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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Fair Work Amendment Bill 2013

No. , 2013

(Education, Employment and Workplace Relations)

**A Bill for an Act to amend the *Fair Work Act 2009*,
and for related purposes**

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1 **A Bill for an Act to amend the *Fair Work Act 2009*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Fair Work Amendment Act 2013*.

6 **2 Commencement**

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

11

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 to 3	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, Part 4	1 January 2014.	1 January 2014
4. Schedule 1, Part 5	At the same time as the provision(s) covered by table item 2.	
5. Schedule 2	1 January 2014.	1 January 2014
6. Schedule 3	At the same time as the provision(s) covered by table item 2.	
7. Schedule 4	1 January 2014.	1 January 2014
8. Schedule 5, item 1	Immediately after the commencement of the <i>Fair Work Amendment (Transfer of Business) Act 2012</i> .	5 December 2012
9. Schedule 5, item 2	Immediately after the commencement of Schedule 1 to the <i>Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012</i> .	1 July 2012
10. Schedule 5, item 3	At the same time as the provision(s) covered by table item 2.	
11. Schedule 6, item 1	Immediately after the commencement of Schedule 1 to the <i>Fair Work Amendment Act 2012</i> .	1 January 2014
12. Schedule 6, items 2 to 4	The day this Act receives the Royal Assent.	
13. Schedule 6, item 5	Immediately after the commencement of Schedule 2 to the <i>Fair Work Amendment Act 2012</i> .	1 July 2013

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
14. Schedule 6, items 6 to 8	The day this Act receives the Royal Assent.	
15. Schedule 6, items 9 and 10	Immediately after the commencement of Schedule 8 to the <i>Fair Work Amendment Act 2012</i> .	1 January 2013
16. Schedule 6, items 11 to 13	Immediately after the commencement of Part 1 of Schedule 9 to the <i>Fair Work Amendment Act 2012</i> .	1 January 2013
17. Schedule 6, item 14	Immediately after the commencement of item 1364 of Schedule 9 to the <i>Fair Work Amendment Act 2012</i> .	1 January 2013
18. Schedule 7	The day this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

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

7 **3 Schedule(s)**

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

1 **Schedule 1—Family-friendly measures**

2 **Part 1—Special maternity leave**

3 *Fair Work Act 2009*

4 **1 Section 70 (note 1)**

5 Omit “Note 1”, substitute “Note”.

6 **2 Section 70 (note 2)**

7 Repeal the note.

8 **3 Paragraph 75(2)(c)**

9 Omit “;”, substitute “.”.

10 **4 Paragraph 75(2)(d)**

11 Repeal the paragraph.

12 **5 Paragraph 76(6)(a)**

13 Omit “and unpaid special maternity leave”.

14 **6 Paragraph 76(6)(b)**

15 Omit “or unpaid special maternity leave”.

16 **7 Subsection 80(1) (note)**

17 Omit “Note”, substitute “Note 1”.

18 **8 At the end of subsection 80(1)**

19 Add:

20 Note 2: If a female employee has an entitlement to paid personal/carer’s leave
21 (see section 96), she may take that leave instead of taking unpaid
22 special maternity leave under this section.

23 **9 Subsection 80(7)**

24 Repeal the subsection (not including the note).

25 **10 Section 97 (note)**

26 Omit “Note”, substitute “Note 1”.

1 **11 At the end of section 97**

2 Add:

3 Note 2: If a female employee has an entitlement to paid personal/carer's leave,
4 she may take that leave instead of taking unpaid special maternity
5 leave under section 80.

1 **Part 2—Parental leave**

2 *Fair Work Act 2009*

3 **12 Section 12**

4 Insert:

5 *concurrent leave*: see subsection 72(5).

6 **13 Paragraphs 72(5)(a), (b) and (c)**

7 Repeal the paragraphs, substitute:

- 8 (a) the concurrent leave must not be longer than 8 weeks in total;
- 9 (b) the concurrent leave may be taken in separate periods, but,
10 unless the employer agrees, each period must not be shorter
11 than 2 weeks;
- 12 (c) unless the employer agrees, the concurrent leave must not
13 start before:
- 14 (i) if the leave is birth-related leave—the date of birth of
15 the child; or
- 16 (ii) if the leave is adoption-related leave—the day of
17 placement of the child.

18 **14 Subsection 74(2)**

19 Repeal the subsection, substitute:

- 20 (2) The employee must give the notice to the employer:
- 21 (a) at least:
- 22 (i) 10 weeks before starting the leave, unless
23 subparagraph (ii) applies; or
- 24 (ii) if the leave is to be taken in separate periods of
25 concurrent leave (see paragraph 72(5)(b)) and the leave
26 is not the first of those periods of concurrent leave—4
27 weeks before starting the period of concurrent leave; or
- 28 (b) if that is not practicable—as soon as practicable (which may
29 be a time after the leave has started).

