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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Road Safety Remuneration Bill 2011**

**No.     , 2011**

*(Education, Employment and Workplace Relations)*

**A Bill for an Act to make provision in relation to remuneration-related matters to improve safety in the road transport industry, and for related purposes**



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1 **A Bill for an Act to make provision in relation to**  
2 **remuneration-related matters to improve safety in**  
3 **the road transport industry, and for related**  
4 **purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**

7 **Division 1—General**

8 **1 Short title**

9 This Act may be cited as the *Road Safety Remuneration Act 2011*.

Section 2

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1     **2 Commencement**

2                     This Act commences on 1 July 2012.

3     **3 Object**

4                     The object of this Act is to promote safety and fairness in the road  
5                     transport industry by doing the following:

- 6                     (a) ensuring that road transport drivers do not have  
7                         remuneration-related incentives to work in an unsafe manner;  
8                     (b) removing remuneration-related incentives, pressures and  
9                         practices that contribute to unsafe work practices;  
10                    (c) ensuring that road transport drivers are paid for their work,  
11                         including loading or unloading their vehicles or waiting for  
12                         someone else to load or unload their vehicles;  
13                    (d) developing and applying reasonable and enforceable  
14                         standards throughout the road transport industry supply chain  
15                         to ensure the safety of road transport drivers;  
16                    (e) ensuring that hirers of road transport drivers and participants  
17                         in the supply chain take responsibility for implementing and  
18                         maintaining those standards;  
19                    (f) facilitating access to dispute resolution procedures relating to  
20                         remuneration and related conditions for road transport  
21                         drivers.  
22

1

2 **Division 2—Definitions**

3 **4 Definitions**

4 In this Act:

5 *applicable services*: see subsection 33(2).

6 *arbitration order*: see subsection 44(2).

7 *civil remedy provision*: see section 46.

8 *Commonwealth authority* means:

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

11 (b) a body corporate:

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

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

15 *compellable person* means any of the following:

16 (a) a road transport driver;

17 (b) the employer or hirer of a road transport driver;

18 (c) a participant in the supply chain in relation to a road transport  
19 driver, if the driver is involved in a matter the Tribunal is  
20 dealing with.

21 *compliance notice*: see subsection 76(2).

22 *constitutional corporation* means a corporation to which  
23 paragraph 51(xx) of the Constitution applies.

24 *constitutional trade or commerce* means trade or commerce:

25 (a) between Australia and a place outside Australia; or

26 (b) among the States; or

27 (c) between a State and a Territory; or

28 (d) between 2 Territories; or

29 (e) within a Territory.

Section 4

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- 1                    **controlling interest**: see subsection 7(4).
- 2                    **dual FWA member** means a member of the Tribunal appointed  
3                    under paragraph 79(2)(a) or (b).
- 4                    Note:            See subsections 97(2) and (3), which require that members appointed  
5                    under paragraphs 79(2)(a) or (b) must also be members of Fair Work  
6                    Australia.
- 7                    **eligible State or Territory court** means an eligible State or  
8                    Territory court within the meaning of the *Fair Work Act 2009*.
- 9                    **enforceable instrument** means any of the following:  
10                    (a) a road safety remuneration order;  
11                    (b) a safe remuneration approval;  
12                    (c) an arbitration order.
- 13                    **enterprise agreement**: see subsection 12(2).
- 14                    **Fair Work Australia** means the body established by section 575 of  
15                    the *Fair Work Act 2009*.
- 16                    **Fair Work Ombudsman** means the Fair Work Ombudsman under  
17                    the *Fair Work Act 2009*.
- 18                    **Federal Court** means the Federal Court of Australia.
- 19                    **Full Bench** means a Full Bench of the Tribunal constituted under  
20                    section 96.
- 21                    **FWA order**: see subsection 12(2).
- 22                    **General Manager** means the General Manager referred to in  
23                    section 112.
- 24                    **hirer**: see section 8.
- 25                    **immediate family**: see subsection 7(4).
- 26                    **industrial association** means an industrial association within the  
27                    meaning of the *Fair Work Act 2009*.
- 28                    **industry member** means a member of the Tribunal appointed under  
29                    paragraph 79(2)(c).

Section 4

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1           **inspector** means a Fair Work Inspector under the *Fair Work Act*  
2           2009.

3           **member of the Tribunal** means a member of the Tribunal  
4           appointed under section 79, and includes the President.

5           **modern award** means a modern award under the *Fair Work Act*  
6           2009.

7           **organisation** means an organisation within the meaning of the *Fair*  
8           *Work Act 2009*.

9           **participant in the supply chain**: see section 9.

10          **participating driver**: see subsection 33(3).

11          **participating hirer**: see subsection 33(2).

12          **pecuniary penalty order** means an order made under subsection  
13          50(1).

14          **President** means the President of the Tribunal.

15          **procedural rules** means the procedural rules of the Tribunal made  
16          under section 113.

17          **registered employee association** means a registered employee  
18          association under the *Fair Work Act 2009*.

19          **related conditions** include matters of a kind referred to in  
20          subsection 27(2).

21          **related individual**: see subsection 7(3).

22          **remuneration** includes a method for determining remuneration.

23          **road safety remuneration order** means a road safety remuneration  
24          order made under Part 2.

25          **road transport collective agreement**: see subsection 33(2).

26          **road transport contract**: see section 8.

27          **road transport driver**: see section 5.

Section 5

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- 1                    **road transport industry** means any of the following:
- 2                    (a) the road transport and distribution industry within the
- 3                    meaning of the Road Transport and Distribution Award 2010
- 4                    as in force on 1 July 2012;
- 5                    (b) long distance operations in the private transport industry
- 6                    within the meaning of the Road Transport (Long Distance
- 7                    Operations) Award 2010 as in force on 1 July 2012;
- 8                    (c) the cash in transit industry within the meaning of the
- 9                    Transport (Cash in Transit) Award 2010 as in force on 1 July
- 10                    2012;
- 11                    (d) the waste management industry within the meaning of the
- 12                    Waste Management Award 2010 as in force on 1 July 2012;
- 13                    (e) the meaning prescribed by the regulations by reference to a
- 14                    modern award specified in the regulations.

15                    **road transport service** means a service provided in the road

16                    transport industry.

17                    **safe remuneration approval** means a safe remuneration approval

18                    granted under Part 3.

19                    **Territory authority** means:

- 20                    (a) a body corporate established for a public purpose by or under
- 21                    a law of a Territory; or
- 22                    (b) a body corporate:
- 23                    (i) incorporated under a law of the Commonwealth or a
- 24                    State or Territory; and
- 25                    (ii) in which a Territory has a controlling interest.

26                    **transitional instrument**: see subsection 12(2).

27                    **Tribunal** means the Road Safety Remuneration Tribunal

28                    established by section 79.

29                    **5 Meaning of road transport driver—general**

30                    A person is a **road transport driver** if:

- 31                    (a) the person is an individual to whom section 6 applies (but see
- 32                    subsection 7(2)); or
- 33                    (b) the person is a corporation to which section 7 applies.

1     **6 Meaning of *road transport driver*—individual**

2             (1) This section applies to an individual (for the purposes of paragraph  
3             5(a)) if:

4                 (a) the individual engages in the road transport industry by  
5                 driving a vehicle to transport things by road; and

6                 (b) the individual does so:

7                     (i) as an employee of a constitutional corporation, the  
8                     Commonwealth, a Commonwealth authority, a Territory  
9                     or a Territory authority; or

10                    (ii) under a road transport contract the other party to which  
11                    is a constitutional corporation, the Commonwealth, a  
12                    Commonwealth authority, a Territory or a Territory  
13                    authority; or

14                    (iii) under a contract entered into in a Territory; or

15                    (iv) under a contract at least one of the parties to which is an  
16                    individual who is resident in, or a body corporate that  
17                    has its principal place of business in, a Territory; or

18                    (v) for the purposes of a business undertaking of a  
19                    constitutional corporation; or

20                    (vi) for the purposes of the Commonwealth, a  
21                    Commonwealth authority, a Territory or a Territory  
22                    authority; or

23                    (vii) in the course of or in relation to constitutional trade or  
24                    commerce.

25             (2) Without limiting its effect apart from this subsection,  
26             subparagraph (1)(b)(ii) also has the effect it would have if the  
27             reference to a constitutional corporation were, by express  
28             provision, confined to a corporation that has entered into the  
29             contract for the purposes of the business of that corporation.

30     **7 Meaning of *road transport driver*—corporation**

31             *Road transport driver—corporation*

32             (1) This section applies to a corporation (for the purposes of paragraph  
33             5(b)) if:

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- 1 (a) the corporation engages in the road transport industry by  
2 transporting things by road using one or more vehicles  
3 supplied by the corporation or a related individual; and  
4 (b) the vehicle or each vehicle is mainly driven by a related  
5 individual; and  
6 (c) the related individual's principal occupation is driving the  
7 vehicle or vehicles; and  
8 (d) the corporation is a constitutional corporation.

9 *Corporation, not individual, is road transport driver if both could*  
10 *apply*

- 11 (2) If a corporation is a **road transport driver**, then despite paragraph  
12 5(1)(a), any individual referred to in subsection (1) of this section  
13 as a related individual who drives one or more of the corporation's  
14 vehicles is taken not to be a **road transport driver**.

15 *Related individual*

- 16 (3) Each of the following individuals is a **related individual** of a  
17 corporation:  
18 (a) a director of the corporation;  
19 (b) a member of the immediate family of a director of the  
20 corporation;  
21 (c) an individual who, together with members of the individual's  
22 immediate family, has a controlling interest in the  
23 corporation;  
24 (d) a member of the immediate family of an individual who,  
25 together with members of the individual's immediate family,  
26 has a controlling interest in the corporation.

27 *Controlling interest and immediate family*

- 28 (4) In this Act:

29 **controlling interest** in a corporation means an interest in the  
30 corporation that enables the person holding the interest to:

- 31 (a) control the composition of the board of directors of the  
32 corporation; or



- 1 (b) cast or control the casting of more than one-half of the  
2 maximum number of votes that might be cast at a general  
3 meeting of the corporation; or  
4 (c) control more than one-half of the issued share capital of the  
5 corporation (excluding any part of that issued share capital  
6 that carries no right to participate beyond a specified amount  
7 in a distribution of either profits or capital).

8 *immediate family* of an individual has the same meaning as  
9 *immediate family* has for a national system employee under the  
10 *Fair Work Act 2009*.

11 **8 Meaning of *hirer* of road transport driver and *road transport***  
12 ***contract***

- 13 (1) A *road transport contract* is a contract for services under which a  
14 road transport driver who is an independent contractor is to provide  
15 road transport services to the other party to the contract (the *hirer*).  
16 (2) A reference to a road transport contract includes a reference to a  
17 condition or collateral arrangement that relates to the contract.  
18 (3) A road transport contract may be in writing, oral, or partly in  
19 writing and partly oral.

20 **9 Meaning of *participant in the supply chain***

21 *Meaning of participant in the supply chain—general*

- 22 (1) A person is a *participant in the supply chain* in relation to a road  
23 transport driver if subsection (2), (4) or (6) applies to the person.

