  
12 (m) subsection 379(1);  
13 (n) subsection 385(1);  
14 (o) subsection 388(1);  
15 (p) subsection 391(1);  
16 (q) subsection 394(5);  
17 (r) subsection 397(1);  
18 (s) subsection 601H(2).

19 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

20 (2) A person must not contravene any of the following provisions of the  
21 WR Act as the provision continues to apply because of Schedule 8:

- 22 (a) subsection 341(1);  
23 (b) subsection 343(1);  
24 (c) subsection 357(1);  
25 (d) subsection 365(1);  
26 (e) subsection 366(1);  
27 (f) subsection 374(1);  
28 (g) subsection 376(1);  
29 (h) subsection 387(1).

30 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

31 (3) A person must not contravene subsection 334(2) of the WR Act as that  
32 subsection continues to apply because of Schedule 8.

33 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

- 1 (4) A person must not contravene subsection 365(1), 366(1), 400(3), 400(5)  
2 or 401(1) of the WR Act as those subsections continue to apply because  
3 of Schedule 8.

4 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

5 **9 Compliance with continued provisions relating to**  
6 **workplace agreements**

- 7 (1) This item applies to the following provisions of the WR Act as the  
8 provisions continue to apply because of Schedule 8:

- 9 (a) subsection 341(1);  
10 (b) subsection 374(1);  
11 (c) subsection 387(1);  
12 (d) subsection 400(5);  
13 (e) subsection 401(1).

- 14 (2) Subdivision C of Division 11 of Part 8 of the WR Act continues to  
15 apply, on and after the WR Act repeal day, in relation to a contravention  
16 of the provision.

17 **10 Compliance with WR Act equal remuneration orders**

18 A person must not contravene a term of a WR Act equal remuneration  
19 order as it continues to apply because of item 4 of Schedule 10.

20 Note: This item is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

21 **11 Transfer of business—compliance with notice**  
22 **requirements**

- 23 (1) A person must not contravene subsection 599(4) of the WR Act as it  
24 continues to apply because of subitem 2(2) of Schedule 11.

25 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

- 26 (2) A person must not contravene any of the following provisions of the  
27 WR Act as they continue to apply because of subitem 2(2) or (3) of  
28 Schedule 11:

- 29 (a) subsections 602(2) and (4);  
30 (b) subsections 603(1), (2) and (3);  
31 (c) subsection 603A(2);  
32 (d) subsection 603B(1);  
33 (e) subclauses 28(2) and (3A) of Schedule 9;
-



- 1 (f) subclauses 29(1), (2) and (3) of Schedule 9;  
 2 (g) subclause 29A(2) of Schedule 9;  
 3 (h) subclause 29B(1) of Schedule 9.

4 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

- 5 (3) A person must not contravene subitem 10(2) of Schedule 11.

6 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

- 7 (4) A person must not contravene subitem 11(1) of Schedule 11.

8 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

- 9 (5) A person must not contravene subsection 599(4) of the WR Act as  
 10 applied by item 13 of Schedule 11.

11 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

12 **12 Non-disclosure obligation—information acquired under**  
 13 **FW Act that identifies an employee as an employee to**  
 14 **whom an individual agreement-based transitional**  
 15 **instrument applies**

- 16 (1) A person who:

- 17 (a) is the protected action ballot agent for a protected action  
 18 ballot (other than the Australian Electoral Commission); or  
 19 (b) is the independent advisor for a protected action ballot; or  
 20 (c) acquires information from, or on behalf of, a person referred  
 21 to in paragraph (a) or (b) in the course of performing  
 22 functions or exercising powers for the purposes of the ballot;

23 must not disclose to any other person information about an employee if  
 24 the information will identify whether or not the employee is covered by  
 25 an individual agreement-based transitional instrument.

26 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

- 27 (2) Subitem (1) does not apply if:

- 28 (a) the disclosure is made in the course of performing functions  
 29 or exercising powers for the purposes of the protected action  
 30 ballot; or  
 31 (b) the disclosure is required or authorised by or under a law; or  
 32 (c) the employee has consented, in writing, to the disclosure.

1 Note 1: Personal information given to FWA, the Australian Electoral Commission or another  
2 protected action ballot agent under Division 8 of Part 3-3 of the FW Act may be  
3 regulated under the *Privacy Act 1988*.

4 Note 2: The President of FWA may, in certain circumstances, disclose, or authorise the  
5 disclosure of, information acquired by FWA or a member of the staff of FWA, in the  
6 course of performing functions or exercising powers as FWA (see section 655 of the  
7 FW Act).

8 (3) In this item:  
9 *protected action ballot* has the same meaning as in the FW Act.

### 10 **13 Non-disclosure obligation—protected ballot information** 11 **acquired under the WR Act**

12 (1) A person who acquires protected ballot information in the course of  
13 performing functions or exercising powers under this Act, the WR Act  
14 or the FW Act must not disclose that information to any other person if  
15 the information will identify:

16 (a) whether a person is a member of an employee organisation;  
17 or

18 (b) a person as:

19 (i) an applicant who was represented by an applicant's  
20 agent; or

21 (ii) a relevant employee who was one of the prescribed  
22 number of employees supporting an application for a  
23 ballot order (as required by subsection 451(4) of the  
24 WR Act); or

25 (iii) a person whose name appears on the roll of voters for a  
26 protected action ballot; or

27 (iv) a person who is covered by an individual  
28 agreement-based transitional instrument.

29 Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

30 (2) Subitem (1) does not apply if:

31 (a) the disclosure is made for the purposes of performing  
32 functions or exercising powers under this Act, the WR Act  
33 (as it continues to apply under this Act) or the FW Act; or

34 (b) the disclosure is required or authorised by or under a law; or

35 (c) the person referred to in paragraph (1)(a) or (b) has  
36 consented, in writing, to the disclosure.

37 Note 1: If the protected ballot information is personal information, it may be regulated under the  
38 *Privacy Act 1988*.

---

1 Note 2: The President of FWA may, in certain circumstances, disclose, or authorise the  
 2 disclosure of, information acquired by FWA or a member of the staff of FWA, in the  
 3 course of performing functions or exercising powers as FWA (see section 655 of the  
 4 FW Act).

5 (3) In this item:

6 *protected action ballot* has the same meaning as in the WR Act.

7 *protected ballot information* means information acquired in connection  
 8 with a protected action ballot.

#### 9 **14 Compliance with continued provisions relating to** 10 **protected action ballots**

11 A person must not contravene subsection 477(1) or (4) of the WR Act  
 12 as those subsections continue to apply because of item 14 of  
 13 Schedule 13.

14 Note: This item is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

#### 15 **15 Compliance with continuing Schedule 6 instruments**

16 A person must not contravene a term of a continuing Schedule 6  
 17 instrument that applies to the person.

18 Note 1: This item is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

19 Note 2: An injunction may not be granted in relation to a contravention of continuing  
 20 Schedule 6 instrument (see item 17).

#### 21 **16 Application of FW Act to civil remedy provisions under** 22 **this Act**

23 (1) Part 4-1 of the FW Act applies as if:

- 24 (a) items 2 to 8 and 10 to 15 of this Schedule were provisions of  
 25 the FW Act; and  
 26 (b) the table in subsection 539(2) included the table below (with  
 27 the references in column 1 of the table below to be read as  
 28 references to provisions of this Schedule (being Schedule 16  
 29 to the *Fair Work (Transitional Provisions and Consequential*  
 30 *Amendments) Act 2009*); and  
 31 (c) a reference to a fair work instrument in that Part included a  
 32 reference to a transitional instrument, a transitional minimum  
 33 wage instrument or a continuing Schedule 6 instrument; and  
 34 (d) the reference in subsection 540(3) to items 4, 7 and 14 in the  
 35 table in subsection 539(2) included a reference to item 40 in  
 36 the table below; and

**Schedule 16 Compliance**

1  
2  
3  
4  
5

(e) subsection 541(3) included references to items 2, 5, 7, 10, and 15 of this Schedule; and

(f) subsection 557(2) included references to items 2 to 8 and 10 to 15 of this Schedule.

---

**Standing, jurisdiction and maximum penalties**

---

<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
38	2(1) (other than in relation to a contravention of an outworker term in an award-based transitional agreement)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an employer organisation; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
39	2(1) (in relation to a contravention of an outworker term in an award-based transitional instrument)	(a) an outworker; (b) an employer; (c) an outworker entity; (d) an employee organisation; (e) an employer organisation; (f) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
40	2(2) (in relation to a contravention of a collective agreement-based transitional instrument)	(a) an employee; (b) an employer; (c) an employee organisation to which the collective agreement-based transitional instrument concerned applies; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units

---

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
41	2(2) (in relation to a contravention of an individual agreement-based transitional instrument)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
42	3(1)	(a) an employee who the proposed enterprise agreement will cover; (b) a bargaining representative for the proposed enterprise agreement; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	30 penalty units
43	3(2)	(a) an employee who the proposed enterprise agreement will cover; (b) a bargaining representative for the proposed enterprise agreement; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	30 penalty units
44	4	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
45	5	(a) an employee;	(a) the Federal Court;	60 penalty

Schedule 16 Compliance

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
		(b) an employee organisation; (c) an inspector	(b) the Federal Magistrates Court; (c) an eligible State or Territory court	units
46	6(1)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
47	6(2)	(a) an employee; (b) a registered employee association; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
48	7	(a) an employee; (b) an outworker; (c) an employee organisation; (d) an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the take-home pay order relates; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
49	8(1)	(a) an employee; (b) an employee organisation; (c) an inspector (d) if the agreement is an ITEA—a	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	30 penalty units

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
		bargaining agent		
50	8(2)	(a) an employee; (b) an employee organisation; (c) an inspector; (d) if the agreement is an ITEA—a bargaining agent	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
51	8(3)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an inspector; (e) if the agreement is an ITEA—a bargaining agent	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	30 penalty units
52	8(4)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an inspector; (e) if the agreement is an ITEA—a bargaining agent	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
53	10	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
54	11(1)	(a) a transferring employee; (b) the new employer; (c) an employee organisation;	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units

Schedule 16 Compliance

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
		(d) an inspector		
55	11(2), (3) and (4)	(a) a transferring employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
56	11(5)	(a) a transferring employee; (b) the new employer; (c) an employee organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
57	12(1)	(a) an employee; (b) an employer; (c) an applicant for the protected action ballot order; (d) the protected action ballot agent; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	30 penalty units
58	13(1)	(a) an employee; (b) an employer; (c) an applicant for the ballot order to which the protected ballot information relates; (d) the authorised ballot agent in relation to the ballot to which the protected	(a) the Federal Court; (b) the Federal Magistrates Court	30 penalty units



<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
		ballot information relates; (e) an inspector		
59	14	(a) an employee; (b) an employer; (c) an applicant for the ballot order; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	30 penalty units
60	15 (other than in relation to a contravention of an outworker term in a continuing Schedule 6 instrument)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an employer organisation; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
61	15 (in relation to a contravention of an outworker term in a continuing Schedule 6 instrument)	(a) an outworker; (b) an employer; (c) an outworker entity; (d) an employee organisation; (e) an employer organisation; (f) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units

1

**Outworkers**

2

(2) For the purposes of table items 38, 39, 48, 60 and 61 in subitem (1):

3

(a) **outworker** has the meaning given by the FW Act; and

4

(b) **outworker term** has the meaning that would be given by  
section 140 of the FW Act if:

5

- 1 (i) references in that section to a “modern award” were  
2 references to an “award-based transitional instrument”  
3 or a “continuing Schedule 6 instrument”; and  
4 (ii) paragraph 140(3)(b) of that Act did not refer to  
5 subsection 142(1); and  
6 (iii) paragraph 140(3)(c) of that Act did not refer to  
7 subsection 142(2).
- 8 (3) Section 570 of the FW Act applies in relation to proceedings that relate  
9 to any of items 2 to 8 or 10 to 15 of this Schedule as if the reference to  
10 this Act (being the FW Act) were a reference to the *Fair Work*  
11 *(Transitional Provisions and Consequential Amendments) Act 2009*.
- 12 (4) Section 571 of the FW Act applies as if the reference to a pecuniary  
13 penalty imposed under this Act (being the FW Act) were a reference to  
14 a pecuniary penalty imposed in relation to any of items 2 to 8 or 10 to  
15 15 of this Schedule.

## 16 **17 No injunctions in relation to certain contraventions**

17 The Federal Court and the Federal Magistrates Court may not make an  
18 order under Division 2 of Part 4-1 of the FW Act granting an injunction,  
19 or an interim injunction, to prevent, stop or remedy the effects of a  
20 contravention of:

- 21 (a) a transitional instrument; or  
22 (b) a continuing Schedule 6 instrument; or  
23 (c) section 182 or 185 of the WR Act as that section continues to  
24 apply under item 5 of Schedule 9; or  
25 (d) section 661 of the WR Act, as it continues to apply under  
26 item 4 of Schedule 4.

## 27 **18 Application of safety net contractual entitlements**

28 To avoid doubt, the following have no effect before the FW (safety net  
29 provisions) commencement day:

- 30 (a) sections 541, 542 and 543 of the FW Act;  
31 (b) section 706 of the FW Act as it operates because of  
32 paragraph 706(1)(b) that Act.

33 Note: Inspectors may exercise powers for the other compliance purposes set out in subsection  
34 706(1) of the FW Act before the FW (safety net provisions) commencement day.

## 35 **19 Regulations dealing with civil penalties**

---

- 1 (1) The regulations may provide for civil penalties for contravention of this  
2 Act or of the WR Act as the WR Act continues to apply because of this  
3 Act.
- 4 (2) The penalties for contravention must not be more than:  
5 (a) 20 penalty units for an individual; and  
6 (b) 100 penalty units for a body corporate.

1  
2 **Schedule 17—Amendments relating to the Fair**  
3 **Work Divisions of the Federal Court**  
4 **and the Federal Magistrates Court**

5 **Part 1—Amendments to the Federal Court of**  
6 **Australia Act 1976**

7 *Federal Court of Australia Act 1976*

8 **1 Section 4**

9 Insert:

10 *Division* means the General Division or the Fair Work Division of  
11 the Court.

12 **2 Section 4 (definition of *Full Court*)**

13 After “Full Court” (second occurring), insert “in a Division of the  
14 Court”.

15 **3 After section 6**

16 Insert:

17 **6A Assignment of Judges to Divisions**

18 The Governor-General may:

19 (a) assign a Judge (other than the Chief Justice) to one of the  
20 Divisions either:

21 (i) in the commission of appointment of the Judge; or

22 (ii) at a later time, with the consent of the Judge; and

23 (b) vary any such assignment, with the consent of the Judge.

24 Note: A Judge (including the Chief Justice) who is not assigned to either  
25 Division of the Court may exercise the powers of the Court in either  
26 Division (see subsection 15(1C)).

27 **4 Section 7**

28 Before “Whenever”, insert “(1)”.

29 **5 At the end of section 7**

---

1

Add:

2

- (2) For the purposes of this Act, a person who is performing duties and exercising powers under subsection (1) is taken not to be assigned to either Division of the Court.

3

4

5

Note: A Judge (including the Chief Justice) who is not assigned to either Division of the Court may exercise the powers of the Court in either Division (see subsection 15(1C)).

6

7

8

## **6 After section 12**

9

Insert:

10

## **13 General and Fair Work Divisions of the Court**

11

- (1) For the purpose of the organisation and conduct of the business of the Court, the Court comprises 2 Divisions:

12

13

(a) the General Division; and

14

(b) the Fair Work Division.

15

- (2) Every proceeding in the Court must be instituted, heard and determined in a Division.

16

17

### *Fair Work Division*

18

- (3) The following jurisdiction of the Court is to be exercised in the Fair Work Division:

19

20

(a) jurisdiction that is required by any other Act to be exercised in the Fair Work Division;

21

22

(b) jurisdiction that is incidental to such jurisdiction.

23

Note: Under section 562 of the *Fair Work Act 2009*, jurisdiction is required to be exercised in the Fair Work Division of the Court in relation to matters arising under that Act.

24

25

26

### *General Division*

27

- (4) The following jurisdiction of the Court is to be exercised in the General Division:

28

29

(a) jurisdiction that is not required by any other Act to be exercised in the Fair Work Division;

30

31

(b) jurisdiction that is incidental to such jurisdiction (including jurisdiction that is required by any other Act to be exercised in the Fair Work Division).

32

33

1 *Jurisdiction that is required to be exercised in both Divisions*

2 (5) If the Court's jurisdiction is required to be exercised in both  
3 Divisions in relation to particular proceedings or proceedings of a  
4 particular kind, the Chief Justice may, at any time (whether before  
5 or after the proceedings are instituted), give a direction about the  
6 allocation to one or other Division of those proceedings or  
7 proceedings of that kind.

## 8 **7 After subsection 15(1)**

9 Insert:

10 *Exercise of powers of General and Fair Work Divisions of the*  
11 *Court*

12 (1A) A Judge who is assigned to a Division of the Court must exercise,  
13 or participate in exercising, the powers of the Court only in that  
14 Division, except as set out in subsection (1B).

15 (1B) The Chief Justice may arrange for a Judge who is assigned to a  
16 particular Division of the Court to exercise, or participate in  
17 exercising, the powers of the Court in the other Division if the  
18 Chief Justice considers that circumstances make it desirable to do  
19 so.

20 (1C) To avoid doubt, a Judge who is not assigned to either Division of  
21 the Court may exercise, or participate in exercising, the powers of  
22 the Court in either Division.

23 (1D) Subsection (1A) does not affect the validity of any exercise of  
24 powers by the Court otherwise than in accordance with that  
25 subsection.

26 Note 1: The following heading to subsection 15(1) is inserted "*Responsibility of Chief Justice*".

27 Note 2: The following heading to subsection 15(2) is inserted "*Judges who are also Judges of*  
28 *the Supreme Court of the ACT and the Northern Territory*".

## 29 **8 At the end of Division 1 of Part IIA**

30 Add:

### 31 **18BA Arrangements with agencies or organisations**

32 (1) The Chief Justice may arrange with the chief executive officer  
33 (however described) of:

---

- 1 (a) an agency of the Commonwealth, a State or a Territory; or  
2 (b) another organisation;  
3 for an employee or employees of the agency or organisation to:  
4 (c) receive, on behalf of the Court, documents to be lodged with  
5 or filed in the Court; or  
6 (d) perform, on behalf of the Court, other non-judicial functions  
7 of the Court.
- 8 (2) If an arrangement under subsection (1) is in force in relation to the  
9 performance by an employee of an agency or organisation of a  
10 function on behalf of the Court, the employee may perform that  
11 function despite any other provision of this Act or any other law of  
12 the Commonwealth.
- 13 (3) A function performed on behalf of the Court in accordance with an  
14 arrangement under subsection (1) has effect as if the function had  
15 been performed by the Court.
- 16 (4) Copies of an arrangement under subsection (1) are to be made  
17 available for inspection by members of the public.

18 **9 Subsection 43(1)**

19 After “subsection (1A)”, insert “and section 570 of the *Fair Work Act*  
20 *2009*”.

1

2

## Part 2—Amendments to the Federal Magistrates Act 1999

3

4

### *Federal Magistrates Act 1999*

5

#### 10 Section 4

6

After:

7

8

- Jurisdiction is conferred on the Federal Magistrates Court by other laws of the Commonwealth.

9

Insert:

10

11

- Jurisdiction is to be exercised in the General Division or the Fair Work Division of the Federal Magistrates Court.

12

#### 11 Section 5

13

Insert:

14

15

*Division* means the General Division or the Fair Work Division of the Federal Magistrates Court.

16

#### 12 After section 10

17

Insert:

18

#### 10A General and Fair Work Divisions of the Federal Magistrates Court

19

20

21

22

23

24

25

26

- (1) For the purpose of the organisation and conduct of the business of the Federal Magistrates Court, the Federal Magistrates Court comprises 2 Divisions:
  - (a) the General Division; and
  - (b) the Fair Work Division.
- (2) Every proceeding in the Federal Magistrates Court must be instituted, heard and determined in a Division.



1 *Fair Work Division*

- 2 (3) The following jurisdiction of the Federal Magistrates Court is to be  
3 exercised in the Fair Work Division:  
4 (a) jurisdiction that is required by any other Act to be exercised  
5 in the Fair Work Division;  
6 (b) jurisdiction that is incidental to such jurisdiction.

7 Note: Under section 566 of the *Fair Work Act 2009*, jurisdiction is required  
8 to be exercised in the Fair Work Division of the Federal Magistrates  
9 Court in relation to matters arising under that Act.

10 *General Division*

- 11 (4) The following jurisdiction of the Federal Magistrates Court is to be  
12 exercised in the General Division:  
13 (a) jurisdiction that is not required by any other Act to be  
14 exercised in the Fair Work Division;  
15 (b) jurisdiction that is incidental to such jurisdiction (including  
16 jurisdiction that is required by any other Act to be exercised  
17 in the Fair Work Division).

18 *Jurisdiction that is required to be exercised in both Divisions*

- 19 (5) If the Court's jurisdiction is required to be exercised in both  
20 Divisions in relation to particular proceedings or proceedings of a  
21 particular kind, the Chief Justice may, at any time (whether before  
22 or after the proceedings are instituted), give a direction about the  
23 allocation to one or other Division of those proceedings or  
24 proceedings of that kind.