30 **15 After subsection 74(4)**

31 Insert:

- 1 (4A) Subsection (4) does not apply to a notice for a period of concurrent
2 leave referred to in subparagraph (2)(a)(ii).

1 **Part 3—Right to request flexible working**
2 **arrangements**

3 ***Fair Work Act 2009***

4 **16 Section 12 (definition of *school age*)**

5 Omit “start attending”, substitute “attend”.

6 **17 Subsection 65(1)**

7 Repeal the subsection, substitute:

8 *Employee may request change in working arrangements*

9 (1) If:

- 10 (a) any of the circumstances referred to in subsection (1A) apply
11 to an employee; and
12 (b) the employee would like to change his or her working
13 arrangements because of those circumstances;

14 then the employee may request the employer for a change in
15 working arrangements relating to those circumstances.

16 Note: Examples of changes in working arrangements include changes in
17 hours of work, changes in patterns of work and changes in location of
18 work.

19 (1A) The following are the circumstances:

- 20 (a) the employee is the parent, or has responsibility for the care,
21 of a child who is of school age or younger;
22 (b) the employee is a carer (within the meaning of the *Carer*
23 *Recognition Act 2010*);
24 (c) the employee has a disability;
25 (d) the employee is 55 or older;
26 (e) the employee is experiencing violence from a member of the
27 employee’s family;
28 (f) the employee provides care or support to a member of the
29 employee’s immediate family, or a member of the
30 employee’s household, who requires care or support because
31 the member is experiencing violence from the member’s
32 family.

1 (1B) To avoid doubt, and without limiting subsection (1), an employee
2 who:

- 3 (a) is a parent, or has responsibility for the care, of a child; and
4 (b) is returning to work after taking leave in relation to the birth
5 or adoption of the child;

6 may request to work part-time to assist the employee to care for the
7 child.

8 **18 After subsection 65(5)**

9 Insert:

10 (5A) Without limiting what are reasonable business grounds for the
11 purposes of subsection (5), reasonable business grounds include
12 the following:

- 13 (a) that the new working arrangements requested by the
14 employee would be too costly for the employer;
15 (b) that there is no capacity to change the working arrangements
16 of other employees to accommodate the new working
17 arrangements requested by the employee;
18 (c) that it would be impractical to change the working
19 arrangements of other employees, or recruit new employees,
20 to accommodate the new working arrangements requested by
21 the employee;
22 (d) that the new working arrangements requested by the
23 employee would be likely to result in a significant loss in
24 efficiency or productivity;
25 (e) that the new working arrangements requested by the
26 employee would be likely to have a significant negative
27 impact on customer service.

1 **Part 4—Consultation about changes to rosters or**
2 **working hours**

3 ***Fair Work Act 2009***

4 **19 After section 145**

5 Insert:

6 **145A Consultation about changes to rosters or hours of work**

7 (1) Without limiting paragraph 139(1)(j), a modern award must
8 include a term that:

- 9 (a) requires the employer to consult employees about a change to
10 their regular roster or ordinary hours of work; and
11 (b) allows for the representation of those employees for the
12 purposes of that consultation.

13 (2) The term must require the employer:

- 14 (a) to provide information to the employees about the change;
15 and
16 (b) to invite the employees to give their views about the impact
17 of the change (including any impact in relation to their family
18 or caring responsibilities); and
19 (c) to consider any views about the impact of the change that are
20 given by the employees.

21 **20 Paragraph 205(1)(a)**

22 Repeal the paragraph, substitute:

- 23 (a) requires the employer or employers to which the agreement
24 applies to consult the employees to whom the agreement
25 applies about:
26 (i) a major workplace change that is likely to have a
27 significant effect on the employees; or
28 (ii) a change to their regular roster or ordinary hours of
29 work; and

30 **21 After subsection 205(1)**

31 Insert:

- 1 (1A) For a change to the employees' regular roster or ordinary hours of
2 work, the term must require the employer:
3 (a) to provide information to the employees about the change;
4 and
5 (b) to invite the employees to give their views about the impact
6 of the change (including any impact in relation to their family
7 or caring responsibilities); and
8 (c) to consider any views given by the employees about the
9 impact of the change.

1 **Part 5—Transfer to a safe job**

2 *Fair Work Act 2009*

3 **22 Section 12 (definition of *appropriate safe job*)**

4 Omit “subsection 81(4)”, substitute “subsection 81(3)”.

5 **23 Section 12 (definition of *paid no safe job leave*)**

6 Omit “paragraph 81(3)(b)”, substitute “section 81A”.

7 **24 Section 12**

8 Insert:

9 *risk period*: see subsections 81(1) and (5).

10 *unpaid no safe job leave* means unpaid no safe job leave to which
11 a national system employee is entitled under section 82A.

12 **25 Subsections 67(1) and (2)**

13 After “unpaid pre-adoption leave”, insert “or unpaid no safe job leave”.

14 **26 Subsection 71(3) (note 2)**

15 Repeal the note, substitute:

16 Note 2: If it is inadvisable for the employee to continue in her present position,
17 she may be entitled:

- 18 (a) to be transferred to an appropriate safe job under section 81; or
19 (b) to paid no safe job leave under section 81A; or
20 (c) to unpaid no safe job leave under section 82A.