24 *Consignor or consignee*

- 25 (2) This subsection applies to a person if:  
26 (a) the person is the consignor or consignee of a thing in respect  
27 of which a road transport driver is providing road transport  
28 services; and  
29 (b) any of the following apply:

**Section 9**

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- 1 (i) the person is a constitutional corporation, the  
2 Commonwealth, a Commonwealth authority, a Territory  
3 or a Territory authority;  
4 (ii) the person is an individual who is resident in, or a body  
5 corporate that has its principal place of business in, a  
6 Territory;  
7 (iii) the person is the consignor or consignee for the  
8 purposes of a business undertaking of a constitutional  
9 corporation;  
10 (iv) the person is the consignor or consignee for the  
11 purposes of the Commonwealth, a Commonwealth  
12 authority, a Territory or a Territory authority;  
13 (v) the person is the consignor or consignee in the course of  
14 or in relation to constitutional trade or commerce.
- 15 (3) Without limiting its effect apart from this subsection,  
16 subparagraph (2)(b)(i) also has the effect it would have if the  
17 reference to a constitutional corporation were, by express  
18 provision, confined to a corporation that was the consignor or  
19 consignee of a thing for the purposes of the business of that  
20 corporation.

21 *Intermediary*

- 22 (4) This subsection applies to a person if:  
23 (a) the person is party to a contract for the carriage of goods, and  
24 that contract concerns the transport of a thing in respect of  
25 which a road transport driver is providing road transport  
26 services; and  
27 (b) any of the following apply:  
28 (i) the person is a constitutional corporation, the  
29 Commonwealth, a Commonwealth authority, a Territory  
30 or a Territory authority;  
31 (ii) the contract was entered into in a Territory;  
32 (iii) at least one of the parties to the contract is an individual  
33 who is resident in, or a body corporate that has its  
34 principal place of business in, a Territory;  
35 (iv) the contract is for the purposes of a business  
36 undertaking of a constitutional corporation;
-

Section 9

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- 1 (v) the contract is for the purposes of the Commonwealth, a  
2 Commonwealth authority, a Territory or a Territory  
3 authority;  
4 (vi) the contract was made in the course of or in relation to  
5 constitutional trade or commerce.

- 6 (5) Without limiting its effect apart from this subsection,  
7 subparagraph (4)(b)(i) also has the effect it would have if the  
8 reference to a constitutional corporation were, by express  
9 provision, confined to a corporation that has entered into the  
10 contract for the purposes of the business of that corporation.

11 *Operator of premises for loading and unloading*

- 12 (6) This subsection applies to a person if the person is a constitutional  
13 corporation that operates premises:  
14 (a) that are used by a road transport driver to load or unload a  
15 vehicle; and  
16 (b) at which an average of at least 5 vehicles are loaded or  
17 unloaded on each day (an *active day*) the premises are used to  
18 load or unload vehicles.
- 19 (7) In determining whether an average of at least 5 vehicles are loaded  
20 or unloaded on each active day for the purposes of  
21 paragraph (6)(b):  
22 (a) have regard to each active day in the previous 12 months; or  
23 (b) if the corporation first used the premises to load or unload  
24 vehicles less than 12 months ago—have regard to each active  
25 day in the period since the premises were first used to load or  
26 unload vehicles.
- 27 (8) In subsection (6), a reference to premises includes a reference to a  
28 part of premises.  
29

Section 10

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1

2 **Division 3—Application of this Act**

3 **Subdivision A—Interaction with other laws**

4 **10 Concurrent operation generally intended**

5 (1) This Act is not intended to exclude or limit the operation of any  
6 other law of the Commonwealth or any law of a State or Territory  
7 that is capable of operating concurrently with this Act.

8 (2) In particular, this Act is not intended to exclude or limit the  
9 operation of:

10 (a) the *Fair Work Act 2009*; or

11 (b) the *Independent Contractors Act 2006* (but see section 14); or

12 (c) Chapter 6 of the *Industrial Relations Act 1996* of New South  
13 Wales (and any other provision of that Act to the extent that  
14 it relates to, or has effect for the purposes of, a provision of  
15 Chapter 6); or

16 (d) the *Owner Drivers and Forestry Contractors Act 2005* of  
17 Victoria; or

18 (e) the *Owner-Drivers (Contracts and Disputes) Act 2007* of  
19 Western Australia; or

20 (f) a law of a State or Territory that is specified in regulations  
21 made for the purposes of this paragraph, to the extent that the  
22 law is so specified.

23 (3) However, this section is subject to the other provisions of this  
24 Subdivision.

25 **11 Interaction of enforceable instruments with State and Territory**  
26 **laws**

27 An enforceable instrument prevails over a law of a State or  
28 Territory, to the extent of any inconsistency.

1 **12 Interaction of enforceable instruments with other**  
2 **Commonwealth instruments (employees)**

3 (1) A term of a modern award, an enterprise agreement, an FWA order  
4 or a transitional instrument has no effect in relation to a road  
5 transport driver to whom an enforceable instrument applies to the  
6 extent that the award, agreement, order or instrument is less  
7 beneficial to the driver than a term of the enforceable instrument.

8 (2) In this Act:

9 ***enterprise agreement*** means an enterprise agreement made under  
10 the *Fair Work Act 2009*.

11 ***FWA order*** means an order of Fair Work Australia made under the  
12 *Fair Work Act 2009*.

13 ***transitional instrument*** means a transitional instrument within the  
14 meaning of the *Fair Work (Transitional Provisions and*  
15 *Consequential Amendments) Act 2009*.

16 **13 Interaction of enforceable instruments with road transport**  
17 **contracts (independent contractors)**

18 A road transport driver who is an independent contractor is entitled  
19 to be provided, by the required provider under an enforceable  
20 instrument that applies to the driver, with at least the remuneration  
21 and related conditions in the enforceable instrument, regardless of  
22 the terms of any road transport contract to which the driver is  
23 party.

24 **14 Interaction with the *Independent Contractors Act 2006***

25 For the purposes of paragraph 15(1)(d) of the *Independent*  
26 *Contractors Act 2006*, an enforceable instrument that applies to a  
27 road transport driver whose services contract is being reviewed  
28 under that Act is a matter the Court under that Act might (but is not  
29 required to) think relevant.

Section 15

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1 **Subdivision B—Miscellaneous**

2 **15 Act binds Crown**

- 3 (1) This Act binds the Crown in each of its capacities.
- 4 (2) However, this Act does not make the Crown liable to be prosecuted  
5 for an offence.
- 6 (3) To avoid doubt, subsection (2) does not prevent the Crown from  
7 being liable to pay a pecuniary penalty under section 50.

8 **16 Act not to apply so as to exceed Commonwealth power**

- 9 (1) Unless the contrary intention appears, if a provision of this Act:
- 10 (a) would, apart from this section, have an application (an  
11 *invalid application*) in relation to:
- 12 (i) one or more particular persons, things, matters, places,  
13 circumstances or cases; or
- 14 (ii) one or more classes (however defined or determined) of  
15 persons, things, matters, places, circumstances or cases;  
16 because of which the provision exceeds the Commonwealth's  
17 legislative power; and
- 18 (b) also has at least one application (a *valid application*) in  
19 relation to:
- 20 (i) one or more particular persons, things, matters, places,  
21 circumstances or cases; or
- 22 (ii) one or more classes (however defined or determined) of  
23 persons, things, matters, places, circumstances or cases;  
24 that, if it were the provision's only application, would be  
25 within the Commonwealth's legislative power;
- 26 it is the Parliament's intention that the provision is not to have the  
27 invalid application, but is to have every valid application.
- 28 (2) Despite subsection (1), the provision is not to have a particular  
29 valid application if:
- 30 (a) apart from this section, it is clear, taking into account the  
31 provision's context and the purpose or object underlying this  
32 Act, that the provision was intended to have that valid

- 1 application only if every invalid application, or a particular  
2 invalid application, of the provision had also been within the  
3 Commonwealth's legislative power; or  
4 (b) the provision's operation in relation to that valid application  
5 would be different in a substantial respect from what would  
6 have been its operation in relation to that valid application if  
7 every invalid application of the provision had been within the  
8 Commonwealth's legislative power.
- 9 (3) Subsection (2) does not limit the cases where a contrary intention  
10 may be taken to appear for the purposes of subsection (1).
- 11 (4) This section applies to a provision of this Act, whether enacted  
12 before, at or after the commencement of this section.

13 **17 Acquisition of property**

14 This Act, or any instrument made under this Act, does not apply to  
15 the extent that the operation of this Act or the instrument would  
16 result in an acquisition of property (within the meaning of  
17 paragraph 51(xxxi) of the Constitution) from a person otherwise  
18 than on just terms (within the meaning of that paragraph).  
19

Section 18

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2 **Part 2—Road safety remuneration orders**

2

3 **Division 1—Preparation of annual work program**

3

4 **18 Tribunal must prepare and publish a work program each year**

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(1) Before the end of each year of its operation, the Tribunal must  
6 prepare a work program for the next year.

6

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(2) The work program must identify the matters the Tribunal proposes  
8 to inquire into in the next year of its operation, with a view to  
9 making a road safety remuneration order in relation to any or all of  
10 those matters. The matters identified may be any or all of the  
11 following:

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(a) a sector or sectors of the road transport industry;

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(b) issues for the road transport industry or a sector of the  
14 industry;

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(c) practices affecting the road transport industry or a sector of  
16 the industry.

16

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(3) In preparing its work program for a year, the Tribunal must consult  
18 with industry.

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(4) The Tribunal must publish its work program on the Tribunal's  
19 website and by any other means the Tribunal considers appropriate.

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(5) A work program prepared under subsection (1) is not a legislative  
22 instrument.

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2 **Division 2—Power to make a road safety remuneration**  
3 **order**

4 **19 Power to make a road safety remuneration order**

5 (1) The Tribunal may make a road safety remuneration order under  
6 this Part consistent with the object of this Act.

7 Note: See section 27 for what the order may deal with.

8 *Tribunal may make order on its own initiative*

9 (2) The Tribunal may make the order on its own initiative if the order  
10 is in relation to a matter identified in its work program.

11 *Tribunal may make order on application*

12 (3) The Tribunal may make the order on application by any of the  
13 following whether or not the order is in relation to a matter  
14 identified in its work program:

15 (a) a road transport driver;

16 (b) an employer or hirer of a road transport driver;

17 (c) a participant in the supply chain in relation to a road transport  
18 driver;

19 (d) a registered employee association that is entitled to represent  
20 the interests of a road transport driver to whom the order will  
21 apply;

22 (e) an industrial association that is entitled to represent the  
23 interests of a road transport driver, employer or hirer of a  
24 road transport driver or participant in the supply chain in  
25 relation to a road transport driver, if:

26 (i) the person or each person whose interests the industrial  
27 association claims to be representing by making the  
28 application has consented to the making of the  
29 application; and

30 (ii) the Tribunal has permitted the application to be made.

**Part 2** Road safety remuneration orders

**Division 2** Power to make a road safety remuneration order

**Section 20**

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- 1 (4) An application that relates to a matter not identified in the  
2 Tribunal's work program must relate to a matter that is capable of  
3 being included in the Tribunal's work program under subsection  
4 18(2).

5 *Tribunal may refuse to consider application*

- 6 (5) The Tribunal may refuse to consider an application under  
7 subsection (3):  
8 (a) if the application relates to a matter not identified in the  
9 Tribunal's work program—because the Tribunal considers  
10 that it is not appropriate to deal with the matter at the time; or  
11 (b) for any other reason.  
12 (6) The Tribunal must notify the applicant of any refusal by the  
13 Tribunal to consider an application.