25 **13 After subsection 12(3)**

26 Insert:

27 *Exercise of powers of General and Fair Work Divisions of the*  
28 *Federal Magistrates Court*

- 29 (3A) A Federal Magistrate who is assigned to a Division of the Federal  
30 Magistrates Court must exercise, or participate in exercising, the  
31 powers of the Federal Magistrates Court only in that Division,  
32 except as set out in subsection (3B).  
33 (3B) The Chief Federal Magistrate may arrange for a Federal Magistrate  
34 who is assigned to a particular Division of the Federal Magistrates
-

**Schedule 17** Amendments relating to the Fair Work Divisions of the Federal Court and the Federal Magistrates Court

**Part 2** Amendments to the Federal Magistrates Act 1999

---

1 Court to exercise, or participate in exercising, the powers of the  
2 Federal Magistrates Court in the other Division if the Chief Federal  
3 Magistrate considers that circumstances make it desirable to do so.

4 (3C) To avoid doubt, a Federal Magistrate who is not assigned to either  
5 Division of the Federal Magistrates Court may exercise, or  
6 participate in exercising, the powers of the Federal Magistrates  
7 Court in either Division.

8 (3D) Subsection (3A) does not affect the validity of any exercise of  
9 powers by the Federal Magistrates Court otherwise than in  
10 accordance with that subsection.

11 Note 1: The following heading to subsection 12(1) is inserted “*Responsibility of Chief Federal*  
12 *Magistrate*”.

13 Note 2: The following heading to subsection 12(4) is inserted “*Assignment of Federal*  
14 *Magistrates to locations or registries*”.

15 Note 3: The following heading to subsection 12(7) is inserted “*Functions and powers of the*  
16 *Chief Federal Magistrate*”.

17 **14 Subsection 79(1)**

18 After “proceedings”, insert “or proceedings in relation to a matter  
19 arising under the *Fair Work Act 2009*”.

20 **15 Subsection 79(1) (at the end of the note)**

21 Add “See section 570 of the *Fair Work Act 2009* for proceedings in  
22 relation to matters arising under that Act.”.

23 **16 After clause 1 of Schedule 1**

24 Insert:

25 **1A Assignment of Federal Magistrates to Divisions**

26 The Governor-General may:

27 (a) assign a Federal Magistrate (other than the Chief Federal  
28 Magistrate) to one of the Divisions either:

29 (i) in the commission of appointment of the Federal  
30 Magistrate; or

31 (ii) at a later time, with the consent of the Federal  
32 Magistrate; and

33 (b) vary any such assignment, with the consent of the Federal  
34 Magistrate.

---

1                                   Note:       A Federal Magistrate (including the Chief Federal Magistrate) who is  
2   not assigned to either Division of the Federal Magistrates Court may  
3   exercise the powers of the Federal Magistrates Court in either  
4   Division (see subsection 12(3C)).

5       **17 At the end of clause 10 of Schedule 1**

6                                   Add:

7                                   (3) For the purposes of this Act, a person who is acting as Chief  
8   Federal Magistrate under subclause (1) is taken not to be assigned  
9   to either Division of the Federal Magistrates Court.

10                                  Note:       A Federal Magistrate who is not assigned to either Division of the  
11   Federal Magistrates Court may exercise the powers of the Federal  
12   Magistrates Court in either Division (see subsection 12(3C)).

1

2 **Part 3—Other amendments**

3 *Administrative Decisions (Judicial Review) Act 1977*

4 **18 Paragraph (a) of Schedule 1**

5 Omit “*Conciliation and Arbitration Act 1904*,” substitute “*Fair Work*  
6 *Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, the *Fair*  
7 *Work (Transitional Provisions and Consequential Amendments) Act*  
8 *2009*,”.

1

2 **Part 4—Application and transitional provisions**

3 **19 Application of Part 1**

- 4 (1) The amendments made by Part 1 of this Schedule (other than item 8)  
5 apply:
- 6 (a) in relation to proceedings commenced after that Part  
7 commences; and
- 8 (b) in relation to proceedings that are pending in the Federal  
9 Court immediately before that Part commences, as if the  
10 reference in subsection 13(2) of the *Federal Court of*  
11 *Australia Act 1976* (as inserted by item 6 of this Schedule) to  
12 “be instituted, heard and determined” were a reference to “,  
13 after item 6 of Schedule 17 to the *Fair Work (Transitional*  
14 *Provisions and Consequential Amendments) Act 2009*  
15 commences, be heard and determined”.
- 16 (2) A person who is a Judge (other than the Chief Justice) of the Federal  
17 Court immediately before Part 1 of this Schedule commences, is taken,  
18 for all purposes, not to have been assigned under section 6A of the  
19 *Federal Court of Australia Act 1976* (as inserted by item 3 of this  
20 Schedule) to either Division of the Federal Court.

21 Note: A Judge (including the Chief Justice) who is not assigned to either Division of the Court  
22 may exercise the powers of the Court in either Division (see subsection 15(1C) of the  
23 *Federal Court of Australia Act 1976*, as inserted by item 7 of this Schedule).

24 **20 Application of Part 2**

- 25 (1) The amendments made by Part 2 of this Schedule apply:
- 26 (a) in relation to proceedings commenced after the Part  
27 commences; and
- 28 (b) in relation to proceedings that are pending in the Federal  
29 Magistrates Court immediately before that Part commences,  
30 as if the reference in subsection 10A(2) of the *Federal*  
31 *Magistrates Act 1999* (as inserted by item 12 of this  
32 Schedule) to “be instituted, heard and determined” were a  
33 reference to “, after item 12 of Schedule 17 to the *Fair Work*  
34 *(Transitional Provisions and Consequential Amendments)*  
35 *Act 2009* commences, be heard and determined”.

**Schedule 17** Amendments relating to the Fair Work Divisions of the Federal Court and the Federal Magistrates Court

**Part 4** Application and transitional provisions

---

- 1 (2) A person who is a Federal Magistrate (other than the Chief Federal  
2 Magistrate) of the Federal Magistrates Court immediately before Part 2  
3 of this Schedule commences, is taken, for all purposes, not to have been  
4 assigned under clause 1A of Schedule 1 to the *Federal Magistrates Act*  
5 *1999* (as inserted by item 16 of this Schedule) to either Division of the  
6 Federal Magistrates Court.
- 7 Note: A Federal Magistrate (including the Chief Federal Magistrate) who is not assigned to  
8 either Division of the Federal Magistrates Court may exercise the powers of the Federal  
9 Magistrates Court in either Division (see subsection 12(3C) of the *Federal Magistrates*  
10 *Act 1999*, as inserted by item 13 of this Schedule).

1

2 **Part 5—Jurisdiction of courts**

3 **21 Conferring jurisdiction on the Federal Court**

4 Jurisdiction is conferred on the Federal Court in relation to any matter  
5 (whether civil or criminal) arising under:

- 6 (a) this Act; or  
7 (b) the WR Act as it continues to apply because of this Act.

8 **22 Exercising jurisdiction in the Fair Work Division of the**  
9 **Federal Court**

10 The jurisdiction conferred on the Federal Court under item 21 is to be  
11 exercised in the Fair Work Division of the Federal Court if:

- 12 (a) an application is made to the Federal Court under this Act or  
13 the WR Act as it continues to apply because of this Act; or  
14 (b) a writ of mandamus or prohibition or an injunction is sought  
15 in the Federal Court against a person holding office under  
16 this Act or the WR Act as it continues to apply because of  
17 this Act; or  
18 (c) a declaration is sought under section 21 of the *Federal Court*  
19 *of Australia Act 1976* in relation to a matter arising under this  
20 Act or the WR Act as it continues to apply because of this  
21 Act; or  
22 (d) an injunction is sought under section 23 of the *Federal Court*  
23 *of Australia Act 1976* in relation to a matter arising under this  
24 Act or the WR Act as it continues to apply because of this  
25 Act; or  
26 (e) a prosecution is instituted in the Federal Court under this Act  
27 or the WR Act as it continues to apply because of this Act; or  
28 (f) an appeal is instituted in the Federal Court from a judgment  
29 of the Federal Magistrates Court or a court of a State or  
30 Territory in a matter arising under this Act or the WR Act as  
31 it continues to apply because of this Act; or  
32 (g) proceedings in relation to a matter arising under this Act, or  
33 the WR Act as it continues to apply because of this Act, are  
34 transferred to the Federal Court from the Federal Magistrates  
35 Court; or  
36 (h) the Federal Magistrates Court or a court of a State or  
37 Territory states a case or reserves a question for the
-

- 1 consideration of the Federal Court in a matter arising under  
2 this Act or the WR Act as it continues to apply because of  
3 this Act; or  
4 (i) the President refers, under section 608 of the FW Act, a  
5 question of law to the Federal Court in relation to a matter  
6 arising under this Act or the WR Act as it continues to apply  
7 because of this Act; or  
8 (j) the High Court remits a matter arising under this Act or the  
9 WR Act as it continues to apply because of this Act to the  
10 Federal Court.

### 11 **23 No limitation on Federal Court's powers**

12 To avoid doubt, nothing in this Act limits the Federal Court's powers  
13 under section 21, 22 or 23 of the *Federal Court of Australia Act 1976*.

### 14 **24 Appeals from eligible State or Territory courts**

- 15 (1) An appeal lies to the Federal Court from a decision of an eligible State  
16 or Territory court exercising jurisdiction under this Act or the WR Act  
17 as it continues to apply because of this Act.  
18 (2) It is not necessary to obtain the leave of the Federal Court, or the court  
19 appealed from, in relation to an appeal under subitem (1).  
20 (3) No appeal lies from a decision referred to in subitem (1), except as  
21 provided for by this item.

### 22 **25 Conferring jurisdiction on the Federal Magistrates Court**

23 Jurisdiction is conferred on the Federal Magistrates Court in relation to  
24 any civil matter arising under:

- 25 (a) this Act; or  
26 (b) the WR Act as it continues to apply because of this Act.

### 27 **26 Exercising jurisdiction in the Fair Work Division of the 28 Federal Magistrates Court**

29 Jurisdiction conferred on the Federal Magistrates Court under item 25 is  
30 to be exercised in the Fair Work Division of the Federal Magistrates  
31 Court if:

- 32 (a) an application is made to the Federal Magistrates Court under  
33 this Act or the WR Act as it continues to apply because of  
34 this Act; or
-



- 1 (b) an injunction is sought under section 15 of the *Federal*  
2 *Magistrates Act 1999* in relation to a matter arising under this  
3 Act or the WR Act as it continues to apply because of this  
4 Act; or  
5 (c) a declaration is sought under section 16 of the *Federal*  
6 *Magistrates Act 1999* in relation to a matter arising under this  
7 Act or the WR Act as it continues to apply because of this  
8 Act; or  
9 (d) proceedings in relation to a matter arising under this Act, or  
10 the WR Act as it continues to apply because of this Act, are  
11 transferred to the Federal Magistrates Court from the Federal  
12 Court; or  
13 (e) the High Court remits a matter arising under this Act or the  
14 WR Act as it continues to apply because of this Act to the  
15 Federal Magistrates Court.

16 **27 No limitation on Federal Magistrates Court's powers**

17 To avoid doubt, nothing in this Act limits the Federal Magistrates  
18 Court's powers under section 14, 15 or 16 of the *Federal Magistrates*  
19 *Act 1999*.

1  
2 **Schedule 18—Institutions**

3 **Part 1—Initial appointment of FWA Members**

4 **1 Appointments to Fair Work Australia**

- 5 (1) An appointment that is:  
6 (a) to an office of the Commission mentioned in a table item  
7 below; and  
8 (b) in force immediately before the commencement time for the  
9 table item;  
10 is taken, after that time, to be an appointment, under section 626 of the  
11 FW Act, to the office of FWA mentioned in the table item.

12 Note: The person continues to be appointed to the Commission (see subitem (3)).  
13

---

**Appointments to FWA**

---

<b>Item</b>	<b>Column 1 Office of the Commission</b>	<b>Column 2 Office of FWA</b>	<b>Column 3 Commencement time</b>
1	President of the Commission	President of FWA	The day proclaimed for the purposes of item 2 of the table in subsection 2(1) of the FW Act.
2	Vice President of the Commission	Deputy President of FWA	The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of the FW Act.
3	Senior Deputy President of the Commission	Deputy President of FWA	The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of the FW Act.
4	Deputy President of the Commission	Deputy President of FWA	The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of the FW Act.
5	Commissioner of the Commission	Commissioner of FWA	The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of the FW Act.

- 14 (2) Subitem (1) does not apply to a member of the Commission who:  
15 (a) was appointed as a member of a prescribed State industrial  
16 authority (within the meaning of the WR Act) before being  
17 appointed as a member of the Commission; and
-

1 (b) still holds that appointment as a member of the prescribed  
2 State industrial authority.

3 *Dual appointments*

4 (3) Despite any provision of the WR Act or the FW Act, a person who is  
5 taken to have been appointed as an FWA Member under this item  
6 continues also to hold office under the WR Act.

7 Note: The terms and conditions of a person who is taken to have been appointed as an FWA  
8 Member are the terms and conditions that attach to his or her appointment under the  
9 WR Act (see item 2 of this Schedule).

10 **2 Terms and conditions**

11 (1) A person who is taken to have been appointed as an FWA Member  
12 under item 1 of this Schedule:  
13 (a) holds office under the FW Act on the same terms and  
14 conditions as attach, or attached, to his or her appointment  
15 under the WR Act (including under subsections 63(2) and (3)  
16 of that Act); and  
17 (b) is entitled to the same designation as he or she is, or was,  
18 entitled to in relation to his or her appointment under the WR  
19 Act (including the designation the person has, or had,  
20 because of subsection 80(2) of the *Industrial Relations*  
21 (*Consequential Provisions*) Act 1988).

22 (2) To avoid doubt, subitem (1):  
23 (a) has effect despite subsections 633(1) and 644(1) of the FW  
24 Act; and  
25 (b) continues the application of the *Judges' Pensions Act 1968* in  
26 relation to a person taken to have been appointed under  
27 item 1 of this Schedule and to whom that Act applied as a  
28 member of the Commission.

29 (3) For the purposes of determining the remuneration of a person who is  
30 taken to have been appointed as an FWA Member under item 1 of this  
31 Schedule:  
32 (a) sections 635 and 637 of the FW Act do not apply; and  
33 (b) sections 79 and 81 of the WR Act apply, and continue to  
34 apply on and after the WR Act repeal day, in relation to the  
35 person's appointment as both an FWA Member and a  
36 member of the Commission.

1 **3 Protection of members of the Commission and FWA**

2 Section 609 of the FW Act has effect, in relation to any time at which  
3 the President is the only FWA Member, as if the words “After  
4 consulting the other FWA Members,” were omitted from subsection (1)  
5 of that section.

6 **4 Seniority of FWA Members**

7 (1) If a person who is a member of the Commission is taken to have been  
8 appointed as an FWA Member under item 1 of this Schedule, the day on  
9 which the person’s appointment took effect is, for the purposes of  
10 section 619 of the FW Act, taken to be the day on which the person was  
11 appointed as such a member of the Commission.

12 (2) If 2 or more such persons were appointed to the Commission on the  
13 same day, their seniority is, for the purposes of section 619 of the FW  
14 Act, to be determined in accordance with the precedence assigned to  
15 them under section 65 of the WR Act.

16 **5 Procedural rules**

17 Despite the requirement in subsection 609(1) of the FW Act, the  
18 President may make rules under that subsection before the WR Act  
19 repeal day without consulting other FWA Members.

20 **6 Directions by President**

21 (1) The President of the Commission may give directions to a person who  
22 is taken to be appointed as an FWA Member under item 1 of this  
23 Schedule as to the manner in which the person is to perform his or her  
24 functions as a member of the Commission.

25 (2) The direction must not relate to a decision by the Commission.

26 (3) A person to whom a direction is given must comply with the direction.

27 (4) If a direction is in writing, the direction is not a legislative instrument.

1  
2  
3  
4  
5  
6  
7

## Part 2—WR Act bodies and WR Act offices

### 7 Continuation and cessation

(1) Despite the WR Act repeal, a body (the *WR Act body*) or office (the *WR Act office*) set out in an item in the following table continues in existence until the *cessation time* set out in the item.

<b>WR Act bodies and WR Act offices—continuation and cessation</b>			
<b>Item</b>	<b>Column 1 WR Act bodies</b>	<b>Column 2 WR Act offices</b>	<b>Column 3 Cessation time</b>
1	Australian Industrial Relations Commission	Members of the Australian Industrial Relations Commission	31 December 2009
2	Australian Industrial Registry	Industrial Registrar and Deputy Registrars	31 December 2009
3	Australian Fair Pay Commission and AFPC Secretariat	AFPC Chair, AFPC Commissioners and Director of the AFPC Secretariat	31 July 2009
4	Workplace Authority	Workplace Authority Director	31 January 2010

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

Note: FWA will begin to take over the work of WR Act bodies and WR Act offices before their cessation times: see item 12 of Schedule 2.

(2) To avoid doubt, an appointment to a WR Act body or a WR Act office in effect immediately before the WR Act repeal continues in force on and after the WR Act repeal day:

- (a) according to its terms; but
- (b) subject to this Act.

Note: As an example of the effect of this Act, at the cessation time for a WR Act body or a WR Act office, related appointments will cease.

(3) Despite subitem (1), the Minister may, by writing, determine that a WR body or a WR Act office ceases to exist at a time that is different from the cessation time set out for the body or office in the table.

(4) A determination under subitem (3):

- 1 (a) has effect accordingly; and  
 2 (b) is not a legislative instrument.

### 3 **8 Transfer of assets and liabilities**

- 4 (1) The person referred to in column 1 of an item of the following table  
 5 must arrange for the transfer, on the WR Act repeal day, of assets and  
 6 liabilities of the body referred to in column 2 of the item of the  
 7 following table to the body referred to in column 3 of the item of the  
 8 following table.  
 9

<b>Transfer of assets and liabilities</b>			
<b>Item</b>	<b>Column 1 Office-holder who enters arrangement with FWA</b>	<b>Column 2 Body whose assets and liabilities are transferred</b>	<b>Column 3 Body to which assets and liabilities are transferred</b>
1	Director of the AFPC Secretariat	AFPC Secretariat	FWA
2	Industrial Registrar	Australian Industrial Registry	FWA
3	Workplace Authority Director	Workplace Authority	Office of the Fair Work Ombudsman
4	Workplace Ombudsman	Office of the Workplace Ombudsman	Office of the Fair Work Ombudsman

- 10 (2) Despite subitem (1), the Minister may, before the WR Act repeal day,  
 11 determine one or more of the following by writing:
- 12 (a) that some or all assets and liabilities of the body (as specified  
 13 in the determination) are to be transferred to a different body  
 14 (as specified in the determination) from the one referred to in  
 15 column 3 of the table;
- 16 (b) that some or all assets and liabilities of the body (as specified  
 17 in the determination) are to be transferred on a different day  
 18 (as specified in the determination) from the one referred to in  
 19 subitem (1);
- 20 (c) that some or all assets and liabilities of the body (as specified  
 21 in the determination) are to be transferred in accordance with  
 22 regulations made, or to be made, for the purposes of this  
 23 paragraph.

- 1 (3) A determination under subitem (2):  
2 (a) has effect accordingly; and  
3 (b) is not a legislative instrument.
- 4 (4) In this item, a reference to an asset of a body includes a reference to a  
5 record or any other information that is in the custody of, or under the  
6 control of, the body.

## 7 **9 Information acquired under WR Act**

8 Section 655 of the FW Act has effect as if information acquired, before  
9 the WR Act repeal day, by a WR Act body or a person holding a WR  
10 Act office in the course of performing functions or exercising powers as  
11 such a body or in such an office were information acquired by FWA in  
12 the course of performing functions or exercising powers as FWA.

13 Note: Item 16 makes provision for information acquired by a member of the Office of the  
14 Workplace Ombudsman to be treated, for the purposes of section 718 of the FW Act, as  
15 if it were acquired by the Fair Work Ombudsman.

## 16 **10 Additional function and power of the General Manager**

17 The General Manager of FWA may enter into an arrangement with the  
18 person referred to in column 1 of an item of the following table for  
19 FWA to provide assistance to the body referred to in column 2 of the  
20 item for the purpose of performing functions on and after the WR Act  
21 repeal day.

22

---

### **Arrangements between FWA and body**

---

	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Office-holder who enters arrangement with FWA</b>	<b>Body to which assistance is provided</b>
1	Industrial Registrar	Australian Industrial Registry
2	Workplace Authority Director	Workplace Authority
3	Director of the AFPC Secretariat	AFPC Secretariat

---

23

## 24 **11 Transfer of functions to FWA at cessation time**

- 25 (1) After the cessation time for a WR Act body or a WR Act office, the  
26 powers, functions and duties of the body or office are to be exercised  
27 and performed by FWA.

28 Note: For *WR Act body*, *WR Act office* and *cessation time*, see subitem 7(1).

---

**Schedule 18** Institutions

**Part 2** WR Act bodies and WR Act offices

---

- 1 (2) For the purposes of subitem (1), a law of the Commonwealth that  
2 relates to the body or office is, for the purposes of its application after  
3 the cessation time, to be read:
- 4 (a) as if a reference to the body or office were a reference to  
5 FWA, as necessary; and  
6 (b) with any other necessary modifications.
- 7 (3) Despite subitem (1), the Minister may, by writing, determine that a  
8 power, function or duty of a WR Act body or a WR Act office is to be  
9 exercised or performed, after the cessation time for the body or office,  
10 by a body or person other than FWA.
- 11 (4) A determination under subitem (3):  
12 (a) has effect accordingly; and  
13 (b) is not a legislative instrument.
- 14 (5) If FWA, or another body or person, deals after the cessation time for a  
15 WR Act body or a WR Act office with a matter that was being dealt  
16 with by the WR Act body or a person holding the WR Act office, FWA  
17 or the other body or person, as the case requires, must take into account  
18 everything done by, or in relation to, the WR Act body or a person  
19 holding the WR Act office, in relation to the matter.



