

2022-2023

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Fair Work Legislation Amendment (Closing Loopholes) Bill 2023**

**No.     , 2023**

*(Employment and Workplace Relations)*

**A Bill for an Act to amend the law relating to  
workplace relations, work health and safety,  
workers' compensation and rehabilitation, certain  
independent contractors, unfair contracts, the road  
transport industry, the Asbestos Safety and  
Eradication Agency and registered organisations,  
and for related purposes**



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1     **A Bill for an Act to amend the law relating to**  
2     **workplace relations, work health and safety,**  
3     **workers’ compensation and rehabilitation, certain**  
4     **independent contractors, unfair contracts, the road**  
5     **transport industry, the Asbestos Safety and**  
6     **Eradication Agency and registered organisations,**  
7     **and for related purposes**

8     The Parliament of Australia enacts:

9     **1 Short title**

10                     This Act is the *Fair Work Legislation Amendment (Closing*  
11                     *Loopholes) Act 2023*.

## 2 Commencement

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

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
Part 8	Assent.	
11. Schedule 1, Part 9	The day after this Act receives the Royal Assent.	
12. Schedule 1, Part 10	1 July 2024.	1 July 2024
13. Schedule 1, Part 11, Division 1	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2024.	
14. Schedule 1, Part 11, Division 2	The later of: (a) the same time as the provisions covered by table item 13; and (b) immediately after the commencement of Division 2 of Part 28 of Schedule 1 to the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
15. Schedule 1, Part 11, Division 3	At the same time as the provisions covered by table item 18.	
16. Schedule 1, Part 12	The day after this Act receives the Royal Assent.	
17. Schedule 1, Part 13	The day after this Act receives the Royal Assent.	
18. Schedule 1, items 213 to 222	A single day to be fixed by Proclamation. However, if the provisions do not commence before 1 January 2025, they commence on that day.	
19. Schedule 1, items 223 and 224	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
20. Schedule 1, items 225 to 236	At the same time as the provisions covered by table item 18.	



## Schedule 1—Main amendments

### Part 1—Casual employment

#### *Fair Work Act 2009*

#### **1 Section 15A**

Repeal the section, substitute:

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

##### *General rule*

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

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

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

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

- 1 (c) having regard to, but not limited to, the following  
2 considerations (which indicate the presence, rather than an  
3 absence, of such a commitment):  
4 (i) whether there is an inability of the employer to elect to  
5 offer work or an inability of the employee to elect to  
6 accept or reject work (and whether this occurs in  
7 practice);  
8 (ii) whether, having regard to the nature of the employer's  
9 enterprise, it is reasonably likely that there will be future  
10 availability of continuing work in that enterprise of the  
11 kind usually performed by the employee;  
12 (iii) whether there are full-time employees or part-time  
13 employees performing the same kind of work in the  
14 employer's enterprise that is usually performed by the  
15 employee;  
16 (iv) whether there is a regular pattern of work for the  
17 employee.
- 18 (3) To avoid doubt:  
19 (a) for the purposes of paragraph (2)(b), a mutual understanding  
20 or expectation may be inferred from conduct of the employer  
21 and employee after entering into the contract of employment  
22 or from how the contract is performed; and  
23 (b) the considerations referred to in paragraph (2)(c) must all be  
24 considered but do not necessarily all need to be satisfied for  
25 an employee to be considered as other than a casual  
26 employee; and  
27 (c) a pattern of work is regular for the purposes of  
28 subparagraph (2)(c)(iv) even if it is not absolutely uniform  
29 and includes some fluctuation or variation over time  
30 (including for reasonable absences such as for illness, injury  
31 or recreation).
- 32 *Exceptions to general rule*
- 33 (4) Despite subsection (1), an employee is not a *casual employee* of an  
34 employer if:  
35 (a) the contract of employment includes a term that provides the  
36 contract will terminate at the end of an identifiable period  
37 (whether or not the contract also includes other terms that

1 provide for circumstances in which it may be terminated  
2 before the end of that period); and

- 3 (b) the period is not identified by reference to a specified season  
4 or the completion of the shift of work to which the contract  
5 relates.

6 Note: This means an employee on a fixed term contract for a specified  
7 season or an employee engaged on a shift by shift basis may be a  
8 casual employee if the requirements of subsections (1) to (4) are  
9 otherwise satisfied.

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

- 12 (5) A person who commences employment as a casual employee  
13 within the meaning of subsections (1) to (4) remains a ***casual***  
14 ***employee*** of the employer until:

- 15 (a) the employee's employment status is changed or converted to  
16 full-time employment or part-time employment under  
17 Division 4A of Part 2-2; or  
18 (b) the employee's employment status is changed or converted  
19 by order of the FWC under section 66MA or 739; or  
20 (c) the employee's employment status is changed or converted to  
21 full-time employment or part-time employment under the  
22 terms of a fair work instrument that applies to the employee;  
23 or  
24 (d) the employee accepts an alternative offer of employment  
25 (other than as a casual employee) by the employer and  
26 commences work on that basis.

27 **2 Paragraph 61(2)(ba)**

28 Repeal the paragraph, substitute:

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

30 **3 Subsection 65(2A)**

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

33 **4 Division 4A of Part 2-2 (heading)**

34 Repeal the heading, substitute:

**Division 4A—Casual employment**

**5 After section 66A**

Insert:

**66AAA Object of this Division**

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

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

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

Insert:

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

**66AAB Employee notification**

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

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

- 1 by the employer for a period of at least 6 months  
2 beginning the day the employment started; and  
3 (d) in the period of 6 months before the day the notification is  
4 given, the employee has not:  
5 (i) received a response from the employer under  
6 section 66AAC not accepting a previous notification  
7 made under this section; or  
8 (ii) been given a notice under subsection 66C(3) that the  
9 employer is not required to make an offer to the  
10 employee under section 66B (which deals with  
11 employer offers of casual conversion); or  
12 (iii) declined, under section 66D, an offer made by the  
13 employer under section 66B (which deals with  
14 employer offers of casual conversion); or  
15 (iv) been given a response by the employer under  
16 section 66G refusing a request by the employee under  
17 section 66F (which deals with employee requests for  
18 casual conversion); or  
19 (v) had a dispute with the employer relating to the operation  
20 of Division 4A of Part 2-2 resolved under section 66M  
21 (including by way of arbitration under section 66MA) or  
22 under section 739.

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

## 26 **66AAC Employer response**

### 27 *Timing of response*

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

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

- 32 (2) The response must be in writing and include the following:  
33 (a) a statement that the employer:  
34 (i) accepts the notification; or

- 1 (ii) does not accept the notification on one or more grounds  
2 referred to in subsection (4); and  
3 (b) if the employer accepts the notification—the following  
4 information:  
5 (i) whether the employee is changing to full-time  
6 employment or part-time employment;  
7 (ii) the employee’s hours of work after the change takes  
8 effect;  
9 (iii) the day the employee’s change to full-time employment  
10 or part-time employment takes effect;  
11 (c) if the employer does not accept the notification—detailed  
12 reasons for the employer’s decision;  
13 (d) if the employer does not accept the notification—a statement  
14 that the employee may:  
15 (i) attempt to resolve the dispute in accordance with  
16 section 66M; and  
17 (ii) if the dispute is not resolved in accordance with that  
18 section—apply to the FWC for the FWC to make an  
19 order under subsection 66MA(1) in relation to the  
20 employee.

21 *Consulting with employee*

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

27 *Grounds for employer to not accept notification*

- 28 (4) For the purposes of subparagraph (2)(a)(ii), the employer may not  
29 accept the notification on any of the following grounds:  
30 (a) having regard to subsections 15A(1) to (4) and the  
31 employee’s current employment relationship with the  
32 employer, the employee still meets the requirements of those  
33 subsections;  
34 (b) accepting the notification would be impractical because  
35 substantial changes to the employee’s terms and conditions  
36 would be reasonably necessary to ensure the employer does

1 not contravene a term of a fair work instrument that would  
2 apply to the employee as a full-time employee or part-time  
3 employee (as the case may be);

- 4 (c) accepting the notification would result in the employer not  
5 complying with a recruitment or selection process required  
6 by or under a law of the Commonwealth or a State or a  
7 Territory.

8 Note: For the purposes of paragraph (4)(b), substantial changes are changes  
9 that significantly affect the way the employee would need to work.

## 10 **66AAD Effect of employer acceptance of employee notification**

- 11 (1) If an employer responds under section 66AAC that the employer  
12 accepts an employee's notification given under section 66AAB, the  
13 employee is taken to be a full-time employee or part-time  
14 employee (as the case may be) beginning on the day specified in  
15 the response.
- 16 (2) The day specified in the response for the purposes of subsection (1)  
17 must be the first day of the employee's first full pay period that  
18 starts after the day the employer response is given, unless the  
19 employer and employee agree to another day.

## 20 **7 Subdivision B of Division 4A of Part 2-2 (heading)**

21 Repeal the heading, substitute:

## 22 **Subdivision C—Offers and requests for casual conversion**

### 23 **8 Section 66AA**

24 Omit "This Subdivision does", substitute "Sections 66B to 66E do".

### 25 **9 Subsection 66C(3) (note)**

26 Omit "Subdivision C", substitute "sections 66F to 66J".

## 27 **10 Subdivision C of Division 4A of Part 2-2 (heading)**

28 Repeal the heading.

### 29 **11 Subparagraph 66F(1)(c)(i)**

30 Repeal the subparagraph, substitute:

- (ia) the employee has not, at any time during the period referred to in paragraph (b), given a notification to the employer under section 66AAB (which deals with employee choice notifications);
- (i) the employee has not, at any time during that period, refused an offer made to the employee under section 66B (which deals with offers of casual conversion);

## 12 Section 66K

Repeal the section, substitute:

### 66K Effect of change or conversion

To avoid doubt, an employee is taken, on and after the day specified in a notice for the purposes of subparagraph 66AAC(2)(b)(iii) or paragraph 66E(1)(c) or 66J(1)(c), to be a full-time employee or part-time employee of the employer for the purposes of the following:

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

## 13 Subsection 66L(1)

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

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

## 14 Subsection 66L(2)

Repeal the subsection, substitute:

- (2) Nothing in this Division:
- (a) requires an employee to change or convert to full-time employment or part-time employment under this Division; or

- (b) permits an employer to require an employee to change or convert to full-time employment or part-time employment under this Division; or
- (c) requires an employer to increase the hours of work of an employee who gives a notification to change, or requests conversion, to full-time employment or part-time employment under this Division.

## **15 Section 66M**

Repeal the section, substitute:

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

*Application of this section to disputes about employee choice*

- (1) This section applies to a dispute between an employer and an employee about the operation of Subdivision B of this Division.
- (2) However, the FWC must not deal with the dispute if the FWC is satisfied that a change to the employee's employment status would result in the employer not complying with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.

*Application of this section to disputes about offers and requests for casual conversion*

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

*Resolving disputes*

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

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

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

*FWC may deal with disputes*

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

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

*Changing streams*

- (7) The FWC may deal with a dispute about the operation of Subdivision B of this Division that has been referred to the FWC under subsection (5) as if the dispute were instead one about the operation of Subdivision C of this Division if:
- (a) paragraph 66F(1)(c) would not otherwise prevent the employee making a request under section 66F; and
  - (b) the employee agrees to the dispute being dealt with as one about the operation of Subdivision C of this Division; and
  - (c) the FWC considers it appropriate to do so.
- (8) The FWC may deal with a dispute about the operation of Subdivision C of this Division that has been referred to the FWC under subsection (5) as if the dispute were instead one about the operation of Subdivision B of this Division if:
- (a) the employee would not otherwise be prevented from giving the employer a notification under section 66AAB because of the operation of paragraph 66AAB(c) or (d); and
  - (b) subsection 66M(2) would not otherwise prevent the FWC dealing with the dispute; and
  - (c) the employee agrees to the dispute being dealt with as one about the operation of Subdivision B of this Division; and
  - (d) the FWC considers it appropriate to do so.

1 (9) If the FWC changes, under subsection (7) or (8), the Subdivision of  
2 this Division the dispute is taken to have arisen in relation to, the  
3 FWC may, for the purposes of dealing with that dispute:

4 (a) deem any actions by the parties under this Division that  
5 would otherwise have been required for the FWC to deal  
6 with the dispute to have occurred; and

7 (b) invite submissions from the parties about whether:

8 (i) for a dispute taken to relate to Subdivision B of this  
9 Division—one or more grounds referred to in  
10 subsection 66AAC(4) exist; or

11 (ii) for a dispute taken to relate to Subdivision C of this  
12 Division—any reasonable grounds referred to in  
13 paragraph 66H(1)(b) exist.

14 *Representatives*

15 (10) The employer or employee may appoint a person, or an employer  
16 organisation or employee organisation, that is entitled to represent  
17 the industrial interests of the employer or employee to provide the  
18 employer or employee (as the case may be) with support or  
19 representation for the purposes of:

20 (a) resolving the dispute; or

21 (b) the FWC dealing with the dispute.

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

25 *Procedural rules*

26 (11) Without limiting section 609, the procedural rules may provide, in  
27 relation to a dispute between an employer and employee that has  
28 been referred to the FWC under subsection (5) of this section:

29 (a) for the joinder of the following as parties to the dispute:

30 (i) any other employee that has a dispute to which this  
31 section applies with the same employer;

32 (ii) any employee organisation that is entitled to represent  
33 the industrial interests of such an employee; and

34 (b) for processes to support the operation of subsections (7) to  
35 (9).