14 **20 Matters the Tribunal must have regard to**

- 15 (1) In deciding whether to make a road safety remuneration order, the  
16 Tribunal must have regard to the following matters:  
17 (a) the need to apply fair, reasonable and enforceable standards  
18 in the road transport industry to ensure the safety and fair  
19 treatment of road transport drivers;  
20 (b) the likely impact of any order on the viability of businesses in  
21 the road transport industry;  
22 (c) the special circumstances of areas that are particularly reliant  
23 on the road transport industry, such as rural, regional and  
24 other isolated areas;  
25 (d) the likely impact of any order on the national economy and  
26 on the movement of freight across the nation;  
27 (e) orders and determinations made by the Minimum Wage  
28 Panel of Fair Work Australia in annual wage reviews and the  
29 reasons for those orders and determinations;  
30 (f) any modern awards relevant to the road transport industry  
31 (see subsection (2)) and the reasons for those awards;  
32 (g) the need to avoid unnecessary overlap with the *Fair Work*  
33 *Act 2009* and any other laws prescribed for the purposes of  
34 this paragraph;

- 1 (h) the need to reduce complexity and for any order to be simple  
2 and easy to understand;  
3 (i) the need to minimise the compliance burden on the road  
4 transport industry;  
5 (j) any other matter prescribed by the regulations for the  
6 purposes of this paragraph.
- 7 (2) For the purposes of paragraph (1)(f), each of the awards referred to  
8 in the definition of *road transport industry* (including an award  
9 referred to in regulations made for the purposes of paragraph (e) of  
10 the definition) is taken to be relevant to the road transport industry.

## 11 **21 Publication of research**

- 12 (1) The Tribunal must publish any research undertaken or  
13 commissioned by the Tribunal for the purposes of determining  
14 whether to make a road safety remuneration order or the terms in  
15 which any order should be made, so that submissions can be made  
16 under section 24 addressing issues covered by the research.
- 17 (2) The publication must be on the Tribunal's website and by any  
18 other means the Tribunal considers appropriate.  
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Section 22

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2 **Division 3—Preparing and consulting on draft road safety**  
3 **remuneration order**

4 **22 Tribunal to prepare and consult on draft order**

5 Before making a road safety remuneration order, the Tribunal must  
6 prepare and consult on a draft of the order in accordance with this  
7 Division.

8 **23 Publication of draft order**

9 The Tribunal must publish the draft of the order on the Tribunal's  
10 website and by any other means the Tribunal considers appropriate.

11 **24 Affected persons and bodies to have a reasonable opportunity to**  
12 **make and comment on submissions for draft order**

13 (1) The Tribunal must ensure that the following persons have a  
14 reasonable opportunity to make written submissions to the Tribunal  
15 for its consideration in relation to the draft of the order:

16 (a) all persons and bodies likely to be affected if a road safety  
17 remuneration order based on the draft were to be made;

18 (b) any person or body prescribed by the regulations for the  
19 purposes of this paragraph.

20 (2) The Tribunal must publish all submissions made to the Tribunal.

21 (3) However, if a submission made by a person or body includes  
22 information that is claimed by the person or body to be confidential  
23 or commercially sensitive, and the Tribunal is satisfied that the  
24 information is confidential or commercially sensitive, the Tribunal:

25 (a) may decide not to publish the information; and

26 (b) may instead publish:

27 (i) a summary of the information which contains sufficient  
28 detail to allow a reasonable understanding of the  
29 substance of the information (without disclosing

- 1 anything that is confidential or commercially sensitive);  
2 or  
3 (ii) if the Tribunal considers that it is not practicable to  
4 prepare a summary that would comply with  
5 subparagraph (i)—a statement that confidential or  
6 commercially sensitive information in the submission  
7 has not been published.
- 8 (4) The Tribunal must ensure that all persons and bodies likely to be  
9 affected if a road safety remuneration order based on the draft were  
10 to be made have a reasonable opportunity to make comments to the  
11 Tribunal on the material published under subsections (2) and (3),  
12 for its consideration.
- 13 (5) The publishing of material under subsections (2) and (3) must be  
14 on the Tribunal's website and by any other means the Tribunal  
15 considers appropriate.
- 16 (6) A reference in this Act (other than in this section) to a submission  
17 under this section includes a reference to a summary or statement  
18 referred to in paragraph (3)(b).

## 19 **25 Hearings in relation to draft order**

20 The Tribunal may, but is not required to, hold a hearing in relation  
21 to the draft of the order.

22 Note: See section 88.

## 23 **26 Finalising draft order**

- 24 (1) The Tribunal may make any changes it thinks appropriate to the  
25 draft of the order, before making a road safety remuneration order  
26 based on the draft.
- 27 (2) The Tribunal may decide that no road safety remuneration order is  
28 to be made based on the draft. If the Tribunal does so, the Tribunal  
29 must publish notice of the decision on its website and by any other  
30 means the Tribunal considers appropriate.  
31

Section 27

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2 **Division 4—Making road safety remuneration order**

3 **27 Making road safety remuneration order**

4 *What the order may deal with*

5 (1) If the Tribunal decides to make a road safety remuneration order,  
6 the Tribunal may make any provision in the order that the Tribunal  
7 considers appropriate in relation to remuneration and related  
8 conditions for road transport drivers to whom the order applies.

9 (2) Without limiting subsection (1), the Tribunal may make provision  
10 in the order in relation to any of the following:

11 (a) conditions about minimum remuneration and other  
12 entitlements for road transport drivers who are employees,  
13 additional to those set out in any modern award relevant to  
14 the road transport industry (see subsection 20(2));

15 (b) conditions about minimum rates of remuneration and  
16 conditions of engagement for road transport drivers who are  
17 independent contractors;

18 (c) conditions for loading and unloading vehicles, waiting times,  
19 working hours, load limits, payment methods and payment  
20 periods;

21 (d) ways of reducing or removing remuneration-related  
22 incentives, pressures and practices that contribute to unsafe  
23 work practices.

24 (3) The order may impose requirements, in relation to a matter for  
25 which provision is made, on any or all of the following:

26 (a) an employer or hirer of a road transport driver to whom the  
27 order applies;

28 (b) a participant in the supply chain in relation to a road transport  
29 driver to whom the order applies.

30 *Content of the order*

31 (4) The order must specify:

32 (a) the road transport drivers to whom the order applies; and

- 1 (b) the persons on whom any requirements in the order are  
2 imposed; and  
3 (c) a commencement date for the order or a series of  
4 commencement dates (see subsection (5)); and  
5 (d) an expiry date for the order (which must not be later than 4  
6 years after the commencement date).
- 7 (5) The order may take effect in stages (as provided in the order) if the  
8 Tribunal considers that it is not feasible for the order to take effect  
9 on a single date.

10 *Publication of order*

- 11 (6) The Tribunal must publish the order on the Tribunal's website and  
12 by any other means the Tribunal considers appropriate.

13 **28 Persons on whom requirements are imposed must not contravene**  
14 **order**

15 A person on whom a road safety remuneration order imposes a  
16 requirement must not contravene the requirement.

17 Note: This section is a civil remedy provision (see Division 1 of Part 5).

18 **29 Expiry of order**

19 A road safety remuneration order ceases to have effect at the end of  
20 the expiry date specified in the order.

21 **30 Road safety remuneration orders to be made by Full Bench**

22 The function of making road safety remuneration orders under this  
23 Part is to be performed by a Full Bench of the Tribunal.  
24

Section 31

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2 **Division 5—Variation and review of road safety**  
3 **remuneration order**

4 **31 Review of road safety remuneration order**

5 (1) The Tribunal must review a road safety remuneration order at some  
6 time in the period of 12 months ending on the expiry date specified  
7 in the order.

8 (2) After reviewing the order and before the expiry date, the Tribunal  
9 must revoke the order and do one of the following:

10 (a) replace it with a road safety remuneration order in the same  
11 terms except for a new expiry date (which must be no more  
12 than 4 years after the date the replacement order is made);

13 (b) replace it with a road safety remuneration order in different  
14 terms;

15 (c) not replace it.

16 (3) The Tribunal must ensure that the following persons have a  
17 reasonable opportunity to make written submissions to the Tribunal  
18 for its consideration in relation to action the Tribunal proposes to  
19 take under subsection (2):

20 (a) all persons and bodies likely to be affected by the proposed  
21 action;

22 (b) any person or body prescribed by the regulations for the  
23 purposes of this paragraph.

24 (4) Section 21 applies in relation to research undertaken or  
25 commissioned for the purposes of deciding on a proposed action  
26 under subsection (2).

27 (5) Subsections 24(2) to (6) apply in relation to submissions made in  
28 relation to the proposed action, as if they were submissions made  
29 under subsection 24(1).



1 **32 Variation of road safety remuneration order**

- 2 (1) At any time before the expiry date specified in a road safety  
3 remuneration order, the Tribunal may vary the order:  
4 (a) on its own initiative; or  
5 (b) on application by a person referred to in subsection (2).
- 6 (2) The Tribunal may vary the order on application by any of the  
7 following:  
8 (a) an employer or hirer of a road transport driver to whom the  
9 order applies;  
10 (b) a participant in the supply chain in relation to a driver to  
11 whom the order applies;  
12 (c) a registered employee association that is entitled to represent  
13 the interests of a road transport driver to whom the order  
14 applies;  
15 (d) an industrial association that is entitled to represent the  
16 interests of a road transport driver, employer or hirer of a  
17 road transport driver or participant in the supply chain in  
18 relation to a road transport driver, if:  
19 (i) the person or each person whose interests the industrial  
20 association claims to be representing by making the  
21 application has consented to the making of the  
22 application; and  
23 (ii) the Tribunal has permitted the application to be made.
- 24 (3) In deciding whether to vary the order, the Tribunal must have  
25 regard to the matters in section 20.
- 26 (4) Before varying the order, the Tribunal must prepare and consult on  
27 a draft of the variation in accordance with Division 3, as if  
28 references in that Division to making an order were references to  
29 varying an order.
- 30 (5) Subsection (4) does not apply if the Tribunal considers that the  
31 variation is minor or technical.  
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Section 33

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2 **Part 3—Safe remuneration approvals in relation to**  
3 **certain collective agreements involving**  
4 **independent contractors**

5

6 **33 Power to grant a safe remuneration approval**

7 (1) The Tribunal may grant a safe remuneration approval for a road  
8 transport collective agreement if the Tribunal is satisfied of the  
9 matters in section 34.

10 (2) A *road transport collective agreement* is an agreement under  
11 which:

12 (a) road transport drivers who are independent contractors and  
13 with whom a hirer or potential hirer of the drivers proposes to  
14 contract for the provision of road transport services (the  
15 *applicable services*); and

16 (b) the hirer or potential hirer of the drivers (the *participating*  
17 *hirer*);

18 agree about remuneration and related conditions for applicable  
19 services provided to the participating hirer.

20 (3) The agreement must specify the road transport drivers with whom  
21 the participating hirer proposes to contract and the basis on which  
22 they became part of that group. The drivers specified are the  
23 *participating drivers*.

24 Note: The effect of a road transport collective agreement is not limited to  
25 participating drivers if a safe remuneration approval is granted for it:  
26 see section 36.

27 **34 Matters about which the Tribunal must be satisfied**

28 The Tribunal must not grant a safe remuneration approval for a  
29 road transport collective agreement unless the Tribunal is satisfied  
30 that:

31 (a) a road safety remuneration order that applies to the  
32 participating drivers is in effect; and

Section 35

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- 1 (b) a majority of the participating drivers would be better off  
2 overall when providing applicable services if the agreement  
3 applied than if the order applied; and  
4 (c) a majority of the participating drivers have approved the  
5 agreement; and  
6 (d) if the agreement is to last for more than one year—the  
7 agreement contains an appropriate method for adjusting  
8 remuneration during the period of the agreement.