1  
2 **Part 3—Transitional role for Fair Work Ombudsman**  
3 **and Inspectors**

4 **12 No continued application for Parts 5A and 6 of WR Act**

- 5 (1) Parts 5A and 6 of the WR Act (which deal with the Workplace  
6 Ombudsman and workplace inspectors) have no application after the  
7 WR Act repeal.
- 8 (2) To avoid doubt, subitem (1) applies in relation to:  
9 (a) conduct that occurred before the WR Act repeal day; and  
10 (b) a provision of the WR Act that continues to apply because of  
11 this Act.
- 12 (3) Subitem (2) does not limit subitem (1).

13 **13 Conduct before WR Act repeal**

14 *Applications to be made or continued by Fair Work Inspectors*

- 15 (1) For the purposes of the application of the WR Act in relation to conduct  
16 that occurred before the WR Act repeal day (including the application  
17 of the WR Act because of subitem 11(2) of Schedule 2), an application  
18 that could have been made or continued by a workplace inspector  
19 (disregarding item 12 of this Schedule) may be made or continued, on  
20 and after the WR Act repeal day, by a Fair Work Inspector.

21 *Application of Part 5-2 of FW Act*

- 22 (2) Part 5-2 of the FW Act applies in relation to conduct that occurred  
23 before the WR Act repeal day as if:  
24 (a) a reference in that Part to a fair work instrument were a  
25 reference to a WR Act instrument, a transitional award  
26 (including a transitional Victorian reference award) or a  
27 common rule; and  
28 (b) a reference (other than a reference in a note to a section or  
29 subsection, or a reference in section 716) in that Part to a  
30 civil remedy provision were a reference to a civil remedy  
31 provision or a civil penalty provision within the meaning of  
32 the WR Act, as in force from time to time; and

- 1 (c) a reference in that Part to “this Act” (being the FW Act) were  
2 a reference to the WR Act, as in force from time to time  
3 before the WR Act repeal day; and  
4 (d) the reference in paragraph 706(1)(c) to the regulations were a  
5 reference to regulations, as in force from time to time, under  
6 the WR Act, as in force from time to time before the WR Act  
7 repeal day; and  
8 (e) section 716 were omitted.

9 **14 Conduct after WR Act repeal—application of Part 5-2 of**  
10 **FW Act**

11 Part 5-2 of the FW Act applies in relation to conduct that occurs on or  
12 after the WR Act repeal day as if:

- 13 (a) a reference in that Part to a fair work instrument included a  
14 reference to a transitional instrument, a transitional minimum  
15 wage instrument or a continuing Schedule 6 instrument; and  
16 (b) a reference in that Part to “this Act” (being the FW Act)  
17 included a reference to the WR Act as it continues to apply  
18 because of this Act; and  
19 (c) a reference in that Part to “this Act” (being the FW Act)  
20 included a reference to this Act (being the *Fair Work*  
21 *(Transitional Provisions and Consequential Amendments)*  
22 *Act 2009*); and  
23 (d) the reference in paragraph 706(1)(c) to the regulations  
24 included a reference to:  
25 (i) any regulations under the WR Act as they continue to  
26 apply because of this Act; or  
27 (ii) regulations under this Act; and  
28 (e) the following were included in paragraphs 706(2)(a) to (f);  
29 (i) a term of a transitional instrument;  
30 (ii) a term of a continuing Schedule 6 instrument;  
31 (iii) subsection 182(1) or (2) of the WR Act, as it continues  
32 to apply under item 5 of Schedule 9 (which deals with  
33 continuation of Australian Fair Pay and Conditions  
34 Standard wages provisions);  
35 (iv) a term of a take-home pay order;  
36 (v) a term of a WR Act equal remuneration order as it  
37 continues to apply because of item 4 of Schedule 10.

1 **15 Directions of Workplace Ombudsman**

2 A direction, given by the Workplace Ombudsman to a workplace  
3 inspector under subsection 167(7) of the WR Act, that is in force  
4 immediately before the WR Act repeal day is taken, on and after that  
5 day, to have been given by the Fair Work Ombudsman to a Fair Work  
6 Inspector under section 704 or 705 (as the case requires) of the FW Act.

7 **16 Disclosure of information acquired by workplace**  
8 **inspectors**

9 Section 718 of the FW Act has effect as if information acquired, before  
10 the WR Act repeal day, by a member of the Office of the Workplace  
11 Ombudsman in the course of performing functions or exercising powers  
12 as such a member were information acquired by the Fair Work  
13 Ombudsman in the course of performing functions or exercising powers  
14 as the Fair Work Ombudsman.

15 Note: The effect of this item is to allow the Fair Work Ombudsman to disclose, under  
16 section 718 of the FW Act, information acquired by a member of the Office of the  
17 Workplace Ombudsman.

1

2 **Part 4—Miscellaneous**

3 **17 FWA annual report—operations of FWA**

4 If Part 5-1 of the FW Act commences before 1 July 2009:

5 (a) the annual report on the operations of FWA prepared for the  
6 2009-2010 financial year under section 652 of the FW Act  
7 must include a report on the operations of FWA during the  
8 period:

9 (i) beginning on the day Part 5-1 of the FW Act  
10 commences; and

11 (ii) ending on 30 June 2009; and

12 (b) that section does not apply in relation to the 2008-2009  
13 financial year.

14 **18 Annual report—operations of the Office of the Fair Work  
15 Ombudsman**

16 If Part 5-2 of the FW Act commences before 1 July 2009:

17 (a) the annual report on the operations of the Office of the Fair  
18 Work Ombudsman prepared for the 2009-2010 financial year  
19 under section 686 of the FW Act must include a report on the  
20 operations of the Office during the period:

21 (i) beginning on the day Part 5-2 of the FW Act  
22 commences; and

23 (ii) ending on 30 June 2009; and

24 (b) that section does not apply in relation to the 2008-2009  
25 financial year.

26 **19 Annual report—operations of the Office of the Workplace  
27 Ombudsman**

28 (1) The Fair Work Ombudsman (instead of the Workplace Ombudsman)  
29 must prepare the annual report on the operations of the Office of the  
30 Workplace Ombudsman under section 166S of the WR Act for the  
31 2008-2009 financial year.

32 (2) Subitem (1) applies whether or not section 166S of the WR Act is  
33 repealed before the end of that year.

34 **20 Report about developments in making agreements**

---

1 Section 844 of the WR Act continues to apply, on and after the WR Act  
2 repeal day, but only in relation to the period:

3 (a) beginning on 1 January 2007; and

4 (b) ending on the day the office of the Workplace Authority  
5 Director, and the Workplace Authority, cease to exist.

6 ***Fair Work Act 2009***

7 **21 Section 574A**

8 Repeal the section.

9 **22 Schedule 1 to the Act**

10 Repeal the Schedule.

1  
2  
3  
**Schedule 19—Dealing with disputes**

4  
**1 Continued application of WR Act**

- 5 (1) The WR Act continues to apply on and after the WR Act repeal day for  
6 the purposes of dealing with the following:
- 7 (a) disputes in relation to a matter arising under a transitional  
8 instrument (including a WR Act instrument that becomes a  
9 transitional instrument);
  - 10 (b) disputes in relation to the Australian Fair Pay and Conditions  
11 Standard in Part 7 of the WR Act, including as it continues to  
12 apply because of Schedule 4 (other than disputes in relation  
13 to Division 2 of Part 7 of that Act);
  - 14 (c) disputes in relation to Division 1, 2 or 6 of Part 12 of the WR  
15 Act, including as it continues to apply because of Schedule 4.
- 16 (2) The WR Act applies in relation to a dispute mentioned in any of  
17 paragraphs (1)(a) to (c) in the way that it applied, before the WR Act  
18 repeal day, in relation to a like dispute.

19  
**2 Disputes to be dealt with by FWA**

- 20 (1) Anything that could, or would, have been done by, or in relation to, the  
21 Commission or the Industrial Registrar because of item 1 may only be  
22 done by, or in relation to, FWA.
- 23 (2) For the purposes of subitem (1), the WR Act is to be read:
- 24 (a) as if a reference to the Commission or the Industrial Registrar  
25 were a reference to FWA, as necessary; and
  - 26 (b) with any other necessary modifications.
- 27 (3) This item does not apply in relation to a dispute if:
- 28 (a) an application has been made to the Commission in relation  
29 to the dispute before the WR Act repeal day; and
  - 30 (b) the Commission is dealing with or has dealt with the dispute.
- 31 (4) Subitem (1) applies despite subsection 595(1) of the FW Act.
- 32 Note: That subsection allows FWA to deal with a dispute only if FWA is expressly authorised  
33 to do so under the FW Act.

---

1  
2  
3

## **Schedule 20—WR Act transitional awards etc.**

4

### **1 Schedule 6 to the WR Act**

5 (1) Schedule 6 to the WR Act continues to apply on and after the WR Act  
6 repeal day in accordance with this Schedule. That Schedule as it  
7 continues to apply is *continued Schedule 6*.

8 (2) Without limiting subitem (1), any of the following:

9 (a) transitional awards (including transitional Victorian reference  
10 awards);

11 (b) common rules;

12 that were in operation under Schedule 6 to the WR Act immediately  
13 before the WR Act repeal day continue in operation as *continuing*  
14 *Schedule 6 instruments* on and after the repeal day in accordance with  
15 continued Schedule 6.

16 Note 1: In addition to provisions of this Schedule, Part 3 of Schedule 2 may also affect  
17 continuing Schedule 6 instruments.

18 Note 2: Compliance with continuing Schedule 6 instruments is dealt with in Schedule 16.

19

### **2 The role of FWA under continued Schedule 6**

20 Continued Schedule 6 has effect as if a reference to the Australian  
21 Industrial Relations Commission (or the Commission) were instead a  
22 reference to FWA.

23

### **3 Meaning of *industrial action***

24 Clause 3 of continued Schedule 6 has effect as if:

25 (a) note 2 to subclause 3(1) were instead worded as follows: “In  
26 *Automotive, Food, Metals, Engineering, Printing and*  
27 *Kindred Industries Union v The Age Company Limited*,  
28 PR946290, the Full Bench of the Australian Industrial  
29 Relations Commission considered the nature of industrial  
30 action and noted that action will not be industrial in character  
31 if it stands completely outside the area of disputation and  
32 bargaining.”; and

33 (b) the words in brackets at the end of subclause 3(3) were  
34 omitted; and

35 (c) subclause 3(4), and note 1 to subclause 3(1), were omitted.

1     **4 Secret ballots**

2     (1)     Subclause 52(2) of continued Schedule 6 has effect as if the reference to  
3             a Presidential Member were instead a reference to the President or a  
4             Deputy President of FWA.

5     (2)     The *new ballots compliance provisions* (see subitem (3)) apply in  
6             relation to a secret ballot ordered by FWA under the continued  
7             transitional awards provisions as if:

- 8                 (a) the order were a protected action ballot order; and  
9                 (b) the ballot were a protected action ballot.

10    (3)     The *new ballots compliance provisions* are:

- 11                 (a) Subdivision E of Division 8 of Part 3-3 of the FW Act;  
12                 (b) Part 4-1 of the FW Act;  
13                 (c) Division 9 of Part 5-1 of the FW Act.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

## **Schedule 21—Clothing Trades Award 1999**

### **1 Status of the Clothing Trades Award 1999**

- (1) The Clothing Trades Award 1999, to the extent that it contains terms relating to outworkers, is taken always to have been made in accordance with Part VI of the *Workplace Relations Act 1996*. Any variation of those terms is taken always to have been made in accordance with that Part.
- (2) Without limiting subitem (1), those terms (as varied from time to time) are taken always to have been terms about allowable award matters of the kind described in paragraph 513(1)(o) of the *Workplace Relations Act 1996*.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

## **Schedule 22—Registered organisations**

### **Part 1—Main amendments**

#### ***Workplace Relations Act 1996***

##### **1 Title**

Omit “workplace relations”, substitute “registered organisations”.

##### **2 Part 1 (heading)**

Repeal the heading, substitute:

## **Chapter 1—Preliminary**

### **3 Section 1**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work (Registered Organisations) Act 2009*”.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

### **4 Schedule 1 (heading)**

Repeal the heading (including the note).

### **5 Chapter 1 of Schedule 1 (heading)**

Repeal the heading.

### **6 Section 1 of Schedule 1**

Repeal the section.

### **7 After section 5A of Schedule 1**

Insert:

### **5B Schedule 1 has effect**

Schedule 1 has effect.

---

1 Note: Schedule 1 is about transitionally recognised associations.

2 **8 Section 6 of Schedule 1**

3 Insert:

4 *applies:*

5 (a) in relation to a modern award, has the same meaning as in  
6 section 47 of the Fair Work Act; and

7 (b) in relation to an enterprise agreement, has the same meaning  
8 as in section 52 of the Fair Work Act.

9 **9 Section 6 of Schedule 1 (definition of *award*)**

10 Repeal the definition.

11 **10 Section 6 of Schedule 1 (definition of *collective***  
12 ***agreement*)**

13 Repeal the definition.

14 **11 Section 6 of Schedule 1 (definition of *Commission*)**

15 Repeal the definition.

16 **12 Section 6 of Schedule 1**

17 Insert:

18 *covers:*

19 (a) in relation to a modern award, has the same meaning as in  
20 section 48 of the Fair Work Act; and

21 (b) in relation to an enterprise agreement, has the same meaning  
22 as in section 53 of the Fair Work Act.

23 **13 Section 6 of Schedule 1 (definition of *Deputy Industrial***  
24 ***Registrar*)**

25 Repeal the definition.

26 **14 Section 6 of Schedule 1**

27 Insert:

28 *Deputy President* means a Deputy President of FWA.

29 **15 Section 6 of Schedule 1**

---

1                   Insert:

2                                 *enterprise agreement* has the same meaning as in the Fair Work  
3                                 Act.

4         **16 Section 6 of Schedule 1**

5                   Insert:

6                                 *Fair Work Act* means the *Fair Work Act 2009* and includes  
7                                 regulations made under that Act.

8         **17 Section 6 of Schedule 1**

9                   Insert:

10                                *FWA* means the body established by section 575 of the Fair Work  
11                                Act.

12         **18 Section 6 of Schedule 1**

13                   Insert:

14                                *FWA Member* has the same meaning as in the Fair Work Act, but  
15                                does not include a Minimum Wage Panel Member (within the  
16                                meaning of that Act).

17         **19 Section 6 of Schedule 1**

18                   Insert:

19                                *General Manager* means the General Manager of FWA.

20         **20 Section 6 of Schedule 1 (definition of *industrial action*)**

21                   Repeal the definition, substitute:

22                                *industrial action* has the same meaning as in the Fair Work Act.

23         **21 Section 6 of Schedule 1 (definition of *Industrial Registrar*)**

24                   Repeal the definition.

25         **22 Section 6 of Schedule 1 (definition of *Industrial Registry*)**

26                   Repeal the definition.

27         **23 Section 6 of Schedule 1**

---

1           Insert:

2                     *modern award* has the same meaning as in the Fair Work Act.

3       **24 Section 6 of Schedule 1 (definition of *prescribed*)**

4           Repeal the definition, substitute:

5                     *prescribed* includes prescribed by procedural rules of FWA made  
6                     under section 609 of the Fair Work Act.

7       **25 Section 6 of Schedule 1 (definition of *Presidential***  
8                     ***member*)**

9           Repeal the definition.

10       **26 Section 6 of Schedule 1**

11           Insert:

12                     *protected industrial action* has the same meaning as in the Fair  
13                     Work Act.

14       **27 Section 6 of Schedule 1 (definition of *Registrar*)**

15           Repeal the definition.

16       **28 Section 6 of Schedule 1 (definition of *registry*)**

17           Repeal the definition.

18       **29 Section 6 of Schedule 1 (definition of *Registry official*)**

19           Repeal the definition.

20       **30 Section 6 of Schedule 1 (definition of *State award*)**

21           Repeal the definition, substitute:

22                     *State award* means an award, order, decision or determination of a  
23                     State industrial authority.

24       **31 Section 6 of Schedule 1**

25           Insert:

26                     *this Act* includes regulations made under this Act.

27       **32 Section 6 of Schedule 1 (definition of *this Schedule*)**

---

1 Repeal the definition.

2 **33 Section 6 of Schedule 1 (definition of *workplace inspector*)**

3 Repeal the definition.

4 **34 Section 6 of Schedule 1 (definition of *Workplace Relations Act*)**

5 Repeal the definition.

6 **35 Section 6A of Schedule 1**

7 Repeal the section.

8 **36 Section 7 of Schedule 1**

9 Repeal the section.

10 **37 Section 14 of Schedule 1**

11 Repeal the section.

12 **38 Paragraphs 28(1)(b) and (c) of Schedule 1**

13 After “industrial action”, insert “(other than protected industrial  
14 action)”.

15 **39 Subparagraph 73(2)(c)(ii) of Schedule 1**

16 Repeal the subparagraph, substitute:

- 17 (ii) breaches of modern awards or enterprise agreements; or  
18 (iii) breaches of orders made under this Act, the Fair Work  
19 Act or other Commonwealth laws; and  
20

21 **40 Paragraph 94(1)(c) of Schedule 1**

22 Repeal the paragraph, substitute:

- 23 (c) the application is made before the period of 5 years after the  
24 amalgamation occurred has elapsed.

25 **41 Subparagraph 337A(b)(ii) of Schedule 1**

26 Repeal the subparagraph, substitute:

- 27 (ii) an FWA Member or a member of the staff of FWA;

28 **42 Subparagraph 337A(b)(v) of Schedule 1**

---

- 1 Repeal the subparagraph, substitute:  
2 (v) a member of the staff of the Office of the Fair Work  
3 Ombudsman (within the meaning of the Fair Work Act);  
4 and

5 **43 Section 337E of Schedule 1**

6 Repeal the section.

7 **44 Subsection 337K(5) of Schedule 1**

8 Repeal the subsection, substitute:

- 9 (5) If an FWA Member ceases to be an FWA Member:  
10 (a) after an order under this Act has been made by FWA  
11 constituted by the FWA Member; but  
12 (b) before the order has been reduced to writing or before it has  
13 been signed by the FWA Member;  
14 the General Manager must reduce the order to writing, sign it and  
15 seal it with the seal of FWA, and the order has effect as if it had  
16 been signed by the FWA Member.

17 **45 Section 338 of Schedule 1**

18 Repeal the section, substitute:

19 **338 Conferring jurisdiction on the Federal Court**

20 Jurisdiction is conferred on the Federal Court in relation to any  
21 matter (whether civil or criminal) arising under this Act.

22 **46 After section 339 of Schedule 1**

23 Insert:

24 **339A Exercising jurisdiction in the Fair Work Division of the**  
25 **Federal Court**

26 The jurisdiction conferred on the Federal Court under this Act is to  
27 be exercised in the Fair Work Division of the Federal Court if:

- 28 (a) an application is made to the Federal Court under this Act; or  
29 (b) a writ of mandamus or prohibition or an injunction is sought  
30 in the Federal Court against a person holding office under  
31 this Act; or

- 1 (c) a declaration is sought under section 21 of the *Federal Court*  
2 *of Australia Act 1976* in relation to a matter arising under this  
3 Act; or  
4 (d) an injunction is sought under section 23 of the *Federal Court*  
5 *of Australia Act 1976* in relation to a matter arising under this  
6 Act; or  
7 (e) a prosecution is instituted in the Federal Court under this Act;  
8 or  
9 (f) the High Court remits a matter arising under this Act to the  
10 Federal Court.

11 **47 At the end of section 340 of Schedule 1**

12 Add:

- 13 (5) This section applies in addition to, and does not affect the  
14 operation of, section 339A.

15 **48 At the end of section 341 of Schedule 1**

16 Add:

- 17 (3) This section applies in addition to, and does not affect the  
18 operation of, section 339A.

19 **49 After section 343 of Schedule 1**

20 Insert:

21 **343A Delegation by General Manager to staff**

- 22 (1) The General Manager may, in writing, delegate to a member of the  
23 staff of FWA all or any of the General Manager's functions or  
24 powers under this Act.
- 25 (2) Despite subsection (1), the General Manager's functions or powers  
26 under the following provisions cannot be delegated:
- 27 (a) subsection 13(2);  
28 (b) any provision of Chapter 2, 3 or 5 (other than subsection  
29 159(1) or (2) or section 161);  
30 (c) subsection 183(4);  
31 (d) section 197;  
32 (e) any provision of Part 3 or 4 of Chapter 7 (other than  
33 section 202);
-



- 1 (f) any provision of Division 1, 2, 3 or 4 of Part 3 of Chapter 8;  
2 (g) subsection 278(2);  
3 (h) section 310;  
4 (i) section 334;  
5 (j) subsection 336(2);  
6 (k) subsection 337K(4).

7 (3) Despite subsection (1), the General Manager's functions or powers  
8 under the following provisions can only be delegated to a member  
9 of the staff of FWA who is an SES employee or an acting SES  
10 employee:

- 11 (a) subsection 159(1) or (2);  
12 (b) section 161;  
13 (c) section 180;  
14 (d) any provision of Part 2 of Chapter 7 (other than subsection  
15 183(4) or section 197);  
16 (e) any provision of Part 2 of Chapter 8;  
17 (f) any provision of Division 5 or 6 of Part 3 of Chapter 8;  
18 (g) section 272;  
19 (h) any provision of Chapter 11 (other than section 334 or  
20 subsection 336(2) or 337K(4)).