**66MA Arbitration**

*FWC may make any orders it considers appropriate*

- (1) For the purposes of paragraph 66M(6)(b), the FWC may deal with the dispute by arbitration, including by making any orders it considers appropriate, including (but not limited to) the following:
- (a) for a dispute about the operation of Subdivision B of this Division (which deals with employee choice about casual employment)—any order referred to in subsection (4);
  - (b) for a dispute about the operation of Subdivision C of this Division (which deals with casual conversion)—any order referred to in subsection (7).
- (2) However, the FWC must not make an order under this section unless the FWC considers that it would be fair and reasonable to make the order.

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

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

*Orders relating to employee choice*

- (4) For the purposes of paragraph (1)(a), the orders are the following:
- (a) that the employee continue to be treated as a casual employee;
  - (b) that the employee be treated as a full-time employee or part-time employee (as the case may be) from the first day of the employee's first full pay period that starts after the day the order is made, or such later day that the FWC considers appropriate.
- (5) In considering whether to make, and the terms of, an order under subsection (1) (including an order referred to in subsection (4)) in relation to a dispute about the operation of Subdivision B of this

1 Division (which deals with employee choice about casual  
2 employment), the FWC must:

- 3 (a) have regard to whether substantial changes to the employee's  
4 terms and conditions would be reasonably necessary to  
5 ensure the employer does not contravene a term of a fair  
6 work instrument that would apply to the employee as a  
7 full-time employee or part-time employee; and  
8 (b) disregard conduct of the employer and employee that  
9 occurred after the employee gave the notification under  
10 section 66AAB (which deals with employee choice  
11 notifications) to the employer.

12 *Orders relating to offers and requests for casual conversion*

13 (7) For the purposes of paragraph (1)(b), the orders are the following:

- 14 (a) if the employer has not made an offer under section 66B  
15 (which deals with employer offers of casual conversion) to  
16 the employee—an order that the employer make an offer of  
17 casual conversion under that section;  
18 (b) if the employer has refused a request made under section 66F  
19 (which deals with employee requests for casual conversion)  
20 by the employee or has not responded to that request under  
21 section 66G within 21 days after the request was given—an  
22 order that the employer grant the request under section 66J.

23 Note: Circumstances in which an employer has, for the purposes of  
24 paragraph (a), not made an offer under section 66B include where an  
25 employer has given the employee a notice under section 66C.

26 *Contravening an order under subsection (1)*

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

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

30 **16 Subsection 67(1A)**

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

1 **17 Subsection 125A(2)**

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

4 **18 After paragraph 125A(2)(a)**

5 Insert:

- 6 (aa) an employee who has completed 6 months of employment  
7 (12 months if a small business employer) can notify the  
8 employer if, having regard to the employee’s current  
9 employment relationship with the employer, the employee  
10 believes that the employee no longer meets the requirements  
11 of subsections 15A(1) to (4);  
12 (ab) the grounds upon which an employer may not accept a  
13 notification given by an employee;

14 **19 Subsection 125B(1)**

15 Repeal the subsection, substitute:

- 16 (1) An employer must give each casual employee the Casual  
17 Employment Information Statement:  
18 (a) before, or as soon as practicable after, the employee starts  
19 employment as a casual employee with the employer; and  
20 (b) as soon as practicable after the employee has been employed  
21 by the employer for a period of 12 months beginning the day  
22 the employment started.

23 **20 Before section 357**

24 Insert:

25 **Subdivision A—Independent contracting**

26 **21 At the end of Division 6 of Part 3-1**

27 Add:

1       **Subdivision B—Casual employment**

2       **359A Misrepresenting employment as casual employment**

- 3               (1) A person (the *employer*) that employs, or proposes to employ, an  
4               individual must not represent to the individual that the contract of  
5               employment under which the individual is, or would be, employed  
6               by the employer is a contract for casual employment under which  
7               the individual performs, or would perform, work other than as a  
8               casual employee.

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

- 10              (2) Subsection (1) does not apply if the employer proves that, when the  
11              representation was made, the employer reasonably believed that  
12              the contract was a contract for employment as a casual employee.

- 13              (3) In determining, for the purpose of subsection (2), whether the  
14              employer's belief was reasonable:

- 15                      (a) regard must be had to the size and nature of the employer's  
16                      enterprise; and  
17                      (b) regard may be had to any other relevant matters.

18       **359B Dismissing to engage as casual employee**

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

- 21                      (a) is an employee of the employer; and  
22                      (b) performs particular work for the employer;

23               in order to engage the individual as a casual employee to perform  
24               the same, or substantially the same, work.

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

26       **359C Misrepresentation to engage as casual employee**

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

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

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

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

4 **22 Subsection 539(2) (after table item 5AA)**

5 Insert:

5AAA	66MA(8)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	300 penalty units
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6 **23 Subsection 539(2) (before table item 12)**

7 Insert:

11B	359A(1) 359B 359C	(a) a person affected by the contravention; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2)	300 penalty units
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8 **24 After subsection 548(1B)**

9 Insert:

- 10 (1C) Proceedings are also to be dealt with as small claims proceedings  
11 under this section if:
- 12 (a) a person applies for an order (other than a pecuniary penalty  
13 order) under Division 2 from a magistrates court or the  
14 Federal Circuit and Family Court of Australia (Division 2) in  
15 connection with a dispute; and
- 16 (b) the dispute relates to whether a person was a casual employee  
17 of an employer when the person commenced employment  
18 with that employer; and

1 (c) the person applying for the order indicates, in a manner  
2 prescribed by the regulations or by the rules of the court, that  
3 the person wants the small claims procedure to apply to the  
4 proceedings.

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

10 **25 After paragraph 675(2)(ab)**

11 Insert:

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

**Part 2—Small business redundancy exemption**

***Fair Work Act 2009***

**26 Section 12 (definition of *appointment*)**

Repeal the definition, substitute:

***appointment:***

- (a) of a bargaining representative means an appointment of a bargaining representative under paragraph 176(1)(c) or (d) or 177(c); and
- (b) of an insolvency practitioner includes a person becoming an insolvency practitioner:
  - (i) by taking possession or control of property; or
  - (ii) by operation of law.

**27 Section 12**

Insert:

***Bankruptcy Act 1966:*** a reference to the *Bankruptcy Act 1966* or a provision of that Act is a reference to that Act or provision:

- (a) applying of its own force; or
- (b) applying, with or without modifications, because of a law of the Commonwealth, a State or a Territory.

***bankruptcy trustee*** of a person means the trustee under the *Bankruptcy Act 1966* of the person's estate in bankruptcy.

***Corporations Act 2001:*** the reference to the *Corporations Act 2001* in the definitions of ***insolvency practitioner*** and ***liquidator*** in this section is a reference to that Act:

- (a) applying of its own force; or
- (b) applying, with or without modifications, because of a law of the Commonwealth, a State or a Territory.

***insolvency practitioner*** for an employer means:

- (a) a liquidator of the employer; or

- 1 (b) an administrator of the employer appointed under the  
2 *Corporations Act 2001*; or  
3 (c) a restructuring practitioner for the employer appointed under  
4 that Act; or  
5 (d) a person appointed as a receiver of property of the employer;  
6 or  
7 (e) a person who has possession or control of property of the  
8 employer for the purpose of enforcing:  
9 (i) a charge; or  
10 (ii) a mortgage; or  
11 (iii) a lien; or  
12 (iv) a pledge; or  
13 (v) a security interest, within the meaning of the *Personal*  
14 *Property Securities Act 2009*, to which that Act applies,  
15 other than a transitional security interest within the  
16 meaning of that Act; or  
17 (f) a bankruptcy trustee of the employer.

18 **liquidator** means a liquidator appointed (provisionally or  
19 otherwise) under the *Corporations Act 2001*.

20 **members' voluntary winding up**: see subsection 121(5).

## 21 **28 At the end of section 121**

22 *Certain small businesses to pay redundancy pay*

- 23 (4) Despite subsection (1), an employee whose employment is  
24 terminated is entitled to be paid redundancy pay in accordance with  
25 this Division if:  
26 (a) at the time of the termination, section 119 did not apply to  
27 the termination because the employer was a small business  
28 employer; and  
29 (b) the employer is bankrupt or in liquidation (other than only  
30 because of a members' voluntary winding up); and  
31 (c) the employer is a small business employer because the  
32 employment of one or more employees was terminated; and  
33 (d) those terminations occurred:

- 1 (i) on or after the day that is 6 months before the employer  
2 became bankrupt or went into liquidation; or  
3 (ii) if there was an insolvency practitioner (the ***last***  
4 ***insolvency practitioner***) for the employer on the  
5 business day before the employer became bankrupt or  
6 went into liquidation—on or after the day that is 6  
7 months before the insolvency practitioner was  
8 appointed; or  
9 (iii) if, before the last insolvency practitioner was appointed,  
10 other insolvency practitioners for the employer were  
11 appointed without any intervening business days  
12 between any of those appointments—on or after the day  
13 that is 6 months before the first of those insolvency  
14 practitioners was appointed; or  
15 (iv) due to the insolvency of the employer.

- 16 (5) A ***members' voluntary winding up*** is a winding up under  
17 section 495 of the *Corporations Act 2001*.

18 *Time of liquidation—members' voluntary winding up where*  
19 *company turns out to be insolvent*

- 20 (6) If a liquidator takes action under section 496 of the *Corporations*  
21 *Act 2001* (company turns out to be insolvent) in relation to a small  
22 business employer whose liquidation began as a members'  
23 voluntary winding up, then, for the purposes of  
24 subparagraph (4)(d)(i), the time the employer goes into liquidation  
25 is the time the employer goes into liquidation because of the  
26 members' voluntary winding up.

27 *Application to partnerships*

- 28 (7) For the purposes of subsection (4), a small business employer that  
29 is a partnership is not bankrupt or in liquidation unless each partner  
30 of the partnership is bankrupt or in liquidation, as the case requires.

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

3 ***Fair Work Act 2009***

4 **29 Subsection 172(3)**

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

7 **30 After subsection 172(3)**

8 Insert:

9 (3A) Two or more employers that are all related employers under  
10 paragraph (5A)(c) (whether or not those employers are also related  
11 employers under another paragraph of subsection (5A)) may make  
12 a multi-enterprise agreement under subsection (3).

13 **31 At the end of subsection 172(5A)**

14 Add:

15 ; or (c) the employers carry on similar business activities under the  
16 same franchise and are:

- 17 (i) franchisees of the same franchisor; or  
18 (ii) related bodies corporate of the same franchisor; or  
19 (iii) any combination of the above.

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

***Fair Work Act 2009***

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

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

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

Repeal the paragraph, substitute:

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

**34 At the end of section 58**

Add:

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

(4) If:

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

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

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

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

(5) If:

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

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

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

4       **35 At the end of paragraph 173(2)(d)**

5           Add “or”.

6       **36 Section 180A (at the end of the heading)**

7           Add “—proposed multi-enterprise agreements”.

8       **37 After section 180A**

9           Insert:

10      **180B Agreement of bargaining representatives that are employee**  
11           **organisations—certain proposed single-enterprise**  
12           **agreements**

13           (1) This section applies to a proposed single-enterprise agreement (the  
14           *new agreement*) if:

- 15               (a) a single interest employer agreement or a supported  
16               bargaining agreement (each of which is an *old agreement*)  
17               applies to an employee in relation to particular employment;  
18               and  
19               (b) the old agreement has not passed its nominal expiry date; and  
20               (c) when the new agreement comes into operation, the old  
21               agreement will cease to apply to the employee in relation to  
22               that employment.

23           (2) An employer must not request under subsection 181(1) that  
24           employees approve the new agreement by voting for it unless:

- 25               (a) each employee organisation to which the old agreement  
26               applies has provided the employer with written agreement to  
27               the making of the request; or  
28               (b) a voting request order permits the employer to make the  
29               request.

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

1     **38 Subsection 188(2A)**

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

3     **39 Subsection 188(2A)**

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

5     **40 Paragraph 188(5)(ab)**

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

7     **41 After paragraph 191A(3)(b)**

8             Insert:

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

13     **42 Subsection 193(1)**

14             Repeal the subsection, substitute:

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

- 16             (1) An enterprise agreement that is not a greenfields agreement ***passes***  
17             ***the better off overall test*** under this section if the FWC is satisfied,  
18             as at the test time, that:

- 19                 (a) each award covered employee, and each reasonably  
20                 foreseeable employee, for the agreement would be better off  
21                 overall if the agreement applied to the employee than if the  
22                 relevant modern award applied to the employee; and  
23                 (b) if the agreement is a single-enterprise agreement that covers  
24                 one or more employees (each of whom is an ***old agreement***  
25                 ***employee***) to whom a supported bargaining agreement or a  
26                 single interest employer agreement applies—each old  
27                 agreement employee would be better off overall if the  
28                 single-enterprise agreement applied to the employee than if  
29                 the supported bargaining agreement or single interest  
30                 employer agreement (as the case requires) applied to the  
31                 employee.

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

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

5                   (1A) If an employee is, at the test time, both an old agreement employee  
6                                 and an award covered employee, the FWC must undertake an  
7                                 assessment against only paragraph (1)(b) for that employee.

#### 8                   **43 After subsection 193(2)**

9                   Insert:

10                  (2A) If, under the flexibility term in the supported bargaining agreement  
11                                 or single interest employer agreement, an individual flexibility  
12                                 arrangement has been agreed to by an old agreement employee and  
13                                 his or her employer, the FWC must disregard the individual  
14                                 flexibility arrangement for the purposes of determining whether the  
15                                 single-enterprise agreement passes the better off overall test.