21 **27 Subparagraph 73(2)(c)(ii)**

22 Repeal the subparagraph, substitute:

- 23 (ii) the employee has not complied with the notice and
24 evidence requirements of section 74 for taking unpaid
25 parental leave.

26 **28 Subsection 73(2) (note)**

27 Repeal the note, substitute:

28 Note: If the medical certificate contains a statement as referred to in
29 subparagraph (c)(i) and the employee has complied with the notice

1 and evidence requirements of section 74, then the employee is entitled
2 to be transferred to a safe job (see section 81) or to paid no safe job
3 leave (see section 81A).

4 **29 Section 81**

5 Repeal the section, substitute:

6 **81 Transfer to a safe job**

- 7 (1) This section applies to a pregnant employee if she gives her
8 employer evidence that would satisfy a reasonable person that she
9 is fit for work, but that it is inadvisable for her to continue in her
10 present position during a stated period (the *risk period*) because of:
11 (a) illness, or risks, arising out of her pregnancy; or
12 (b) hazards connected with that position.

13 Note: Personal information given to an employer under this subsection may
14 be regulated under the *Privacy Act 1988*.

- 15 (2) If there is an appropriate safe job available, then the employer must
16 transfer the employee to that job for the risk period, with no other
17 change to the employee's terms and conditions of employment.

18 Note: If there is no appropriate safe job available, then the employee may be
19 entitled to paid no safe job leave under section 81A or unpaid no safe
20 job leave under 82A.

- 21 (3) An *appropriate safe job* is a safe job that has:
22 (a) the same ordinary hours of work as the employee's present
23 position; or
24 (b) a different number of ordinary hours agreed to by the
25 employee.

- 26 (4) If the employee is transferred to an appropriate safe job for the risk
27 period, the employer must pay the employee for the safe job at the
28 employee's full rate of pay (for the position she was in before the
29 transfer) for the hours that she works in the risk period.

- 30 (5) If the employee's pregnancy ends before the end of the risk period,
31 the *risk period* ends when the pregnancy ends.

- 32 (6) Without limiting subsection (1), an employer may require the
33 evidence to be a medical certificate.

1 **81A Paid no safe job leave**

2 (1) If:

- 3 (a) section 81 applies to a pregnant employee but there is no
4 appropriate safe job available; and
5 (b) the employee is entitled to unpaid parental leave; and
6 (c) the employee has complied with the notice and evidence
7 requirements of section 74 for taking unpaid parental leave;
8 then the employee is entitled to paid no safe job leave for the risk
9 period.

10 (2) If the employee takes paid no safe job leave for the risk period, the
11 employer must pay the employee at the employee's base rate of
12 pay for the employee's ordinary hours of work in the risk period.

13 **30 After section 82**

14 Insert:

15 **82A Unpaid no safe job leave**

16 (1) If:

- 17 (a) section 81 applies to a pregnant employee but there is no
18 appropriate safe job available; and
19 (b) the employee is not entitled to unpaid parental leave; and
20 (c) if required by the employer—the employee has given the
21 employer evidence that would satisfy a reasonable person of
22 the pregnancy;
23 then the employee is entitled to unpaid no safe job leave for the
24 risk period.

25 (2) Without limiting subsection (1), an employer may require the
26 evidence referred to in paragraph (1)(c) to be a medical certificate.

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Schedule 2—Modern awards objective

Fair Work Act 2009

1 After paragraph 134(1)(d)

Insert:

- (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and

Schedule 3—Anti-bullying measure

Fair Work Act 2009

1 After subsection 9(5A)

Insert:

(5B) Part 6-4B allows a worker who has been bullied at work to apply to the FWC for an order to stop the bullying.

2 Section 12

Insert:

bullied at work: see subsection 789FD(1).

constitutionally-covered business: see subsection 789FD(3).

worker:

(a) in Part 6-4B—see subsection 789FC(2); and

(b) otherwise—has its ordinary meaning.

3 Subsection 539(2) (at the end of the table)

Add:

Part 6-4B—Workers bullied at work

38	789FG	(a) a person affected by the contravention;	(a) the Federal Court; (b) the Federal Magistrates Court;	60 penalty units
		(b) an industrial association;	(c) an eligible State or Territory court	
		(c) an inspector		

4 At the end of subsection 576(1)

Add:

; (q) workers bullied at work (Part 6-4B).

5 At the end of subsection 675(2)

Add:

1 ; (j) an order under Part 6-4B (which deals with workers bullied
2 at work).