21 Note: The expressions *SES employee* and *acting SES employee* are defined  
22 in section 17AA of the *Acts Interpretation Act 1901*.

23 (4) In exercising powers or functions under a delegation, the delegate  
24 must comply with any directions of the General Manager.

## 25 **50 After section 351 of Schedule 1**

26 Insert:

### 27 **351A Minister's entitlement to intervene**

28 (1) The Minister may intervene on behalf of the Commonwealth in  
29 proceedings before a court (including a court of a State or  
30 Territory) in relation to a matter arising under this Act if the  
31 Minister believes it is in the public interest to do so.

32 (2) If the Minister intervenes, the Minister is taken to be a party to the  
33 proceedings for the purposes of instituting an appeal from a  
34 judgment given in the proceedings.

- 1                   (3) A court may make an order as to costs against the Commonwealth  
2                   if:  
3                   (a) the Minister intervenes under subsection (1); or  
4                   (b) the Minister institutes an appeal from a judgment as referred  
5                   to in subsection (2).

6                   **51 Subsection 359(2) of Schedule 1 (note)**

7                   Repeal the note, substitute:

8                   Note:        Regulations made under the Fair Work Act may also be relevant to the  
9                   operation of this Act. For example, regulations about FWA's practice  
10                  and procedure may be made for the purposes of section 610 of the Fair  
11                  Work Act.

12                  **52 Schedule 10**

13                  Renumber as Schedule 1.

14                  **53 Schedule 10 (note to heading)**

15                  Omit "section 9", substitute "section 5B".

1

2

## **Part 2—State and federal organisations**

3

### ***Workplace Relations Act 1996***

4

#### **54 Before section 6 of Schedule 1**

5

Insert:

6

#### **5C Schedule 2 has effect**

7

Schedule 2 has effect.

8

Note: Schedule 2 is about recognised State-registered associations.

9

#### **55 Section 6 of Schedule 1**

10

Insert:

11

*federal counterpart*, in relation to an association of employers or employees registered under a State or Territory industrial law, means an organisation that has a branch (including a division of such a branch or a constituent part of such a branch) in that State or Territory that has or purports to have:

12

(a) substantially the same eligibility rules as the association; and

13

(b) substantially the same officers as the association;

14

and includes an organisation of which the association has

15

purported to function as a branch (including a division of a branch

16

or a constituent part of a branch).

17

18

purported to function as a branch (including a division of a branch

19

or a constituent part of a branch).

20

21

#### **56 Section 6 of Schedule 1**

22

Insert:

23

*recognised State-registered association* means a State-registered association that is recognised under Schedule 2.

24

25

#### **57 Section 6 of Schedule 1**

26

Insert:

27

*transitionally recognised association* means a State-registered association that is recognised under Schedule 1.

28

1 **58 Section 6 of Schedule 1 (definition of *transitionally***  
2 ***registered association*)**

3 Repeal the definition.

4 **59 At the end of section 19 of Schedule 1**

5 Add:

- 6 (5) FWA must not, under this section, grant an application for  
7 registration of an association of employers or employees registered  
8 under a State or Territory industrial law if the association has a  
9 federal counterpart.

10 **60 Subsection 138A(1) of Schedule 1**

11 Omit “registered” (first occurring), substitute “recognised”.

12 **61 Subsection 138A(1) of Schedule 1**

13 Omit “registered” (last occurring), substitute “recognised”.

14 **62 After Subdivision B of Division 4 of Part 2 of Chapter 5 of**  
15 **Schedule 1**

16 Insert:

17 **Subdivision BA—Branches of organisations**

18 **154A Branch autonomy**

19 The rules of an organisation may provide for the autonomy of a  
20 branch in matters affecting members of the branch only and  
21 matters concerning the participation of the branch in a State  
22 workplace relations system.

23 **154B Branch funds**

24 (1) The rules of an organisation may provide for a fund of the branch  
25 that is to be managed and controlled under rules of the branch, and  
26 may make provision in relation to the fund in accordance with  
27 subsection (2).

28 (2) The branch fund may consist of:

- 29 (a) real or personal property of which the branch of the  
30 organisation, by the rules or by any established practice not

- 1 inconsistent with the rules, has, or in the absence of a limited  
2 term lease, bailment or arrangement, would have, the right of  
3 custody, control or management; and  
4 (b) the amounts of entrance fees, subscriptions, fines, fees or  
5 levies received by a branch, less so much of the amounts as is  
6 payable by the branch to the organisation; and  
7 (c) interest, rents, dividends or other income derived from the  
8 investment or use of the fund; and  
9 (d) a superannuation or long service leave or other fund operated  
10 or controlled by the branch for the benefit of its officers or  
11 employees; and  
12 (e) a sick pay fund, accident pay fund, funeral fund, tool benefit  
13 fund or similar fund operated or controlled by the branch for  
14 the benefit of its members; and  
15 (f) property acquired wholly or mainly by expenditure of the  
16 money of the fund or derived from other assets of the fund;  
17 and  
18 (g) the proceeds of a disposal of parts of the fund.

19 **63 Subsection 158(5) of Schedule 1**

20 Repeal the subsection, substitute:

- 21 (5) However, subsection (4) does not apply if:  
22 (a) FWA accepts an undertaking from the organisation seeking  
23 the alteration that FWA considers appropriate to avoid  
24 demarcation disputes that might otherwise arise from an  
25 overlap between:  
26 (i) the eligibility rules of that organisation; and  
27 (ii) the eligibility rules of the other organisation; or  
28 (b) FWA is satisfied that:  
29 (i) the alteration will not extend the eligibility rules of the  
30 organisation seeking the alteration beyond those of an  
31 association of employers or employees, registered under  
32 a State or Territory industrial law, for which the  
33 organisation is a federal counterpart; and  
34 (ii) the alteration will not apply outside the limits of the  
35 State or Territory for which the association is registered;  
36 and

1 (iii) the association has been actively representing its  
2 members to whom the eligibility rules of the  
3 organisation (as proposed to be altered) would apply.

4 (5A) Without limiting the matters that FWA may take into account in  
5 considering whether the association has been actively representing  
6 the members referred to in subparagraph (5)(b)(iii), FWA must, if  
7 the association is an association of employees, take into account  
8 the extent to which the association has:

- 9 (a) sought variations to awards covering those members; and  
10 (b) exercised rights of entry in relation to those members; and  
11 (c) sought to bargain on behalf of those members; and  
12 (d) sought to increase its membership amongst persons to whom  
13 the eligibility rules of the organisation (as proposed to be  
14 altered) would apply.

15 **64 Schedule 10 (heading)**

16 Omit “registered”, substitute “recognised”.

17 **65 Subclause 1(1) of Schedule 10 (definition of *transitionally***  
18 ***registered association*)**

19 Repeal the definition.

20 **66 Subclause 2(1) of Schedule 10**

21 Omit “registration”, substitute “recognition”.

22 Note: The heading to clause 2 of Schedule 10 is altered by omitting “**registration**” and  
23 substituting “**recognition**”.

24 **67 Subclause 2(6) of Schedule 10**

25 Omit “registered” (last occurring), substitute “recognised”.

26 **68 Clause 3 of Schedule 10**

27 Before “The”, insert “(1)”.

28 **69 Clause 3 of Schedule 10**

29 Omit “registered” (wherever occurring), substitute “recognised”.

30 Note: The heading to clause 3 of Schedule 10 is altered by omitting “**registered**” and  
31 substituting “**recognised**”.

32 **70 At the end of clause 3 of Schedule 10**

---

1 Add:

- 2 (2) To avoid doubt, this section does not confer on a transitionally  
3 recognised association:  
4 (a) a legal identity that it would not otherwise have; or  
5 (b) a right to represent its members' industrial interests outside  
6 the State in relation to which it is a State-registered  
7 association.

8 **71 Subclause 4(1) of Schedule 10**

9 Omit "registered", substitute "recognised".

10 Note: The heading to clause 4 of Schedule 10 is altered by omitting "**registered**" and  
11 substituting "**recognised**".

12 **72 Subclause 5(1) of Schedule 10**

13 Omit "registration", substitute "recognition".

14 Note: The heading to clause 5 of Schedule 10 is altered by omitting "**registration**" and  
15 substituting "**recognition**".

16 **73 Subclause 5(1) of Schedule 10**

17 Omit "registered", substitute "recognised".

18 **74 Paragraphs 5(1)(b) and (c) of Schedule 10**

19 After "industrial action", insert "(other than protected industrial  
20 action)".

21 **75 Subclause 5(3) of Schedule 10**

22 Omit "registration", substitute "recognition".

23 **76 Subclause 5(5) of Schedule 10**

24 Omit "registration", substitute "recognition".

25 **77 Subclause 5(5) of Schedule 10**

26 Omit "registered", substitute "recognised".

27 **78 Subclause 5(6) of Schedule 10**

28 Omit "registration", substitute "recognition".

29 **79 Subclause 5(6) of Schedule 10**

---

1 Omit “registered”, substitute “recognised”.

2 **80 Clause 6 of Schedule 10**

3 Omit “registration”, substitute “recognition”.

4 Note: The heading to clause 6 of Schedule 10 is altered by omitting “**registration**” and  
5 substituting “**recognition**”.

6 **81 Clause 6 of Schedule 10**

7 Omit “registered”, substitute “recognised”.

8 **82 Subparagraph 6(c)(i) of Schedule 10**

9 Repeal the subparagraph, substitute:

- 10 (i) unless subparagraph (ii) applies—the fifth anniversary  
11 of the commencement of Part 2 of Schedule 22 to the  
12 *Fair Work (Transitional Provisions and Consequential*  
13 *Amendments) Act 2009; or*

14 **83 Clause 7 of Schedule 10**

15 Omit “registered”, substitute “recognised”.

16 **84 At the end of the Act**

17 Add:

18 **Schedule 2—Recognised State-registered**  
19 **associations**

20 Note: See section 5C.  
21  
22

23 **1 Recognition of State-registered associations**

24 (1) A State-registered association may apply to the General Manager  
25 for recognition under this Schedule if:

- 26 (a) the association has no federal counterpart; and  
27 (b) the law of a State under which the association is registered is  
28 a law to which subclause (2) applies.

29 (2) This subclause applies to a law of a State if the regulations so  
30 provide.



- 1 (3) The application must be accompanied by:  
2 (a) a copy of the current rules of the association; and  
3 (b) a statement setting out:  
4 (i) the address of the association; and  
5 (ii) each office in the association; and  
6 (iii) the name and address of each person holding office in  
7 the association.
- 8 (4) If the General Manager is satisfied that the association satisfies  
9 subclause (1), the General Manager must, by written instrument,  
10 grant the application and record the fact that he or she is so  
11 satisfied.
- 12 (5) An instrument under subclause (4) is not a legislative instrument.
- 13 (6) The General Manager must give a copy of the instrument to the  
14 association.
- 15 (7) A State-registered association is taken to be recognised under this  
16 Schedule when the General Manager grants the application.

17 **2 Application of Fair Work Act to recognised State-registered**  
18 **associations**

- 19 (1) The provisions of the *Fair Work Act 2009* and Part 3 of Chapter 4  
20 of this Act apply in relation to a recognised State-registered  
21 association:  
22 (a) in the same way as they apply in relation to an organisation;  
23 and  
24 (b) as if a recognised State-registered association were a person.
- 25 (2) To avoid doubt, this section does not confer on a recognised  
26 State-registered association:  
27 (a) a legal identity that it would not otherwise have; or  
28 (b) a right to represent its members' industrial interests outside  
29 the State in relation to which it is a State-registered  
30 association.

1 **3 Cancellation of recognition**

2 *Cancellation by the Federal Court*

3 (1) A person interested or the Minister may apply to the Federal Court  
4 for an order cancelling the recognition under this Schedule of a  
5 recognised State-registered association on the ground that:

6 (a) the conduct of:

7 (i) the association (in relation to its continued breach of an  
8 order of FWA or an industrial instrument, or its  
9 continued failure to ensure that its members comply  
10 with and observe an order of FWA or an industrial  
11 instrument, or in any other respect); or

12 (ii) a substantial number of the members of the association  
13 (in relation to their continued breach of an order of  
14 FWA or an industrial instrument, or in any other  
15 respect);

16 has, on or after the commencement of this Schedule,  
17 prevented or hindered the achievement of an object of this  
18 Act as in force at that time; or

19 (b) the association, or a substantial number of the members of  
20 the association or of a section or class of members of the  
21 association, has engaged in industrial action (other than  
22 protected industrial action) that has, on or after the  
23 commencement of this Schedule, prevented, hindered or  
24 interfered with:

25 (i) the activities of a federal system employer; or

26 (ii) the provision of any public service by the  
27 Commonwealth or a State or Territory or an authority of  
28 the Commonwealth or a State or Territory; or

29 (c) the association, or a substantial number of the members of  
30 the association or of a section or class of members of the  
31 association, has or have been, or is or are, engaged, on or  
32 after the commencement of this Schedule, in industrial action  
33 (other than protected industrial action) that has had, is having  
34 or is likely to have a substantial adverse effect on the safety,  
35 health or welfare of the community or a part of the  
36 community; or

37 (d) the association, or a substantial number of the members of  
38 the association or of a section or class of members of the  
39 association, has or have failed to comply with one of the

---

- 1 following, made on or after the commencement of this  
2 Schedule:
- 3 (i) an injunction granted under subsection 421(3) of the  
4 Fair Work Act (which deals with orders to stop  
5 industrial action);
  - 6 (ii) an order made under the Fair Work Act in relation to a  
7 contravention of Part 3-1 of that Act (which deals with  
8 general protections);
  - 9 (iii) an interim injunction granted under section 545 of the  
10 Fair Work Act so far as it relates to conduct or proposed  
11 conduct that could be the subject of an injunction under  
12 a provision mentioned in subparagraph (i) or (ii);
  - 13 (iv) an order under section 23 of this Act (which deals with  
14 contraventions of the employee associations provisions).

15 (2) The Court must give the association an opportunity to be heard.

16 (3) If the Court:

- 17 (a) finds that a ground for cancellation set out in the application  
18 has been established; and
- 19 (b) does not consider that it would be unjust to do so having  
20 regard to the degree of gravity of the matters constituting the  
21 ground and the action (if any) that has been taken by or  
22 against the association in relation to the matters;

23 the Court must cancel the recognition of the association under this  
24 Schedule.

25 (4) A finding of fact in:

- 26 (a) proceedings commenced on or after the commencement of  
27 this Schedule:
  - 28 (i) under section 421 of the Fair Work Act; or
  - 29 (ii) under the Fair Work Act in relation to a contravention  
30 of Part 3-1 of that Act; or
- 31 (b) proceedings under section 23 of this Act;

32 is admissible as prima facie evidence of that fact in an application  
33 made on a ground specified in paragraph (1)(d).

34 *Cancellation by FWA*

35 (5) FWA may cancel the recognition under this Schedule of a  
36 recognised State-registered association:

- 1 (a) on application by the association made under the regulations;  
2 or  
3 (b) on application by a person interested or by the Minister, if  
4 FWA has satisfied itself, as prescribed:  
5 (i) that the association was recognised by mistake; or  
6 (ii) that the association is no longer a State-registered  
7 association; or  
8 (iii) that the association has been found by another industrial  
9 body (within the meaning of the Fair Work Act) to have  
10 contravened a State or Territory industrial law, and that  
11 the contravention constitutes serious misconduct.

12 *Cancellation by General Manager*

- 13 (6) The General Manager may, by written instrument, cancel the  
14 recognition under this Schedule of a recognised State-registered  
15 association if he or she is satisfied that the association no longer  
16 exists.  
17 (7) An instrument under subclause (6) is not a legislative instrument.

18 *Cancellation if subclause 1(2) no longer applies*

- 19 (8) The recognition under this Schedule of a recognised  
20 State-registered association is taken to be cancelled if the law of a  
21 State under which the association is registered ceases to be a law to  
22 which subclause 1(2) applies.

1

2 **Part 3—Representation orders**

3 *Workplace Relations Act 1996*

4 **85 Section 6 of Schedule 1**

5 Insert:

6 *peak council* has the same meaning as in the Fair Work Act.

7 **86 Section 6 of Schedule 1**

8 Insert:

9 *workplace group* means a class or group of employees, all of  
10 whom perform work:

- 11 (a) for the same employer; or  
12 (b) at the same premises or workplace; or  
13 (c) for the same employer and at the same premises or  
14 workplace.

15 **87 Section 132 of Schedule 1**

16 Repeal the section, substitute:

17 **132 Simplified outline**

18 This Chapter enables FWA to make orders about the representation  
19 rights of organisations of employees.

20 Part 2 provides for the orders to be made generally in relation to  
21 demarcation disputes.

22 Part 3 provides for the orders to be made in relation to employees  
23 who perform work for the same employer and/or at the same  
24 premises or workplace.

25 Part 4 contains miscellaneous provisions.

26 **88 Subsection 133(1) of Schedule 1**

27 Omit “this Chapter”, substitute “this Part, Part 4”.

---

1 **89 After section 137 of Schedule 1**

2 Insert:

3 **Part 3—Representation orders for workplace**  
4 **groups**

5 Note: In addition to registered organisations, this Part also applies to transitionally recognised  
6 associations (see clause 3 of Schedule 1) and recognised State-registered associations  
7 (see clause 2 of Schedule 2).  
8

9 **137A Orders about representation rights of organisations of**  
10 **employees**

- 11 (1) Subject to this Part, Part 4 and subsection 151(6), FWA may, on  
12 the application of an organisation, an employer or the Minister,  
13 make the following orders in relation to a dispute about the  
14 entitlement of an organisation of employees to represent, under this  
15 Act or the Fair Work Act, the industrial interests of employees:  
16 (a) an order that an organisation of employees is to have the  
17 right, to the exclusion of another organisation or other  
18 organisations, to represent under this Act or the Fair Work  
19 Act the industrial interests of the employees in a particular  
20 workplace group who are eligible for membership of the  
21 organisation;  
22 (b) an order that an organisation of employees is not to have the  
23 right to represent under this Act or the Fair Work Act the  
24 industrial interests of the employees in a particular workplace  
25 group.

26 Note: Section 151 deals with agreements between organisations of  
27 employees and State unions.

28 *Interim orders*

- 29 (2) FWA may make an interim order in relation to an application  
30 under subsection (1) on application by a person or organisation  
31 who would have been eligible to make the application under  
32 subsection (1).  
33 (3) FWA must not make an order under subsection (2) if FWA  
34 considers that the making of the order would be unfair to a person  
35 or organisation other than the applicant.

1 (4) An interim order made under subsection (2) ceases to have effect if  
2 the application under subsection (1) is determined.

3 *Variation of orders*

4 (5) FWA may, on application by an organisation, an employer or the  
5 Minister, vary an order made under subsection (1) or (2).

6 (6) FWA may, on its own initiative, vary an order made under  
7 subsection (1) or (2) if the order is inconsistent with an order that is  
8 in force under subsection 133(1).

9 *Inconsistency with orders under subsection 133(1)*

10 (7) FWA must not make an order under subsection (1) or (2) if the  
11 order would be inconsistent with an order that is in force under  
12 subsection 133(1).

13 **137B Factors to be taken into account by FWA**

14 (1) In considering whether to make an order under subsection 137A(1)  
15 in relation to a particular workplace group, FWA must have regard  
16 to:

- 17 (a) the history of award coverage and agreement making in  
18 relation to the employees in the workplace group; and  
19 (b) the wishes of the members of the workplace group; and  
20 (c) the extent to which particular employee organisations  
21 represent the employees in the workplace group, and the  
22 nature of that representation; and  
23 (d) any agreement or understanding of which FWA becomes  
24 aware that deals with the right of an organisation of  
25 employees to represent under this Act or the Fair Work Act  
26 the industrial interests of a particular class or group of  
27 employees; and  
28 (e) the consequences of not making the order for any employer,  
29 employees or organisation concerned; and  
30 (f) any matter prescribed by the regulations.

31 (2) However, if:

- 32 (a) the workplace group relates to a genuine new enterprise  
33 (within the meaning of the Fair Work Act) that one or more  
34 employers are establishing or propose to establish; and
-

- 1 (b) the employer or employees have not employed any of the  
2 persons who will be necessary for the normal conduct of that  
3 enterprise;  
4 FWA must, as far as practicable, have regard to the matters set out  
5 in subsection (1) as they would apply in relation to the persons who  
6 would be the employees in the workplace group.
- 7 Note: The expression genuine new enterprise includes a genuine new  
8 business, activity, project or undertaking (see the definition of  
9 *enterprise* in section 12 of the Fair Work Act).

### 10 **137C Submissions by peak councils**

- 11 (1) A peak council is entitled to make a submission for consideration  
12 in relation to the proposed making of an order under subsection  
13 137A(1).
- 14 (2) Subsection (1) applies whether or not FWA holds a hearing in  
15 relation to the matter.

### 16 **137D Order may be subject to limits**

17 An order under subsection 137A(1) or (2) may be subject to  
18 conditions or limitations.

### 19 **137E Organisation must comply with order**

- 20 (1) An organisation to which an order under subsection 137A(1) or (2)  
21 applies must comply with the order.
- 22 (2) The Federal Court may, on application by the Minister or a person  
23 or organisation affected by an order made under subsection  
24 137A(1) or (2), make such orders as it thinks fit to ensure  
25 compliance with that order.