9 **35 Grant of safe remuneration approval**

- 10 (1) If the Tribunal decides to grant a safe remuneration approval for a  
11 road transport collective agreement, the Tribunal must state in  
12 writing that the Tribunal is satisfied that the remuneration and any  
13 related conditions in the agreement are adequate to ensure that road  
14 transport drivers do not have remuneration-related incentives to  
15 work in an unsafe manner.
- 16 (2) In addition to the statement in subsection (1), the approval must:  
17 (a) specify the participating hirer; and  
18 (b) specify the remuneration (including any method for adjusting  
19 remuneration during the period of the agreement) and any  
20 related conditions in the agreement; and  
21 (c) specify the applicable services; and  
22 (d) state that the participating hirer is required to provide at least  
23 the specified remuneration and related conditions to any road  
24 transport driver providing applicable services to the hirer;  
25 and  
26 (e) specify an expiry date for the approval (which must not be  
27 more than 4 years from the date of the statement).
- 28 (3) The Tribunal must:  
29 (a) give a copy of the approval to the participating hirer and each  
30 of the participating drivers; and  
31 (b) publish the approval on the Tribunal's website and by any  
32 other means the Tribunal considers appropriate.

Section 36

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1 **36 Effect of safe remuneration approval**

2 (1) The participating hirer specified in a safe remuneration approval  
3 must not provide remuneration or related conditions to a road  
4 transport driver providing applicable services to the hirer that are  
5 less beneficial than the remuneration or related conditions specified  
6 in the approval.

7 Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

8 (2) Subsection (1) applies in relation to a road transport driver  
9 regardless of whether the driver was a participating driver in  
10 relation to the agreement to which the approval relates.

11 **37 Relationship with road safety remuneration orders**

12 (1) A road safety remuneration order that is in effect at the time the  
13 Tribunal grants a safe remuneration approval has no effect in  
14 relation to a road transport driver who provides applicable services  
15 to the participating hirer.

16 (2) If a road safety remuneration order takes effect after a safe  
17 remuneration approval is granted, the approval ceases to have  
18 effect in relation to a road transport driver who provides applicable  
19 services to the participating hirer, to the extent that the  
20 remuneration or related conditions specified in the approval are  
21 less beneficial to the driver than a term of the order that applies to  
22 the driver.

23 **38 Expiry of safe remuneration approval**

24 A safe remuneration approval ceases to have effect at the end of  
25 the expiry date specified in the approval.

26 **39 Safe remuneration approvals to be granted by dual FWA  
27 member or Full Bench**

28 The function of granting safe remuneration approvals under this  
29 Part is to be performed by, at the President's discretion:

- 30 (a) a dual FWA member; or  
31 (b) a Full Bench of the Tribunal.

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**Part 4—Disputes about remuneration and related conditions**

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**40 Tribunal may deal with disputes about remuneration and related conditions**

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- (1) The Tribunal may deal with a dispute if:
- (a) section 41, 42 or 43 applies to the dispute; and
  - (b) an application is made by:
    - (i) a party to the dispute; or
    - (ii) an industrial association that is entitled to represent the interests of a party to the dispute, if the party has consented to the making of an application by the association.
- (2) The Tribunal may choose to deal with 2 or more disputes together (regardless of which of sections 41, 42 and 43 applies to each dispute).

**41 Disputes involving employee road transport drivers***Dispute between employee and employer*

- (1) The Tribunal may deal with a dispute between a road transport driver who is an employee and the employer of the driver if the dispute is about remuneration or related conditions provided by the employer that could affect whether the driver works in an unsafe manner. The parties to the dispute are the driver and the employer.

Note: Disputes involving drivers who are employees may also be dealt with under the *Fair Work Act 2009* (see section 595 of that Act).

*Dispute between employee and former employer*

- (2) The Tribunal may deal with a dispute between a road transport driver and a former employer of the driver if:

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- 1 (a) the dispute is about the former employer dismissing the  
2 driver; and  
3 (b) the driver contends that the dismissal was mainly because the  
4 driver refused to work in an unsafe manner.  
5 The parties to the dispute are the driver and the former employer.

6 *Interaction with Fair Work procedures*

- 7 (3) A road transport driver who has applied to the Tribunal under  
8 section 40 in relation to a matter must not make an application or  
9 complaint under the *Fair Work Act 2009* in relation to the same  
10 matter, unless the application to the Tribunal has been withdrawn  
11 or has failed for want of jurisdiction.  
12 (4) A road transport driver who has made an application or complaint  
13 in relation to a matter under the *Fair Work Act 2009* must not  
14 apply to the Tribunal under section 40 in relation to the same  
15 matter, unless the application or complaint under the *Fair Work*  
16 *Act 2009* has been withdrawn or has failed for want of jurisdiction.

17 **42 Disputes involving independent contractor road transport drivers**

18 *Dispute between independent contractor and hirer*

- 19 (1) The Tribunal may deal with a dispute between a road transport  
20 driver who is an independent contractor and the hirer of the driver  
21 if the dispute is about remuneration or related conditions in a road  
22 transport contract between the driver and hirer that could affect  
23 whether the driver works in an unsafe manner. The parties to the  
24 dispute are the driver and the hirer.

25 *Dispute between independent contractor and former hirer*

- 26 (2) The Tribunal may deal with a dispute between a road transport  
27 driver who is an independent contractor and a former hirer of the  
28 driver if:  
29 (a) the dispute is about the former hirer terminating the road  
30 transport contract; and  
31 (b) the driver contends that the termination was mainly because  
32 the driver refused to work in an unsafe manner.

1                   The parties to the dispute are the driver and the former hirer.

2           **43 Disputes involving participants in the supply chain**

3                   The Tribunal may deal with a dispute that is about practices of one  
4                   or more participants in the supply chain in relation to a road  
5                   transport driver if:

- 6                   (a) the employer or hirer of the driver contends that the practices  
7                   affect the employer's or hirer's ability to provide  
8                   remuneration or related conditions to the driver that do not  
9                   provide incentives to work in an unsafe manner; and  
10                  (b) the driver and employer or hirer have applied to the Tribunal  
11                  under section 40.

12                  The parties to the dispute are the driver, the employer or hirer and  
13                  the participant or participants in the supply chain whose practices  
14                  the dispute relates to.

15           **44 How Tribunal may deal with disputes**

- 16                  (1) If the Tribunal decides to deal with the dispute, it may deal with it  
17                  as the Tribunal considers appropriate, including in the following  
18                  ways:  
19                  (a) by mediation or conciliation;  
20                  (b) by making a recommendation or expressing an opinion;  
21                  (c) if the parties to the dispute agree—by arbitrating (however  
22                  described) the dispute.
- 23                  (2) If the Tribunal arbitrates the dispute, the Tribunal may make any  
24                  order (an *arbitration order*) that the Tribunal considers appropriate  
25                  to ensure that the driver does not have remuneration-related  
26                  incentives to work in an unsafe manner.
- 27                  (3) An arbitration order may impose the requirements specified in the  
28                  order on any or all of the following:  
29                  (a) a party to the dispute;  
30                  (b) if there is a participant in the supply chain in relation to the  
31                  road transport driver who is not a party to the dispute but  
32                  who has agreed to be bound by the outcome of the  
33                  arbitration—that participant.

**Part 4** Disputes about remuneration and related conditions

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1                   (4) A person on whom an arbitration order imposes a requirement  
2                   must not contravene the requirement.

3                   Note:        This subsection is a civil remedy provision (see Division 1 of Part 5).

4                   **45 Disputes about safe remuneration to be dealt with by dual FWA**  
5                   **member**

6                   The function of dealing with disputes under this Part is to be  
7                   performed by a dual FWA member.  
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## **Part 5—Compliance**

### **Division 1—Civil remedy provisions and orders**

#### **Subdivision A—Applications for orders**

#### **46 Civil remedy provisions**

- (1) A provision referred to in column 1 of an item in the table in subsection (2) is a *civil remedy provision*.
- (2) For each civil remedy provision, the persons referred to in column 2 of the item may, subject to sections 47 and 48 and Subdivision B of this Division, apply to:
- (a) the Federal Court; or
  - (b) the Federal Magistrates Court; or
  - (c) an eligible State or Territory court;
- for orders in relation to a contravention or proposed contravention of the provision, including the maximum penalty referred to in column 3 of the item.

Note: See also subsection 47(4).

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#### **Civil remedy provisions**

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<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Maximum penalty</b>
1	Section 28	(a) a driver to whom the order applies; (b) a person on whom the order imposes a requirement, if the person is affected by the contravention or will be affected by the proposed contravention; (c) a registered employee association; (d) an industrial association; (e) an inspector	60 penalty units

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**Part 5** Compliance

**Division 1** Civil remedy provisions and orders

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<b>Civil remedy provisions</b>			
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Maximum penalty</b>
2	Subsection 36(1)	(a) a road transport driver who is providing applicable services to the participating hirer; (b) the participating hirer; (c) a registered employee association; (d) an industrial association; (e) an inspector	60 penalty units
3	Subsection 44(4)	(a) a party to the dispute to which the arbitration order relates, if the person is affected by the contravention or will be affected by the proposed contravention; (b) a registered employee association; (c) an industrial association; (d) an inspector	60 penalty units
4	Subsection 76(6)	an inspector	30 penalty units
5	Subsection 115(3)	(a) the person to whom the costs are payable; (b) a registered employee association; (c) an industrial association	60 penalty units
6	Subsection 119(1)	(a) a road transport driver; (b) an inspector	30 penalty units
7	Subsection 119(2)	(a) a road transport driver; (b) an inspector	30 penalty units

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2 **47 Limitations on who may apply for orders etc.**

3 (1) The following persons may apply for an order under this Division,  
4 in relation to a contravention or a proposed contravention of a civil  
5 remedy provision, only if the person is affected by the  
6 contravention, or will be affected by the proposed contravention:

- 1 (a) a road transport driver;  
2 (b) an employer of a road transport driver;  
3 (c) a hirer of a road transport driver;  
4 (d) a participant in the supply chain in relation to a road transport  
5 driver.
- 6 (2) A registered employee association may apply for an order under  
7 this Division, in relation to a contravention or a proposed  
8 contravention of a civil remedy provision, only if:  
9 (a) the contravention affects a person or the proposed  
10 contravention will affect a person; and  
11 (b) the association is entitled to represent the interests of the  
12 person.
- 13 (3) An industrial association may apply for an order under this  
14 Division, in relation to a contravention or proposed contravention  
15 of a civil remedy provision, only if:  
16 (a) the contravention affects a person or the proposed  
17 contravention will affect a person; and  
18 (b) the association is entitled to represent the interests of the  
19 person; and  
20 (c) the person has consented to the association making the  
21 application.
- 22 (4) The regulations may prescribe a person for the purposes of an item  
23 in column 2 of the table in subsection 46(2). The regulations may  
24 provide that the person is prescribed only in relation to  
25 circumstances specified in the regulations.

#### 26 **48 Time limit on applications**

27 A person may apply for an order under this Division in relation to a  
28 contravention of a civil remedy provision only if the application is  
29 made within 6 years after the day on which the contravention  
30 occurred.

31 Note: For time limits on orders relating to underpayments, see subsection  
32 49(4).

Section 49

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1 **Subdivision B—Orders**

2 **49 Orders that can be made**

3 *Federal Court and Federal Magistrates Court*

4 (1) The Federal Court or the Federal Magistrates Court may make any  
5 of the following orders if the court is satisfied that a person has  
6 contravened, or proposes to contravene, a civil remedy provision:

- 7 (a) an order granting an injunction, or interim injunction, to  
8 prevent, stop or remedy the effects of a contravention;  
9 (b) an order awarding compensation for loss that a person has  
10 suffered because of the contravention;  
11 (c) any other order the court considers appropriate.