3 **6 After Part 6-4A**

4 Insert:

5 **Part 6-4B—Workers bullied at work**

6 **Division 1—Introduction**

7 **789FA Guide to this Part**

8 This Part allows a worker who has been bullied at work to apply to
9 the FWC for an order to stop the bullying.

10 **789FB Meanings of *employee* and *employer***

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

12 **Division 2—Stopping workers being bullied at work**

13 **789FC Application for an FWC order to stop bullying**

14 (1) A worker who reasonably believes that he or she has been bullied
15 at work may apply to the FWC for an order under section 789FF.

16 (2) For the purposes of this Part, *worker* has the same meaning as in
17 the *Work Health and Safety Act 2011*.

18 Note: Broadly, for the purposes of the *Work Health and Safety Act 2011*, a
19 worker is an individual who performs work in any capacity, including
20 as an employee, a contractor, a subcontractor, an outworker, an
21 apprentice, a trainee, a student gaining work experience or a volunteer.

22 (3) The application must be accompanied by any fee prescribed by the
23 regulations.

24 (4) The regulations may prescribe:

25 (a) a fee for making an application to the FWC under this
26 section; and

27 (b) a method for indexing the fee; and

- 1 (c) the circumstances in which all or part of the fee may be
2 waived or refunded.

3 **789FD When is a worker *bullied at work*?**

- 4 (1) A worker is *bullied at work* if:
5 (a) while the worker is at work in a constitutionally-covered
6 business:
7 (i) an individual; or
8 (ii) a group of individuals;
9 repeatedly behaves unreasonably towards the worker, or a
10 group of workers of which the worker is a member; and
11 (b) that behaviour creates a risk to health and safety.
- 12 (2) To avoid doubt, subsection (1) does not apply to reasonable
13 management action carried out in a reasonable manner.
- 14 (3) If a person conducts a business or undertaking (within the meaning
15 of the *Work Health and Safety Act 2011*) and either:
16 (a) the person is:
17 (i) a constitutional corporation; or
18 (ii) the Commonwealth; or
19 (iii) a Commonwealth authority; or
20 (iv) a body corporate incorporated in a Territory; or
21 (b) the business or undertaking is conducted principally in a
22 Territory or Commonwealth place;
23 then the business or undertaking is a *constitutionally-covered*
24 *business*.

25 **789FE FWC to deal with applications promptly**

26 The FWC must start to deal with an application under
27 section 789FC within 14 days after the application is made.

28 Note: For example, the FWC may start to inform itself of the matter under
29 section 590, it may decide to conduct a conference under section 592,
30 or it may decide to hold a hearing under section 593.

31 **789FF FWC may make orders to stop bullying**

- 32 (1) If:
33 (a) a worker has made an application under section 789FC; and
-

-
- 1 (b) the FWC is satisfied that:
- 2 (i) the worker has been bullied at work by an individual or
- 3 a group of individuals; and
- 4 (ii) there is a risk that the worker will continue to be bullied
- 5 at work by the individual or group;
- 6 then the FWC may make any order it considers appropriate (other
- 7 than an order requiring payment of a pecuniary amount) to prevent
- 8 the worker from being bullied at work by the individual or group.
- 9 (2) In considering the terms of an order, the FWC must take into
- 10 account:
- 11 (a) if the FWC is aware of any final or interim outcomes arising
- 12 out of an investigation into the matter that is being, or has
- 13 been, undertaken by another person or body—those
- 14 outcomes; and
- 15 (b) if the FWC is aware of any procedure available to the worker
- 16 to resolve grievances or disputes—that procedure; and
- 17 (c) if the FWC is aware of any final or interim outcomes arising
- 18 out of any procedure available to the worker to resolve
- 19 grievances or disputes—those outcomes; and
- 20 (d) any matters that the FWC considers relevant.

21 **789FG Contravening an order to stop bullying**

22 A person to whom an order under section 789FF applies must not

23 contravene a term of the order.

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

25 **789FH Actions under work health and safety laws permitted**

26 Section 115 of the *Work Health and Safety Act 2011* and

27 corresponding provisions of corresponding WHS laws (within the

28 meaning of that Act) do not apply in relation to an application

29 under section 789FC.

30 Note: Ordinarily, if a worker makes an application under section 789FC for

31 an FWC order to stop the worker from being bullied at work, then

32 section 115 of the *Work Health and Safety Act 2011* and

33 corresponding provisions of corresponding WHS laws would prohibit

34 a proceeding from being commenced, or an application from being

35 made or continued, under those laws in relation to the bullying. This

36 section removes that prohibition.

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Schedule 4—Right of entry

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Fair Work Act 2009

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1 Section 12

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Insert:

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accommodation arrangement: see subsections 521A(1) and (2).

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transport arrangement: see subsections 521B(1) and (2).

8

2 At the end of section 478

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Add:

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Division 7 deals with accommodation and transport arrangements in remote areas.

12

3 At the end of subsection 481(1)

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Add:

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Note 3: A permit holder, or the organisation to which the permit holder belongs, may be subject to an order by the FWC under section 508 if rights under this Subdivision are misused.

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Note 4: A person must not refuse or unduly delay entry by a permit holder, or intentionally hinder or obstruct a permit holder, exercising rights under this Subdivision (see sections 501 and 502).