## 26 **Part 4—Miscellaneous**

27

### 28 **90 Section 138 of Schedule 1**

29 Omit “or Presidential Member”.

### 30 **91 Clause 3 of Schedule 10**

---



- 1 After “the Fair Work Act”, insert “and Part 3 of Chapter 4 of the *Fair*  
2 *Work (Registered Organisations) Act 2009*”.

1

2 **Part 4—References to Schedules to the Workplace**  
3 **Relations Act**

4 ***Fair Work Act 2009***

5 **92 Section 12 (paragraph (c) of the definition of *industrial***  
6 ***body*)**

7 Omit “Schedule 1 to the *Workplace Relations Act 1996*”, substitute “the  
8 *Fair Work (Registered Organisations) Act 2009*”.

9 **93 Section 12 (paragraph (b) of the definition of *industrial***  
10 ***law*)**

11 Omit “Schedule 1 to the *Workplace Relations Act 1996*”, substitute “the  
12 *Fair Work (Registered Organisations) Act 2009*”.

13 **94 Section 12 (definition of *organisation*)**

14 Omit “Schedule 1 to the *Workplace Relations Act 1996*”, substitute “the  
15 *Fair Work (Registered Organisations) Act 2009*”.

16 **95 Section 12 (paragraph (b) of the definition of *workplace***  
17 ***law*)**

18 Omit “Schedule 1 to the *Workplace Relations Act 1996*”, substitute “the  
19 *Fair Work (Registered Organisations) Act 2009*”.

20 **96 Subsection 485(2)**

21 Omit “Schedule 1 to the *Workplace Relations Act 1996*”, substitute “the  
22 *Fair Work (Registered Organisations) Act 2009*”.

23 ***Workplace Relations Act 1996***

24 **97 Subsections 5(1), (2), (3) and (4) of Schedule 1**

25 Omit “this Schedule” (wherever occurring), substitute “this Act”.

26 Note: The heading to section 5 of Schedule 1 is altered by omitting “**this Schedule**” and  
27 substituting “**this Act**”.

28 **98 Subsection 5(4) of Schedule 1 (note)**

29 Omit “this Schedule” (wherever occurring), substitute “this Act”.

---

1 **99 Subsections 5A(1) and (2) of Schedule 1**

2 Omit “Schedule”, substitute “Act”.

3 Note: The heading to section 5A of Schedule 1 is altered by omitting “Schedule” and  
4 substituting “Act”.

5 **100 Section 6 of Schedule 1**

6 Omit “this Schedule” (first occurring), substitute “this Act”.

7 **101 Section 6 of Schedule 1 (paragraph (c) of the definition of**  
8 ***demarcation dispute*)**

9 Omit “this Schedule”, substitute “this Act”.

10 **102 Section 6 of Schedule 1 (paragraph (b) of the definition of**  
11 ***federal system employee*)**

12 Omit “this Schedule”, substitute “this Act”.

13 **103 Section 6 of Schedule 1 (paragraph (g) of the definition of**  
14 ***federal system employer*)**

15 Omit “this Schedule”, substitute “this Act”.

16 **104 Section 6 of Schedule 1 (definition of *organisation*)**

17 Omit “this Schedule”, substitute “this Act”.

18 **105 Section 6 of Schedule 1 (note at the end of the definition**  
19 ***of organisation*)**

20 Omit “this Schedule” (first occurring), substitute “former Schedule 1B  
21 of that Act”.

22 **106 Section 6 of Schedule 1 (note at the end of the definition**  
23 ***of organisation*)**

24 Omit “this Schedule” (last occurring), substitute “that Schedule (and  
25 therefore under this Act)”.

26 **107 Subsections 9(1) and (2), 10(1), (2) and (3) and 11(1) and**  
27 **(2) of Schedule 1**

28 Omit “this Schedule”, substitute “this Act”.

29 **108 Section 12 of Schedule 1**

---

1 Omit “this Schedule”, substitute “this Act”.

2 **109 Paragraph 13(1)(b) of Schedule 1**

3 Omit “this Schedule”, substitute “this Act”.

4 **110 Subsection 13(2) of Schedule 1**

5 Omit “this Schedule”, substitute “this Act”.

6 **111 Section 15 of Schedule 1**

7 Omit “this Schedule”, substitute “this Act”.

8 **112 Section 15 of Schedule 1 (note 1)**

9 Repeal the note, substitute:

10 Note 1: Section 6 defines *this Act* to include the regulations.

11 **113 Section 15 of Schedule 1 (note 2)**

12 Omit “this Schedule”, substitute “this Act”.

13 **114 Paragraphs 16(a) and (b), 18A(4)(a), 18B(5)(a), 18C(2)(k),**  
14 **18C(5)(a) and 19(1)(e), (f) and (i) of Schedule 1**

15 Omit “this Schedule”, substitute “this Act”.

16 **115 Subsection 19(3) of Schedule 1**

17 Omit “this Schedule”, substitute “this Act”.

18 **116 Paragraphs 20(1)(d), (e) and (i), 21(3)(a), 22(3)(a) and**  
19 **25(1)(a) of Schedule 1**

20 Omit “this Schedule”, substitute “this Act”.

21 **117 Subsection 25(1) of Schedule 1 (note)**

22 Omit “this Schedule” (wherever occurring), substitute “this Act”.

23 **118 Subsections 26(2) and (4) of Schedule 1**

24 Omit “this Schedule”, substitute “this Act”.

25 **119 Paragraph 28(1)(a) of Schedule 1**

26 Omit “this Schedule” (wherever occurring), substitute “this Act”.

1 **120 Subsection 28(5) of Schedule 1**

2 Omit “this Schedule”, substitute “this Act”.

3 **121 Paragraph 29(2)(a) of Schedule 1**

4 Omit “this Schedule” (wherever occurring), substitute “this Act”.

5 **122 Sections 31 and 32 of Schedule 1**

6 Omit “this Schedule” (wherever occurring), substitute “this Act”.

7 **123 Subsections 36(3) and 38(5) of Schedule 1**

8 Omit “this Schedule”, substitute “this Act”.

9 **124 Paragraphs 38(8)(c), 55(1)(d) and (e) and 57(1)(b) of**  
10 **Schedule 1**

11 Omit “this Schedule” (wherever occurring), substitute “this Act”.

12 **125 Subsection 60(6) of Schedule 1**

13 Omit “this Schedule”, substitute “this Act”.

14 **126 Paragraph 62(3)(b) of Schedule 1**

15 Omit “this Schedule”, substitute “this Act”.

16 **127 Subsection 65(4) of Schedule 1**

17 Omit “this Schedule”, substitute “this Act”.

18 **128 Subparagraph 73(2)(c)(i) of Schedule 1**

19 Omit “this Schedule”, substitute “this Act”.

20 **129 Subsection 87(2) of Schedule 1**

21 Omit “this Schedule”, substitute “this Act”.

22 **130 Paragraph 92(a) of Schedule 1**

23 Omit “this Schedule”, substitute “this Act”.

24 **131 Subsection 97(3) of Schedule 1**

25 Omit “this Schedule”, substitute “this Act”.

1 **132 Paragraphs 133(1)(a), (b) and (c) and 135(b) of**  
2 **Schedule 1**

3 Omit “this Schedule”, substitute “this Act”.

4 **133 Subsections 138A(1) and (2) and 140(1) and (2) of**  
5 **Schedule 1**

6 Omit “this Schedule”, substitute “this Act”.

7 **134 Paragraphs 142(1)(a) and (c) of Schedule 1**

8 Omit “this Schedule” (wherever occurring), substitute “this Act”.

9 **135 Subparagraph 144(3)(a)(i) of Schedule 1**

10 Omit “this Schedule”, substitute “this Act”.

11 **136 Subsection 146(5) of Schedule 1 (paragraph (a) of the**  
12 **definition of *relevant provisions*)**

13 Omit “this Schedule”, substitute “this Act”.

14 **137 Section 150 of Schedule 1 (paragraph (b) of the definition**  
15 **of *State union*)**

16 Omit “this Schedule” (wherever occurring), substitute “this Act”.

17 **138 Subparagraphs 151(5)(a)(ia), (i) and (iii) of Schedule 1**

18 Omit “this Schedule”, substitute “this Act”.

19 **139 Subsection 151(6) of Schedule 1**

20 Omit “this Schedule”, substitute “this Act”.

21 **140 Paragraph 152(6)(a) of Schedule 1**

22 Omit “this Schedule” (wherever occurring), substitute “this Act”.

23 **141 Subsection 156(1) of Schedule 1**

24 Omit “this Schedule” (wherever occurring), substitute “this Act”.

25 **142 Subsection 158(6) of Schedule 1**

26 Omit “this Schedule”, substitute “this Act”.

27 **143 Paragraphs 158(7)(a) and 159(1)(a) of Schedule 1**

---

1 Omit “this Schedule”, substitute “this Act”.

2 **144 Sections 160 and 161 of Schedule 1**

3 Omit “this Schedule”, substitute “this Act”.

4 **145 Subsection 164B(2) of Schedule 1 (note)**

5 Omit “of this Schedule”.

6 **146 Sections 170 and 175 of Schedule 1**

7 Omit “this Schedule”, substitute “this Act”.

8 **147 Paragraph 186(1)(a) of Schedule 1**

9 Omit “this Schedule”, substitute “this Act”.

10 **148 Subparagraph 186(1)(b)(i) of Schedule 1**

11 Omit “this Schedule”, substitute “this Act”.

12 **149 Paragraph 205(3)(a) of Schedule 1**

13 Omit “this Schedule”, substitute “this Act”.

14 **150 Subsection 230(2) of Schedule 1 (note 2)**

15 Omit “the Schedule”, substitute “this Act”.

16 **151 Section 239 of Schedule 1**

17 Omit “this Schedule”, substitute “this Act”.

18 **152 Subparagraphs 246(2)(b)(i) and 249(5)(b)(i) of Schedule 1**

19 Omit “this Schedule”, substitute “this Act”.

20 **153 Subsection 253(3) of Schedule 1 (note 2)**

21 Omit “this Schedule”, substitute “this Act”.

22 **154 Subsection 256(7) of Schedule 1**

23 Omit “this Schedule”, substitute “this Act”.

24 **155 Paragraph 257(11)(a) of Schedule 1**

25 Omit “this Schedule”, substitute “this Act”.

26 **156 Subsection 261(2) of Schedule 1**

---

1 Omit “this Schedule”, substitute “this Act”.

2 **157 Section 281 of Schedule 1**

3 Omit “this Schedule”, substitute “this Act”.

4 **158 Subsection 285(2) of Schedule 1 (note)**

5 Omit “this Schedule”, substitute “this Act”.

6 **159 Section 290 of Schedule 1**

7 Omit “this Schedule”, substitute “this Act”.

8 **160 Paragraphs 293(2)(a), 297(1)(a), 298(1)(a), 299(1)(a),**  
9 **300(1)(a), 301(1)(a), 302(1)(a) and 303(1)(a) of**  
10 **Schedule 1**

11 Omit “this Schedule”, substitute “this Act”.

12 **161 Section 317 of Schedule 1**

13 Omit “the Schedule”, substitute “this Act”.

14 **162 Section 317 of Schedule 1**

15 Omit “this Schedule” (wherever occurring), substitute “this Act”.

16 **163 Subsection 329(1) of Schedule 1**

17 Omit “this Schedule”, substitute “this Act”.

18 **164 Subparagraphs 337A(d)(i) and (ii) of Schedule 1**

19 Omit “this Schedule or this Act”, substitute “this Act or the Fair Work  
20 Act”.

21 **165 Subsection 337F(1) of Schedule 1**

22 Omit “this Schedule”, substitute “this Act”.

23 **166 Sections 337G, 337H and 337J of Schedule 1**

24 Omit “this Schedule”, substitute “this Act”.

25 **167 Subsections 337K(1) and (2) of Schedule 1**

26 Omit “this Schedule”, substitute “this Act”.

27 **168 Paragraph 337K(4)(a) of Schedule 1**

---



1 Omit “this Schedule”, substitute “this Act”.

2 **169 Subsections 339(1), 340(1) and 341(1) of Schedule 1**

3 Omit “this Schedule” (wherever occurring), substitute “this Act”.

4 **170 Section 343 of Schedule 1**

5 Omit “this Schedule”, substitute “this Act”.

6 **171 Subsections 344(1) and (2) of Schedule 1**

7 Omit “this Schedule”, substitute “this Act”.

8 **172 Subsection 344(3) of Schedule 1 (note)**

9 Repeal the note, substitute:

10 Note: Section 6 defines *this Act* to include the regulations.

11 **173 Section 351 of Schedule 1**

12 Omit “this Schedule”, substitute “this Act”.

13 **174 Subsection 352(1) of Schedule 1**

14 Omit “this Schedule”, substitute “this Act”.

15 **175 Section 353 of Schedule 1**

16 Omit “this Schedule” (wherever occurring), substitute “this Act”.

17 **176 Subsection 354(1) of Schedule 1**

18 Omit “this Schedule” (wherever occurring), substitute “this Act”.

19 **177 Section 357 of Schedule 1**

20 Omit “this Schedule”, substitute “this Act”.

21 **178 Paragraphs 358(1)(a) and 359(1)(a) and (b), (2)(a), (b) and**  
22 **(e) of Schedule 1**

23 Omit “this Schedule”, substitute “this Act”.

24 **179 Section 360 of Schedule 1**

25 Omit “this Schedule”, substitute “this Act”.

26 **180 Subsection 362(3) of Schedule 1**

---

1 Omit “this Schedule”, substitute “this Act”.

2 **181 Paragraph 363(2)(b) of Schedule 1**

3 Omit “this Schedule”, substitute “this Act”.

4 **182 Subparagraph 367(9)(d)(i) of Schedule 1**

5 Omit “this Schedule”, substitute “this Act”.

6 **183 Subclause 1(1) of Schedule 10 (definition of *federal***  
7 ***system employer*)**

8 Repeal the definition.

9 **184 Clause 7 of Schedule 10**

10 Omit “of the Registration and Accountability of Organisations  
11 Schedule”, substitute “of this Act”.

12 Note: The heading to clause 7 of Schedule 10 is altered by omitting “**Registration and**  
13 **Accountability of Organisations Schedule**” and substituting “**this Act**”.

1

2 **Part 5—References to the Workplace Relations Act**  
3 **etc.**

4 ***Workplace Relations Act 1996***

5 **185 Subsection 5(2) of Schedule 1**

6 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

7 **186 Subsection 5(4) of Schedule 1 (note)**

8 Omit “Workplace Relations Act” (wherever occurring), substitute “Fair  
9 Work Act”.

10 **187 Section 6 of Schedule 1 (definition of *constitutional trade***  
11 ***or commerce*)**

12 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

13 **188 Section 6 of Schedule 1 (paragraph (c) of the definition of**  
14 ***demarcation dispute*)**

15 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

16 **189 Section 6 of Schedule 1 (definition of *employee*)**

17 Omit “section 4 of the Workplace Relations Act”, substitute “ the Fair  
18 Work Act”.

19 **190 Section 6 of Schedule 1 (definitions of *flight crew officer***  
20 ***and maritime employee*)**

21 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

22 **191 Section 6 of Schedule 1 (note at the end of the definition**  
23 ***of organisation*)**

24 Omit “the Workplace Relations Act”, substitute “the *Workplace*  
25 *Relations Act 1996*”.

26 **192 Section 6 of Schedule 1 (definitions of *public sector***  
27 ***employment and State or Territory industrial law*)**

28 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

---

- 1 **193 Section 6 of Schedule 1 (definitions of *State-registered***  
2 ***association* and *transitionally registered association*)**  
3 Omit “Schedule 10 to the Workplace Relations Act”, substitute  
4 “Schedule 1”.
- 5 **194 Section 6 of Schedule 1 (definitions of *vocational***  
6 ***placement* and *waterside worker*)**  
7 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.
- 8 **195 Paragraphs 19(1)(e) and (i) of Schedule 1**  
9 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.
- 10 **196 Subsection 19(3) of Schedule 1**  
11 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.
- 12 **197 Paragraphs 20(1)(d) and (i) of Schedule 1**  
13 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.
- 14 **198 Subsection 25(1) of Schedule 1 (note)**  
15 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.
- 16 **199 Subsection 26(4) of Schedule 1 (note)**  
17 Omit “the Workplace Relations Act”, substitute “the *Workplace*  
18 *Relations Act 1996*”.
- 19 **200 Paragraph 28(1)(a) of Schedule 1**  
20 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.
- 21 **201 Subparagraph 28(1)(d)(i) of Schedule 1**  
22 Omit “subsection 496(12) of the Workplace Relations Act”, substitute  
23 “subsection 421(3) of the Fair Work Act”.
- 24 **202 Subparagraph 28(1)(d)(ii) of Schedule 1**  
25 Repeal the subparagraph, substitute:  
26 (ii) an order made under the Fair Work Act in relation to a  
27 contravention of Part 3-1 of that Act (which deals with  
28 general protections); or
- 29 **203 Subparagraph 28(1)(d)(iii) of Schedule 1**
-

1 Repeal the subparagraph.

2 **204 Subparagraph 28(1)(d)(iv) of Schedule 1**

3 Omit “section 838 of the Workplace Relations Act”, substitute  
4 “section 545 of the Fair Work Act”.

5 **205 Subparagraph 28(1)(d)(iv) of Schedule 1**

6 Omit “the Workplace Relations Act” (second occurring), substitute “the  
7 Fair Work Act”.

8 **206 Subsection 28(7) of Schedule 1**

9 Repeal the subsection, substitute:

10 (7) A finding of fact in proceedings:

11 (a) under section 23 or subsection 131(2) of this Act; or

12 (b) under Division 4 of Part 3-3 or Part 4-1 of the Fair Work Act;  
13 or

14 (c) under the Fair Work Act in relation to a contravention of  
15 Part 3-1 of that Act;

16 is admissible as prima facie evidence of that fact in an application  
17 made on a ground specified in paragraph (1)(d).

18 **207 Paragraph 29(2)(a) of Schedule 1**

19 Omit “the Workplace Relations Act” (wherever occurring), substitute  
20 “the Fair Work Act”.

21 **208 Subsection 38(5) of Schedule 1**

22 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

23 **209 Paragraphs 38(8)(c), 55(1)(d) and 57(1)(b) of Schedule 1**

24 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

25 **210 Subparagraph 73(2)(c)(i) of Schedule 1**

26 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

27 **211 Paragraph 80(1)(a) of Schedule 1**

28 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

29 **212 Subsection 87(2) of Schedule 1**

---

1 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

2 **213 Paragraph 92(a) of Schedule 1**

3 Omit “the Workplace Relations Act”, substitute “the *Workplace*  
4 *Relations Act 1996*”.

5 **214 Subparagraph 94(1)(a)(i) of Schedule 1**

6 Omit “the Workplace Relations Act”, substitute “the *Workplace*  
7 *Relations Act 1996*”.

8 **215 Paragraph 117(1)(a) of Schedule 1**

9 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

10 **216 Paragraphs 133(1)(a), (b) and (c) and 135(b) of**  
11 **Schedule 1**

12 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

13 **217 Subsection 138A(2) of Schedule 1**

14 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

15 **218 Paragraphs 142(1)(a) and (c) of Schedule 1**

16 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

17 **219 Subparagraph 144(3)(a)(i) of Schedule 1**

18 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

19 **220 Subsection 144(9) of Schedule 1**

20 Omit “Subsection 147(1) of the Workplace Relations Act”, substitute  
21 “Subsection 604(1) of the Fair Work Act”.

22 **221 Subsection 144(9) of Schedule 1 (note)**

23 Omit “Subsection 147(1) of the Workplace Relations Act”, substitute  
24 “Subsection 604(1) of the Fair Work Act”.

25 **222 Subparagraphs 151(5)(a)(i) and (iii) of Schedule 1**

26 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

27 **223 Subsection 151(6) of Schedule 1**

28 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

---

1 **224 Paragraph 152(6)(a) of Schedule 1**

2 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

3 **225 Subsection 158(6) of Schedule 1**

4 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

5 **226 Paragraphs 158(7)(a) and 159(1)(a) of Schedule 1**

6 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

7 **227 Sections 161, 170 and 175 of Schedule 1**

8 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

9 **228 Subsection 180(2) of Schedule 1**

10 Omit “section 147 of the Workplace Relations Act”, substitute  
11 “section 604 of the Fair Work Act”.

12 **229 Subparagraphs 246(2)(b)(i) and 249(5)(b)(i) of Schedule 1**

13 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

14 **230 Subsection 255(5) of Schedule 1**

15 Omit “Section 147 of the Workplace Relations Act”, substitute  
16 “Section 604 of the Fair Work Act”.

17 **231 Section 290 of Schedule 1**

18 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

19 **232 Paragraphs 293(2)(a), 297(1)(a), 298(1)(a), 299(1)(a),**  
20 **300(1)(a), 301(1)(a), 302(1)(a) and 303(1)(a) of**  
21 **Schedule 1**

22 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

23 **233 Section 317 of Schedule 1**

24 Omit “Division 4 of Part 3 of the Workplace Relations Act”, substitute  
25 “Division 3 of Part 5-1 of the Fair Work Act”.

26 **234 Subsections 345(2) and 346(2) of Schedule 1**

27 Omit “Division 4 of Part 9 of the Workplace Relations Act”, substitute  
28 “Division 8 of Part 3-3 of the Fair Work Act”.