#### 16                  **44 Paragraphs 193A(2)(a) and (b)**

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

#### 19                  **45 Paragraph 193A(3)(b)**

20                  Repeal the paragraph, substitute:

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

#### 27                  **46 At the end of subsection 193A(4)**

28                  Add:

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

1       **47 Paragraph 193A(6A)(b)**

2               Repeal the paragraph, substitute:

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

4                       (i) the award covered employees for the agreement; and

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

9       **48 Subsection 193A(7)**

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

12       **49 After paragraph 211(4A)(ac)**

13               Insert:

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

15       **50 Paragraph 227A(2)(a)**

16               Repeal the paragraph, substitute:

17               (a) before approving the agreement the FWC had regard, under  
18                       subsection 193A(6), to patterns or kinds of work, or types of  
19                       employment engaged in, or to be engaged in, by:

20                       (i) the award covered employees for the agreement; and

21                       (ii) if the agreement is a single-enterprise agreement that  
22                               covers one or more employees to whom a supported  
23                               bargaining agreement or a single interest employer  
24                               agreement applies—those employees; and

25       **51 Paragraph 227A(2)(b)**

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

27       **52 At the end of section 227A**

28               Add:

29               (5) An employee is covered by this subsection if, on the assumption  
30                       that the test time mentioned in section 193 were the time the  
31                       application is made under subsection (1) of this section, the

1           employee would be an employee referred to in  
2           subparagraph (2)(a)(ii).

3       **53 After paragraph 227B(2)(a)**

4           Insert:

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

10      **54 After paragraph 227B(2)(f)**

11           Insert:

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

13      **55 After subsection 236(1A)**

14           Insert:

15               (1B) Despite subsection (1), a bargaining representative of an employee  
16               may not apply to the FWC for a determination if:

- 17                   (a) a single interest employer agreement or a supported  
18                   bargaining agreement applies to the employee; and  
19                   (b) the agreement has not passed its nominal expiry date.

20      **56 After subsection 238(1)**

21           Insert:

22               (2) Despite subsection (1), a bargaining representative may not apply  
23               to the FWC for a scope order in relation to a proposed  
24               single-enterprise agreement if:

- 25                   (a) a single interest employer agreement or a supported  
26                   bargaining agreement applies to one or more employees who  
27                   will be covered by the proposed single-enterprise agreement;  
28                   and  
29                   (b) the single interest employer agreement or supported  
30                   bargaining agreement has not passed its nominal expiry date.

31      **57 At the end of section 240A**

32           Add:

*Certain proposed single-enterprise agreements*

- (4) A bargaining representative for a proposed single-enterprise agreement (the ***new agreement***) may apply to the FWC for an order (also a ***voting request order***) permitting an employer to make a request under subsection 181(1) that employees approve the new agreement by voting for it if all of the following apply:
- (a) a single interest employer agreement or a supported bargaining agreement (each of which is an ***old agreement***) applies to one or more employees who will be covered by the new agreement;
  - (b) the old agreement has not passed its nominal expiry date;
  - (c) when the new agreement comes into operation, the old agreement will cease to apply to the employees;
  - (d) it is after the notification time for the new agreement;
  - (e) each employee organisation to which the old agreement applies has been asked to provide the employer with written agreement to the making of the request;
  - (f) one or more of the employee organisations has failed to provide the written agreement.

**58 Section 240B**

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

**59 Section 245**

Before “The”, insert “(1)”.

**60 At the end of section 245**

Add:

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

**Part 5—Model terms**

***Fair Work Act 2009***

**61 Subsection 202(5)**

Repeal the subsection, substitute:

- (5) The FWC must determine the ***model flexibility term*** for enterprise agreements.
- (6) In determining the model flexibility term, the FWC must:
- (a) ensure that the model term is consistent with the requirements set out in subsection (1); and
  - (b) take into account the following matters:
    - (i) whether the model term is broadly consistent with comparable terms in modern awards;
    - (ii) best practice workplace relations as determined by the FWC;
    - (iii) whether all persons and bodies have had a reasonable opportunity to be heard and make submissions to the FWC for consideration in determining the model term;
    - (iv) the object of this Act (see section 3), and the objects of this Part (see section 171);
    - (v) any other matters the FWC considers relevant.

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

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

- (7) A determination under subsection (5) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

**62 Subsection 205(3)**

Repeal the subsection, substitute:

- (3) The FWC must determine the ***model consultation term*** for enterprise agreements.

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

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

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

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

### 63 After subsection 616(4)

Insert:

#### *Model term determinations*

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

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

## **64 Section 737**

Repeal the section, substitute:

### **737 Model term about dealing with disputes**

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

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

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

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

## **65 Section 768BK (after the heading)**

Insert:

1 *Model term required*

2 **66 Subsection 768BK(1)**

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

5 **67 After subsection 768BK(1)**

6 Insert:

7 *Model term determined by FWC*

8 (1A) The FWC must determine a model term for the purposes of  
9 subsection (1).

10 **68 Subsection 768BK(2)**

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

13 **69 Subsection 768BK(2)**

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

15 **70 At the end of section 768BK**

16 Add:

- 17 (3) In determining the model term, the FWC must take into account  
18 the following matters:
- 19 (a) whether the model term is broadly consistent with  
20 comparable terms in modern awards;
  - 21 (b) best practice workplace relations as determined by the FWC;
  - 22 (c) whether all persons and bodies have had a reasonable  
23 opportunity to be heard and make submissions to the FWC  
24 for consideration in determining the model term;
  - 25 (d) the operation of subsections 739(3), (4), (5) and (6) and  
26 740(3) and (4);
  - 27 (e) the object of this Act (see section 3);
  - 28 (f) any other matters the FWC considers relevant.

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

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

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

**Part 6—Closing the labour hire loophole**

***Fair Work Act 2009***

**71 After paragraph 5(8)(a)**

Insert:

- (aa) provided by Part 2-7A (which deals with regulated labour hire arrangement orders); and

**72 Section 12**

Insert:

***alternative protected rate of pay order***: see subsection 306M(2).

***arbitrated protected rate of pay order***: see subsection 306Q(1).

***covered employment instrument*** means:

- (a) an enterprise agreement; or
- (b) a workplace determination; or
- (c) a determination under section 24 of the *Public Service Act 1999* that applies to a class of APS employees in an Agency (within the meaning of that Act); or
- (d) an instrument made under any other law of the Commonwealth (other than this Act), or of a State or a Territory, that provides for the terms and conditions of employment for a class of national system employees of:
  - (i) the Commonwealth or a State or Territory; or
  - (ii) an authority of the Commonwealth or of a State or Territory; or
- (e) any other instrument relating to the employment of a class of national system employees that:
  - (i) is made under a law of the Commonwealth (other than this Act) or a State or Territory; and
  - (ii) is prescribed by the regulations.

***host employment instrument***: see subsection 306E(6).

***protected rate of pay***: see section 306F.

1                    *recurring extended exemption period*: see subsection 306K(2).

2                    *regulated employee*: see subsection 306E(5).

3                    *regulated host*: see section 306C.

4                    *regulated labour hire arrangement order*: see subsection 306E(1).

5                    **73 After Part 2-7**

6                    Insert:

7                    **Part 2-7A—Regulated labour hire arrangement**  
8                    **orders**

9                    **Division 1—Introduction**

10                  **306A Guide to this Part**

11                    This Part is about regulated labour hire arrangement orders.

12                    Division 2 deals with the making of regulated labour hire  
13                    arrangement orders by the FWC and sets out the obligations of  
14                    employers and regulated hosts covered by those orders.

15                    Division 2 also deals with the making of alternative protected rate  
16                    of pay orders by the FWC.

17                    Division 3 deals with disputes about the operation of this Part.

18                    Division 4 is about anti-avoidance.

19                    Division 5 requires the FWC to make written guidelines in relation  
20                    to the operation of this Part.

21                  **306B Meanings of *employee* and *employer***

22                    In this Part, *employee* means a national system employee, and  
23                    *employer* means a national system employer.

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

### 306C Meaning of *regulated host*

A *regulated host* is:

- (a) a constitutional corporation; or
- (b) the Commonwealth; or
- (c) a Commonwealth authority; or
- (d) a person, so far as work is performed for the person in connection with constitutional trade or commerce, and the work is of a kind that would ordinarily be performed by:
  - (i) a flight crew officer; or
  - (ii) a maritime employee; or
  - (iii) a waterside worker; or
- (e) a body corporate incorporated in a Territory; or
- (f) a person who carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, so far as work is performed for the person in connection with the activity carried on in the Territory; or
- (g) a person, so far as work is performed for the person in a Territory in Australia; or
- (h) any person in a State that is a referring State because of Division 2A or 2B of Part 1-3.

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

### 306D References to kinds of work and work performed for a person etc.

- (1) A reference in this Part to work of a kind includes a reference to work that is substantially of that kind.
- (2) A reference in this Part to work performed for a person includes a reference to work performed wholly or principally for the benefit of the person or an enterprise carried on by the person.
- (3) To avoid doubt, in determining for the purposes of this Part whether work is or is to be performed for a person by an employee

1 of an employer, it does not matter whether there is or will be any  
2 agreement between the person and the employer relating to the  
3 performance of the work.

4 **Division 2—Regulated labour hire arrangement orders**

5 **Subdivision A—Making regulated labour hire arrangement**  
6 **orders**

7 **306E FWC may make a regulated labour hire arrangement order**

8 *Regulated labour hire arrangement order*

- 9 (1) The FWC must, on application by a person mentioned in  
10 subsection (7), make an order (a ***regulated labour hire***  
11 ***arrangement order***) if the FWC is satisfied that:
- 12 (a) an employer supplies or will supply, either directly or  
13 indirectly, one or more employees of the employer to a  
14 regulated host to perform work for the regulated host; and  
15 (b) a covered employment instrument that applies to the  
16 regulated host would apply to the employees if the regulated  
17 host were to employ the employees to perform work of that  
18 kind; and  
19 (c) the regulated host is not a small business employer.

20 Note: The FWC may make other decisions under this Part which relate to  
21 regulated labour hire arrangement orders: see Subdivisions C  
22 (short-term arrangements) and D (alternative protected rate of pay  
23 orders) of this Division, and Division 3 (dealing with disputes).

- 24 (2) Despite subsection (1), the FWC must not make the order if the  
25 FWC is satisfied that it is not fair and reasonable in all the  
26 circumstances to do so, having regard to any matters in  
27 subsection (8) in relation to which submissions have been made.
- 28 (3) For the purposes of paragraph (1)(a), it does not matter:  
29 (a) whether the supply is the result of an agreement, or one or  
30 more agreements; or  
31 (b) if there are one or more agreements relating to the supply—  
32 whether an agreement is between:  
33 (i) the regulated host and the employer; or

- 1 (ii) the regulated host and a person other than the employer;  
2 or  
3 (iii) the employer and a person other than the regulated host;  
4 or  
5 (iv) any 2 persons who are neither the regulated host nor the  
6 employer; or  
7 (c) whether the regulated host and employer are related bodies  
8 corporate.

9 Note: If related bodies corporate with different corporate branding do not  
10 provide labour to each other, a regulated labour hire arrangement  
11 order cannot be made because labour is not supplied in the way  
12 mentioned in paragraph (1)(a).

- 13 (4) For the purposes of paragraph (1)(b), in determining whether a  
14 covered employment instrument would apply to the employees, it  
15 does not matter on what basis the employees are or would be  
16 employed.

17 *Regulated employee and host employment instrument*

- 18 (5) An employee referred to in paragraph (1)(a) is a **regulated**  
19 **employee**.  
20 (6) The covered employment instrument referred to in paragraph (1)(b)  
21 is a **host employment instrument**.

22 *Who may apply for an order*

- 23 (7) The following persons may apply for the order:  
24 (a) a regulated employee;  
25 (b) an employee of the regulated host;  
26 (c) an employee organisation that is entitled to represent the  
27 industrial interests of an employee mentioned in  
28 paragraph (a) or (b);  
29 (d) the regulated host.

30 *Matters to be considered if submissions are made*

- 31 (8) The matters are as follows:

- 1 (a) the pay arrangements that apply to employees of the  
2 regulated host (or related bodies corporate of the regulated  
3 host) and the regulated employees, including in relation to:  
4 (i) whether the host employment instrument applies only to  
5 a particular class or group of employees; and  
6 (ii) whether, in practice, the host employment instrument  
7 has ever applied to an employee at a classification, job  
8 level or grade that would be applicable to the regulated  
9 employees; and  
10 (iii) the rate of pay that would be payable to the regulated  
11 employees if the order were made;
- 12 (b) whether the performance of the work is or will be wholly or  
13 principally for the provision of a service, rather than the  
14 supply of labour, to the regulated host, having regard to:  
15 (i) the involvement of the employer in matters relating to  
16 the performance of the work; and  
17 (ii) the extent to which, in practice, the employer or a  
18 person acting on behalf of the employer directs,  
19 supervises or controls (or will direct, supervise or  
20 control) the regulated employees when they perform the  
21 work, including by managing rosters, assigning tasks or  
22 reviewing the quality of the work; and  
23 (iii) the extent to which the regulated employees use or will  
24 use systems, plant or structures of the employer to  
25 perform the work; and  
26 (iv) the extent to which either the employer or another  
27 person is or will be subject to industry or professional  
28 standards or responsibilities in relation to the regulated  
29 employees; and  
30 (v) the extent to which the work is of a specialist or expert  
31 nature; and  
32 (vi) the extent to which, in the circumstances, the regulated  
33 host employs, has previously employed or could employ  
34 employees to whom the host employment instrument  
35 applies, applied or would apply;
- 36 (c) the history of industrial arrangements applying to the  
37 regulated host and the employer;

- 1 (d) the relationship between the regulated host and the employer,  
2 including whether they are related bodies corporate or  
3 engaged in a joint venture or common enterprise;  
4 (e) the terms and nature of the arrangement under which the  
5 work will be performed, including:  
6 (i) the period for which the arrangement operates or will  
7 operate; and  
8 (ii) the location of the work being performed or to be  
9 performed under the arrangement; and  
10 (iii) the industry in which the regulated host and the  
11 employer operate; and  
12 (iv) the number of employees of the employer performing  
13 work, or who are to perform work, for the regulated host  
14 under the arrangement;  
15 (f) any other matter the FWC considers relevant.