20

4 Subsection 483A(1) (note)

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Omit “Note”, substitute “Note 1”.

22

5 At the end of subsection 483A(1)

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Add:

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Note 2: A permit holder, or the organisation to which the permit holder belongs, may be subject to an order by the FWC under section 508 if rights under this Subdivision are misused.

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Note 3: A person must not refuse or unduly delay entry by a permit holder, or intentionally hinder or obstruct a permit holder, exercising rights under this Subdivision (see sections 501 and 502).

6 At the end of section 484

Add:

- Note 1: A permit holder, or the organisation to which the permit holder belongs, may be subject to an order by the FWC under section 508 if rights under this Subdivision are misused.
- Note 2: A person must not refuse or unduly delay entry by a permit holder, or intentionally hinder or obstruct a permit holder, exercising rights under this Subdivision (see sections 501 and 502).
- Note 3: Under paragraph 487(1)(b), the permit holder must give the occupier of the premises notice for the entry. Having given that notice, the permit holder may hold discussions with any person on the premises described in this section.

7 Section 492

Repeal the section, substitute:

492 Location of interviews and discussions

- (1) The permit holder must conduct interviews or hold discussions in the rooms or areas of the premises agreed with the occupier of the premises.
- (2) Subsection (3) applies if the permit holder and the occupier cannot agree on the room or area of the premises in which the permit holder is to conduct an interview or hold discussions.
- (3) The permit holder may conduct the interview or hold the discussions in any room or area:
- (a) in which one or more of the persons who may be interviewed or participate in the discussions ordinarily take meal or other breaks; and
 - (b) that is provided by the occupier for the purpose of taking meal or other breaks.
- Note 1: The permit holder may be subject to an order by the FWC under section 508 if rights under this section are misused.
- Note 2: A person must not intentionally hinder or obstruct a permit holder exercising rights under this section (see section 502).

1 **492A Route to location of interview and discussions**

2 (1) The permit holder must comply with any reasonable request by the
3 occupier of the premises to take a particular route to reach a room
4 or area of the premises determined under section 492.

5 Note: The FWC may deal with a dispute about whether the request is
6 reasonable (see subsection 505(1)).

7 (2) A request under subsection (1) is not unreasonable only because
8 the route is not that which the permit holder would have chosen.

9 (3) The regulations may prescribe circumstances in which a request
10 under subsection (1) is or is not reasonable.

11 **8 Section 500 (note)**

12 Omit “Note”, substitute “Note 1”.

13 **9 At the end of section 500**

14 Add:

15 Note 2: A permit holder, or the organisation to which the permit holder
16 belongs, may also be subject to an order by the FWC under
17 section 508 if rights under this Part are misused.

18 Note 3: A person must not intentionally hinder or obstruct a permit holder,
19 exercising rights under this Part (see section 502).

20 **10 Subsection 505(1)**

21 Repeal the subsection, substitute:

22 (1) The FWC may deal with a dispute about the operation of this Part,
23 including a dispute about:

24 (a) whether a request under section 491, 492A or 499 is
25 reasonable; or

26 (b) when a right of the kind referred to in section 490 may be
27 exercised by a permit holder on premises of a kind mentioned
28 in subsection 521C(1) or 521D(1), despite that section; or

29 (c) whether accommodation is reasonably available as
30 mentioned in subsection 521C(1) or premises reasonably
31 accessible as mentioned in subsection 521D(1); or

32 (d) whether providing accommodation or transport, or causing
33 accommodation or transport to be provided, would cause the
34 occupier of premises undue inconvenience as mentioned in
35 paragraph 521C(2)(a) or 521D(2)(a); or

1 (e) whether a request to provide accommodation or transport is
 2 made within a reasonable period as mentioned in
 3 paragraph 521C(2)(c) or 521D(2)(c).

4 Note 1: Sections 491 and 499 deal with requests for permit holders to comply
 5 with occupational health and safety requirements.

6 Note 2: Section 492A deals with requests for a permit holder to take a
 7 particular route to a room or area in which an interview is to be
 8 conducted or discussions held.

9 Note 3: Section 490 deals with when rights under Subdivision A, AA or B of
 10 Division 2 of this Part may be exercised.

11 Note 4: Sections 521C and 521D deal with accommodation in and transport to
 12 remote areas for the purpose of exercising rights under this Part.

13 **11 Subsection 505(5)**

14 Repeal the subsection, substitute:

15 (5) In dealing with the dispute, the FWC must not confer rights on a
 16 permit holder that are additional to, or inconsistent with, rights
 17 exercisable in accordance with Division 2, 3 or 7 of this Part,
 18 unless the dispute is about:

19 (a) whether a request under section 491, 492A or 499 is
 20 reasonable; or

21 (b) when a right of the kind referred to in section 490 may be
 22 exercised by the permit holder on premises of a kind
 23 mentioned in subsection 521C(1) or 521D(1), despite that
 24 section; or

25 (c) whether accommodation is reasonably available as
 26 mentioned in subsection 521C(1) or premises reasonably
 27 accessible as mentioned in subsection 521D(1); or

28 (d) whether providing accommodation or transport, or causing
 29 accommodation or transport to be provided, would cause the
 30 occupier of premises undue inconvenience as mentioned in
 31 paragraph 521C(2)(a) or 521D(2)(a); or

32 (e) whether a request to provide accommodation or transport is
 33 made within a reasonable period as mentioned in
 34 paragraph 521C(2)(c) or 521D(2)(c).