1 **235 Section 353 of Schedule 1**

2 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

3 **236 Subsection 362(3) of Schedule 1**

4 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

5 **237 Paragraph 363(2)(b) of Schedule 1**

6 Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

7 **238 Subclause 1(1) of Schedule 10 (definition of *notional***  
8 ***agreement preserving State awards*)**

9 Omit “will be”, substitute “was”.

10 **239 Subclause 1(1) of Schedule 10 (definition of *notional***  
11 ***agreement preserving State awards*)**

12 Omit “this Act”, substitute “the *Workplace Relations Act 1996*”.

13 **240 Subclause 1(1) of Schedule 10 (definition of *preserved***  
14 ***State agreement*)**

15 Omit “will be”, substitute “was”.

16 **241 Subclause 1(1) of Schedule 10 (definition of *preserved***  
17 ***State agreement*)**

18 Omit “this Act”, substitute “the *Workplace Relations Act 1996*”.

19 **242 Subclause 1(2) of Schedule 10**

20 Omit “this Act”, substitute “the *Workplace Relations Act 1996*”.

21 **243 Clause 3 of Schedule 10**

22 Omit “this Act apply, on and after the reform commencement”,  
23 substitute “the Fair Work Act apply, on and after the commencement of  
24 those provisions”.

25 Note: The heading to clause 3 of Schedule 10 is altered by omitting “**this Act**” and  
26 substituting “**the Fair Work Act**”.

27 **244 Subclause 4(1) of Schedule 10**

28 Omit “this Act, on and after the reform commencement”, substitute “the  
29 Fair Work Act, on and after the commencement of provisions of that  
30 Act”.

---



1 **245 Paragraph 5(1)(a) of Schedule 10**

2 Omit “this Act”, substitute “the *Workplace Relations Act 1996*”.

3 **246 Paragraph 5(1)(a) of Schedule 10**

4 After “at that time”, insert “, or has, on or after the commencement of  
5 section 3 of the Fair Work Act, prevented or hindered the achievement  
6 of the object set out in that section”.

7 **247 Subparagraph 5(1)(d)(i) of Schedule 10**

8 After “subsection 496(12)”, insert “of the *Workplace Relations Act*  
9 *1996*”.

10 **248 Subparagraphs 5(1)(d)(ii) and (iii) of Schedule 10**

11 Before “(which”, insert “of that Act”.

12 **249 Subparagraph 5(1)(d)(iv) of Schedule 10**

13 After “section 838”, insert “of that Act”.

14 **250 Subparagraph 5(1)(d)(v) of Schedule 10**

15 Repeal the subparagraph.

16 **251 At the end of subclause 5(1) of Schedule 10**

17 Add:

18 ; or (e) the association, or a substantial number of the members of  
19 the association or of a section or class of members of the  
20 association, has or have failed to comply with an order under  
21 section 23 of this Act (which deals with contraventions of the  
22 employee associations provisions) made on or after the  
23 reform commencement; or

24 (f) the association, or a substantial number of the members of  
25 the association or of a section or class of members of the  
26 association, has or have failed to comply with one of the  
27 following made on or after the commencement of the  
28 relevant provision:

29 (i) an injunction granted under subsection 421(3) of the  
30 Fair Work Act (which deals with orders to stop  
31 industrial action);

- 1 (ii) an order made under the Fair Work Act in relation to a  
2 contravention of Part 3-1 of that Act (which deals with  
3 general protections);  
4 (iii) an interim injunction granted under section 545 of the  
5 Fair Work Act so far as it relates to conduct or proposed  
6 conduct that could be the subject of an injunction or  
7 order under a provision mentioned in subparagraph (i)  
8 or (ii).

9 **252 Subclause 5(4) of Schedule 10**

10 Repeal the subclause, substitute:

11 (4) A finding of fact in proceedings under section 496, 508, 509 or 807  
12 of the *Workplace Relations Act 1996* commenced on or after the  
13 reform commencement is admissible as prima facie evidence of  
14 that fact in an application made on a ground specified in  
15 paragraph (1)(d).

16 (4A) A finding of fact in proceedings under section 23 of this Act is  
17 admissible as prima facie evidence of that fact in an application  
18 made on a ground specified in paragraph (1)(e).

19 (4B) A finding of fact in proceedings:

20 (a) under Division 4 of Part 3-3 or Part 4-1 of the Fair Work Act;  
21 or

22 (b) under the Fair Work Act in relation to a contravention of  
23 Part 3-1 of that Act;

24 is admissible as prima facie evidence of that fact in an application  
25 made on a ground specified in paragraph (1)(f).

1

2 **Part 6—References to the Commission etc.**

3 *Workplace Relations Act 1996*

4 **253 Subsection 5(4) of Schedule 1 (note)**

5 Omit “the Commission”, substitute “FWA”.

6 **254 Section 6 of Schedule 1 (definition of *Full Bench*)**

7 Repeal the definition, substitute:

8 *Full Bench* has the same meaning as in the Fair Work Act.

9 **255 Section 6 of Schedule 1 (definition of *President*)**

10 Omit “the Commission”, substitute “FWA”.

11 **256 Section 17 of Schedule 1**

12 Omit “the Commission”, substitute “FWA”.

13 **257 Subsection 19(1) of Schedule 1**

14 Omit “The Commission”, substitute “FWA”.

15 **258 Paragraph 19(1)(e) of Schedule 1**

16 Omit “the Commission”, substitute “FWA”.

17 **259 Subsections 19(2), (3) and (4) of Schedule 1**

18 Omit “the Commission” (wherever occurring), substitute “FWA”.

19 **260 Subsection 20(1) of Schedule 1**

20 Omit “The Commission”, substitute “FWA”.

21 **261 Paragraphs 20(1)(d) and (g) of Schedule 1**

22 Omit “the Commission”, substitute “FWA”.

23 **262 Subsection 20(1A) of Schedule 1**

24 Omit “the Commission”, substitute “FWA”.

25 **263 Subsection 20(1A) of Schedule 1 (note)**

1 Omit “The Commission”, substitute “FWA”.

2 **264 Subsection 20(2) of Schedule 1**

3 Omit “the Commission”, substitute “FWA”.

4 **265 Paragraph 21(4)(c) of Schedule 1**

5 Omit “the Commission”, substitute “FWA”.

6 **266 Subsection 25(1) of Schedule 1**

7 Omit “The Commission”, substitute “FWA”.

8 **267 Subsections 25(1) and 26(1) of Schedule 1**

9 Omit “the Commission” (wherever occurring), substitute “FWA”.

10 **268 Subparagraphs 28(1)(a)(i) and (ii) of Schedule 1**

11 Omit “the Commission” (wherever occurring), substitute “FWA”.

12 **269 Subsection 30(1) of Schedule 1**

13 Omit “The Commission”, substitute “FWA”.

14 **270 Paragraph 30(1)(b) of Schedule 1**

15 Omit “the Commission”, substitute “FWA”.

16 **271 Paragraph 30(1)(c) of Schedule 1**

17 Omit “the Commission’s”, substitute “FWA’s”.

18 **272 Subparagraph 30(1)(c)(i) of Schedule 1**

19 Omit “the Commission”, substitute “FWA”.

20 **273 Subsection 30(2) of Schedule 1**

21 Omit “the Commission” (wherever occurring), substitute “FWA”.

22 **274 Subsection 30(3) of Schedule 1**

23 Omit “The Commission”, substitute “FWA”.

24 **275 Paragraphs 30(3)(a) and (b) of Schedule 1**

25 Omit “the Commission”, substitute “FWA”.

26 **276 Paragraph 30(4)(c) of Schedule 1**

---

1 Omit “the Commission’s”, substitute “FWA’s”.

2 **277 Paragraph 30(6)(c) of Schedule 1**

3 Omit “the Commission”, substitute “FWA”.

4 **278 Subsection 30(6) of Schedule 1**

5 Omit “The Commission”, substitute “FWA”.

6 **279 Subsection 30(6) of Schedule 1**

7 Omit “the Commission” (last occurring), substitute “FWA”.

8 **280 Paragraphs 32(c) and (d) of Schedule 1**

9 Omit “the Commission” (wherever occurring), substitute “FWA”.

10 **281 Part 4 of Chapter 2 of Schedule 1 (heading)**

11 Repeal the heading, substitute:

12 **Part 4—FWA’s powers under this Chapter**

13 **282 Section 33 of Schedule 1**

14 Omit “the Commission”, substitute “FWA”.

15 Note: The heading to section 33 of Schedule 1 is altered by omitting “**Presidential Member**”  
16 and substituting “**President or a Deputy President**”.

17 **283 Section 33 of Schedule 1**

18 Omit “a Presidential Member”, substitute “the President or a Deputy  
19 President”.

20 **284 Section 34 of Schedule 1**

21 Omit “the Commission”, substitute “FWA”.

22 **285 Subsections 36(2) and (3) of Schedule 1**

23 Omit “the Commission” (wherever occurring), substitute “FWA”.

24 **286 Subparagraph 36(4)(b)(i) of Schedule 1**

25 Omit “or the Rules of the Commission”, substitute “, or the procedural  
26 rules of FWA made under section 609 of the Fair Work Act”.

27 **287 Section 37 of Schedule 1**

---

1 Omit “the Commission”, substitute “FWA”.

2 Note: The heading to section 37 of Schedule 1 is altered by omitting “Commission’s” and  
3 substituting “FWA’s”.

4 **288 Section 37 of Schedule 1**

5 Omit “a Presidential Member”, substitute “the President or a Deputy  
6 President”.

7 **289 Subsection 38(3) of Schedule 1**

8 Omit “the Commission” (wherever occurring), substitute “FWA”.

9 **290 Paragraphs 38(7)(a) and (b) of Schedule 1**

10 Omit “the Commission”, substitute “FWA”.

11 **291 Subsections 43(3) and (4) of Schedule 1**

12 Omit “the Commission” (wherever occurring), substitute “FWA”.

13 **292 Subsection 43(5) of Schedule 1**

14 Omit “The Commission”, substitute “FWA”.

15 **293 Subsection 43(5) of Schedule 1**

16 Omit “the Commission”, substitute “FWA”.

17 **294 Subsection 43(6) of Schedule 1**

18 Omit “The Commission”, substitute “FWA”.

19 **295 Subsection 43(6) of Schedule 1**

20 Omit “the Commission”, substitute “FWA”.

21 **296 Subsection 43(7) of Schedule 1**

22 Omit “the Commission”, substitute “FWA”.

23 **297 Subsection 43(9) of Schedule 1**

24 Omit “The Commission”, substitute “FWA”.

25 **298 Subsections 43(9) and (10) of Schedule 1**

26 Omit “the Commission”, substitute “FWA”.

27 **299 Section 53 of Schedule 1**

---

1 Omit “the Commission”, substitute “FWA”.

2 **300 Subsections 54(3), 55(1), (2), (3), (5), (6), (7) and (8) and**  
3 **56(1) and (2) of Schedule 1**

4 Omit “the Commission” (wherever occurring), substitute “FWA”.

5 Note: The headings to subsections 55(5) and (7) of Schedule 1 are altered by omitting  
6 “*Commission*” and substituting “*FWA*”.

7 **301 Subsection 56(4) of Schedule 1**

8 Omit “The Commission”, substitute “FWA”.

9 **302 Subsections 57(1), (2), (3), (6), (7), (8) and (9) and 58(1) of**  
10 **Schedule 1**

11 Omit “the Commission” (wherever occurring), substitute “FWA”.

12 Note: The headings to subsections 57(6) and (8) of Schedule 1 are altered by omitting  
13 “*Commission*” and substituting “*FWA*”.

14 **303 Paragraphs 58(2)(a) and (b) of Schedule 1**

15 Omit “the Commission”, substitute “FWA”.

16 **304 Subsection 58(4) of Schedule 1**

17 Omit “The Commission”, substitute “FWA”.

18 **305 Section 59 of Schedule 1**

19 Omit “the Commission”, substitute “FWA”.

20 **306 Subsection 60(1) of Schedule 1**

21 Omit “the Commission”, substitute “FWA”.

22 **307 Subsection 60(3) of Schedule 1**

23 Omit “The Commission”, substitute “FWA”.

24 **308 Paragraphs 60(5)(a) and (b) of Schedule 1**

25 Omit “the Commission”, substitute “FWA”.

26 **309 Subsection 60(6) of Schedule 1**

27 Omit “The Commission”, substitute “FWA”.

28 Note: The heading to subsection 60(6) of Schedule 1 is altered by omitting “*Commission*” and  
29 substituting “*FWA*”.

---

1 **310 Subsection 60(7) of Schedule 1**

2 Omit “the Commission”, substitute “FWA”.

3 Note: The heading to subsection 60(7) of Schedule 1 is altered by omitting “*Commission*” and  
4 substituting “*FWA*”.

5 **311 Subsection 61(1) of Schedule 1**

6 Omit “The Commission”, substitute “FWA”.

7 **312 Subsections 61(4) and (5) and 62(1) and (2) of Schedule 1**

8 Omit “the Commission” (wherever occurring), substitute “FWA”.

9 Note: The heading to subsection 61(4) of Schedule 1 is altered by omitting “*Commission*” and  
10 substituting “*FWA*”.

11 **313 Subsection 62(3) of Schedule 1**

12 Omit “The Commission”, substitute “FWA”.

13 **314 Subsection 63(1) of Schedule 1**

14 Omit “the Commission” (wherever occurring), substitute “FWA”.

15 **315 Section 64 of Schedule 1**

16 Omit “the Commission” (wherever occurring), substitute “FWA”.

17 **316 Subsection 65(1) of Schedule 1**

18 Omit “the Commission”, substitute “FWA”.

19 **317 Paragraphs 65(9)(a) and (b) of Schedule 1**

20 Omit “the Commission”, substitute “FWA”.

21 **318 Subsections 67(2) and 73(2) of Schedule 1**

22 Omit “the Commission” (wherever occurring), substitute “FWA”.

23 **319 Paragraph 73(3)(c) of Schedule 1**

24 Omit “the Commission”, substitute “FWA”.

25 **320 Subsection 73(4) of Schedule 1**

26 Omit “the Commission” (wherever occurring), substitute “FWA”.

27 **321 Sections 75 and 79 of Schedule 1**

---



1 Omit “the Commission”, substitute “FWA”.

2 **322 Subsection 94(1) of Schedule 1**

3 Omit “the Commission”, substitute “FWA”.

4 Note: The heading to section 94 of Schedule 1 is altered by omitting “**the Commission**” and  
5 substituting “FWA”.

6 **323 Paragraph 94(2)(a) of Schedule 1**

7 Omit “the Commission”, substitute “FWA”.

8 **324 Subsections 95(2) and (4) and 96(1) of Schedule 1**

9 Omit “the Commission” (wherever occurring), substitute “FWA”.

10 **325 Paragraph 96(2)(b) of Schedule 1**

11 Omit “the Commission”, substitute “FWA”.

12 **326 Subsection 96(3) of Schedule 1**

13 Omit “The Commission”, substitute “FWA”.

14 **327 Subsection 97(1) of Schedule 1**

15 Omit “the Commission”, substitute “FWA”.

16 **328 Paragraphs 97(2)(a) and (b) of Schedule 1**

17 Omit “the Commission”, substitute “FWA”.

18 **329 Subsection 97(3) of Schedule 1**

19 Omit “The Commission”, substitute “FWA”.

20 **330 Subsection 98(1) of Schedule 1**

21 Omit “the Commission”, substitute “FWA”.

22 **331 Subsection 98(2) of Schedule 1**

23 Omit “The Commission”, substitute “FWA”.

24 **332 Subsection 98(2) of Schedule 1**

25 Omit “the Commission”, substitute “FWA”.

26 **333 Subsection 100(1) of Schedule 1**

1 Omit “The Commission”, substitute “FWA”.

2 **334 Subsections 100(1), (2) and (3) and 108(1), (2) and (3) of**  
3 **Schedule 1**

4 Omit “the Commission” (wherever occurring), substitute “FWA”.

5 **335 Section 108A of Schedule 1**

6 Omit “the Commission”, substitute “FWA”.

7 Note: The heading to section 108A of Schedule 1 is altered by omitting “the Commission”  
8 and substituting “FWA”.

9 **336 Subsection 113(1) of Schedule 1**

10 Omit “the Commission”, substitute “FWA”.

11 Note: The heading to section 113 of Schedule 1 is altered by omitting “the Commission” and  
12 substituting “FWA”.

13 **337 Subsection 133(1) of Schedule 1**

14 Omit “the Commission”, substitute “FWA”.

15 **338 Subsection 133(2) of Schedule 1**

16 Omit “The Commission”, substitute “FWA”.

17 **339 Section 134 of Schedule 1**

18 Omit “The Commission”, substitute “FWA”.

19 **340 Sections 134, 135 and 138 of Schedule 1**

20 Omit “the Commission” (wherever occurring), substitute “FWA”.

21 Note 1: The heading to section 135 of Schedule 1 is altered by omitting “Commission” and  
22 substituting “FWA”.

23 Note 2: The heading to section 138 of Schedule 1 is altered by omitting “Commission’s” and  
24 substituting “FWA’s”.

25 **341 Subsection 138A(2) of Schedule 1**

26 Omit “the Commission”, substitute “FWA”.

27 **342 Subparagraphs 141(1)(b)(vi) and 142(1)(b)(i) and (ii) of**  
28 **Schedule 1**

29 Omit “the Commission”, substitute “FWA”.

1 **343 Subsection 151(4) of Schedule 1**

2 Omit “the Commission”, substitute “FWA”.

3 **344 Subsection 151(5) of Schedule 1**

4 Omit “The Commission”, substitute “FWA”.

5 **345 Subsections 151(5), (8) and (9) and 152(5) of Schedule 1**

6 Omit “the Commission” (wherever occurring), substitute “FWA”.

7 **346 Subsection 152(6) of Schedule 1**

8 Omit “The Commission”, substitute “FWA”.

9 **347 Subsection 152(6) of Schedule 1**

10 Omit “the Commission”, substitute “FWA”.

11 **348 Section 155 of Schedule 1**

12 Omit “the Commission”, substitute “FWA”.

13 Note: The heading to section 155 of Schedule 1 is altered by omitting “**Commission’s**” and  
14 substituting “**FWA’s**”.

15 **349 Section 155 of Schedule 1**

16 Omit “a Presidential Member”, substitute “the President or a Deputy  
17 President”.

18 **350 Subsection 157(1) of Schedule 1**

19 Omit “the Commission”, substitute “FWA”.

20 Note: The heading to section 157 of Schedule 1 is altered by omitting “**Commission**” and  
21 substituting “**FWA**”.

22 **351 Subsection 157(1) of Schedule 1**

23 Omit “the Commission’s”, substitute “FWA’s”.

24 **352 Subsection 157(2) of Schedule 1**

25 Omit “The Commission”, substitute “FWA”.

26 **353 Subsection 158(1) of Schedule 1**

27 Omit “the Commission”, substitute “FWA”.

28 **354 Subsection 158(2) of Schedule 1**

---

1 Omit “The Commission”, substitute “FWA”.

2 **355 Subsection 158(2) of Schedule 1**

3 Omit “the Commission”, substitute “FWA”.

4 **356 Subsection 158(3) of Schedule 1**

5 Omit “The Commission”, substitute “FWA”.

6 **357 Subsection 158(3) of Schedule 1**

7 Omit “the Commission”, substitute “FWA”.

8 **358 Subsection 158(4) of Schedule 1**

9 Omit “The Commission”, substitute “FWA”.

10 **359 Subsection 158(4) of Schedule 1**

11 Omit “the Commission”, substitute “FWA”.

12 **360 Subsections 158(6) and (7) of Schedule 1**

13 Omit “The Commission”, substitute “FWA”.

14 **361 Paragraph 158(7)(a) of Schedule 1**

15 Omit “the Commission”, substitute “FWA”.

16 **362 Subsections 158(8) and (9) of Schedule 1**

17 Omit “the Commission”, substitute “FWA”.

18 **363 Paragraph 158(10)(a) of Schedule 1**

19 Omit “the Commission”, substitute “FWA”.

20 **364 Section 162 of Schedule 1**

21 Omit “the Commission”, substitute “FWA”.

22 Note: The heading to section 162 of Schedule 1 is altered by omitting “**Commission**” and  
23 substituting “**FWA**”.