12 Note: For the court's power to make pecuniary penalty orders, see  
13 section 50.

14 *Eligible State or Territory courts*

15 (2) An eligible State or Territory court may order a person to pay an  
16 amount to or on behalf of another person if the court is satisfied  
17 that:

- 18 (a) the person was required to pay the amount to or on behalf of  
19 the other person under this Act or an enforceable instrument;  
20 and  
21 (b) the person has contravened a civil remedy provision by  
22 failing to pay the amount.

23 Note: For the court's power to make pecuniary penalty orders, see  
24 section 50.

25 *When orders may be made*

26 (3) A court may make an order under this section:

- 27 (a) on its own initiative during proceedings before the court; or  
28 (b) on application.

1 *Time limit for orders in relation to underpayments*

- 2 (4) A court must not make an order under this section in relation to an  
3 underpayment that relates to a period that is more than 6 years  
4 before the proceedings concerned commenced.

5 **50 Pecuniary penalty orders**

- 6 (1) The Federal Court, the Federal Magistrates Court or an eligible  
7 State or Territory court may, on application, order a person to pay  
8 to the Commonwealth a pecuniary penalty that the court considers  
9 is appropriate if the court is satisfied that the person has  
10 contravened a civil remedy provision.

11 Note: Column 3 of the table in subsection 46(2) sets out the maximum  
12 penalty that the court may order the person to pay.

13 *Determining amount of pecuniary penalty*

- 14 (2) The pecuniary penalty must not be more than:  
15 (a) if the person is an individual—the maximum number of  
16 penalty units referred to in the relevant item in column 3 of  
17 the table in subsection 46(2); or  
18 (b) if the person is a body corporate—5 times the maximum  
19 number of penalty units referred to in the relevant item in  
20 column 3 of the table in subsection 46(2).

21 *Recovery of penalty*

- 22 (3) The pecuniary penalty is a civil debt payable to the  
23 Commonwealth.  
24 (4) The Commonwealth may enforce a pecuniary penalty order as if it  
25 were an order made in civil proceedings against the person to  
26 recover a debt due by the person. The debt arising from the order is  
27 taken to be a judgement debt.

28 *No limitation on orders*

- 29 (5) To avoid doubt, a court may make a pecuniary penalty order in  
30 addition to one or more orders under section 49.

Section 51

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1 **51 Interest up to judgement**

- 2 (1) This section applies to an order (other than a pecuniary penalty  
3 order) under this Division in relation to an amount that a person  
4 was required to pay to or on behalf of another person under this  
5 Act or an enforceable instrument.
- 6 (2) In making the order the court must, on application, include an  
7 amount of interest in the sum ordered, unless good cause is shown  
8 to the contrary.
- 9 (3) Without limiting subsection (2), in determining the amount of  
10 interest, the court must take into account the period between the  
11 day the relevant cause of action arose and the day the order is  
12 made.

13 **Subdivision C—General provisions about civil remedies**

14 **52 Contravening a civil remedy provision is not an offence**

15 A contravention of a civil remedy provision is not an offence.

16 **53 Involvement in contravention treated in same way as actual**  
17 **contravention**

- 18 (1) A person who is involved in a contravention of a civil remedy  
19 provision is taken to have contravened that provision.
- 20 (2) A person is *involved in* a contravention of a civil remedy provision  
21 if, and only if, the person:
- 22 (a) has aided, abetted, counselled or procured the contravention;  
23 or
- 24 (b) has induced the contravention, whether by threats or  
25 promises or otherwise; or
- 26 (c) has been in any way, by act or omission, directly or  
27 indirectly, knowingly concerned in or party to the  
28 contravention; or
- 29 (d) has conspired with others to effect the contravention.

1 **54 Proceedings may be heard together**

2 A court may direct that 2 or more proceedings for civil remedy  
3 orders are to be heard together.

4 **55 Civil evidence and procedure rules for proceedings relating to**  
5 **civil remedy provisions**

6 A court must apply the rules of evidence and procedure for civil  
7 matters when hearing proceedings relating to a contravention, or  
8 proposed contravention, of a civil remedy provision.

9 **56 Civil proceedings after criminal proceedings**

10 None of the Federal Court, the Federal Magistrates Court or an  
11 eligible State or Territory court may make a pecuniary penalty  
12 order against a person for a contravention of a civil remedy  
13 provision if the person has been convicted of an offence constituted  
14 by conduct that is substantially the same as the conduct  
15 constituting the contravention.

16 **57 Criminal proceedings during civil proceedings**

- 17 (1) Proceedings for a pecuniary penalty order against a person for a  
18 contravention of a civil remedy provision are stayed if:  
19 (a) criminal proceedings are commenced or have already been  
20 commenced against the person for an offence; and  
21 (b) the offence is constituted by conduct that is the same, or  
22 substantially the same, as the conduct alleged to constitute  
23 the contravention.
- 24 (2) The proceedings for the order (the civil proceedings) may be  
25 resumed if the person is not convicted of the offence. Otherwise:  
26 (a) the civil proceedings are dismissed; and  
27 (b) costs must not be awarded in relation to the civil proceedings.

28 **58 Criminal proceedings after civil proceedings**

29 Criminal proceedings may be commenced against a person for  
30 conduct that is substantially the same as conduct constituting a

**Section 59**

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1                                   contravention of a civil remedy provision regardless of whether a  
2                                   pecuniary penalty order has been made against the person.

3                                   **59 Evidence given in proceedings for penalty not admissible in**  
4                                   **criminal proceedings**

5                                   (1) Evidence of information given or evidence of production of  
6                                   documents by a natural person is not admissible in criminal  
7                                   proceedings against the person if:

- 8                                   (a) the person previously gave the evidence or produced the  
9                                   documents in proceedings for a pecuniary penalty order  
10                                   against the person for a contravention of a civil remedy  
11                                   provision (whether or not the order was made); and  
12                                   (b) the conduct alleged to constitute the offence is the same, or  
13                                   substantially the same, as the conduct alleged to constitute  
14                                   the contravention.

15                                   (2) However, subsection (1) does not apply to criminal proceedings in  
16                                   relation to the falsity of the evidence given by the person in the  
17                                   proceedings for the pecuniary penalty order.

18                                   **60 Civil double jeopardy**

19                                   If a person is ordered to pay a pecuniary penalty under a civil  
20                                   remedy provision in relation to particular conduct, the person is not  
21                                   liable to be ordered to pay a pecuniary penalty under some other  
22                                   provision of a law of the Commonwealth in relation to that  
23                                   conduct.

24                                   Note:           A court may make other orders, such as an order for compensation, in  
25                                   relation to particular conduct even if the court has made a pecuniary  
26                                   penalty order in relation to that conduct (see subsection 50(5)).

27                                   **61 Course of conduct**

28                                   (1) For the purposes of this Part, 2 or more contraventions of a civil  
29                                   remedy provision referred to in subsection (2) are, subject to  
30                                   subsection (3), taken to constitute a single contravention if:

- 31                                   (a) the contraventions are committed by the same person; and  
32                                   (b) the contraventions arose out of a course of conduct by the  
33                                   person.



- 1           (2) The civil remedy provisions are the following:
- 2               (a) section 28 (which deals with contraventions of road safety
- 3               remuneration orders);
- 4               (b) subsection 36(1) (which deals with contraventions in relation
- 5               to safe remuneration approvals);
- 6               (c) subsection 44(4) (which deals with contraventions of
- 7               arbitration orders).
- 8           (3) Subsection (1) does not apply to a contravention of a civil remedy
- 9           provision that is committed by a person after a court has imposed a
- 10           pecuniary penalty on the person for an earlier contravention of the
- 11           provision.
- 12

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2 **Division 2—Jurisdiction and powers of courts**

3 **Subdivision A—Jurisdiction and powers of the Federal Court**

4 **62 Conferring jurisdiction on the Federal Court**

5 Jurisdiction is conferred on the Federal Court in relation to any  
6 civil matter arising under this Act.

7 **63 Exercising jurisdiction in the Fair Work Division of the Federal**  
8 **Court**

9 The jurisdiction conferred on the Federal Court under section 62 is  
10 to be exercised in the Fair Work Division of the Federal Court if:

- 11 (a) an application is made to the Federal Court under this Act; or  
12 (b) a writ of mandamus or prohibition or an injunction is sought  
13 in the Federal Court against a person holding office under  
14 this Act; or  
15 (c) a declaration is sought under section 21 of the *Federal Court*  
16 *of Australia Act 1976* in relation to a matter arising under this  
17 Act; or  
18 (d) an injunction is sought under section 23 of the *Federal Court*  
19 *of Australia Act 1976* in relation to a matter arising under this  
20 Act; or  
21 (e) an appeal is instituted in the Federal Court from a judgement  
22 of the Federal Magistrates Court or a court of a State or  
23 Territory in a matter arising under this Act; or  
24 (f) proceedings in relation to a matter arising under this Act are  
25 transferred to the Federal Court from the Federal Magistrates  
26 Court; or  
27 (g) the Federal Magistrates Court or a court of a State or  
28 Territory states a case or reserves a question for the  
29 consideration of the Federal Court in a matter arising under  
30 this Act; or  
31 (h) the President refers, under section 95 of this Act, a question  
32 of law to the Federal Court; or

- 1 (i) the High Court remits a matter arising under this Act to the  
2 Federal Court.

3 **64 No limitation on Federal Court's powers**

4 To avoid doubt, nothing in this Act limits the Federal Court's  
5 powers under section 21, 22 or 23 of the *Federal Court of*  
6 *Australia Act 1976*.

7 **65 Appeals from eligible State or Territory courts**

8 *Appeals from original decisions of eligible State or Territory*  
9 *courts*

- 10 (1) An appeal lies to the Federal Court from a decision of an eligible  
11 State or Territory court exercising jurisdiction under this Act.
- 12 (2) No appeal lies from a decision of an eligible State or Territory  
13 court exercising jurisdiction under this Act, except:
- 14 (a) if the court was exercising summary jurisdiction—an appeal,  
15 to that court or another eligible State or Territory court of the  
16 same State or Territory, as provided for by a law of that State  
17 or Territory; or  
18 (b) in any case—an appeal as provided for by subsection (1).

19 *Appeals from appellate decisions of eligible State or Territory*  
20 *courts*

- 21 (3) An appeal lies to the Federal Court from a decision of an eligible  
22 State or Territory court made on appeal from a decision that:
- 23 (a) was a decision of that court or another eligible State or  
24 Territory court of the same State or Territory; and  
25 (b) was made in the exercise of jurisdiction under this Act.
- 26 (4) No appeal lies from a decision to which subsection (3) applies,  
27 except an appeal as provided for by that subsection.

**Part 5** Compliance

**Division 2** Jurisdiction and powers of courts

Section 66

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1 *Leave to appeal not required*

2 (5) It is not necessary to obtain the leave of the Federal Court, or the  
3 court appealed from, in relation to an appeal under subsection (1)  
4 or (3).

5 **Subdivision B—Jurisdiction and powers of the Federal**  
6 **Magistrates Court**

7 **66 Conferring jurisdiction on the Federal Magistrates Court**

8 Jurisdiction is conferred on the Federal Magistrates Court in  
9 relation to any civil matter arising under this Act.

10 **67 Exercising jurisdiction in the Fair Work Division of the Federal**  
11 **Magistrates Court**

12 Jurisdiction conferred on the Federal Magistrates Court under  
13 section 66 is to be exercised in the Fair Work Division of the  
14 Federal Magistrates Court if:

- 15 (a) an application is made to the Federal Magistrates Court under  
16 this Act; or  
17 (b) an injunction is sought under section 15 of the *Federal*  
18 *Magistrates Act 1999* in relation to a matter arising under this  
19 Act; or  
20 (c) a declaration is sought under section 16 of the *Federal*  
21 *Magistrates Act 1999* in relation to a matter arising under this  
22 Act; or  
23 (d) proceedings in relation to a matter arising under this Act are  
24 transferred to the Federal Magistrates Court from the Federal  
25 Court; or  
26 (e) the High Court remits a matter arising under this Act to the  
27 Federal Magistrates Court.