35 **12 After section 505**

36 Insert:

1 **505A FWC may deal with a dispute about frequency of entry to hold**
2 **discussions**

3 (1) This section applies if:

4 (a) a permit holder or permit holders of an organisation enter
5 premises under section 484 for the purposes of holding
6 discussions with one or more employees or TCF award
7 workers; and

8 (b) an employer of the employees or the TCF award workers, or
9 occupier of the premises, disputes the frequency with which
10 the permit holder or permit holders of the organisation enter
11 the premises.

12 (2) The FWC may deal with a dispute about the frequency with which
13 a permit holder or permit holders of an organisation enter premises
14 under section 484.

15 (3) The FWC may deal with the dispute by arbitration, including by
16 making one or more of the following orders:

17 (a) an order imposing conditions on an entry permit;

18 (b) an order suspending an entry permit;

19 (c) an order revoking an entry permit;

20 (d) an order about the future issue of entry permits to one or
21 more persons;

22 (e) any other order it considers appropriate.

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

26 (4) However, the FWC may only make an order under subsection (3) if
27 the FWC is satisfied that the frequency of entry by the permit
28 holder or permit holders of the organisation would require an
29 unreasonable diversion of the occupier's critical resources.

30 (5) The FWC may deal with the dispute:

31 (a) on its own initiative; or

32 (b) on application by any of the following to whom the dispute
33 relates:

34 (i) a permit holder;

35 (ii) a permit holder's organisation;

36 (iii) an employer;

1 (iv) an occupier of premises.

2 (6) In dealing with the dispute, the FWC must take into account
3 fairness between the parties concerned.

4 **13 At the end of section 506**

5 Add “or subsection 505A(3)”.

6 **14 At the end of Part 3-4**

7 Add:

8 **Division 7—Accommodation and transport arrangements**
9 **in remote areas**

10 **521A Meaning of *accommodation arrangement***

11 (1) If:

12 (a) an occupier of premises enters into an arrangement with an
13 organisation; and

14 (b) under the terms of the arrangement, a permit holder is
15 provided with accommodation for the purpose of assisting
16 him or her to exercise rights under this Part;

17 the arrangement is an *accommodation arrangement*.

18 (2) If:

19 (a) an occupier of premises enters into an arrangement with a
20 permit holder; and

21 (b) under the terms of the arrangement, the permit holder is
22 provided with accommodation for the purpose of assisting
23 him or her to exercise rights under this Part;

24 the arrangement is an *accommodation arrangement*.

25 **521B Meaning of *transport arrangement***

26 (1) If:

27 (a) an occupier of premises enters into an arrangement with an
28 organisation; and

29 (b) under the terms of the arrangement, a permit holder is
30 provided with transport for the purpose of assisting him or
31 her to exercise rights under this Part;

1 the arrangement is a *transport arrangement*.

2 (2) If:

3 (a) an occupier of premises enters into an arrangement with a
4 permit holder; and

5 (b) under the terms of the arrangement, the permit holder is
6 provided with transport for the purpose of assisting him or
7 her to exercise rights under this Part;

8 the arrangement is a *transport arrangement*.

9 **521C Accommodation arrangements for remote areas**

10 *This section applies only in remote areas*

11 (1) This section applies if rights under this Part are to be exercised by
12 a permit holder on premises that are located in a place where
13 accommodation is not reasonably available to the permit holder
14 unless the occupier of the premises on which the rights are to be
15 exercised provides the accommodation, or causes it to be provided.

16 *Where parties cannot agree on an accommodation arrangement*

17 (2) If all of the following are satisfied:

18 (a) to provide accommodation, or cause accommodation to be
19 provided, to the permit holder would not cause the occupier
20 undue inconvenience;

21 (b) the permit holder, or the organisation of which the permit
22 holder is an official, requests the occupier to provide, or
23 cause to be provided, accommodation for the purpose of
24 assisting the permit holder to exercise rights under this Part
25 on the premises;

26 (c) the request is made within a reasonable period before
27 accommodation is required;

28 (d) the permit holder, and the organisation of which the permit
29 holder is an official, have been unable to enter into an
30 accommodation arrangement with the occupier by consent;

31 the occupier must enter into an accommodation arrangement for
32 the purpose of assisting the permit holder to exercise rights under
33 this Part.