24 **365 Section 162 of Schedule 1**

25 Omit “a Presidential Member”, substitute “the President or a Deputy  
26 President”.

1 **366 Subsection 163(12) of Schedule 1 (paragraph (a) of the**  
2 **definition of *appropriate authority*)**

3 Omit “a Presidential Member of the Commission”, substitute “the  
4 President or a Deputy President”.

5 **367 Subsections 166(1) and (4), 180(2) and 273(1) of**  
6 **Schedule 1**

7 Omit “the Commission”, substitute “FWA”.

8 **368 Subsections 273(2) and (3) of Schedule 1**

9 Omit “The Commission”, substitute “FWA”.

10 **369 Subsections 273(4) and 274(2) of Schedule 1**

11 Omit “the Commission” (wherever occurring), substitute “FWA”.

12 **370 Section 275 of Schedule 1**

13 Omit “the Commission” (wherever occurring), substitute “FWA”.

14 **371 Subsection 278(2) of Schedule 1**

15 Omit “the Commission” (wherever occurring), substitute “FWA”.

16 Note: The heading to section 278 of Schedule 1 is altered by omitting “**Commission**” and  
17 substituting “FWA”.

18 **372 Section 279 of Schedule 1**

19 Omit “the Commission”, substitute “FWA”.

20 Note: The heading to section 279 of Schedule 1 is altered by omitting “**Commission**” and  
21 substituting “FWA”.

22 **373 Section 279 of Schedule 1**

23 Omit “a Presidential Member”, substitute “the President or a Deputy  
24 President”.

25 **374 Sections 281 and 294 of Schedule 1**

26 Omit “the Commission”, substitute “FWA”.

27 **375 Paragraphs 297(1)(a), 298(1)(a), 299(1)(a), 300(1)(a),**  
28 **301(1)(a), 302(1)(a), 303(1)(a) and 303A(1)(a) of**  
29 **Schedule 1**

30 Omit “the Commission”, substitute “FWA”.

---

1 **376 Section 317 of Schedule 1**

2 Omit “the Commission”, substitute “FWA”.

3 **377 Part 4B of Chapter 11 of Schedule 1 (heading)**

4 Repeal the heading, substitute:

5 **Part 4B—Functions and powers of FWA**

6 **378 Subsection 337F(1) of Schedule 1**

7 Omit “the Commission”, substitute “FWA”.

8 **379 Subsection 337F(2) of Schedule 1 (paragraph (c) of the**  
9 **definition of *prescribed premises*)**

10 Omit “the Commission”, substitute “FWA”.

11 **380 Section 337G of Schedule 1**

12 Omit “The Commission”, substitute “FWA”.

13 **381 Sections 337H and 337J of Schedule 1**

14 Omit “the Commission” (wherever occurring), substitute “FWA”.

15 **382 Subsection 337K(1) of Schedule 1**

16 Omit “the Commission” (wherever occurring), substitute “FWA”.

17 **383 Subsection 337K(2) of Schedule 1**

18 Omit “The Commission”, substitute “FWA”.

19 **384 Subparagraphs 340(1)(b)(i) and (ii) of Schedule 1**

20 Omit “a Presidential Member”, substitute “the President or a Deputy  
21 President”.

22 **385 Section 353 of Schedule 1**

23 Omit “the Rules of the Commission”, substitute “the procedural rules of  
24 FWA made under section 609 of the Fair Work Act”.

25 **386 Section 355 of Schedule 1**

26 Omit “the Commission” (wherever occurring), substitute “FWA”.

1 **387 Subsection 356(1) of Schedule 1**

2 Omit “the Commission”, substitute “FWA”.

3 **388 Subsections 356(2), (3), (4) and (5) of Schedule 1**

4 Omit “Commission”, substitute “FWA”.

5 **389 Paragraph 359(2)(e) of Schedule 1**

6 Omit “the Commission”, substitute “FWA”.

7 **390 Subsection 362(3) of Schedule 1**

8 Omit “The Commission”, substitute “FWA”.

9 **391 Subsection 363(1) of Schedule 1**

10 Omit “the Commission”, substitute “FWA”.

11 Note: The heading to section 363 of Schedule 1 is altered by omitting “**Commission**” and  
12 substituting “FWA”.

13 **392 Subsection 363(2) of Schedule 1**

14 Omit “The Commission”, substitute “FWA”.

15 **393 Subsections 363(3) and 367(2) of Schedule 1**

16 Omit “the Commission”, substitute “FWA”.

17 **394 Subsection 367(5) of Schedule 1**

18 Omit “The Commission”, substitute “FWA”.

19 **395 Subsections 367(8) and (9) of Schedule 1**

20 Omit “the Commission” (wherever occurring), substitute “FWA”.

21 **396 Subsection 367(10) of Schedule 1**

22 Omit “The Commission”, substitute “FWA”.

23 **397 Subsection 367(10) of Schedule 1**

24 Omit “the Commission”, substitute “FWA”.

25 **398 Division 5 of Part 7 of Chapter 11 of Schedule 1 (heading)**

26 Repeal the heading, substitute:

1 **Division 5—Exercise of FWA’s powers**

2 **399 Section 368 of Schedule 1**

3 Omit “the Commission”, substitute “FWA”.

4 Note: The heading to section 368 of Schedule 1 is altered by omitting “**Commission’s**” and  
5 substituting “**FWA’s**”.

6 **400 Section 368 of Schedule 1**

7 Omit “a Presidential Member”, substitute “the President or a Deputy  
8 President”.

9 **401 Subclauses 4(1) and (2) of Schedule 10**

10 Omit “the Commission”, substitute “FWA”.

11 **402 Subparagraphs 5(1)(a)(i) and (ii) of Schedule 10**

12 Omit “the Commission” (wherever occurring), substitute “FWA”.

13 **403 Subclause 5(5) of Schedule 10**

14 Omit “The Commission”, substitute “FWA”.

15 Note: The heading to subclause 5(5) of Schedule 10 is altered by omitting “*Commission*” and  
16 substituting “*FWA*”.

17 **404 Paragraph 5(5)(b) of Schedule 10**

18 Omit “the Commission”, substitute “FWA”.



1

2 **Part 7—References to the Registrar etc.**

3 *Fair Work Act 2009*

4 **405 At the end of section 576**

5 Add:

6 Note: Section 13 of the *Fair Work (Registered Organisations) Act 2009*  
7 confers additional functions on FWA.

8 *Workplace Relations Act 1996*

9 **406 Subsection 5(4) of Schedule 1 (note)**

10 Omit “Registrars”, substitute “the General Manager”.

11 **407 Subsection 13(1) of Schedule 1**

12 Omit “the Industrial Registry”, substitute “FWA”.

13 Note: The heading to section 13 of Schedule 1 is altered by omitting “**the Industrial**  
14 **Registry**” and substituting “FWA”.

15 **408 Subsection 13(1) of Schedule 1 (note)**

16 Repeal the note, substitute:

17 Note: Other functions of FWA are set out in section 576 of the Fair Work  
18 Act.

19 **409 Subsections 13(2), 26(1), (2), (4) and (6), 28(1A) of**  
20 **Schedule 1**

21 Omit “Industrial Registrar”, substitute “General Manager”.

22 **410 Subsection 28(1A) of Schedule 1 (note)**

23 Omit “a Registrar”, substitute “the General Manager”.

24 **411 Section 31 of Schedule 1**

25 Omit “Industrial Registrar”, substitute “General Manager”.

26 **412 Subsection 38(1) of Schedule 1**

27 Omit “in the Industrial Registry”, substitute “with FWA”.

- 1       **413 Subsection 38(4) of Schedule 1**  
2             Omit “Industrial Registrar”, substitute “General Manager”.
- 3       **414 Subsections 43(1), 44(1), 46(1) and 47(1) of Schedule 1**  
4             Omit “in the Industrial Registry”, substitute “with FWA”.
- 5       **415 Subsection 50(1) of Schedule 1**  
6             Omit “Industrial Registrar”, substitute “General Manager”.
- 7       **416 Paragraph 52(2)(b) of Schedule 1**  
8             Omit “in the Industrial Registry”, substitute “with FWA”.
- 9       **417 Subsections 60(2) and (5) and 67(1) of Schedule 1**  
10            Omit “in the Industrial Registry”, substitute “with FWA”.
- 11       **418 Paragraphs 68(1)(b) and 73(3)(a) of Schedule 1**  
12            Omit “Industrial Registrar”, substitute “General Manager”.
- 13       **419 Subsection 77(2) of Schedule 1**  
14            Omit “Industrial Registrar”, substitute “General Manager”.
- 15       **420 Subsections 95(3A), (3B) and (3C) and 99(1) of**  
16            **Schedule 1**  
17            Omit “Industrial Registrar” (wherever occurring), substitute “General  
18            Manager”.
- 19       **421 Paragraph 104(2)(b) of Schedule 1**  
20            Omit “in the Industrial Registry”, substitute “with FWA”.
- 21       **422 Paragraphs 106(2)(b) and 107(1)(b) of Schedule 1**  
22            Omit “Industrial Registrar”, substitute “General Manager”.
- 23       **423 Section 110 of Schedule 1**  
24            Omit “Industrial Registrar”, substitute “General Manager”.
- 25       **424 Subsection 111(2) of Schedule 1**  
26            Omit “a Registrar”, substitute “the General Manager”.
-

- 1 **425 Subsection 114(2) of Schedule 1**  
2 Omit “Industrial Registrar”, substitute “General Manager”.
- 3 **426 Subsection 144(2) of Schedule 1**  
4 Omit “in the Industrial Registry”, substitute “with FWA”.
- 5 **427 Subsections 144(3), (4), (6) and (7) of Schedule 1**  
6 Omit “Industrial Registrar” (wherever occurring), substitute “General  
7 Manager”.
- 8 **428 Subsection 144(7) of Schedule 1**  
9 Omit “Industrial Registrar’s”, substitute “General Manager’s”.
- 10 **429 Subsection 144(9) of Schedule 1**  
11 Omit “Industrial Registrar”, substitute “General Manager”.
- 12 **430 Subsection 144(9) of Schedule 1 (note)**  
13 Omit “Industrial Registrar”, substitute “General Manager”.
- 14 **431 Subsection 151(2) of Schedule 1**  
15 Omit “in the Industrial Registry”, substitute “with FWA”.
- 16 **432 Subsections 151(3), (4), (5) and (10) of Schedule 1**  
17 Omit “Industrial Registrar”, substitute “General Manager”.
- 18 **433 Paragraph 151(11)(a) of Schedule 1**  
19 Omit “in the Industrial Registry”, substitute “with FWA”.
- 20 **434 Paragraph 151(11)(b) of Schedule 1**  
21 Omit “Industrial Registrar”, substitute “General Manager”.
- 22 **435 Subsection 152(3) of Schedule 1**  
23 Omit “in the Industrial Registry”, substitute “with FWA”.
- 24 **436 Subsections 152(4), (5) and (6) and 154(4) of Schedule 1**  
25 Omit “Industrial Registrar”, substitute “General Manager”.
- 26 **437 Subsection 156(1) of Schedule 1**
-

1 Omit “Industrial Registrar’s” (wherever occurring), substitute “General  
2 Manager’s”.

3 Note: The heading to section 156 of Schedule 1 is altered by omitting “Industrial Registrar”  
4 and substituting “General Manager”.

5 **438 Subsection 156(1) of Schedule 1**

6 Omit “Industrial Registrar”, substitute “General Manager”.

7 **439 Subsection 159(1) of Schedule 1**

8 Omit “in the Industrial Registry and a Registrar”, substitute “with FWA  
9 and the General Manager”.

10 **440 Subsection 159(2) of Schedule 1**

11 Omit “in the Industrial Registry, a Registrar”, substitute “with FWA,  
12 the General Manager”.

13 **441 Paragraph 159(4)(b) of Schedule 1**

14 Omit “Industrial Registrar”, substitute “General Manager”.

15 **442 Section 160 of Schedule 1**

16 Omit “Industrial Registrar” (wherever occurring), substitute “General  
17 Manager”.

18 **443 Section 161 of Schedule 1**

19 Omit “a Registrar”, substitute “the General Manager”.

20 **444 Subsection 163(12) of Schedule 1 (paragraph (b) of the  
21 definition of *appropriate authority*)**

22 Omit “Industrial Registrar”, substitute “General Manager”.

23 **445 Paragraph 180(1)(a) of Schedule 1**

24 Omit “a Registrar”, substitute “the General Manager”.

25 **446 Subsection 180(1) of Schedule 1**

26 Omit “the Registrar” (wherever occurring), substitute “the General  
27 Manager”.

28 **447 Subsections 180(2) and (3) of Schedule 1**

29 Omit “a Registrar”, substitute “the General Manager”.

---

1 **448 Subsection 180(3) of Schedule 1**

2 Omit “the Registrar”, substitute “the General Manager”.

3 **449 Paragraph 180(4)(a) of Schedule 1**

4 Omit “a Registrar”, substitute “the General Manager”.

5 **450 Subsection 180(4) of Schedule 1**

6 Omit “the Registrar” (wherever occurring), substitute “the General  
7 Manager”.

8 **451 Subsection 180(6) of Schedule 1 (definition of**  
9 ***appropriate organisation*)**

10 Omit “the Registrar”, substitute “the General Manager”.

11 **452 Subsection 183(1) of Schedule 1**

12 Omit “in the Industrial Registry”, substitute “with FWA”.

13 **453 Subsection 183(4) of Schedule 1**

14 Omit “Industrial Registrar”, substitute “General Manager”.

15 **454 Subsection 184(2) of Schedule 1**

16 Omit “Industrial Registrar or, if the Industrial Registrar directs, another  
17 Registrar”, substitute “General Manager”.

18 **455 Subsection 186(1) of Schedule 1**

19 Omit “a Registrar”, substitute “the General Manager”.

20 Note: The heading to section 186 of Schedule 1 is altered by omitting “**Registrar**” and  
21 substituting “**General Manager**”.

22 **456 Subsection 186(1) of Schedule 1**

23 Omit “the Registrar”, substitute “the General Manager”.

24 **457 Subsection 186(2) of Schedule 1**

25 Omit “A Registrar”, substitute “The General Manager”.

26 **458 Paragraph 186(2)(b) of Schedule 1**

27 Omit “the Registrar”, substitute “the General Manager”.

28 **459 Subsections 187(3) and 189(1) of Schedule 1**

---

1 Omit “in the Industrial Registry”, substitute “with FWA”.

2 Note: The heading to section 189 of Schedule 1 is altered by omitting “Registrar” and  
3 substituting “General Manager”.

4 **460 Subsection 189(2) of Schedule 1**

5 Omit “a Registrar”, substitute “the General Manager”.

6 **461 Paragraph 189(3)(a) of Schedule 1**

7 Omit “in the Industrial Registry”, substitute “with FWA”.

8 **462 Subsection 189(3) of Schedule 1**

9 Omit “a Registrar” (wherever occurring), substitute “the General  
10 Manager”.

11 **463 Paragraph 192(2)(b) of Schedule 1**

12 Omit “in the Industrial Registry”, substitute “with FWA”.

13 **464 Paragraph 197(1)(a) of Schedule 1**

14 Omit “Industrial Registrar”, substitute “General Manager”.

15 **465 Subparagraph 198(6)(b)(i) of Schedule 1**

16 Omit “in the Industrial Registry”, substitute “with FWA”.

17 **466 Subsection 202(1) of Schedule 1**

18 Omit “Industrial Registrar to arrange, for the purposes of the inquiry,  
19 for a designated Registry official”, substitute “General Manager”.

20 Note: The heading to section 202 of Schedule 1 is altered by omitting “Industrial Registrar”  
21 and substituting “General Manager”.

22 **467 Subsection 202(2) of Schedule 1**

23 Omit “a Registry official is designated by the Industrial Registrar for  
24 the purposes of subsection (1), the actions that the official may take are  
25 as follows”, substitute “the General Manager is authorised for the  
26 purposes of subsection (1), he or she may take the following actions”.

27 **468 Paragraph 202(5)(b) of Schedule 1**

28 Omit “Industrial Registrar”, substitute “General Manager”.

29 **469 Subsection 203(1) of Schedule 1**

---

- 1 Omit “Industrial Registrar”, substitute “General Manager”.
- 2 Note: The heading to section 203 of Schedule 1 is replaced by the heading “**Identity cards**”.
- 3 **470 Subsection 203(1) of Schedule 1**
- 4 Omit “designated Registry official”, substitute “member of the staff of
- 5 FWA (an *official*) to whom powers of the General Manager under
- 6 section 202 have been delegated under section 343A”.
- 7 **471 Subsection 203(3) of Schedule 1**
- 8 Omit “A designated Registry official”, substitute “The official”.
- 9 **472 Paragraph 203(6)(b) of Schedule 1**
- 10 Omit “Registry official”, substitute “member of the staff of FWA to
- 11 whom powers of the General Manager under section 202 have been
- 12 delegated under section 343A”.
- 13 **473 Paragraphs 203(6)(c) and 206(4)(c) of Schedule 1**
- 14 Omit “Industrial Registrar”, substitute “General Manager”.
- 15 **474 Section 207 of Schedule 1**
- 16 Omit “Industrial Registrar”, substitute “General Manager”.
- 17 Note: The heading to section 207 of Schedule 1 is altered by omitting “**Industrial Registrar**”
- 18 and substituting “**General Manager**”.
- 19 **475 Subsection 215(5) of Schedule 1**
- 20 Omit “Industrial Registrar”, substitute “General Manager”.
- 21 **476 Section 229 of Schedule 1**
- 22 Omit “Industrial Registrar” (wherever occurring), substitute “General
- 23 Manager”.
- 24 **477 Subsections 233(1) and (2) of Schedule 1**
- 25 Omit “in the Industrial Registry”, substitute “with FWA”.
- 26 Note: The heading to section 233 of Schedule 1 is altered by omitting “**in Industrial**
- 27 **Registry**” and substituting “**with FWA**”.
- 28 **478 Subsection 234(3) of Schedule 1**
- 29 Omit “a Registrar”, substitute “the General Manager”.
-

1 **479 Subsection 234(4) of Schedule 1**

2 Omit “A Registrar”, substitute “The General Manager”.

3 **480 Subsection 234(4) of Schedule 1**

4 Omit “the Registrar”, substitute “the General Manager”.

5 **481 Subsection 235(1) of Schedule 1**

6 Omit “a Registrar”, substitute “the General Manager”.

7 Note: The heading to section 235 of Schedule 1 is altered by omitting “Registrar” and  
8 substituting “General Manager”.

9 **482 Subsection 235(1) of Schedule 1**

10 Omit “the Registrar”, substitute “the General Manager”.

11 **483 Paragraph 236(1)(a) of Schedule 1**

12 Omit “a Registrar”, substitute “the General Manager”.

13 Note: The heading to section 236 of Schedule 1 is altered by omitting “Registrar” and  
14 substituting “General Manager”.

15 **484 Subsection 236(1) of Schedule 1**

16 Omit “the Registrar” (wherever occurring), substitute “the General  
17 Manager”.

18 **485 Paragraph 236(2)(a) of Schedule 1**

19 Omit “a Registrar”, substitute “the General Manager”.

20 **486 Subsections 236(2), (3) and (4) of Schedule 1**

21 Omit “the Registrar” (wherever occurring), substitute “the General  
22 Manager”.

23 **487 Subsection 236(5) of Schedule 1**

24 Omit “a Registrar”, substitute “the General Manager”.

25 **488 Subsections 236(5) and 237(1) of Schedule 1**

26 Omit “the Registrar” (wherever occurring), substitute “the General  
27 Manager”.

28 **489 Subsections 237(1), (2) and (4) of Schedule 1**

29 Omit “in the Industrial Registry”, substitute “with FWA”.

---



1 **490 Subsection 237(4) of Schedule 1**

2 Omit “at any registry”.

3 **491 Subsection 241(1) of Schedule 1**

4 Omit “Industrial Registrar”, substitute “General Manager”.

5 **492 Subsection 241(2) of Schedule 1**

6 Omit “Registrar”, substitute “General Manager”.

7 **493 Subsections 242(3) and 245(1) of Schedule 1**

8 Omit “Industrial Registrar”, substitute “General Manager”.

9 **494 Subsection 245(2) of Schedule 1**

10 Omit “Registrar”, substitute “General Manager”.

11 **495 Paragraph 246(1)(b) of Schedule 1**

12 Omit “Industrial Registrar”, substitute “General Manager”.

13 **496 Subsection 246(2) of Schedule 1**

14 Omit “Industrial Registrar”, substitute “General Manager”.

15 **497 Subsection 246(2) of Schedule 1**

16 Omit “the Registrar”, substitute “the General Manager”.

17 **498 Subsection 247(1) of Schedule 1**

18 Omit “Industrial Registrar”, substitute “General Manager”.

19 Note: The heading to section 247 of Schedule 1 is altered by omitting “**Industrial Registrar**”  
20 and substituting “**General Manager**”.

21 **499 Subsection 247(1) of Schedule 1**

22 Omit “the Registrar”, substitute “the General Manager”.

23 **500 Subsection 247(2) of Schedule 1**

24 Omit “Industrial Registrar’s” (wherever occurring), substitute “General  
25 Manager’s”.

26 **501 Subsections 247(2) and 249(1) of Schedule 1**

27 Omit “Industrial Registrar”, substitute “General Manager”.

---

1 **502 Subsection 249(3) of Schedule 1**

2 Omit “Registrar”, substitute “General Manager”.

3 **503 Paragraph 249(4)(b) of Schedule 1**

4 Omit “Industrial Registrar”, substitute “General Manager”.

5 **504 Subsection 249(5) of Schedule 1**

6 Omit “Industrial Registrar”, substitute “General Manager”.

7 **505 Subsection 249(5) of Schedule 1**

8 Omit “the Registrar”, substitute “the General Manager”.

9 **506 Subsection 249(6) of Schedule 1**

10 Omit “Industrial Registrar”, substitute “General Manager”.

11 **507 Subsection 249(6) of Schedule 1**

12 Omit “the Registrar”, substitute “the General Manager”.

13 **508 Paragraph 249(7)(a) of Schedule 1**

14 Omit “Industrial Registrar”, substitute “General Manager”.

15 **509 Subsection 249(7) of Schedule 1**

16 Omit “Registrar’s” (wherever occurring), substitute “General  
17 Manager’s”.

18 **510 Subsection 249(7) of Schedule 1**

19 Omit “the Registrar”, substitute “the General Manager”.

20 **511 Subsections 255(1) and (4) and 257(11) of Schedule 1**

21 Omit “Industrial Registrar”, substitute “General Manager”.

22 **512 Subsection 261(2) of Schedule 1**

23 Omit “with the Industrial Registry”, substitute “with FWA”.

24 **513 Subsection 265(5) of Schedule 1**

25 Omit “A Registrar”, substitute “The General Manager”.

26 **514 Subsection 266(1) of Schedule 1**

---

1 Omit “a Registrar”, substitute “the General Manager”.

2 **515 Section 268 of Schedule 1**

3 Omit “a Registrar”, substitute “the General Manager”.

4 Note: The heading to section 268 of Schedule 1 is altered by omitting “**in Industrial**  
5 **Registry**” and substituting “**with FWA**”.