28 **68 No limitation on Federal Magistrates Court's powers**

29 To avoid doubt, nothing in this Act limits the Federal Magistrates  
30 Court's powers under section 14, 15 or 16 of the *Federal*  
31 *Magistrates Act 1999*.

1 **Subdivision C—Small claims procedure**

2 **69 Applicants may choose small claims procedure**

- 3 (1) Proceedings are to be dealt with as small claims proceedings under  
4 this section if:
- 5 (a) a person applies for an order (other than a pecuniary penalty  
6 order) under Division 1 from a magistrates court or the  
7 Federal Magistrates Court; and
  - 8 (b) the order relates to an amount that another person is required  
9 to pay under this Act or an enforceable instrument; and
  - 10 (c) the person indicates, in the manner prescribed by the  
11 regulations or by the rules of the court, that he or she wants  
12 the small claims procedure to apply to the proceedings.

13 *Limits on award*

- 14 (2) In small claims proceedings, the court may not award more than  
15 \$20,000.

16 *Procedure*

- 17 (3) In small claims proceedings, the court is not bound by any rules of  
18 evidence and procedure and may act:
- 19 (a) in an informal manner; and
  - 20 (b) without regard to legal forms and technicalities.
- 21 (4) At any stage of the small claims proceedings, the court may amend  
22 the papers commencing the proceedings if sufficient notice is given  
23 to any party adversely affected by the amendment.

24 *Legal representation*

- 25 (5) A party to small claims proceedings may be represented in the  
26 proceedings by a lawyer only with the leave of the court.
- 27 (6) If the court grants leave for a party to the proceedings to be  
28 represented by a lawyer, the court may, if it considers appropriate,  
29 do so subject to conditions designed to ensure that no other party is  
30 unfairly disadvantaged.

**Part 5** Compliance

**Division 2** Jurisdiction and powers of courts

**Section 70**

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1 (7) For the purposes of this section, a person is taken not to be  
2 represented by a lawyer if the lawyer is an employee or officer of  
3 the person.

4 *Representation by an industrial association*

5 (8) The regulations may provide for a party to small claims  
6 proceedings to be represented in the proceedings, in specified  
7 circumstances, by an official of an industrial association.

8 (9) However, if small claims proceedings are heard in a court of a  
9 State, the regulations may so provide only if the law of the State  
10 allows a party to be represented in that court in those  
11 circumstances by officials of bodies representing interests related  
12 to the matters in dispute.

13 **Subdivision D—Miscellaneous**

14 **70 Costs only if proceedings instituted vexatiously etc.**

15 (1) A party to proceedings (including an appeal) in a court (including a  
16 court of a State or Territory) exercising jurisdiction under this Act  
17 may be ordered by the court to pay costs incurred by another party  
18 to the proceedings only in accordance with subsection (2).

19 (2) The party may be ordered to pay the costs only if:  
20 (a) the court is satisfied that the party instituted the proceedings  
21 vexatiously or without reasonable cause; or  
22 (b) the court is satisfied that the party's unreasonable act or  
23 omission caused the other party to incur the costs; or  
24 (c) the court is satisfied of both of the following:  
25 (i) the party unreasonably refused to participate in a matter  
26 before the Tribunal;  
27 (ii) the matter arose from the same facts as the proceedings.

28 **71 No imprisonment for failure to pay pecuniary penalty**

29 (1) A court (including a court of a State or Territory) may not order a  
30 person to serve a sentence of imprisonment if the person fails to  
31 pay a pecuniary penalty imposed under this Act.

1                   (2) This section applies despite any other law of the Commonwealth, a  
2                   State or a Territory.

3                   **72 Regulations dealing with matters relating to court proceedings**

4                   The regulations may provide for the fees to be charged in relation  
5                   to proceedings in a court (including a court of a State or Territory)  
6                   under this Act.  
7

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2 **Division 3—Fair Work Ombudsman**

3 **Subdivision A—Role of Fair Work Ombudsman**

4 **73 Functions of the Fair Work Ombudsman**

5 The Fair Work Ombudsman has the following functions:

- 6 (a) to monitor compliance with this Act and enforceable  
7 instruments, including by providing education, assistance and  
8 advice to road transport drivers, their employers or hirers and  
9 participants in the supply chain in relation to road transport  
10 drivers;
- 11 (b) to inquire into, and investigate, any act or practice that may  
12 be contrary to this Act or an enforceable instrument;
- 13 (c) to commence proceedings in a court to enforce this Act and  
14 any enforceable instrument;
- 15 (d) to refer matters to relevant authorities;
- 16 (e) to represent road transport drivers who are, or may become, a  
17 party to proceedings in a court under this Act, if the Fair  
18 Work Ombudsman considers that representing the drivers  
19 will promote compliance with this Act or an enforceable  
20 instrument.

21 **74 Exercise of compliance powers**

- 22 (1) An inspector may exercise compliance powers within the meaning  
23 of the *Fair Work Act 2009* (other than a power under section 715  
24 or 716 of that Act) for the purpose of determining whether this Act  
25 or an enforceable instrument is being or has been complied with.
- 26 (2) For the purposes of the *Fair Work Act 2009*:
- 27 (a) a purpose referred to in subsection (1) is taken to be a  
28 compliance purpose; and
- 29 (b) a civil remedy provision under section 28 or subsection  
30 36(1), 44(4), 76(6) or 119(1) or (2) is taken to be a civil  
31 remedy provision.



1 **75 Referring matters to the Fair Work Ombudsman**

- 2 (1) The General Manager may refer a matter to the Fair Work  
3 Ombudsman for investigation if:  
4 (a) the General Manager has reason to believe that a person has  
5 not complied with an enforceable instrument in relation to  
6 another person; and  
7 (b) the General Manager does not believe that the persons are  
8 able to resolve the matter themselves.
- 9 (2) The General Manager must inform the persons, in writing, if the  
10 General Manager refers the matter to the Fair Work Ombudsman.
- 11 (3) The General Manager must inform the Fair Work Ombudsman  
12 about any action taken or information obtained by the General  
13 Manager in relation to the matter.

14 **Subdivision B—Compliance notices**

15 **76 Compliance notices**

16 *Application of this section*

- 17 (1) This section applies if an inspector reasonably believes that a  
18 person has contravened a term of an enforceable instrument.

19 *Giving a compliance notice*

- 20 (2) The inspector may give the person a notice (a **compliance notice**)  
21 requiring the person to do the following within such reasonable  
22 time as is specified in the notice:  
23 (a) take specified action to remedy the direct effects of the  
24 contravention referred to in subsection (1);  
25 (b) produce reasonable evidence of the person's compliance with  
26 the notice.

27 *Content of compliance notice*

- 28 (3) A compliance notice must also:  
29 (a) set out the name of the person to whom the notice is given;  
30 and

**Section 76**

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- 1 (b) set out the name of the inspector who gave the notice; and  
2 (c) set out brief details of the contravention; and  
3 (d) explain that a failure to comply with the notice may  
4 contravene a civil remedy provision; and  
5 (e) explain that the person may apply to the Federal Court, the  
6 Federal Magistrates Court or an eligible State or Territory  
7 Court for review of the notice on either or both of the  
8 following grounds:  
9 (i) the person has not committed a contravention set out in  
10 the notice;  
11 (ii) the notice does not comply with subsection (2) or this  
12 subsection; and  
13 (f) set out any other matters prescribed by the regulations.

14 *Relationship with civil remedy provisions*

- 15 (4) An inspector must not apply for an order under Division 1 of this  
16 Part in relation to a contravention of a civil remedy provision by a  
17 person if:  
18 (a) the inspector has given the person a compliance notice in  
19 relation to the contravention; and  
20 (b) either of the following subparagraphs apply:  
21 (i) the notice has not been withdrawn, and the person has  
22 complied with the notice;  
23 (ii) the person has made an application under section 77 in  
24 relation to the notice that has not been completely dealt  
25 with.

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

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

32 *Person must not fail to comply with notice*

- 33 (6) A person must not fail to comply with a compliance notice given  
34 under this section.



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2 **Division 4—Right of entry**

3 **78 Right of entry for suspected contravention of this Act or**  
4 **enforceable instrument**

5 The reference in subsection 481(1) of the *Fair Work Act 2009* to a  
6 suspected contravention of that Act or a term of a fair work  
7 instrument is taken to include a reference to a suspected  
8 contravention of this Act or an enforceable instrument.  
9

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2 **Part 6—Road Safety Remuneration Tribunal**

3 **Division 1—Establishment and functions of Tribunal**

4 **79 Establishment of Tribunal**

- 5 (1) The Road Safety Remuneration Tribunal is established by this  
6 section.
- 7 (2) The Tribunal consists of:
- 8 (a) the President; and
- 9 (b) at least 2 and no more than 4 persons who are experienced in  
10 workplace relations matters; and
- 11 (c) at least 2 and no more than 4 persons who have knowledge  
12 of, or experience in, one or more of the following fields:
- 13 (i) transport and logistics;
- 14 (ii) driving in the road transport industry;
- 15 (iii) business, industry or commerce;
- 16 (iv) work health and safety in the road transport industry.

17 **80 Functions of Tribunal**

- 18 The Tribunal has the following functions:
- 19 (a) to make road safety remuneration orders under Part 2;
- 20 (b) to grant safe remuneration approvals in relation to road  
21 transport collective agreements under Part 3;
- 22 (c) to deal with certain disputes relating to road transport drivers,  
23 their employers or hirers and participants in the supply chain  
24 under Part 4;
- 25 (d) to conduct research into remuneration-related matters that  
26 may affect safety in the road transport industry;
- 27 (e) any other function prescribed by the regulations or another  
28 law of the Commonwealth.

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1 **81 Tribunal has privileges and immunities of the Crown**

2 The Tribunal has the privileges and immunities of the Crown.

3 **82 Protection of Tribunal members**

4 A member of the Tribunal has, in performing his or her functions  
5 or exercising his or her powers as a member of the Tribunal, the  
6 same protection and immunity as a Justice of the High Court.  
7

1

2 **Division 2—Performance of functions of Tribunal**

3 **Subdivision A—Role of the President**

4 **83 Role of President in performance of functions**

5 The President is responsible for ensuring that the Tribunal  
6 performs its functions efficiently and effectively.

7 **Subdivision B—Applications to Tribunal**

8 **84 Dismissing applications**

- 9 (1) Without limiting when the Tribunal may dismiss an application,  
10 the Tribunal may dismiss an application if:  
11 (a) the application is not made in accordance with this Act; or  
12 (b) the application is frivolous or vexatious; or  
13 (c) the application has no reasonable prospects of success.
- 14 (2) The Tribunal may dismiss an application:  
15 (a) on its own initiative; or  
16 (b) on application.

17 **Subdivision C—Performance of functions**

18 **85 Performance of functions generally**

- 19 (1) In performing its functions, the Tribunal:  
20 (a) may regulate the conduct of its proceedings as it sees fit and  
21 is not bound to act in a formal manner; and  
22 (b) is not bound by the rules of evidence and procedure in  
23 relation to any matter it is dealing with (even if it conducts a  
24 hearing in relation to the matter).
- 25 (2) The performance of the functions of the Tribunal is not affected by  
26 reason only of there being a vacancy in the membership of the  
27 Tribunal, unless the vacancy is in the office of the President.