16 *What an order must specify*

- 17 (9) A regulated labour hire arrangement order must specify:  
18 (a) the regulated host covered by the order; and  
19 (b) the employer covered by the order; and  
20 (c) the regulated employees covered by the order; and  
21 (d) the host employment instrument covered by the order; and  
22 (e) the day the order comes into force, which must be:  
23 (i) if the order is made before 1 November 2024—that day  
24 or a later day; or  
25 (ii) otherwise—the day the order is made or a later day.

26 *What an order may specify*

- 27 (10) A regulated labour hire arrangement order may specify when the  
28 order ceases to be in force.

29 Note: For variation and revocation of a regulated labour hire arrangement  
30 order, see section 603.

1     **Subdivision B—Obligations of employers and regulated hosts**  
2             **etc. when a regulated labour hire arrangement order**  
3             **is in force**

4     **306F Protected rate of pay payable to employees if a regulated**  
5             **labour hire arrangement order is in force**

6             *Application of section*

- 7             (1) This section applies if a regulated labour hire arrangement order is  
8                 in force that covers a regulated host, an employer and a regulated  
9                 employee.

10            *Employer must not pay less than protected rate of pay*

- 11            (2) The employer must pay the regulated employee at no less than the  
12               protected rate of pay for the employee in connection with the work  
13               performed by the employee for the regulated host.

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

15            *Exception*

- 16            (3) The employer does not contravene subsection (2) if the employer  
17               pays the regulated employee at less than the protected rate of pay  
18               because:

- 19               (a) the regulated host provides information to the employer  
20                  under section 306H (which deals with information about the  
21                  protected rate of pay); and  
22               (b) the employer reasonably relies on the information for the  
23                  purposes of working out the protected rate of pay for the  
24                  regulated employee; and  
25               (c) the information is incorrect in a material particular.

26            *Meaning of protected rate of pay*

- 27            (4) Unless subsection (5) applies, the ***protected rate of pay*** for the  
28               regulated employee is the full rate of pay that would be payable to  
29               the employee if the host employment instrument covered by the  
30               regulated labour hire arrangement order were to apply to the  
31               employee.

- 1 (5) If the regulated employee is a casual employee, and there is no  
2 covered employment instrument that applies to the regulated host  
3 that provides for work of that kind to be performed by casual  
4 employees, the ***protected rate of pay*** for the regulated employee is  
5 the full rate of pay that would be payable to the employee if:  
6 (a) the employee were an employee other than a casual employee  
7 and the host employment instrument covered by the regulated  
8 labour hire arrangement order were to apply to the employee;  
9 and  
10 (b) the base rate of pay that would be payable to the employee,  
11 in the circumstances referred to in paragraph (a), were  
12 increased by 25%.
- 13 (6) Despite subsections (4) and (5), if the employer is a national  
14 system employer only because of section 30D or 30N, the  
15 ***protected rate of pay*** for the regulated employee does not include  
16 any amount that relates to an excluded subject matter within the  
17 meaning of subsection 30A(1) or 30K(1).
- 18 Note: Sections 30D and 30N extend the meaning of ***national system***  
19 ***employer***.
- 20 (7) If the regulated employee is a pieceworker and paragraph 16(2)(b)  
21 would apply to the employee were the host employment instrument  
22 to apply to the employee, the base rate of pay that would be  
23 payable to the employee for the purposes of subsection (5) of this  
24 section is taken to be the base rate of pay that would be referred to  
25 in that paragraph.
- 26 (8) If the regulated employee is a pieceworker and paragraph 18(2)(b)  
27 would apply to the employee were the host employment instrument  
28 to apply to the employee, the full rate of pay that would be payable  
29 to the employee for the purposes of subsections (4) and (5) of this  
30 section is taken to be the full rate of pay that would be referred to  
31 in that paragraph.
- 32 (9) To avoid doubt, this section does not require that a regulated  
33 employee referred to in subsection (5) be taken to be an employee  
34 other than a casual employee for the purposes of determining  
35 entitlements to kinds of leave, or any other purpose, except  
36 determining the protected rate of pay for the regulated employee.

*Requirement to pay no less than protected rate of pay applies despite other fair work instruments etc.*

(10) Subsection (2) applies despite any provision of:

(a) a fair work instrument (other than an instrument made by the FWC under this Part) that applies to the regulated employee; or

(b) a covered employment instrument (other than a fair work instrument) that applies to the regulated employee; or

(c) the regulated employee's contract of employment; that provides for a rate of pay for the regulated employee that is less than the protected rate of pay for the regulated employee.

Note: See also section 306N (effect of alternative protected rate of pay order) and subsection 306Q(6) (effect of arbitrated protected rate of pay order).

### **306G Exceptions from requirement to pay protected rate of pay**

#### *Training arrangements*

(1) Section 306F does not apply to a regulated employee if a training arrangement applies to the employee in respect of the work performed for the regulated host.

#### *Certain short-term arrangements*

(2) Section 306F does not apply to a regulated employee if:

(a) no determination for the purposes of paragraph 306J(2)(a) (no exemption period) that applies to the employee in respect of the work performed for the regulated host is in force; and

(b) the employee performs, or is to perform, the work for the regulated host during:

(i) if neither subparagraph (ii) nor (iii) applies—a period of no longer than 3 months; or

(ii) if a determination in force under section 306J specifies a period as the exemption period for the regulated host, the employer and the work—a period of no longer than the period specified; or

(iii) if subparagraph (ii) does not apply and the work commences during a recurring extended exemption

1 period for work of the kind performed by the employee  
2 for the regulated host—a period of no longer than the  
3 remainder of the extended exemption period, or a period  
4 of no longer than 3 months, whichever ends later.

- 5 (3) However, if the regulated employee does in fact perform the work  
6 for longer than the maximum period applicable under  
7 paragraph (2)(b), as a result of a variation to or the making of one  
8 or more agreements, section 306F applies to the regulated  
9 employee on and after the day the agreements are varied or made.

10 **306H Obligations of regulated hosts covered by a regulated labour**  
11 **hire arrangement order**

12 *Application of this section*

- 13 (1) This section applies to a regulated host and an employer if the  
14 regulated host and employer are covered by a regulated labour hire  
15 arrangement order that is in force.

16 *Ability to request information regarding protected rate of pay*

- 17 (2) If the employer reasonably considers that the employer does not  
18 have all of the information needed regarding what is the protected  
19 rate of pay for one or more regulated employees covered by the  
20 order, the employer may request, in writing, that the regulated host  
21 provide the employer with specified information needed.
- 22 (3) The regulated host must comply with the request:  
23 (a) as soon as reasonably practicable; and  
24 (b) in any event, within such a period as would reasonably  
25 enable the employer to comply with its obligations under  
26 section 306F (protected rate of pay payable to employees if a  
27 regulated labour hire arrangement order is in force) in  
28 relation to the employees.

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

30 *Manner of complying with request*

- 31 (4) The regulated host may comply with the request by:  
32 (a) providing the employer with the information requested; or

- (b) providing information, for each relevant pay period of the employees, setting out the protected rate of pay for each employee for the period.

## **Subdivision C—Short-term arrangements**

### **306J Determination altering exemption period for short-term arrangements**

- (1) This section applies if:

- (a) a regulated labour hire arrangement order is in force that covers a regulated host, an employer and one or more regulated employees performing work for the regulated host; or
- (b) a regulated labour hire arrangement order has been made but is not yet in force that covers a regulated host, an employer and one or more regulated employees performing work for the regulated host; or
- (c) an application for a regulated labour hire arrangement order that would cover a regulated host, an employer and one or more regulated employees performing work for the regulated host has been made to the FWC under section 306E but has not been finally determined.

- (2) The FWC may determine that, in relation to the regulated host, the employer and work to be performed by one or more regulated employees:

- (a) there is no exemption period for the purposes of section 306G; or
- (b) a specified period of less than 3 months is the exemption period for the purposes of that section; or
- (c) a specified period of more than 3 months is the exemption period for the purposes of that section.

Note: The exemption period is used in determining whether the exception to pay the protected rate of pay in the case of short-term arrangements in subsection 306G(2) applies.

### **306K Determination of recurring extended exemption period**

- (1) This section applies if:

- 1 (a) a regulated labour hire arrangement order is in force that  
2 covers a regulated host, an employer and one or more  
3 regulated employees performing work for the regulated host;  
4 or  
5 (b) a regulated labour hire arrangement order has been made but  
6 is not yet in force that covers a regulated host, an employer  
7 and one or more regulated employees performing work for  
8 the regulated host; or  
9 (c) an application for a regulated labour hire arrangement order  
10 that would cover a regulated host, an employer and one or  
11 more regulated employees performing work for the regulated  
12 host has been made to the FWC under section 306E but has  
13 not been finally determined.
- 14 (2) The FWC may determine that a specified period of more than 3  
15 months, starting on a specified day of the year in specified  
16 consecutive years, is a ***recurring extended exemption period*** for  
17 the regulated host in relation to a specified kind of work to which  
18 the regulated labour hire arrangement order relates.

19 **306L Making and effect of determinations under this Subdivision**

20 *Who may apply for determination*

- 21 (1) The FWC may make a determination under this Subdivision only  
22 on application by:  
23 (a) the regulated host, the employer or a regulated employee of  
24 the employer who is performing or is to perform work for the  
25 regulated host; or  
26 (b) an organisation entitled to represent the industrial interests of  
27 any of those persons.

28 *Time for making determination*

- 29 (2) The FWC must decide whether or not to make the determination as  
30 quickly as possible after the application is made.

31 *Requirements for making determination*

- 32 (3) Before deciding whether or not to make the determination, the  
33 FWC must seek the views of any person or organisation that, apart

1 from the applicant, could have applied for the determination under  
2 subsection (1).

- 3 (4) The FWC may make the determination only if satisfied that there  
4 are exceptional circumstances that justify making it, having regard  
5 to:
- 6 (a) whether the purpose of the proposed exemption period or  
7 recurring extended exemption period relates to satisfying a  
8 seasonal or short-term need for workers; and
  - 9 (b) the industry in which the work is performed or is to be  
10 performed; and
  - 11 (c) the circumstances of:
    - 12 (i) the regulated host; and
    - 13 (ii) the employer; and
  - 14 (d) the views (if any) of any persons or organisations mentioned  
15 in subsection (1); and
  - 16 (e) for a determination made for the purposes of  
17 paragraph 306J(2)(c)—the principle that the longer the period  
18 to be specified in the determination, the greater the  
19 justification required; and
  - 20 (f) for a determination that a period is a recurring extended  
21 exemption period for a regulated host for a kind of work—  
22 the principle that the longer the period to be specified in the  
23 determination, and the greater the number of recurrences of  
24 that period to be specified, the greater the justification  
25 required; and
  - 26 (g) any other matter the FWC considers relevant.

27 *When determination comes into force*

- 28 (5) The determination comes into force on the later of the day the  
29 regulated labour hire arrangement order comes into force, and the  
30 following:
- 31 (a) for a determination under section 306J that there is no  
32 exemption period for the purposes of section 306G—the day  
33 it is made;
  - 34 (b) for a determination under section 306J that there is an  
35 exemption period of more than, or less than, 3 months for the  
36 purposes of section 306G—the day it is made or a later day  
37 specified in the determination;

- (c) for a determination under section 306K (which deals with recurring extended exemption periods)—the day it is made or a later day specified in the determination.

## **Subdivision D—Alternative protected rate of pay orders**

### **306M Making an alternative protected rate of pay order**

#### *Application of this section*

- (1) This section applies if:
- (a) a regulated labour hire arrangement order is in force that covers a regulated host, an employer and a regulated employee performing work for the regulated host; or
  - (b) a regulated labour hire arrangement order has been made but is not yet in force that covers a regulated host, an employer and a regulated employee performing work for the regulated host; or
  - (c) an application for a regulated labour hire arrangement order that would cover a regulated host, an employer and a regulated employee performing work for the regulated host has been made to the FWC under section 306E but has not been finally determined.

#### *Alternative protected rate of pay order*

- (2) The FWC may make an order (an ***alternative protected rate of pay order***) specifying:
- (a) how the rate of pay at which the employer must pay the regulated employee in connection with the work is to be worked out; and
  - (b) that the employer must pay the rate of pay worked out in that way to the regulated employee in connection with the work.

#### *Rate of pay*

- (3) The rate of pay for the purposes of paragraph (2)(a) must be the protected rate of pay for the regulated employee that would apply if the references in section 306F to the host employment instrument covered by the regulated labour hire arrangement order were

1 instead references to a specified covered employment instrument  
2 that:

- 3 (a) applies to a related body corporate of the regulated host and  
4 would apply to a person employed by the related body  
5 corporate to perform work of that kind; or  
6 (b) applies to the regulated host and would apply to a person  
7 employed by the regulated host to perform work of that kind  
8 in circumstances that do not apply in relation to the  
9 employee.