34 Note: The FWC may deal with disputes about whether accommodation is
35 reasonably available, whether providing accommodation or causing it
36 to be provided would cause the occupier undue inconvenience and

1 whether a request to provide accommodation is made within a
2 reasonable period (see subsection 505(1)).

3 *Costs*

4 (3) If an accommodation arrangement is entered into under
5 subsection (2), the occupier must not charge an organisation or a
6 permit holder a fee for accommodation under the arrangement that
7 is more than is necessary to cover the cost to the occupier of
8 providing the accommodation, or causing it to be provided.

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

10 *FWC's powers if rights misused whilst in accommodation*

11 (4) For the purposes of this Part, the FWC may treat the conduct of the
12 permit holder whilst in accommodation under an accommodation
13 arrangement to which the occupier is a party, whether entered into
14 under subsection (2) or by consent, as conduct engaged in as part
15 of the exercise of rights by the permit holder under this Part.

16 **521D Transport arrangements for remote areas**

17 *This section applies only in remote areas*

18 (1) This section applies if rights under this Part are to be exercised by
19 a permit holder on premises that are located in a place that is not
20 reasonably accessible to the permit holder unless the occupier of
21 the premises on which the rights are to be exercised provides
22 transport, or causes it to be provided.

23 *Where parties cannot agree on transport arrangement*

24 (2) If all of the following are satisfied:
25 (a) to provide transport to the premises for the permit holder, or
26 cause that transport to be provided, would not cause the
27 occupier undue inconvenience;
28 (b) the permit holder, or the organisation of which the permit
29 holder is an official, requests the occupier to provide, or
30 cause to be provided, transport to the premises for the
31 purpose of assisting the permit holder to exercise rights under
32 this Part;
33 (c) the request is made within a reasonable period before
34 transport is required;

1 (d) the permit holder, and the organisation of which the permit
2 holder is an official, have been unable to enter into a
3 transport arrangement with the occupier by consent;
4 the occupier must enter into a transport arrangement for the
5 purpose of assisting the permit holder to exercise rights under this
6 Part.

7 Note: The FWC may deal with disputes about whether premises are
8 reasonably accessible, whether providing transport or causing it to be
9 provided would cause the occupier undue inconvenience and whether
10 a request to provide transport is made within a reasonable period (see
11 subsection 505(1)).

12 *Costs*

13 (3) If a transport arrangement is entered into under subsection (2), the
14 occupier must not charge an organisation or a permit holder a fee
15 for transport under the arrangement that is more than is necessary
16 to cover the cost to the occupier of providing the transport, or
17 causing it to be provided.

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

19 *FWC's powers if rights misused whilst in transport*

20 (4) For the purposes of this Part, the FWC may treat the conduct of the
21 permit holder whilst in transport under a transport arrangement to
22 which the occupier is a party, whether entered into under
23 subsection (2) or by consent, as conduct engaged in as part of the
24 exercise of rights by the permit holder under this Part.

25 **15 Subsection 539(2) (at the end of the cell at table item 25,**
26 **column headed "Civil remedy provision")**

27 Add:
28 521C(3)
29 521D(3)

1
2

Schedule 5—Functions of the FWC

3

Fair Work Act 2009

4

1 After paragraph 576(1)(n)

5

Insert:

6

(na) transfer of business from a State public sector employer

7

(Part 6-3A);

8

2 At the end of subsection 576(1)

9

Add:

10

; (p) special provisions about TCF outworkers (Part 6-4A).

11

3 Before paragraph 576(2)(a)

12

Insert:

13

(aa) promoting cooperative and productive workplace relations

14

and preventing disputes;

1
2

Schedule 6—Technical amendments

3

Fair Work Act 2009

4

1 Section 12 (definition of *default fund employee*)

5

Omit “149A(2)”, substitute “149C(2)”.

6

Note: This item fixes an incorrect cross-reference.

7

2 Subsection 176(4)

8

Omit “subsection (3),”, substitute “subsection (3),”.

9

Note: This item fixes incorrect punctuation.

10

3 Subsection 400(1)

11

Omit “FWA” (wherever occurring), substitute “the FWC”.

12

Note: This item fixes an incorrect reference.

13

4 Subsection 515(5)

14

Omit “an the FWC order”, substitute “an FWC order”.

15

Note: This item fixes a grammatical error.

16

5 Paragraph 584(1)(a)

17

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

18

Note: This item fixes an incorrect reference.

19

6 Subsection 603(1)

20

Omit “of The FWC”, substitute “of the FWC”.

21

Note: This item fixes a grammatical error.

22

7 Subsection 603(1) (note)

23

Omit “The FWC” (wherever occurring), substitute “the FWC”.

24

Note: This item fixes a grammatical error.

25

8 Paragraph 670(2)(a)

26

Omit “FWA”, substitute “the FWC”.

27

Note: This item fixes an incorrect reference.