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1       **86 Powers of Tribunal to perform functions**

- 2               (1) The Tribunal may, except as provided by this Act, inform itself in  
3               relation to matters it is dealing with in any manner it considers  
4               appropriate.
- 5               (2) Without limiting subsection (1), the Tribunal may inform itself in  
6               the following ways:
- 7                     (a) by requiring a compellable person to attend before the  
8                     Tribunal;
- 9                     (b) by inviting, subject to any terms and conditions determined  
10                    by the Tribunal, oral or written submissions (see for example  
11                    subsection 24(1));
- 12                   (c) by requiring a compellable person to provide copies of  
13                   documents or records, or to provide any other information to  
14                   the Tribunal;
- 15                   (d) by taking evidence under oath or affirmation in accordance  
16                   with the regulations (if any);
- 17                   (e) by conducting inquiries;
- 18                   (f) by undertaking or commissioning research;
- 19                   (g) by conducting a conference (see section 87);
- 20                   (h) by holding a hearing (see section 88).

21       **87 Conferences**

- 22               (1) For the purposes of performing a function of the Tribunal, the  
23               Tribunal may direct a compellable person to attend a conference at  
24               a specified time and place.
- 25               (2) If a Full Bench is performing the function, the President is  
26               responsible for conducting the conference. Otherwise, the dual  
27               FWA member performing the function is responsible.
- 28               (3) The conference must be conducted in private, unless the person  
29               conducting the conference directs that it be conducted in public.
- 30               (4) If the conference is to arbitrate a dispute under Part 4, then despite  
31               subsections (1) and (3):
- 32                     (a) the Tribunal must not direct a person to attend the conference  
33                     unless the person is a party to the dispute; and



- 1 (b) the person conducting the conference must not direct that it  
2 be conducted in public.

3 **88 Hearings**

- 4 (1) The Tribunal is not required to hold a hearing in performing  
5 functions under this Act.
- 6 (2) If the Tribunal holds a hearing in relation to a matter, the hearing  
7 must be held in public, except as provided by subsection (3).
- 8 (3) The Tribunal may make the following orders in relation to a  
9 hearing that the Tribunal holds if the Tribunal is satisfied that it is  
10 desirable to do so because of the confidential nature of any  
11 evidence, or for any other reason:
- 12 (a) orders that all or part of the hearing is to be held in private;
  - 13 (b) orders about who may be present at the hearing;
  - 14 (c) orders prohibiting or restricting the publication of the names  
15 and addresses of persons appearing at the hearing;
  - 16 (d) orders prohibiting or restricting the publication of, or the  
17 disclosure to some or all of the persons present at the hearing  
18 of, the following:
    - 19 (i) evidence given in the hearing;
    - 20 (ii) matters contained in documents before the Tribunal in  
21 relation to the hearing.
- 22 (4) Subsection (3) does not apply to the publication of a submission  
23 made to the Tribunal for consideration in determining whether to  
24 make a road safety remuneration order or take a proposed action  
25 under subsection 31(2) (see subsections 24(3) and 31(4)).

26 **89 Offences in relation to attendance before Tribunal**

27 *Required to attend*

- 28 (1) A person commits an offence if:  
29 (a) the person has been required to attend before the Tribunal;  
30 and  
31 (b) the person fails to attend as required.

Section 90

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1                   Penalty: Imprisonment for 6 months.

2                   *Oath or affirmation*

- 3                   (2) A person commits an offence if:  
4                         (a) the person attends before the Tribunal; and  
5                         (b) the Tribunal requires the person to take an oath or make an  
6                                 affirmation; and  
7                         (c) the person refuses or fails to be sworn or to make an  
8                                 affirmation as required.

9                   Penalty: Imprisonment for 6 months.

10                  *Questions or documents*

- 11                  (3) A person commits an offence if:  
12                         (a) the person attends before the Tribunal; and  
13                         (b) the Tribunal requires the person to answer a question or  
14                                 produce a document; and  
15                         (c) the person refuses or fails to answer the question or produce  
16                                 the document.

17                  Penalty: Imprisonment for 6 months.

18                  *Defence of reasonable excuse*

- 19                  (4) Subsection (1), (2) or (3) does not apply if the person has a  
20                         reasonable excuse.

21                  Note:         A defendant bears an evidential burden in relation to the matter in  
22                                 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

23                  **90 Confidential evidence**

- 24                  (1) The Tribunal may make an order prohibiting or restricting the  
25                         publication of the following in relation to a matter before the  
26                         Tribunal (whether or not the Tribunal holds a hearing in relation to  
27                         the matter) if the Tribunal is satisfied that it is desirable to do so  
28                         because of the confidential nature of the evidence, or for any other  
29                         reason:  
30                         (a) evidence given to the Tribunal in relation to the matter;

- 1 (b) the names and addresses of persons making submissions to  
2 the Tribunal in relation to the matter;
- 3 (c) matters contained in documents lodged with the Tribunal or  
4 received in evidence by the Tribunal in relation to the matter;
- 5 (d) the whole or any part of its decisions or reasons in relation to  
6 the matter.
- 7 (2) Subsection (1) does not apply to the publication of a submission  
8 made to the Tribunal for consideration in determining whether to  
9 make a road safety remuneration order or take a proposed action  
10 under subsection 31(2) (see subsections 24(3) and 31(4)).

## 11 **Subdivision D—Representation by lawyers and paid agents**

### 12 **91 Representation by lawyers and paid agents**

- 13 (1) Except as provided by subsection (2) or the procedural rules, a  
14 person may be represented in a matter before the Tribunal  
15 (including by making an application or submission to the Tribunal  
16 on behalf of the person) by a lawyer or paid agent only with the  
17 permission of the Tribunal.
- 18 (2) The Tribunal's permission is not required for a person to be  
19 represented by a lawyer or paid agent in making a written  
20 submission under section 24 or 31.
- 21 (3) For the purposes of this section, a person is taken not to be  
22 represented by a lawyer or paid agent if the lawyer or paid agent:  
23 (a) is an employee or officer of the person; or  
24 (b) is an employee or officer of an industrial association that is  
25 representing the person.

## 26 **Subdivision E—Appeals**

### 27 **92 Appeal of decisions**

- 28 (1) A person who is aggrieved by:  
29 (a) a decision of a dual FWA member to grant, or refuse to grant,  
30 a safe remuneration approval in relation to a road transport  
31 collective agreement under Part 3; or

**Section 93**

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- 1 (b) a decision of a dual FWA member in relation to a dispute  
2 being dealt with under Part 4;  
3 may appeal the decision with the permission of the Tribunal.
- 4 (2) The person may appeal the decision by applying to the Tribunal.
- 5 (3) A Full Bench must:
- 6 (a) decide whether to grant permission to appeal the decision;  
7 and  
8 (b) if the Full Bench decides to grant permission—hear the  
9 appeal in accordance with section 94.
- 10 (4) Without limiting when permission to appeal may be granted, a Full  
11 Bench must grant permission if the Full Bench is satisfied that it is  
12 in the public interest to do so.

13 **93 Staying decisions that are appealed**

- 14 (1) The Full Bench may order that the operation of the whole or part of  
15 the decision be stayed, on any terms and conditions that the Full  
16 Bench considers appropriate, until a decision in relation to the  
17 appeal is made or the Full Bench makes a further order.
- 18 (2) An order under subsection (1) in relation to the appeal may be  
19 made by:
- 20 (a) the Full Bench; or  
21 (b) the President.

22 **94 Process for appealing decisions**

- 23 (1) The Full Bench may deal with an appeal in any manner it considers  
24 appropriate, including by holding a hearing or conducting a  
25 conference.
- 26 Note: See sections 87 and 88.
- 27 (2) The Full Bench may:
- 28 (a) admit further evidence; and  
29 (b) take into account any other information or evidence.

- 1 (3) The Full Bench may do any of the following in relation to the  
2 appeal:  
3 (a) confirm, quash or vary the decision;  
4 (b) make a further decision in relation to the matter that is the  
5 subject of the appeal;  
6 (c) refer the matter that is the subject of the appeal to a dual  
7 FWA member and:  
8 (i) require the member to deal with the subject matter of  
9 the decision; or  
10 (ii) require the member to act in accordance with the  
11 directions of the Full Bench.

12 **95 Referring questions of law to the Federal Court**

- 13 (1) The President may refer a question of law arising in a matter being  
14 appealed to the Full Bench for the opinion of the Federal Court.
- 15 (2) A question of law referred under subsection (1) must be  
16 determined by the Full Court of the Federal Court.
- 17 (3) The Full Bench may make a decision in relation to the matter even  
18 if the Federal Court is determining the question of law, except if  
19 the question is whether the Tribunal may exercise powers in  
20 relation to the matter.
- 21 (4) Once the Federal Court has determined the question, the Full  
22 Bench may only make a decision in relation to the matter that is  
23 not inconsistent with the opinion of the Federal Court (if the Full  
24 Bench has not already done so).
- 25 (5) However, if the Full Bench has made a decision in relation to the  
26 matter that is inconsistent with the opinion of the Federal Court,  
27 the Full Bench must vary the decision in such a way as to make it  
28 consistent with the opinion of the Federal Court.

Section 96

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1       **Subdivision F—Organisation of Tribunal**

2       **96 Constitution of Full Bench**

- 3               (1) If a function of the Tribunal may or must be performed by a Full  
4               Bench of the Tribunal, the Full Bench is to consist of either:
- 5                     (a) 3 members of the Tribunal, being the President, one dual  
6                     FWA member and one industry member; or
- 7                     (b) 5 members of the Tribunal, being the President, 2 dual FWA  
8                     members and 2 industry members.
- 9               (2) The President is to determine how many and which members of the  
10              Tribunal form part of a Full Bench.
- 11              (3) A decision of a majority of the members on the Full Bench  
12              prevails.  
13

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2 **Division 3—Members of Tribunal**

3 **Subdivision A—Appointment of members of Tribunal**

4 **97 Appointment**

5 (1) The members of the Tribunal are to be appointed by the  
6 Governor-General by written instrument for a period not exceeding  
7 5 years.

8 (2) The person appointed as the President must also be a Deputy  
9 President of Fair Work Australia.

10 (3) The persons appointed for the purposes of paragraph 79(2)(b) must  
11 also be Deputy Presidents or Commissioners of Fair Work  
12 Australia.

13 **98 Basis of appointment of industry members**

14 An industry member of the Tribunal holds office on a part-time  
15 basis.

16 Note: Members of the Tribunal who are dual FWA members are permitted  
17 to hold dual appointments under section 632 of the *Fair Work Act*  
18 *2009*.

19 **Subdivision B—Terms and conditions of members of Tribunal**

20 **99 Outside employment of industry members**

21 An industry member must not engage in any paid employment that,  
22 in the President's opinion, conflicts or may conflict with the proper  
23 performance of his or her duties.

24 **100 Remuneration**

25 (1) A dual FWA member is not to be paid any remuneration or  
26 allowances in relation to the member's office as a member of the  
27 Tribunal.

Section 101

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- 1 (2) An industry member is to be paid the remuneration that is  
2 determined by the Remuneration Tribunal. If no determination of  
3 that remuneration by that Tribunal is in operation, the member is to  
4 be paid the remuneration that is prescribed by the regulations.
- 5 (3) An industry member is to be paid the allowances prescribed by the  
6 regulations.
- 7 (4) This section has effect subject to the *Remuneration Tribunal Act*  
8 *1973*.

9 **101 Leave of absence**

10 A dual FWA member is allowed to be absent from the Tribunal  
11 during any period of recreation leave or any other leave of absence  
12 to which the member is entitled under section 639 of the *Fair Work*  
13 *Act 2009*.