10 *Who may apply*

- 11 (4) The FWC may make an alternative protected rate of pay order only  
12 on application by the employee, the employer, the regulated host or  
13 an organisation entitled to represent the industrial interests of any  
14 of those persons.

15 *Time for making*

- 16 (5) The FWC must decide whether or not to make the order as quickly  
17 as possible after the application is made.

18 *Criteria for making etc.*

- 19 (6) The FWC must not make the order unless satisfied that:  
20 (a) it would be unreasonable for the requirement in section 306F,  
21 that the employer pay the regulated employee at no less than  
22 the protected rate of pay, to apply in connection with that  
23 work (including, for example, because the rate would be  
24 insufficient or would be excessive); and  
25 (b) there is a covered employment instrument of the kind  
26 referred to in paragraph (3)(a) or (b).  
27 (7) Before deciding whether to make the order, the FWC must seek the  
28 views of the following:  
29 (a) the employer;  
30 (b) the regulated host;  
31 (c) the employer to which a covered employment instrument to  
32 be specified in the order for the purposes of subsection (3)  
33 applies (if not the regulated host);  
34 (d) the employee;

- 1 (e) employees to whom the covered employment instrument to  
2 be specified in the order for the purposes of subsection (3)  
3 applies;  
4 (f) organisations entitled to represent the industrial interests of  
5 any of the persons referred to in paragraphs (a) to (e).
- 6 (8) In deciding whether to make the order, the FWC must have regard  
7 to:  
8 (a) whether the host employment instrument covered by the  
9 regulated labour hire arrangement order applies only to a  
10 particular class or group of employees; and  
11 (b) whether, in practice, the host employment instrument has  
12 ever applied to an employee at a classification, job level or  
13 grade that would be applicable to the regulated employee;  
14 and  
15 (c) the views (if any) of any persons or organisations mentioned  
16 in subsection (7);  
17 (d) the rate of pay that would be payable to the regulated  
18 employee in connection with the work if the order were  
19 made; and  
20 (e) any other matter the FWC considers relevant.

21 *Exception for short-term arrangements*

- 22 (9) In making an order under this section, the FWC must ensure that, if  
23 an exception in section 306G would apply to the requirement to  
24 pay the regulated employee at no less than the protected rate of  
25 pay, the exception also applies in relation to the requirement to pay  
26 the employee at the rate worked out under the alternative protected  
27 rate of pay order.

28 **306N Effect of alternative protected rate of pay order**

29 *When alternative protected rate of pay order comes into force*

- 30 (1) An alternative protected rate of pay order comes into force:  
31 (a) if the order is made before the regulated labour hire  
32 arrangement order to which the order relates comes into  
33 force:

- 1 (i) on the day the regulated labour hire arrangement order  
2 comes into force; or  
3 (ii) on a later day specified in the alternative protected rate  
4 of pay order; or  
5 (b) otherwise—on the day the alternative protected rate of pay  
6 order is made, or on a later day specified in the order.

7 *Effect of alternative protected rate of pay order*

8 (2) If:

- 9 (a) a regulated labour hire arrangement order is in force that  
10 covers a regulated host, an employer and work performed by  
11 a regulated employee; and  
12 (b) an alternative protected rate of pay order is made in relation  
13 to the regulated labour hire arrangement order;

14 then:

- 15 (c) the alternative protected rate of pay order applies in relation  
16 to so much of the work as is performed during the period that  
17 the alternative protected rate of pay order is in force; and  
18 (d) during that period, the alternative protected rate of pay order  
19 has effect despite section 306F (protected rate of pay payable  
20 to employees if a regulated labour hire arrangement order is  
21 in force), and despite any provision of the following that  
22 provides for a lower rate of pay than that worked out in  
23 accordance with the order:  
24 (i) a fair work instrument that applies to the regulated  
25 employee;  
26 (ii) a covered employment instrument (other than a fair  
27 work instrument) that applies to the regulated employee;  
28 (iii) the regulated employee's contract of employment.

29 *Person must not contravene an alternative protected rate of pay*  
30 *order*

- 31 (3) A person must not contravene a term of an alternative protected  
32 rate of pay order.

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

**Division 3—Dealing with disputes**

**306P Disputes about the operation of this Part**

*When this Division applies to a dispute*

- (1) This Division applies to a dispute about the operation of this Part if:
- (a) a regulated labour hire arrangement order is in force that covers a regulated host, an employer and a regulated employee performing work for the regulated host; or
  - (b) a regulated labour hire arrangement order has been made but is not yet in force that covers a regulated host, an employer and a regulated employee performing work for the regulated host.
- (2) Without limiting subsection (1), this Division applies to a dispute about:
- (a) what the protected rate of pay for a regulated employee is; or
  - (b) whether a regulated employee has been, or is being, paid less than the protected rate of pay for the employee.

*Parties must attempt to resolve dispute at workplace level*

- (3) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level by discussions between the parties.
- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may apply to the FWC to resolve the dispute.

*How the FWC deals with dispute*

- (5) If a party to the dispute makes an application under subsection (4):
- (a) the FWC must first deal with the dispute by means other than arbitration, unless there are exceptional circumstances; and
  - (b) the FWC may deal with the dispute by arbitration in accordance with section 306Q.

Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation,

1 making a recommendation or expressing an opinion (see  
2 subsection 595(2)).

3 *Representatives*

4 (6) The employer, employee or regulated host may appoint a person or  
5 organisation that is entitled to represent the industrial interests of  
6 the employer, employee or regulated host to provide the employer,  
7 employee or regulated host (as the case may be) with support or  
8 representation for the purposes of:

- 9 (a) resolving the dispute; or  
10 (b) the FWC dealing with the dispute.

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

14 *Joinder of other employees to disputes*

15 (7) Without limiting section 609, the procedural rules may provide for  
16 the joinder, as parties to a dispute in relation to which an employee  
17 has made an application under subsection (4), of any other  
18 employees who have a dispute about the operation of this Part with  
19 the same regulated host or employer.

20 **306Q Dealing with disputes by arbitration**

- 21 (1) The FWC may deal with the dispute by arbitration, including by  
22 making an order (an *arbitrated protected rate of pay order*)  
23 determining:  
24 (a) how the rate of pay at which the employer must pay the  
25 employee in connection with the work is to be worked out;  
26 and  
27 (b) that the employer must pay the rate of pay worked out in that  
28 way to the employee in connection with the work.
- 29 (2) If the employer is a national system employer only because of  
30 section 30D or 30N, the rate of pay for the purposes of  
31 paragraph (1)(a) of this section must not include any amount that  
32 relates to an excluded subject matter within the meaning of  
33 subsection 30A(1) or 30K(1).

Note: Sections 30D and 30N extend the meaning of *national system employer*.

- (3) The FWC must not make an arbitrated protected rate of pay order unless the FWC considers that it would be fair and reasonable to make the order.
- (4) If the parties have notified the FWC, in writing, that they agree to the FWC arbitrating the dispute, an arbitrated protected rate of pay order made in relation to the dispute may apply in relation to work performed at any time on or after the day the regulated labour hire arrangement order comes into force.
- (5) If the parties have not notified the FWC that they agree to the FWC arbitrating the dispute, an arbitrated protected rate of pay order made in relation to the dispute may apply only in relation to work performed on or after:
- (a) if the arbitrated protected rate of pay order is made before the regulated labour hire arrangement order to which the order relates comes into force—the day the regulated labour hire arrangement order comes into force; or
  - (b) otherwise—the day the arbitrated protected rate of pay order is made.

*Effect of arbitrated protected rate of pay order*

- (6) If the FWC makes an arbitrated protected rate of pay order in relation to the dispute, the order has effect, in relation to so much of the work as is performed during the period to which the order applies, despite the following:
- (a) section 306F (protected rate of pay payable to employees if a regulated labour hire arrangement order is in force);
  - (b) any provision of the following that provides for a lower rate of pay than that worked out in accordance with the order:
    - (i) a fair work instrument that applies to the employee;
    - (ii) a covered employment instrument (other than a fair work instrument) that applies to the employee;
    - (iii) the employee's contract of employment.
- (7) A person must not contravene a term of an arbitrated protected rate of pay order.

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

- (8) In making an order under this section, the FWC must ensure that, if an exception in section 306G would apply to the requirement to pay the regulated employee at no less than the protected rate of pay, the exception also applies in relation to the requirement to pay the employee at the rate worked out under the arbitrated protected rate of pay order.

### **306R Application fees**

- (1) An application under subsection 306P(4) must be accompanied by any fee prescribed by the regulations.
- (2) The regulations may prescribe:
- (a) a fee for making an application to the FWC under that subsection; and
  - (b) a method for indexing the fee; and
  - (c) the circumstances in which all or part of the fee may be waived or refunded.

## **Division 4—Anti-avoidance**

### **306S Preventing making of regulated labour hire arrangement orders**

- (1) A person contravenes this section if:
- (a) the person is an employer or a regulated host; and
  - (b) the person, either alone or with one or more other persons:
    - (i) enters into a scheme; or
    - (ii) begins to carry out a scheme; or
    - (iii) carries out a scheme; and
  - (c) the person does so for the sole or dominant purpose of preventing the FWC from making a regulated labour hire arrangement order in relation to any person or persons (whether or not those persons are the same persons mentioned in paragraph (b)); and
  - (d) as a result of that scheme or part of that scheme, the FWC is prevented from making the order.

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

(2) In this section:

*scheme* means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

### **306T Short-term arrangements—engaging other employees**

An employer covered by a regulated labour hire arrangement order contravenes this section if:

- (a) the employer is not required to pay a regulated employee at a rate determined under or in accordance with this Part because of the operation of subsection 306G(2) (including as it applies because of subsection 306M(9) or 306Q(8)); and
- (b) the employer engages another person to perform the same, or substantially the same, work as that performed by the employee for the regulated host; and
- (c) it could reasonably be concluded that the purpose, or one of the purposes, of engaging the other person is to achieve the result that the employer is not required to pay a regulated employee at a rate determined under or in accordance with this Part.

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

### **306U Short-term arrangements—entering into other labour hire agreements**

A regulated host covered by a regulated labour hire arrangement order contravenes this section if:

- (a) an employer covered by the regulated labour hire arrangement order is not required to pay a regulated employee at a rate determined under or in accordance with this Part because of the operation of subsection 306G(2)

(including as it applies because of subsection 306M(9) or 306Q(8)); and

(b) the regulated host enters into an agreement that has the result that another person is to perform the same, or substantially the same, work as that performed by the regulated employee for the regulated host; and

(c) it could reasonably be concluded that the purpose, or one of the purposes, of engaging the other person is to achieve the result that the employer is not required to pay a regulated employee at a rate determined under or in accordance with this Part.

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

### **306V Engaging independent contractors**

An employer covered by a regulated labour hire arrangement order contravenes this section if:

(a) the employer dismisses an employee who performs, or is to perform, work for a regulated host covered by the order; and

(b) the employer engages another person as an independent contractor, under a contract for services, to perform that work, or work of that kind, for the regulated host; and

(c) a result of the employer dismissing the employee and engaging the independent contractor is that the employer is not required to pay a person at a rate determined under or in accordance with this Part; and

(d) it could reasonably be concluded that the employer dismissed the employee and engaged the independent contractor for the purpose, or purposes including the purpose, of achieving that result.

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

## **Division 5—Other matters**

### **306W Guidelines**

(1) The FWC may make written guidelines in relation to the operation of this Part.

- 1 (2) Guidelines made under subsection (1) are not a legislative  
2 instrument.
- 3 (3) The FWC must ensure that guidelines under subsection (1) are in  
4 force:  
5 (a) by 1 November 2024; and  
6 (b) at all times on and after that day.

7 **74 Subsection 539(2) (after table item 9)**

8 Insert:

9 **Part 2-7A—Regulated labour hire arrangement orders**

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9A	306F(2)	(a) an employee;	(a) the Federal	for a serious
	306H(3)	(b) an employee	Court;	contravention
	306N(3)	organisation;	(b) the Federal	—600 penalty
	306Q(7)	(c) an inspector	Circuit and	units; or
	306S(1)		Family Court	otherwise—60
	306T		of Australia	penalty units
	306U		(Division 2);	
	306V		(c) an eligible	
			State or	
			Territory court	

10 **75 After paragraph 557(2)(f)**

11 Insert:

- 12 (fa) subsection 306F(2) (which deals with the protected rate of  
13 pay payable to employees covered by a regulated labour hire  
14 arrangement order);  
15 (fb) subsection 306H(3) (which deals with the obligations of  
16 regulated hosts covered by a regulated labour hire  
17 arrangement order);  
18 (fc) subsection 306N(3) (which deals with the contravention of  
19 alternative protected rate of pay orders);  
20 (fd) subsection 306Q(7) (which deals with the contravention of  
21 arbitrated protected rate of pay orders);

22 **76 After paragraph 576(1)(f)**

23 Insert:

- 24 (fa) regulated labour hire arrangement orders (Part 2-7A);

**Part 7—Workplace delegates' rights**

**Division 1—Amendments commencing day after Royal Assent**

***Fair Work Act 2009***

**77 Section 12**

Insert:

***delegates' rights term*** means a term in a fair work instrument that provides for the exercise of the rights of workplace delegates.

Note: The rights of workplace delegates are set out in section 350C, and a delegates' rights term must provide at least for the exercise of those rights.

***workplace delegate***: see subsection 350C(1).

**78 At the end of Subdivision C of Division 3 of Part 2-3**

Add:

**149E Workplace delegates' rights**

A modern award must include a delegates' rights term for workplace delegates covered by the award.