1 ***Fair Work Amendment Act 2012***

2 **9 Item 40 of Schedule 8 (heading)**

3 Repeal the heading, substitute:

4 **40 Subsection 644(1) (heading)**

5 Note: This item fixes a misdescribed amendment.

6 **10 Item 41 of Schedule 8**

7 Omit “Deputy President,”, substitute “Deputy President”.

8 Note: This item fixes a misdescribed amendment.

9 **11 Item 414 of Schedule 9 (heading)**

10 Repeal the heading, substitute:

11 **414 Subsection 400(2)**

12 Note: This item fixes a misdescribed amendment.

13 **12 Item 1144 of Schedule 9**

14 Omit “FWC’s” (first occurring), substitute “FWA’s”.

15 Note: This item fixes a misdescribed amendment.

16 **13 Item 1252 of Schedule 9**

17 Repeal the item, substitute:

18 **1252 Subitem 2(1) of Schedule 20**

19 Omit “FWA” (wherever occurring), substitute “the FWC”.

20 Note: This item fixes a misdescribed amendment.

21 **14 Item 1364 of Schedule 9**

22 Repeal the item.

23 Note: This item repeals an item made redundant by other amendments.

1 **Schedule 7—Application and transitional**
2 **provisions**
3

4 ***Fair Work Act 2009***

5 **1 After Schedule 3**

6 Insert:

7 **Schedule 4—Amendments made by the Fair**
8 **Work Amendment Act 2013**

9 Note: See section 795A.

10 **Part 1—Preliminary**
11

12 **1 Definition**

13 In this Schedule:

14 *amending Act* means the *Fair Work Amendment Act 2013*.

15 **Part 2—Family-friendly measures (Schedule 1)**
16

17 **2 Part 1 of Schedule 1 to the amending Act**

18 The amendments made by Part 1 of Schedule 1 to the amending
19 Act apply in relation to a period of unpaid special maternity leave
20 that starts after the commencement of that Part.

21 **3 Part 2 of Schedule 1 to the amending Act**

22 The amendments made by Part 2 of Schedule 1 to the amending
23 Act apply in relation to the taking of unpaid parental leave by
24 members of an employee couple if the first taking of leave by
25 either member of the employee couple occurs after the
26 commencement of that Part.

1 **4 Part 3 of Schedule 1 to the amending Act**

2 The amendments made by Part 3 of Schedule 1 to the amending
3 Act apply in relation to a request that is made under
4 subsection 65(1) after the commencement of that Part.

5 **5 Part 4 of Schedule 1 to the amending Act**

6 *Application of amendments*

7 (1) The amendment made by item 19 of Schedule 1 to the amending
8 Act applies in relation to a modern award that is in operation on or
9 after 1 January 2014, whether or not the award was made before
10 that day.

11 (2) The amendments made by items 20 and 21 of Schedule 1 to the
12 amending Act apply in relation to an enterprise agreement that is
13 made after the commencement of that Schedule.

14 *Transitional provision*

15 (3) If:

16 (a) a modern award is made before 1 January 2014; and

17 (b) the modern award is in operation on that day; and

18 (c) immediately before that day, the modern award does not
19 include a term (the *relevant term*) of the kind mentioned in
20 section 145A (as inserted by item 19 of Schedule 1 to the
21 amending Act);

22 then the FWC must, by 31 December 2013, make a determination
23 varying the modern award to include the relevant term.

24 (4) A determination made under subclause (3) comes into operation on
25 (and takes effect from) 1 January 2014.

26 (5) Section 168 applies to a determination made under subclause (3) as
27 if it were a determination made under Part 2-3.

28 **6 Part 5 of Schedule 1 to the amending Act**

29 The amendments made by Part 5 of Schedule 1 to the amending
30 Act apply in relation to evidence that is given under section 81
31 after the commencement of that Part.

1 **Part 3—Modern awards objective (Schedule 2)**
2

3 **7 Schedule 2 to the amending Act**

4 The amendment made by Schedule 2 to the amending Act applies
5 in relation to a modern award that is made or varied after the
6 commencement of that Schedule.

7 **Part 4—Anti-bullying measure (Schedule 3)**
8

9 **8 Schedule 3 to the amending Act**

10 The amendments made by Schedule 3 to the amending Act apply
11 in relation to an application that is made under section 789FC (as
12 inserted by item 6 of that Schedule) after the commencement of
13 that Schedule.

14 **Part 5—Right of entry (Schedule 4)**
15

16 **9 Schedule 4 to the amending Act**

17 *Application of amendment relating to sections 492 and 492A*

18 (1) The amendment made by item 7 of Schedule 4 to the amending Act
19 applies in relation to interviews conducted and discussions held
20 after the commencement of that item.

21 *Application of amendments relating to section 505A*

22 (2) The amendments made by items 12 and 13 of Schedule 4 to the
23 amending Act apply in relation to the frequency of entry after the
24 commencement of those items.

25 *Application of amendments relating to accommodation
26 arrangements and transport arrangements*

27 (3) The amendments made by items 14 and 15 of Schedule 4 to the
28 amending Act do not apply in relation to arrangements entered into
29 before the commencement of those items.