14 **102 Disclosure of interests**

- 15 (1) This section applies if:  
16 (a) a member of the Tribunal (other than the President) is dealing  
17 with, or will deal with, a matter; and  
18 (b) the member has or acquires any interest (the *potential*  
19 *conflict*), pecuniary or otherwise, that conflicts or could  
20 conflict with the proper performance of the member's  
21 functions in relation to the matter.
- 22 (2) The member must disclose the potential conflict to the President.
- 23 (3) If the member does so, the member may only deal, or continue to  
24 deal, with the matter with the President's approval.
- 25 (4) The President must direct a member of the Tribunal not to deal, or  
26 to no longer deal, with a matter if:  
27 (a) the President becomes aware that the member has a potential  
28 conflict in relation to the matter (whether or not because of a  
29 disclosure referred to in subsection (2)); and  
30 (b) the President considers that the member should not deal, or  
31 should no longer deal, with the matter.



- 1 (5) To avoid doubt, subsection (4) applies to a member even if the  
2 President has previously given approval to the member under  
3 subsection (3).

4 **103 Termination of appointment on grounds of misbehaviour or**  
5 **incapacity**

6 The Governor-General may terminate the appointment of a  
7 member of the Tribunal if an address praying for the termination,  
8 on one of the following grounds, is presented to the  
9 Governor-General by each House of the Parliament in the same  
10 session:

- 11 (a) proved misbehaviour;  
12 (b) the member is unable to perform the duties of his or her  
13 office because of physical or mental incapacity.

14 **104 Suspension on grounds of misbehaviour or incapacity**

15 *Governor-General may suspend member*

- 16 (1) The Governor-General may suspend a member of the Tribunal  
17 from office:  
18 (a) for misbehaviour; or  
19 (b) if the member is unable to perform the duties of his or her  
20 office because of physical or mental incapacity.

21 *Statement of grounds*

- 22 (2) The Minister must cause to be tabled in each House of Parliament,  
23 within 7 sitting days of that House after the suspension, a statement  
24 identifying the member and setting out the ground of the  
25 suspension.

26 *Resolution by a House of Parliament*

- 27 (3) A House of the Parliament may, within 15 sitting days of that  
28 House after the day the statement has been tabled in it, declare by  
29 resolution that the appointment of the member should be  
30 terminated.

**Section 105**

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*Suspension terminates*

2

- (4) If a House does not pass a resolution in that way, the suspension terminates.

3

4

*Appointment to be terminated*

5

- (5) If each House of the Parliament passes a resolution in that way, the Governor-General must terminate the appointment of the member.

6

7

*Suspension not to affect entitlements*

8

- (6) The suspension of a member under this section does not affect any entitlement of the member to be paid remuneration and allowances in accordance with this Act.

9

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**105 Termination of appointment for bankruptcy, etc.**

12

The Governor-General must terminate the appointment of a member if:

13

14

- (a) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or

15

16

17

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

20

21

- (c) the member fails, without reasonable excuse, to comply with section 102 (disclosure of interests).

22

23

**106 Termination of appointment for outside employment**

24

The Governor-General must terminate the appointment of an industry member if the member engages in paid employment that, in the President's opinion, conflicts or may conflict with the proper performance of the member's duties (see section 99).

25

26

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1 **107 Automatic cessation of appointment for loss of qualification**

- 2 (1) If the President ceases to be a Deputy President of Fair Work  
3 Australia, the President's appointment to the Tribunal ceases on the  
4 same day.
- 5 (2) If a person appointed for the purposes of paragraph 79(2)(b) ceases  
6 to be a Deputy President or Commissioner of Fair Work Australia,  
7 the person's appointment to the Tribunal ceases on the same day.

8 **108 Resignation**

- 9 (1) A member of the Tribunal may resign his or her appointment by  
10 giving the Governor-General a written resignation.
- 11 (2) The resignation takes effect on the day it is received by the  
12 Governor-General or, if a later day is specified in the resignation,  
13 on that later day.

14 **109 Other terms and conditions of members**

15 A member of the Tribunal holds office on the terms and conditions  
16 (if any) in relation to matters not covered by this Act that are  
17 determined by the Governor-General.

18 **110 Acting appointments**

- 19 (1) The Minister may, by written instrument, appoint a person who is  
20 qualified for appointment as a particular kind of member of the  
21 Tribunal to act as a member of that kind:
- 22 (a) during a vacancy in the office of a member of that kind  
23 (whether or not an appointment has previously been made to  
24 the office); or
- 25 (b) during any period, or during all periods, when a member of  
26 that kind:
- 27 (i) is absent from duty or from Australia; or  
28 (ii) is, for any reason, unable to perform the duties of the  
29 office.
- 30 (2) The appointment must be for a specified period of not more than  
31 12 months.

**Part 6** Road Safety Remuneration Tribunal

**Division 3** Members of Tribunal

Section 111

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1 Note: For rules that apply to acting appointments, see section 33A of the  
2 *Acts Interpretation Act 1901*.

3 **Subdivision C—Miscellaneous matters relating to members of**  
4 **Tribunal**

5 **111 Disclosure of information by Tribunal**

6 The Tribunal may disclose information acquired by the Tribunal in  
7 the course of performing its functions or exercising its powers if  
8 the President reasonably believes:

- 9 (a) that it is necessary or appropriate to do so in the course of  
10 performing the Tribunal's functions or exercising the  
11 Tribunal's powers; or  
12 (b) that the disclosure is likely to assist in the administration or  
13 enforcement of a law of the Commonwealth, a State or a  
14 Territory.  
15

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2 **Division 4—General Manager and consultants**

3 **112 Role of General Manager of Fair Work Australia**

- 4 (1) The General Manager of Fair Work Australia has the function of  
5 assisting the President in ensuring that the Tribunal performs its  
6 functions efficiently and effectively.
- 7 (2) The General Manager has power to do all things necessary or  
8 convenient to be done for the purpose of performing his or her  
9 function.
- 10 (3) In particular, the General Manager is to assist the President in  
11 ensuring that the Tribunal performs its function under paragraph  
12 80(d) and may engage persons having suitable qualifications and  
13 experience as consultants for this purpose.
- 14 (4) The President may direct the General Manager as to the manner in  
15 which the General Manager is to perform his or her functions or  
16 exercise his or her powers.
- 17 (5) The direction may be of a general nature or may relate to a  
18 particular matter.
- 19 (6) The General Manager must comply with the direction except to the  
20 extent that compliance with the direction would be inconsistent  
21 with the General Manager's:
- 22 (a) performance of functions or exercise of powers in relation to  
23 Fair Work Australia; or
- 24 (b) performance of functions or exercise of powers under the  
25 *Financial Management and Accountability Act 1997* in  
26 relation to Fair Work Australia; or
- 27 (c) performance of functions or exercise of powers under the  
28 *Public Service Act 1999* in relation to Fair Work Australia.
- 29 (7) If a direction is in writing, the direction is not a legislative  
30 instrument.  
31

Section 113

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2 **Division 5—Miscellaneous matters relating to Tribunal**

3 **113 Procedural rules**

- 4 (1) After consulting the other members of the Tribunal, the President  
5 may, by legislative instrument, make procedural rules in relation  
6 to:
- 7 (a) the practice and procedure to be followed by the Tribunal; or
  - 8 (b) the conduct of business in relation to matters the Tribunal is  
9 authorised to deal with.
- 10 (2) Without limiting subsection (1), the procedural rules may provide  
11 for the following:
- 12 (a) the requirements for making an application to the Tribunal;
  - 13 (b) the circumstances in which a lawyer or paid agent may make  
14 an application or submission to the Tribunal on behalf of a  
15 person who is entitled to make the application or submission;
  - 16 (c) the form and manner in which, and the time within which,  
17 submissions may or must be made to the Tribunal;
  - 18 (d) the procedural requirements for making decisions of the  
19 Tribunal;
  - 20 (e) the form and manner in which the Tribunal gives directions  
21 and notifies persons of things;
  - 22 (f) who is notified by the Tribunal of things;
  - 23 (g) the manner in which conferences are to be conducted.
- 24 (3) To avoid doubt, subsection (1) includes the power to make  
25 procedural rules in relation to any functions conferred on the  
26 Tribunal by any other law of the Commonwealth.

27 **114 Regulations dealing with Tribunal matters**

28 The regulations may provide for any matter that the procedural  
29 rules may provide for.

30 Note: Regulations prevail over procedural rules if inconsistent (see  
31 subsection 121(2)).

1 **115 Costs**

- 2 (1) A person must bear the person's own costs in relation to a matter  
3 before the Tribunal.
- 4 (2) However, the Tribunal may order a person to bear some or all of  
5 the costs of another person in relation to an application to the  
6 Tribunal if:
- 7 (a) the Tribunal is satisfied that the person made or responded to  
8 the application vexatiously or without reasonable cause; or  
9 (b) the Tribunal is satisfied that it should have been reasonably  
10 apparent to the person that the person's application or  
11 response had no reasonable prospect of success.
- 12 (3) A person on whom an order imposes a requirement to pay costs  
13 must not contravene the requirement.

14 Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

15 **116 Annual report**

- 16 (1) The President must, as soon as practicable after the end of each  
17 financial year, prepare and give to the Minister, for presentation to  
18 the Parliament, a report on the operations of the Tribunal during  
19 that year.
- 20 Note: See also section 34C of the *Acts Interpretation Act 1901*, which  
21 contains extra rules about annual reports.
- 22 (2) To avoid doubt, subsection (1) does not require or authorise the  
23 disclosure of information for the purposes of the *Privacy Act 1988*.

24 **117 President must provide certain information etc. to the Minister  
25 and Fair Work Ombudsman**

- 26 (1) The President must provide the Minister and the Fair Work  
27 Ombudsman with:
- 28 (a) copies of any enforceable instrument made or granted by the  
29 Tribunal; and  
30 (b) the information and copies of documents prescribed by the  
31 regulations;  
32 by the time, and in the form, prescribed.

**Part 6** Road Safety Remuneration Tribunal

**Division 5** Miscellaneous matters relating to Tribunal

**Section 117**

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- 1                   (2) The regulations may prescribe information and documents relating  
2                   to or derived from information that:  
3                   (a) is publicly available; and  
4                   (b) relates to matters the Tribunal is authorised to deal with.  
5



1

**Part 7—Miscellaneous**2  
3**118 This Act is a workplace law**

5 This Act is a workplace law for the purposes of the *Fair Work Act*  
6 *2009*.

7 Note: See section 341 of the *Fair Work Act 2009*.

**119 Employer and hirer obligations in relation to records**

9 (1) A person who is the employer or hirer of a road transport driver  
10 must make, and keep for 7 years, records of the kind prescribed by  
11 the regulations in relation to each road transport driver the person  
12 employs or engages.

13 Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

14 (2) The records must:

15 (a) if a form is prescribed by the regulations—be in that form;  
16 and

17 (b) include any information prescribed by the regulations.

18 Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

19 (3) The regulations may provide for the inspection of those records.

**120 Review of this Act**

21 (1) The Minister must cause a review of the operation of this Act to be  
22 started by 1 July 2015.

23 (2) The review must be completed by 31 December 2015.

24 (3) The persons who undertake the review must give the Minister a  
25 written report of the review.

26 (4) The report must be published on the website of the Department and  
27 by any other means the Minister considers appropriate.

Section 121

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1 **121 Regulations**

- 2 (1) The Governor-General may make regulations prescribing matters:  
3 (a) required or permitted by this Act to be prescribed; or  
4 (b) necessary or convenient to be prescribed for carrying out or  
5 giving effect to this Act.
- 6 (2) Regulations made under this Act prevail over procedural rules  
7 made under this Act, to the extent of any inconsistency.