Note: ***Delegates' rights term*** is defined in section 12.

**79 Section 169 (paragraph about Division 5)**

Omit "and consultation requirements", substitute ", consultation requirements and the rights of workplace delegates".

**80 After subsection 201(1)**

Insert:

*Approval decision to note modern award delegates' rights term included in an enterprise agreement*

(1A) If:

- 1 (a) the FWC approves an enterprise agreement; and  
2 (b) a delegates' rights term in a modern award is taken to be a  
3 term of the enterprise agreement because of  
4 subsection 205A(2):  
5 the FWC must note in its decision to approve the agreement that  
6 the term is so included in the agreement.

7 **81 At the end of Division 5 of Part 2-4**

8 Add:

9 **205A Enterprise agreements to include a delegates' rights term etc.**

- 10 (1) An enterprise agreement must include a delegates' rights term for  
11 workplace delegates to whom the agreement applies.

12 Note: *Delegates' rights term* is defined in section 12.

13 *When modern award term prevails*

- 14 (2) However, if, when the agreement is approved, the delegates' rights  
15 term is less favourable than the delegates' rights term in one or  
16 more modern awards that cover the workplace delegates:

- 17 (a) the term in the enterprise agreement has no effect; and  
18 (b) the most favourable term of those in the modern awards, as  
19 determined by the FWC, is taken to be a term of the  
20 enterprise agreement.

- 21 (3) To avoid doubt, if the delegates' rights term of a modern award is  
22 taken to be a term of an enterprise agreement, the term does not  
23 change if the modern award changes.

24 **82 At the end of section 273**

25 Add:

26 *Delegates' rights term*

- 27 (6) The determination must include a delegates' rights term for the  
28 workplace delegates to whom the determination applies.

29 Note: *Delegates' rights term* is defined in section 12.

- 1 (7) The delegates' rights term must not be less favourable than the  
2 delegates' rights term in any modern award that covers a  
3 workplace delegate to whom the determination applies.

4 **83 Section 334 (paragraph about Division 4)**

5 Repeal the paragraph, substitute:

6 Division 4 protects freedom of association, involvement in lawful  
7 industrial activities, and the exercise of workplace delegates'  
8 rights.

9 **84 At the end of Division 4 of Part 3-1**

10 Add:

11 **350A Protection for workplace delegates**

- 12 (1) The employer of a workplace delegate must not:  
13 (a) unreasonably fail or refuse to deal with the workplace  
14 delegate; or  
15 (b) knowingly or recklessly make a false or misleading  
16 representation to the workplace delegate; or  
17 (c) unreasonably hinder, obstruct or prevent the exercise of the  
18 rights of the workplace delegate under this Act or a fair work  
19 instrument.

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

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

25 *Exception—conduct required by law*

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

1       **350C Workplace delegates and their rights**

2                   *Meaning of workplace delegate*

- 3           (1) A **workplace delegate** is a person appointed or elected, in  
4           accordance with the rules of an employee organisation, to be a  
5           delegate or representative (however described) for members of the  
6           organisation who work in a particular enterprise.

7                   *Rights of workplace delegates*

- 8           (2) The workplace delegate is entitled to represent the industrial  
9           interests of those members, and any other persons eligible to be  
10          such members, including in disputes with their employer.

11          Note:       This section does not create any obligation on a person to be  
12                       represented by a workplace delegate.

- 13          (3) The workplace delegate is entitled to:
- 14               (a) reasonable communication with those members, and any  
15               other persons eligible to be such members, in relation to their  
16               industrial interests; and  
17               (b) for the purpose of representing those interests:
- 18                   (i) reasonable access to the workplace and workplace  
19                   facilities where the enterprise is being carried on; and  
20                   (ii) unless the employer of the workplace delegate is a small  
21                   business—reasonable access to paid time, during  
22                   normal working hours, for the purposes of related  
23                   training.
- 24          (4) The employer of the workplace delegate is taken to have afforded  
25          the workplace delegate the rights mentioned in subsection (3) if the  
26          employer has complied with the delegates' rights term in the fair  
27          work instrument that applies to the workplace delegate.
- 28          (5) Otherwise, in determining what is reasonable for the purposes of  
29          subsection (3), regard must be had to the following:
- 30               (a) the size and nature of the enterprise;  
31               (b) the resources of the employer of the workplace delegate;  
32               (c) the facilities available at the enterprise.

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

After “350(2)”, insert “350A(1)”.

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

***Fair Work Act 2009***

**86 Section 12**

Insert:

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

**87 After section 350A**

Insert:

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

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

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

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

*Exception—conduct required by law*

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

1                                    *Meaning of **associated regulated business***

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

7                    **88 Subsection 350C(1)**

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

10                    for either or both of the following:

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

16                    **89 Subsection 350C(2)**

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

19                    **90 Subparagraphs 350C(3)(b)(i) and (ii)**

20                    Repeal the subparagraphs, substitute:

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

31                    **91 Subsection 350C(4)**

32                    Repeal the subsection, substitute:

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

6 **92 Paragraphs 350C(5)(a), (b) and (c)**

7 Repeal the paragraphs, substitute:

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

13 **93 Subsection 539(2) (table item 11, column 1)**

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

**Part 8—Strengthening protections against discrimination**

***Fair Work Act 2009***

**94 Subsection 153(1)**

After “family or carer’s responsibilities,”, insert “subjection to family and domestic violence,”.

**95 Subsection 195(1)**

After “family or carer’s responsibilities,”, insert “subjection to family and domestic violence,”.

**96 Subsection 351(1)**

After “family or carer’s responsibilities,”, insert “subjection to family and domestic violence,”.

**97 Section 578**

After “family or carer’s responsibilities,”, insert “subjection to family and domestic violence,”.

**98 Paragraph 772(1)(f)**

After “family or carer’s responsibilities,”, insert “subjection to family and domestic violence,”.

**99 Before section 789HA**

Insert:

**Division 1—Breastfeeding, gender identity and intersex status**

**100 Section 789HA (heading)**

Omit “Part”, substitute “Division”.

**101 Section 789HA**

Omit “Part”, substitute “Division”.

1 **102 At the end of Part 6-4E**

2 Add:

3 **Division 2—Family and domestic violence**

4 **789HC Constitutional basis of this Division**

5 This Division relies on the Commonwealth’s legislative powers  
6 under paragraph 51(xxix) (external affairs) of the Constitution as it  
7 relates to giving effect to Australia’s obligations under:

- 8 (a) the ILO Convention (No. 111) concerning Discrimination in  
9 respect of Employment and Occupation, done at Geneva on  
10 25 June 1958; and  
11 (b) the ILO Convention (No. 190) concerning the elimination of  
12 violence and harassment in the world of work, done at  
13 Geneva on 21 June 2019.

14 Note: The Conventions could in 2023 be viewed in the Australian Treaties  
15 Library on the AustLII website (<http://www.austlii.edu.au>).

16 **789HD Extension of anti-discrimination rules**

17 (1) Subsection (3) applies for the purposes of the operation of the  
18 provisions identified in subsection (2) in relation to family and  
19 domestic violence.

20 (2) The provisions are as follows:

- 21 (a) section 153;  
22 (b) section 172A;  
23 (c) section 195;  
24 (d) section 351.

25 (3) In applying sections 30H and 30S in relation to that operation of  
26 the provisions identified in subsection (2), assume that:

- 27 (a) the matter to which that operation of those provisions relates  
28 is not an excluded subject matter for the purposes of:  
29 (i) the State’s referral law mentioned in sections 30H and  
30 30S; and  
31 (ii) Divisions 2A and 2B of Part 1-3; and

**Schedule 1** Main amendments

**Part 8** Strengthening protections against discrimination

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- 1 (b) the referral of that matter by that referral law results in the  
2 Parliament of the Commonwealth having sufficient  
3 legislative power for those provisions (to the extent of that  
4 operation) to have effect.

**Part 9—Sham arrangements**

***Fair Work Act 2009***

**103 Subsection 357(2)**

Repeal the subsection, substitute:

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

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

***Fair Work Act 2009***

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

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

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

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

**106 Section 484 (note 2)**

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

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

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

**108 Section 500 (note 3)**

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

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

Add “etc.”.

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

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

**111 Subsection 502(2)**

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

**112 Subsection 502(3)**

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

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

Insert:

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

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

Insert:

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

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

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

**116 Section 510 (heading)**

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

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

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

**118 Subsection 510(1)**

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

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

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

**120 Subsection 510(5)**

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

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

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

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

Repeal the paragraph, substitute:

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(b) either:

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

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

Insert:

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

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

2 **Division 1—Penalties**

3 ***Fair Work Act 2009***

4 **124 Subsection 539(2) (cell at table item 1, column 4)**

5 Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

6 **125 Subsection 539(2) (cell at table item 2, column 4)**

7 Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

8 **126 Subsection 539(2) (cell at table item 3, column 4)**

9 Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

1 **127 Subsection 539(2) (cell at table item 4, column 4)**

2 Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

3 **128 Subsection 539(2) (cell at table item 5, column 4)**

4 Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

5 **129 Subsection 539(2) (cell at table item 7, column 4)**

6 Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

7 **130 Subsection 539(2) (cell at table item 8, column 4)**

8 Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

1     **131 Subsection 539(2) (cell at table item 9, column 4)**

2             Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

3     **132 Subsection 539(2) (cell at table item 10, column 4)**

4             Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

5     **133 Subsection 539(2) (cell at table item 10A, column 4)**

6             Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

1       **134 Subsection 539(2) (table item 11, column 1)**  
2           Omit “357(1)”.

3       **135 Subsection 539(2) (table item 11, column 1)**  
4           Omit “358”.

5       **136 Subsection 539(2) (table item 11, column 1)**  
6           Omit “359”.

7       **137 Subsection 539(2) (after table item 11)**  
8           Insert:

11A	357(1)	(a) a person affected	(a) the Federal	300 penalty units
	358	by the	Court;	
	359	contravention;	(b) the Federal	
		(b) an industrial	Circuit and	
		association;	Family Court	
		(c) an inspector	of Australia	
			(Division 2)	

9       **138 Subsection 539(2) (cell at table item 29, column 4)**  
10          Repeal the cell, substitute:

for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

**139 Subsection 539(2) (table item 29AA, column 4)**

Omit “60 penalty units”, substitute “300 penalty units”.

**140 Subsection 539(2) (table item 29A, column 4)**

Omit “60 penalty units”, substitute “300 penalty units”.

**141 Subsection 539(2) (table item 32, column 4)**

Omit “60 penalty units”, substitute “300 penalty units”.

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

Omit “30 penalty units”, substitute “300 penalty units”.

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

Omit “60 penalty units”, substitute “300 penalty units”.

**144 Subsection 539(2) (table item 34, column 4)**

Omit “60 penalty units”, substitute “300 penalty units”.

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

Omit “and”, substitute “or”.

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

Repeal the paragraph, substitute:

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

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

Repeal the example, substitute:

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

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

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

Repeal the subsections, substitute:

- 1 (2) For the purposes of subsection (1), a person is reckless as to  
2 whether a contravention would occur if:  
3 (a) the person is aware of a substantial risk that the contravention  
4 would occur; and  
5 (b) having regard to the circumstances known to the person, it is  
6 unjustifiable to take the risk.

7 **Division 2—Contingent amendments**

8 ***Fair Work Act 2009***

9 **149 Subsection 539(2) (cell at table item 34AAA, column 4)**

10 Repeal the cell, substitute:  
for a serious  
contravention  
—3,000  
penalty units;  
or  
otherwise—  
300 penalty  
units

11 **Division 3—Underpayments**

12 ***Fair Work Act 2009***

13 **150 Section 12**

14 Insert:

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

17 **151 Subsection 539(2) (after note 3)**

18 Insert:

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

1 **152 Subsection 546(2)**

2 Omit “The”, substitute “Unless subsection (2A) applies, the”.

3 **153 After subsection 546(2)**

4 Insert:

5 (2A) If:

- 6 (a) the contravention is associated with an underpayment  
7 amount; and  
8 (b) the application specifies that the applicant wants the  
9 maximum penalty to be calculated based on a multiple of the  
10 underpayment amount; and  
11 (c) the person is not taken to have contravened the civil remedy  
12 provision under section 550 (person involved in a  
13 contravention);

14 the pecuniary penalty must not be more than:

- 15 (d) if the person is an individual—the greater of the following:  
16 (i) the maximum number of penalty units referred to in the  
17 relevant item in column 4 of the table in  
18 subsection 539(2);  
19 (ii) 3 times the underpayment amount; or  
20 (e) if the person is a body corporate—the greater of the  
21 following:  
22 (i) 5 times the maximum number of penalty units referred  
23 to in the relevant item in column 4 of the table in  
24 subsection 539(2);  
25 (ii) 3 times the underpayment amount.

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

28 **154 After section 546**

29 Insert:

30 **546A Underpayment amounts associated with contravention of civil**  
31 **remedy provisions**

- 32 (1) A contravention of a civil remedy provision is *associated with an*  
33 *underpayment amount* if:

- 1 (a) an employer is required to pay an amount (a ***required***  
2 ***amount***) to, on behalf of, or for the benefit of, an employee  
3 under this Act, a fair work instrument or a transitional  
4 instrument (as continued in existence by Schedule 3 to the  
5 Transitional Act); and  
6 (b) the employer engages in conduct; and  
7 (c) the conduct results in a failure to pay the required amount to,  
8 on behalf of, or for the benefit of, the employee in full on or  
9 before the day when the required amount is due for payment;  
10 and  
11 (d) the failure is related to the contravention.
- 12 (2) The ***underpayment amount*** the contravention is associated with is,  
13 to the extent it can be determined by the court, the difference  
14 between:  
15 (a) the required amount mentioned in paragraph (1)(a); and  
16 (b) the amount (including a nil amount) the employer actually  
17 paid to, on behalf of, or for the benefit of, the employee on  
18 account of the required amount.