6 **516 Section 268 of Schedule 1**

7 Omit “in the Industrial Registry”, substitute “with FWA”.

8 **517 Paragraph 269(2)(a) of Schedule 1**

9 Omit “a Registrar”, substitute “the General Manager”.

10 **518 Paragraph 269(2)(c) of Schedule 1**

11 Omit “with the Industrial Registry”, substitute “with FWA”.

12 **519 Subsection 270(1) of Schedule 1**

13 Omit “a Registrar”, substitute “the General Manager”.

14 **520 Subsection 270(1) of Schedule 1**

15 Omit “the Registrar” (wherever occurring), substitute “the General  
16 Manager”.

17 **521 Paragraph 270(3)(c) of Schedule 1**

18 Omit “in the Industrial Registry”, substitute “with FWA”.

19 **522 Paragraph 270(3)(c) of Schedule 1**

20 Omit “with the Industrial Registry”, substitute “with FWA”.

21 **523 Subsection 270(7) of Schedule 1**

22 Omit “a Registrar”, substitute “the General Manager”.

23 **524 Subsection 270(7) of Schedule 1**

24 Omit “the Registrar”, substitute “the General Manager”.

25 **525 Subsection 271(1) of Schedule 1**

26 Omit “a Registrar”, substitute “the General Manager”.

27 **526 Subsection 271(1) of Schedule 1**

---

1 Omit “the Registrar”, substitute “the General Manager”.

2 **527 Subsection 271(3) of Schedule 1**

3 Omit “a Registrar”, substitute “the General Manager”.

4 **528 Subsection 271(3) of Schedule 1**

5 Omit “the Registrar”, substitute “the General Manager”.

6 **529 Subsection 272(1) of Schedule 1**

7 Omit “a Registrar”, substitute “the General Manager”.

8 Note: The heading to section 272 of Schedule 1 is altered by omitting “Registrar” and  
9 substituting “General Manager”.

10 **530 Subsection 272(4) of Schedule 1**

11 Omit “A Registrar”, substitute “The General Manager”.

12 **531 Subsection 272(4) of Schedule 1**

13 Omit “the Registrar”, substitute “the General Manager”.

14 **532 Paragraph 276(1)(a) of Schedule 1**

15 Omit “Registry official”, substitute “member of the staff of FWA”.

16 **533 Subsections 278(1) and (2) of Schedule 1**

17 Omit “the Industrial Registry” (wherever occurring), substitute “FWA”.

18 **534 Subsection 278(2) of Schedule 1**

19 Omit “Industrial Registrar”, substitute “General Manager”.

20 **535 Paragraph 305(2)(q) of Schedule 1**

21 Omit “in Registry”, substitute “with FWA”.

22 **536 Subsection 310(1) of Schedule 1**

23 Omit “Industrial Registrar” (wherever occurring), substitute “General  
24 Manager”.

25 Note: The heading to subsection 310(1) of Schedule 1 is altered by omitting “Industrial  
26 Registrar” and substituting “General Manager”.

27 **537 Section 317 of Schedule 1**

28 Omit “a Registrar”, substitute “the General Manager”.

---

1 **538 Section 317 of Schedule 1**

2 Omit “The Registrar”, substitute “The General Manager”.

3 **539 Subsections 330(1) and (2) of Schedule 1**

4 Omit “A Registrar, or another Registry official on behalf of a  
5 Registrar,”, substitute “The General Manager”.

6 Note: The heading to section 330 of Schedule 1 is altered by omitting “**Registrar or staff**”  
7 and substituting “**General Manager**”.

8 **540 Subsection 331(1) of Schedule 1**

9 Omit “a Registrar”, substitute “the General Manager”.

10 Note: The heading to section 331 of Schedule 1 is altered by omitting “**Registrar**” and  
11 substituting “**General Manager**”.

12 **541 Subsection 331(1) of Schedule 1**

13 Omit “the Registrar”, substitute “the General Manager”.

14 **542 Subsection 331(2) of Schedule 1**

15 Omit “a Registrar”, substitute “the General Manager”.

16 **543 Subsection 331(2) of Schedule 1**

17 Omit “the Registrar”, substitute “the General Manager”.

18 **544 Subsection 331(3) of Schedule 1**

19 Omit “A Registrar”, substitute “The General Manager”.

20 **545 Subsection 331(4) of Schedule 1**

21 Omit “a Registrar”, substitute “the General Manager”.

22 **546 Subsection 331(4) of Schedule 1**

23 Omit “the Registrar”, substitute “the General Manager”.

24 **547 Subsection 332(1) of Schedule 1**

25 Omit “a Registrar”, substitute “the General Manager”.

26 **548 Paragraph 332(1)(a) of Schedule 1**

27 Omit “in the Industrial Registry”, substitute “with FWA”.

28 **549 Paragraph 332(1)(b) of Schedule 1**

---

1 Omit “the Registrar”, substitute “the General Manager”.

2 **550 Subsection 332(2) of Schedule 1**

3 Omit “Registrar” (wherever occurring), substitute “General Manager”.

4 **551 Subsection 332(3) of Schedule 1**

5 Omit “a Registrar”, substitute “the General Manager”.

6 **552 Subsection 332(3) of Schedule 1**

7 Omit “the Registrar”, substitute “the General Manager”.

8 **553 Subsection 333(1) of Schedule 1**

9 Omit “in the Industrial Registry”, substitute “with FWA”.

10 **554 Subsections 333(1) and (2) of Schedule 1**

11 Omit “a Registrar”, substitute “the General Manager”.

12 **555 Subsection 333(2) of Schedule 1**

13 Omit “The Registrar”, substitute “The General Manager”.

14 **556 Subsection 333(3) of Schedule 1**

15 Omit “Registrar” (wherever occurring), substitute “General Manager”.

16 **557 Section 334 of Schedule 1**

17 Repeal the section, substitute:

18 **334 Investigations arising from referral under section 278**

19 If a matter is referred to the General Manager under section 278,  
20 the General Manager must conduct an investigation.

21 **558 Subsection 335(1) of Schedule 1**

22 Omit “a Registrar”, substitute “the General Manager”.

23 **559 Paragraph 335(1)(e) of Schedule 1**

24 Omit “Registrar”, substitute “General Manager”.

25 **560 Subsection 335(2) of Schedule 1**

26 Omit “Registrar” (wherever occurring), substitute “General Manager”.

---

1 **561 Subsection 336(1) of Schedule 1**

2 Omit “Registrar who conducted the investigation”, substitute “General  
3 Manager”.

4 **562 Subsection 336(1) of Schedule 1**

5 Omit “Registrar” (second occurring), substitute “General Manager”.

6 **563 Subsection 336(2) of Schedule 1**

7 Omit “Industrial Registrar”, substitute “General Manager”.

8 **564 Subsection 336(2) of Schedule 1 (note)**

9 Omit “Registrar”, substitute “General Manager”.

10 **565 Subsections 336(3) and (5) of Schedule 1**

11 Omit “Registrar”, substitute “General Manager”.

12 **566 Subparagraph 337(1)(a)(i) of Schedule 1**

13 Omit “a Registrar”, substitute “the General Manager”.

14 Note: The heading to section 337 of Schedule 1 is altered by omitting “**Registrar**” and  
15 substituting “**General Manager**”.

16 **567 Paragraph 337(1)(c) of Schedule 1**

17 Omit “a Registrar”, substitute “the General Manager”.

18 **568 Subparagraph 337A(b)(i) of Schedule 1**

19 Omit “a Registrar”, substitute “the General Manager”.

20 **569 Paragraph 337K(1)(b) of Schedule 1**

21 Omit “a Registrar”, substitute “the General Manager”.

22 **570 Subsection 337K(3) of Schedule 1**

23 Omit “A Registrar who receives a copy of an order under  
24 subsection (1)”, substitute “The General Manager”.

25 **571 Paragraphs 337K(3)(a) and (b) of Schedule 1**

26 Omit “the Registrar” (wherever occurring), substitute “the General  
27 Manager”.

28 **572 Subsection 337K(4) of Schedule 1**

---

1 Omit “Industrial Registrar”, substitute “General Manager”.

2 **573 Paragraph 337K(4)(b) of Schedule 1**

3 Omit “the Registrar”, substitute “the General Manager”.

4 **574 Paragraph 347(1)(c) of Schedule 1**

5 Omit “in the Industrial Registry”, substitute “with FWA”.

6 **575 Section 348 of Schedule 1**

7 Omit “a Registrar”, substitute “the General Manager”.

8 **576 Section 349 of Schedule 1**

9 Omit “in the Industrial Registry”, substitute “with FWA”.

10 **577 Section 349 of Schedule 1**

11 Omit “a Registrar”, substitute “the General Manager”.

12 **578 Subsection 358(1) of Schedule 1**

13 Omit “a Registrar”, substitute “the General Manager”.

14 **579 Subclauses 2(1) and (3) of Schedule 10**

15 Omit “a Registrar”, substitute “the General Manager”.

16 **580 Subclause 2(3) of Schedule 10**

17 Omit “the Registrar”, substitute “the General Manager”.

18 **581 Subclauses 2(5) and (6) of Schedule 10**

19 Omit “Registrar”, substitute “General Manager”.

20 **582 Subclause 5(6) of Schedule 10**

21 Omit “A Registrar”, substitute “The General Manager”.

22 Note: The heading to subclause 5(6) of Schedule 10 is altered by omitting “Registrar” and  
23 substituting “General Manager”.



1

2 **Part 8—References to awards and collective**  
3 **agreements**

4 ***Fair Work Act 2009***

5 **583 Paragraph 48(2)(a)**

6 After “this Act”, insert “or of the *Fair Work (Registered Organisations)*  
7 *Act 2009*”.

8 **584 Paragraph 53(3)(a)**

9 After “this Act”, insert “or of the *Fair Work (Registered Organisations)*  
10 *Act 2009*”.

11 ***Workplace Relations Act 1996***

12 **585 Subparagraph 28(1)(a)(i) of Schedule 1**

13 Omit “an award” (first occurring), substitute “a modern award”.

14 **586 Subparagraph 28(1)(a)(i) of Schedule 1**

15 Omit “a collective agreement” (first occurring), substitute “an enterprise  
16 agreement”.

17 **587 Subparagraph 28(1)(a)(i) of Schedule 1**

18 Omit “an award” (second occurring), substitute “a modern award”.

19 **588 Subparagraph 28(1)(a)(i) of Schedule 1**

20 Omit “a collective agreement” (second occurring), substitute “an  
21 enterprise agreement”.

22 **589 Subparagraph 28(1)(a)(ii) of Schedule 1**

23 Omit “an award”, substitute “a modern award”.

24 **590 Subparagraph 28(1)(a)(ii) of Schedule 1**

25 Omit “a collective agreement”, substitute “an enterprise agreement”.

26 **591 Paragraph 29(2)(a) of Schedule 1**

27 Before “awards”, insert “modern”.

---

1 **592 Paragraph 29(2)(a) of Schedule 1**

2 Omit “collective”, substitute “enterprise”.

3 **593 Paragraph 32(c) of Schedule 1**

4 Before “award”, insert “modern”.

5 **594 Paragraph 32(c) of Schedule 1**

6 Omit “collective”, substitute “enterprise”.

7 **595 Subsection 38(6) of Schedule 1**

8 Repeal the subsection, substitute:

9 (6) Subsection (5) does not have the effect that a modern award or  
10 enterprise agreement covers the federation.

11 **596 Paragraphs 43(5)(c) and (6)(c) of Schedule 1**

12 Omit “bound by the same”, substitute “covered by the same modern”.

13 **597 Paragraph 55(1)(d) of Schedule 1**

14 Omit “awards or collective”, substitute “modern awards or enterprise”.

15 **598 Paragraph 57(1)(b) of Schedule 1**

16 Omit “awards and collective”, substitute “modern awards and  
17 enterprise”.

18 **599 Paragraph 76(a) of Schedule 1**

19 Repeal the paragraph, substitute:

- 20 (a) a modern award or an enterprise agreement that, immediately  
21 before that day, covered a proposed de-registering  
22 organisation and its members covers, by force of this section,  
23 the proposed amalgamated organisation and its members; and  
24 (aa) a modern award, an order of FWA or an enterprise agreement  
25 that, immediately before that day, applied to a proposed  
26 de-registering organisation and its members applies to, by  
27 force of this section, the proposed amalgamated organisation  
28 and its members; and

29 Note: The heading to section 76 of Schedule 1 is altered by omitting “**awards, orders and**  
30 **collective agreements**” and substituting “**modern awards, orders and enterprise**  
31 **agreements**”.

1 **600 Subsection 113(1) of Schedule 1**

2 Omit “an award or a collective agreement that was, immediately before  
3 the day the registration takes effect, binding on ”, substitute “a modern  
4 award or an enterprise agreement that, immediately before the day the  
5 registration takes effect, covered”.

6 Note: The heading to section 113 of Schedule 1 is altered by omitting “awards” and  
7 substituting “modern awards”.

8 **601 Subsection 113(2) of Schedule 1**

9 Omit “collective”.

10 **602 Paragraph 113(2)(a) of Schedule 1**

11 Omit “becomes binding on”, substitute “covers”.

12 **603 Subsection 113A(1) of Schedule 1**

13 Omit “a collective”, substitute “an enterprise”.

14 Note: The heading to section 113A of Schedule 1 is altered by omitting “Collective” and  
15 substituting “Enterprise”.

16 **604 Paragraph 113A(1)(b) of Schedule 1**

17 Omit “is binding on”, substitute “covers”.

18 **605 Subsection 113A(2) of Schedule 1**

19 Omit “becomes binding on” (wherever occurring), substitute “covers”.

20 **606 Paragraph 142(1)(a) of Schedule 1**

21 Omit “an award or a collective”, substitute “a modern award or an  
22 enterprise”.

23 **607 Subparagraph 142(1)(b)(i) of Schedule 1**

24 Omit “an award”, substitute “a modern award”.

25 **608 Subparagraph 142(1)(b)(i) of Schedule 1**

26 Omit “a collective”, substitute “an enterprise”.

27 **609 Subparagraph 142(1)(b)(ii) of Schedule 1**

28 Omit “an award”, substitute “a modern award”.

29 **610 Subparagraph 142(1)(b)(ii) of Schedule 1**

---

1 Omit “a collective”, substitute “an enterprise”.

2 **611 Subparagraph 144(3)(a)(i) of Schedule 1**

3 Omit “awards or collective”, substitute “modern awards or enterprise”.

4 **612 Paragraph 159(1)(a) of Schedule 1**

5 Omit “awards and collective”, substitute “modern awards and  
6 enterprise”.

7 **613 Subsections 166(1) and (4) of Schedule 1**

8 Before “award”, insert “modern”.

9 **614 Subsection 177(3) of Schedule 1**

10 Omit “an award”, substitute “a modern award”.

11 **615 Subsection 177(3) of Schedule 1**

12 Omit “collective”, substitute “enterprise”.

13 **616 Subparagraphs 246(2)(b)(i) and 249(5)(b)(i) of Schedule 1**

14 Omit “awards or collective”, substitute “modern awards or enterprise”.

15 **617 Subsection 337F(2) of Schedule 1 (paragraph (c) of the  
16 definition of *prescribed premises*)**

17 Omit “an award”, substitute “a modern award”.

18 **618 Subsection 337F(2) of Schedule 1 (paragraph (d) of the  
19 definition of *prescribed premises*)**

20 Omit “a collective”, substitute “an enterprise”.

21 **619 Subparagraph 367(9)(d)(i) of Schedule 1**

22 Before “awards”, insert “modern”.

23 **620 Subclause 1(1) of Schedule 10 (paragraphs (a) and (b) of  
24 the definition of *industrial instrument*)**

25 Repeal the paragraphs, substitute:

26 (a) a modern award; or

27 (b) an enterprise agreement; or

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

## **Part 9—Transitional provisions etc.**

### **621 Things done before the commencement of this Schedule**

- (1) The following table has effect if:
- (a) before the commencement of this item, a thing was done under, or for the purposes of, a provision of Schedule 1 to the WR Act (as in force from time to time) by, or in relation to, a person or body mentioned in column 1 of the table; and
  - (b) immediately before that commencement, the thing continued to have effect.

<b>Things done before the commencement of this item</b>		
<b>Item</b>	<b>If the thing was done by, or in relation to ...</b>	<b>then, after that commencement, the thing has effect as if it had been done by, or in relation to ...</b>
1	the Commission	FWA.
2	the Industrial Registry	FWA.
3	the Industrial Registrar	the General Manager.
4	a Registrar	the General Manager.
5	a member of the Commission	an FWA member.
6	a Presidential Member	the President or a Deputy President.
7	a Registry official	the General Manager.
8	a designated Registry official	a member of the staff of FWA.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

- (2) Without limiting subitem (1), a reference in that subitem to a thing being done in relation to a person or body includes a reference to:
- (a) an application, request, statement, objection, disclosure, direction or referral being made or given to, or lodged with, the person or body; and
  - (b) information or a document being given or produced to, or lodged with, the person or body; and
  - (c) evidence being taken by the person or body.

### **622 Instruments made under, or for the purposes of, a provision of Schedule 1 to the WR Act**

- 1 (1) The following table has effect if:  
2 (a) before the commencement of this item, an instrument was  
3 made under, or for the purposes of, a provision of Schedule 1  
4 to the WR Act (as in force from time to time); and  
5 (b) the instrument was in force immediately before that  
6 commencement.

7

---

<b>Instruments in force immediately before the commencement of this item</b>		
<b>Item</b>	<b>A reference in the instrument to ...</b>	<b>has effect after that commencement as if it were a reference to ...</b>
1	the Commission	FWA.
2	the Industrial Registry	FWA.
3	the Industrial Registrar	the General Manager.
4	a Registrar	the General Manager.
5	a member of the Commission	an FWA member.
6	a Presidential Member	the President or a Deputy President.
7	a Registry official	the General Manager.
8	a designated Registry official	a member of the staff of FWA.

8

- 9 (2) Subject to subitem (3), a reference in the instrument to a provision of  
10 Schedule 1 to the WR Act is to be construed, after the commencement  
11 of this item, as a reference to the same provision of the *Fair Work*  
12 (*Registered Organisations*) Act 2009.
- 13 (3) Subitem (2) does not apply to a reference that is expressed as a  
14 reference to a provision as in force at a time that is before the  
15 commencement of this item.

16 **623 Award-based transitional instruments and**  
17 **agreement-based transitional instruments**

- 18 The *Fair Work (Registered Organisations) Act 2009* applies as if:  
19 (a) references in that Act to a modern award included a reference  
20 to an award-based transitional instrument; and  
21 (b) references in that Act to an enterprise agreement included a  
22 reference to an agreement-based transitional instrument.

1 **624 Register of organisations kept under paragraph 13(1)(a)**  
2 **of Schedule 1 to the WR Act**

3 The register of organisations kept by the Industrial Registry under  
4 paragraph 13(1)(a) of Schedule 1 to the WR Act in its form immediately  
5 before the commencement of this item is taken, after that  
6 commencement, to be the register of organisations kept by FWA under  
7 paragraph 13(1)(a) of the *Fair Work (Registered Organisations) Act*  
8 *2009*.

9 **625 Application of paragraph 73(2)(c) of Schedule 1 to the**  
10 **WR Act**

11 To avoid doubt:

- 12 (a) subparagraph 73(2)(c)(i) of the *Fair Work (Registered*  
13 *Organisations) Act 2009* applies in relation to contraventions  
14 of the WR Act (as in force from time to time) that occurred  
15 before the commencement of this item; and  
16 (b) subparagraph 73(2)(c)(ii) of that Act applies in relation to  
17 breaches of orders made under the WR Act (as in force from  
18 time to time) that occurred before the commencement of this  
19 item.

20 **626 Application of section 337A of Schedule 1 to the WR Act**

21 (1) Part 4A of Chapter 11 of the *Fair Work (Registered Organisations) Act*  
22 *2009* applies as if a disclosure of information made to a person referred  
23 to in subparagraph 337A(b)(i) or (ii) of Schedule 1 to the WR Act:

- 24 (a) after the commencement of this item; and  
25 (b) before:

- 26 (i) if the person is of a kind referred to in subparagraph  
27 337A(b)(i) of that Schedule 1 to the WR Act—the  
28 cessation time for the Industrial Registrar under item 7  
29 of Schedule 18 to this Act; or  
30 (ii) if the person is of a kind referred to in subparagraph  
31 337A(b)(ii) of Schedule 1 to the WR Act—the cessation  
32 time for the Workplace Authority Director under item 7  
33 of Schedule 18 to this Act;

34 were a disclosure to which paragraph 337A(b) of the *Fair Work*  
35 *(Registered Organisations) Act 2009* applies.

- 1 (2) Paragraph 337A(d) of the *Fair Work (Registered Organisations) Act*  
2 *2009* applies as if references in that paragraph to contraventions of the  
3 FW Act included references to contraventions of the WR Act (as in  
4 force from time to time) that occurred before the commencement of this  
5 item.

6 **627 Transitionally registered organisations**

7 For the purposes of the *Fair Work (Registered Organisations) Act 2009*,  
8 an association that, immediately before the commencement of this item,  
9 was a transitionally registered organisation is taken, on that  
10 commencement, to be a transitionally recognised organisation.