1     **Part 12—Compliance notice measures**

2     ***Fair Work Act 2009***

3     **155 At the end of subsection 545(2)**

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

8     **156 At the end of paragraph 716(2)(a)**

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

**Part 13—Withdrawal from amalgamations**

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

**157 Paragraph 92(a)**

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

**158 Paragraph 92(b)**

Omit “, divisions or parts”.

**159 Section 92A**

Repeal the section.

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

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

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

Omit “or a predecessor law”.

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

Omit “or a predecessor law”.

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

Omit “or a predecessor law”.

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

Repeal the definition.

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

Repeal the definition.

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

3 Omit “or a predecessor law”.

4 **167 Subsection 93(1) (paragraph (b) of the definition of**  
5 ***separately identifiable constituent part*)**

6 Omit “part; or”, substitute “part.”.

7 **168 Subsection 93(1) (paragraph (c) of the definition of**  
8 ***separately identifiable constituent part*)**

9 Repeal the paragraph.

10 **169 Subsection 93(1) (definition of *workplace or safety law*)**

11 Repeal the definition.

12 **170 Subsection 93(2)**

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

14 **171 Subsection 93(3)**

15 Repeal the subsection.

16 **172 Subsection 93(4)**

17 Omit “or a predecessor law”.

18 **173 Subsection 94(1)**

19 After “secret”, insert “postal”.

20 **174 Paragraph 94(1)(a)**

21 Omit “or a predecessor law”.

22 **175 Sections 94A and 95A**

23 Repeal the sections.

24 **176 Subsection 100(1)**

25 After “secret”, insert “postal”.

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

2 Repeal the paragraph.

3 **178 Subsection 100(4)**

4 Repeal the subsection (including the note).

5 **179 Subsection 102(1) (heading)**

6 Repeal the heading.

7 **180 Subsections 102(1A), (1B) and (1C)**

8 Repeal the subsections.

9 **181 Subsection 102(2) (heading)**

10 Repeal the heading.

11 **182 Subsection 102(2)**

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

14 **183 Paragraphs 102(2)(aa) and (ca)**

15 Repeal the paragraphs.

16 **184 Subsection 102(3)**

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

18 **185 Subsection 102(3)**

19 Omit “, or designated official,”.

20 **186 Subsection 102(4)**

21 Repeal the subsection.

22 **187 Section 103 (heading)**

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

24 **188 Subsection 103(1) (heading)**

25 Repeal the heading.

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

2 Repeal the subsections.

3 **190 Subsection 103(2) (heading)**

4 Repeal the heading.

5 **191 Subsection 103(2)**

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

7 **192 Subsection 103(5) (heading)**

8 Repeal the heading.

9 **193 Subsection 103(7) (heading)**

10 Repeal the heading.

11 **194 Subsection 103(7)**

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

15 **195 Subsection 104(1)**

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

17 **196 Subsection 104(1A)**

18 Repeal the subsection.

19 **197 Subsection 106(1)**

20 Omit “, or the designated official,”.

21 **198 Paragraph 106(1)(c)**

22 Omit “or designated official”.

23 **199 Subsections 106(2) and (3)**

24 Omit “or designated official”.

25 **200 Section 107 (heading)**

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

1     **201 Subsection 107(1)**

2             Omit “, or the designated official,”.

3     **202 Subsection 107(2)**

4             Omit “or designated official”.

5     **203 Subsection 107(4)**

6             Omit “or designated official” (wherever occurring).

7     **204 Paragraph 109(2)(a)**

8             Repeal the paragraph, substitute:

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

13    **205 Paragraph 109(2)(b)**

14             Omit “if paragraph (a) applies—”.

15    **206 Paragraph 109(2)(ba)**

16             Repeal the paragraph.

17    **207 Sections 110A and 110B**

18             Repeal the sections.

19    **208 Section 111 (heading)**

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

21    **209 Paragraph 111(3)(b)**

22             Repeal the paragraph, substitute:

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

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

5 **210 Subsection 111(4)**

6 Repeal the subsection, substitute:

- 7 (4) As soon as practicable after the amalgamated organisation receives  
8 a notice under paragraph (3)(b), it must notify the newly registered  
9 organisation of the receipt.
- 10 (5) As soon as practicable after the newly registered organisation  
11 receives a notice under paragraph (3)(b), it must notify the  
12 amalgamated organisation of the receipt.
- 13 (6) If a person referred to in subsection (2) gives written notice in  
14 accordance with paragraph (3)(b), within the notice period, that the  
15 person wants to become a member of the newly registered  
16 organisation, the person:  
17 (a) ceases, by force of this subsection, to be a member of the  
18 amalgamated organisation with effect from the end of the day  
19 on which the notice is received by the amalgamated  
20 organisation or the newly registered organisation (as the case  
21 may be); and  
22 (b) becomes, by force of this subsection and without payment of  
23 entrance fee, a member of the newly registered organisation  
24 with effect from the day after the day referred to in  
25 paragraph (a) of this subsection.
- 26 (7) If a person referred to in subsection (2) gives written notice in  
27 accordance with paragraph (3)(b), within the notice period, that the  
28 person wants to remain a member of the amalgamated  
29 organisation, the person remains a member of the amalgamated  
30 organisation.
- 31 (8) If a person referred to in subsection (2) fails to give written notice  
32 in accordance with paragraph (3)(b), the person:  
33 (a) ceases, by force of this subsection, to be a member of the  
34 amalgamated organisation with effect from the end of the day  
35 after the end of the notice period; and

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

27 **211 Subsection 123(2)**

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

1       **212 Application of amendments**

2               *Definitions*

3       (1)       In this item:

4               *old Act* means the *Fair Work (Registered Organisations) Act 2009*, as  
5               in force immediately before the commencement of this item.

6               *Applications for withdrawal made before commencement*

7       (2)       Despite the amendments of the *Fair Work (Registered Organisations)*  
8               *Act 2009* made by this Part and subject to subitem (3), Part 3 of  
9               Chapter 3 of the old Act continues to apply as if those amendments had  
10              not been made, in relation to:

- 11              (a) an application that was made to the FWC under section 94 of  
12                 the old Act; and  
13              (b) anything done in relation to the application (whether before  
14                 or after the commencement of this item).

15       (3)       If:

- 16              (a) an application was made to the FWC under section 94 of the  
17                 old Act for a secret ballot to be held to decide whether a  
18                 constituent part of an amalgamated organisation should  
19                 withdraw from the organisation; and  
20              (b) either or both of the following apply:  
21                  (i) the application related to a constituent part of the  
22                     amalgamated organisation that is a branch, division or  
23                     part of the organisation referred to in paragraph (c) of  
24                     the definition of *separately identifiable constituent*  
25                     *part* in subsection 93(1) of the old Act;  
26                  (ii) the application was made after the end of the period  
27                     referred to in paragraph 94(1)(c) of the old Act; and  
28              (c) a certificate in relation to a ballot was not prepared, dated and  
29                 signed under subsection 106(1) of the old Act before 1 July  
30                 2023;

31              then:

- 32              (d) the application is taken not to have been made; and  
33              (e) anything that was done in relation to the application before  
34                 the commencement of this item (including by the applicant,  
35                 the FWC, the AEC or any other person):

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

**Part 14—Wage theft**

***Fair Work Act 2009***

**213 Section 12**

Insert:

***Australian government***: see subsection 794A(2).

***contravene*** this Act, or a provision of this Act, includes contravene any of the following:

- (a) a civil remedy provision;
- (b) a provision of this Act that creates an offence;
- (c) a related offence provision.

***cooperation agreement***: see subsection 717B(1).

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

***Finance Minister*** means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

***governing body*** of an agency of the Commonwealth: see subsection 794B(5).

***offence against*** this Act, or a particular provision of this Act, includes a reference to an offence against a related offence provision.

Note: See also section 11.6 of the *Criminal Code*.

***related offence provision*** means:

- (a) section 6 of the *Crimes Act 1914*; or
  - (b) a provision of Part 2.4 of the *Criminal Code*;
- to the extent that the offence created by the provision relates to an offence against this Act other than an offence mentioned in paragraph (a) or (b).

1            **responsible agency** in relation to a contravention of a civil remedy  
2            provision by an Australian government or the commission of an  
3            offence by the Commonwealth: see subsection 794C(4).

4            **underpayment amount:**

- 5            (a) in relation to a contravention of a civil remedy provision—  
6            see subsection 546A(2); and  
7            (b) in relation to the commission of an offence against  
8            subsection 327A(1)—see subsection 327A(7).

9            **Voluntary Small Business Wage Compliance Code** means the  
10           Voluntary Small Business Wage Compliance Code declared under  
11           subsection 327B(1).

12           **214 At the end of subsection 37(2)**

13           Add “, except as provided for by subsection (3)”.

14           **215 At the end of section 37**

15           Add:

- 16           (3) The Crown in right of the Commonwealth is liable to be  
17           prosecuted for an offence against any of the following provisions:  
18           (a) subsection 327A(1);  
19           (b) a related offence provision, to the extent that the related  
20           offence provision relates to an offence against  
21           subsection 327A(1).  
22           (4) The Crown, in each of its capacities and to the extent the  
23           Commonwealth’s legislative power permits, is liable to be the  
24           subject of proceedings for a contravention of a civil remedy  
25           provision.

26           **216 Section 321 (after the paragraph relating to Division 2)**

27           Insert:

28           Division 2 also makes it an offence for a national system employer  
29           to fail to pay certain amounts to, on behalf of, or for the benefit of,  
30           a national system employee.

1 **217 Before section 323**

2 Insert:

3 **Subdivision A—Civil remedy provisions relating to payment of**  
4 **wages etc.**

5 **218 Subsection 324(1) (note 1)**

6 Omit “Division”, substitute “Subdivision”.

7 **219 Section 327 (heading)**

8 Omit “Division”, substitute “Subdivision”.

9 **220 At the end of Division 2 of Part 2-9**

10 Add:

11 **Subdivision B—Offence for failing to pay certain amounts as**  
12 **required**

13 **327A Offence—failing to pay certain amounts as required**

14 (1) An employer commits an offence if:

- 15 (a) the employer is required to pay an amount (a ***required***  
16 ***amount***) to, on behalf of, or for the benefit of, an employee  
17 under:  
18 (i) this Act; or  
19 (ii) a fair work instrument; or  
20 (iii) a transitional instrument (as continued in existence by  
21 Schedule 3 to the Transitional Act); and  
22 (b) the required amount is not:  
23 (i) a contribution payable to a superannuation fund for the  
24 benefit of the employee; or  
25 (ii) an amount covered by subsection (2); and  
26 (c) the employer engages in conduct; and  
27 (d) the conduct results in a failure to pay the required amount to,  
28 on behalf of, or for the benefit of, the employee in full on or  
29 before the day when the required amount is due for payment.

30 Note 1: For the penalty for an offence against this subsection, see  
31 subsection (5).

Note 2: A single payment to, on behalf of, or for the benefit of, an employee in relation to a particular period may comprise more than one required amount. For example, a single payment consisting of:

- (a) a required amount referable to wages earned during the period; and
- (b) a required amount referable to paid leave taken during the period.

(2) For the purposes of subparagraph (1)(b)(ii), an amount is covered by this subsection if:

(a) either of the following apply:

- (i) the employee is a national system employee only because of section 30C or 30M (which extend the meaning of *national system employee*);
- (ii) the employer is a national system employer only because of section 30D or 30N (which extend the meaning of *national system employer*); and

(b) the amount is referable to the employee taking a period of:

- (i) long service leave; or
- (ii) paid leave that the employee was entitled to take by reason of being a victim of crime; or
- (iii) paid leave that the employee was entitled to take because the employee attended for service on a jury, or for emergency services duties.

*Fault elements*

(3) For the purposes of subsection (1):

- (a) absolute liability applies to paragraphs (1)(a) and (b); and
- (b) the fault element for paragraphs (1)(c) and (d) is intention.

Note 1: For *absolute liability*, see section 6.2 of the *Criminal Code*.

Note 2: For *intention*, see section 5.2 of the *Criminal Code*.

*Things given or provided, and amounts required to be spent or paid, in contravention of Subdivision A*

(4) Section 327 applies for the purposes of determining whether a person commits an offence against subsection (1) of this section in the same way as it applies in proceedings for recovery of an amount payable to an employee in relation to the performance of work.

*Penalty—general*

- (5) An offence against subsection (1) is punishable on conviction as follows:
- (a) for an individual—by a term of imprisonment of not more than 10 years or a fine of not more than the amount determined under subsection (6), or both;
  - (b) for a body corporate—by a fine of not more than the amount determined under subsection (6).

*Determining maximum fine*

- (6) For the purposes of subsection (5), the amount is:
- (a) if the court can determine the underpayment amount for the offence—the greater of 3 times the underpayment amount and whichever of the following applies:
    - (i) for an individual—5,000 penalty units;
    - (ii) for a body corporate—25,000 penalty units; or
  - (b) otherwise—the following amount:
    - (i) for an individual—5,000 penalty units;
    - (ii) for a body corporate—25,000 penalty units.

*Underpayment amount*

- (7) The ***underpayment amount*** for an offence committed by an employer against subsection (1) is the difference between:
- (a) the required amount mentioned in paragraph (1)(a); and
  - (b) the amount (including a nil amount) the employer actually paid to, on behalf of, or for the benefit of, the employee on account of the required amount.

*Penalty for courses of conduct*

- (8) If:
- (a) a person is found guilty of committing 2 or more offences (the ***aggregated offences***) against subsection (1); and
  - (b) the aggregated offences arose out of a course of conduct by the person;

1 then, subject to subsections (9) and (10), the person is taken for the  
2 purposes of subsections (5) to (7) to have been found guilty of only  
3 a single offence.

4 (9) Paragraph (6)(a) applies in relation to the single offence if, and  
5 only if, the court can determine the underpayment amount for any  
6 of the aggregated offences.

7 (10) The underpayment amount for the single offence is taken to be the  
8 sum of each of the underpayment amounts for the aggregated  
9 offences that the court can determine.

10 **327B The Voluntary Small Business Wage Compliance Code**

11 (1) The Minister may, by legislative instrument, declare a Voluntary  
12 Small Business Wage Compliance Code.

13 (2) If the Fair Work Ombudsman is satisfied that a small business  
14 employer complied with the Voluntary Small Business Wage  
15 Compliance Code in relation to a failure by the employer to pay an  
16 amount to, on behalf of, or for the benefit of, an employee, the Fair  
17 Work Ombudsman must not:

18 (a) refer any conduct that resulted in the failure to the Director of  
19 Public Prosecutions or the Australian Federal Police for  
20 action in relation to a possible offence against  
21 subsection 327A(1); or

22 (b) enter into a cooperation agreement with the employer that  
23 covers any conduct that resulted in the failure.

24 (3) The Fair Work Ombudsman must give the employer written notice  
25 of a decision under subsection (2).

26 (4) Subsection (2) does not affect:

27 (a) the power of an inspector to institute or continue civil  
28 proceedings in relation to the conduct; or

29 (b) the power of the Fair Work Ombudsman to accept an  
30 enforceable undertaking under section 715 in relation to the  
31 conduct; or

32 (c) the power of an inspector to give a notice under section 716  
33 in relation to the conduct; or

- (d) any other power or function of the Fair Work Ombudsman or an inspector that is not mentioned in paragraph (2)(a) or (b) of this section.

### **327C Commencing proceedings for certain offences against this Act**

(1) Proceedings for an offence against:

- (a) subsection 327A(1) (offence for failing to pay amounts as required); or  
(b) a related offence provision, to the extent that the related offence provision relates to an offence against subsection 327A(1);

may be commenced only by the Director of Public Prosecutions or the Australian Federal Police.

- (2) Despite anything in any other law, proceedings for an offence against a provision referred to in paragraph (1)(a) or (b) may be commenced at any time within 6 years after the commission of the offence.

### **221 Paragraph 682(1)(c)**

Omit “any act”, substitute “any conduct”.

### **222 Paragraph 682(1)(c)**

After “this Act”, insert “, a related offence provision”.

### **223 After paragraph 682(1)(d)**

Insert:

- (da) to publish a compliance and enforcement policy, including guidelines relating to the circumstances in which the Fair Work Ombudsman will, or will not:
- (i) accept or consider accepting undertakings under section 715; or  
(ii) enter or consider entering into cooperation agreements under section 717B;

### **224 At the end of section 682**

Add:

- 1 (3) Before publishing a compliance and enforcement policy under  
2 paragraph (1)(da), the Fair Work Ombudsman must consult with  
3 the National Workplace Relations Consultative Council about the  
4 guidelines referred to in that paragraph.

5 **225 Paragraph 706(1)(a)**

6 After “this Act”, insert “, a related offence provision”.

7 **226 Subsection 711(1)**

8 Omit “a civil remedy provision”, substitute “this Act”.

9 **227 Paragraph 712AA(1)(a)**

10 After “this Act”, insert “, a related offence provision”.

11 **228 At the end of section 713**

12 Add:

13 *Employee records and pay slips*

- 14 (4) Subsections (2) and (3) do not apply to:  
15 (a) an employee record in relation to an employee that is made  
16 under section 535; or  
17 (b) a copy of a pay slip created in relation to an employee.

18 **229 Section 713A**

19 Before “The following are not admissible”, insert “(1)”.

20 **230 At the end of section 713A**

21 Add:

- 22 (2) Subsection (1) does not apply to:  
23 (a) an employee record in relation to an employee that is made  
24 under section 535; or  
25 (b) a copy of a pay slip created in relation to an employee.

26 **231 After Subdivision DD of Division 3 of Part 5-2**

27 Insert:

1       **Subdivision DE—Cooperation agreements**

2       **717A Effect of cooperation agreement**

- 3           (1) While a cooperation agreement is in force between the Fair Work  
4           Ombudsman and a person, the Fair Work Ombudsman must not  
5           refer conduct engaged in by the person that is covered by the  
6           agreement to the Director of Public Prosecutions or the Australian  
7           Federal Police for action in relation to a possible offence.

8           Note:       See subsection 717B(1) for the definition of *cooperation agreement*.

- 9           (2) Subsection (1) does not prevent:  
10           (a) an inspector instituting or continuing civil proceedings in  
11           relation to the conduct; or  
12           (b) conduct engaged in by any other person from being referred  
13           to the Director of Public Prosecutions or the Australian  
14           Federal Police for action in relation to a possible offence.

15       **717B Entry into cooperation agreement**

- 16           (1) The Fair Work Ombudsman may enter into a written agreement (a  
17           *cooperation agreement*) with a person covering specified conduct  
18           engaged in by the person that the person has reported to the Fair  
19           Work Ombudsman as amounting to the possible commission by  
20           the person of an offence, or at least the physical elements of an  
21           offence, against either or both of the following:  
22           (a) subsection 327A(1) (failing to pay amounts as required);  
23           (b) a related offence provision, to the extent that the offence  
24           created by the provision relates to an offence against  
25           subsection 327A(1).  
26           (2) The Fair Work Ombudsman must have regard to the following  
27           matters in deciding whether to enter into a cooperation agreement  
28           with a person in relation to conduct:  
29           (a) whether in the Fair Work Ombudsman's view the person has  
30           made a voluntary, frank and complete disclosure of the  
31           conduct, and the nature and level of detail of the disclosure;  
32           (b) whether in the Fair Work Ombudsman's view the person has  
33           cooperated with the Fair Work Ombudsman in relation to the  
34           conduct;

- 1 (c) the Fair Work Ombudsman's assessment of the person's  
2 commitment to continued cooperation in relation to the  
3 conduct, including by way of providing the Fair Work  
4 Ombudsman with comprehensive information to enable the  
5 effectiveness of the person's actions and approach to  
6 remedying the effects of the conduct to be assessed;  
7 (d) the nature and gravity of the conduct;  
8 (e) the circumstances in which the conduct occurred;  
9 (f) the person's history of compliance with this Act;  
10 (g) any other matters prescribed by the regulations.
- 11 (3) The regulations may prescribe matters in relation to the content of  
12 cooperation agreements.

13 **717C When a cooperation agreement is in force**

- 14 A cooperation agreement is in force:  
15 (a) from the time it is entered into or any later time specified in  
16 the agreement; and  
17 (b) until the earliest of the following:  
18 (i) the Fair Work Ombudsman terminates the agreement in  
19 accordance with section 717D;  
20 (ii) the person withdraws from the agreement in accordance  
21 with section 717E;  
22 (iii) the expiry date (if any) specified in the agreement.

23 **717D Termination of cooperation agreement by Fair Work**  
24 **Ombudsman**

- 25 (1) The Fair Work Ombudsman may terminate a cooperation  
26 agreement with a person at any time, by written notice to the  
27 person, if the Fair Work Ombudsman is satisfied that any of the  
28 following grounds exist:  
29 (a) the person has contravened a term of the agreement;  
30 (b) the person has, in relation to the agreement, given  
31 information or produced a document to the Fair Work  
32 Ombudsman, an inspector, or a person referred to in  
33 subsection 712AA(2) that:  
34 (i) is false or misleading; or

- 1 (ii) for information—omits any matter or thing without  
2 which the information is misleading;  
3 whether the person gave the information or produced the  
4 document before the agreement was entered into or since;  
5 (c) any other ground prescribed by the regulations.
- 6 (2) If the Fair Work Ombudsman is satisfied that a ground exists for  
7 terminating a cooperation agreement with a person, the Fair Work  
8 Ombudsman may, instead of terminating the agreement, apply to  
9 the Federal Court, the Federal Circuit and Family Court of  
10 Australia (Division 2) or an eligible State or Territory Court for an  
11 order under subsection (3).
- 12 (3) If the court is satisfied that the ground exists, the court may make  
13 one or more of the following orders:  
14 (a) an order directing the person to comply with a term of the  
15 cooperation agreement, or to give or produce correct and  
16 complete information or documents;  
17 (b) an order awarding compensation for loss that a person has  
18 suffered because of matters constituting the ground for  
19 terminating the agreement;  
20 (c) any other order that the court considers appropriate.

#### 21 **717E Withdrawal from cooperation agreement**

22 A person that is party to a cooperation agreement with the Fair  
23 Work Ombudsman may withdraw from the agreement, but only  
24 with the consent of the Fair Work Ombudsman.

#### 25 **717F Variation of cooperation agreement**

26 The parties to a cooperation agreement may vary the agreement, by  
27 mutual consent and in writing.

#### 28 **717G Relationship with other powers**

- 29 (1) Whether a cooperation agreement is in force in relation to  
30 particular conduct does not affect:  
31 (a) the power of the Fair Work Ombudsman to accept an  
32 enforceable undertaking under section 715 in relation to the  
33 conduct; or

- 1 (b) the power of an inspector to give a notice under section 716  
2 in relation to the conduct; or  
3 (c) any other power or function of the Fair Work Ombudsman or  
4 an inspector that is not mentioned in subsection 717A(1).

5 (2) However:

- 6 (a) an enforceable undertaking has no effect to the extent that it  
7 is inconsistent with a cooperation agreement; and  
8 (b) a compliance notice has no effect to the extent that an action  
9 specified in the notice is inconsistent with a cooperation  
10 agreement.

11 This subsection has effect regardless of whether the undertaking or  
12 notice was given before or after the cooperation agreement comes  
13 into force.

## 14 **232 Subsections 793(1) and (2)**

15 After “for the purposes of this Act”, insert “(subject to  
16 subsection (3A))”.

## 17 **233 After subsection 793(3)**

18 Insert:

19 *Exception—offence relating to failure to pay amounts*

20 (3A) Subsections (1) and (2) do not apply for the purposes of:

- 21 (a) subsection 327A(1) (offence for failing to pay amounts as  
22 required); or  
23 (b) a related offence provision, to the extent that the related  
24 offence provision relates to an offence against  
25 subsection 327A(1).

## 26 **234 At the end of subsection 793(4)**

27 Add “, other than an offence against a provision referred to in  
28 paragraph (3A)(a) or (b) of this section”.

## 29 **235 After section 794**

30 Insert:

1 **794A Liability of Australian governments under civil remedy**  
2 **provisions**

3 *Scope*

- 4 (1) This section applies for the purposes of applying a civil remedy  
5 provision, or any other provision of this Act in so far as it relates to  
6 a civil remedy provision, in relation to an Australian government.
- 7 (2) Each of the following is an ***Australian government***:  
8 (a) the Commonwealth;  
9 (b) a State;  
10 (c) the Australian Capital Territory;  
11 (d) the Northern Territory.

12 *Conduct of Australian governments*

- 13 (3) Any conduct engaged in on behalf of an Australian government by  
14 an officer, employee or agent (an ***official***) of the government  
15 within the scope of the official's actual or apparent authority is  
16 taken, for the purposes of this Act and the procedural rules, to have  
17 been engaged in also by the government.

18 *State of mind of Australian governments*

- 19 (4) If, for the purposes of this Act or the procedural rules, it is  
20 necessary to establish the state of mind of an Australian  
21 government in relation to particular conduct, it is enough to show:  
22 (a) that the conduct was engaged in by an official of the  
23 government; and  
24 (b) that the official had that state of mind.

25 Note: For ***state of mind***, see subsection 793(3).

26 *Determining penalty amounts for Australian governments*

- 27 (5) If an Australian government contravenes a civil remedy provision,  
28 the pecuniary penalty that government may be ordered to pay  
29 under a pecuniary penalty order is the penalty applicable to a body  
30 corporate.

*Modifications*

- (6) This section applies in relation to an Australian government subject to any modifications prescribed by the regulations.

*Meaning of **employee***

- (7) In this section, **employee** has its ordinary meaning.

**794B Liability of the Commonwealth for certain offences**

- (1) Part 2.5 of the *Criminal Code* applies in relation to the Commonwealth, for the purposes of an offence against:
- (a) subsection 327A(1) (offence for failing to pay amounts as required) of this Act; or
  - (b) a related offence provision, to the extent that the related offence provision relates to an offence against subsection 327A(1) of this Act;
- in the same way as that Part applies in relation to a body corporate.
- (2) It so applies:
- (a) as if sections 12.4 and 12.5 of the *Criminal Code* were omitted; and
  - (b) with the following modifications:
    - (i) the modifications set out in the following table (subject to subparagraph (iii));
    - (ii) such other modifications as are made necessary by the fact that criminal liability is being imposed on a body politic rather than a body corporate (subject to subparagraph (iii));
    - (iii) any modifications prescribed by the regulations.

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**Application of Part 2.5 of the *Criminal Code* to the Commonwealth**

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Item	Part 2.5 of the <i>Criminal Code</i> applies as if a reference to ...	were a reference to ...
1	a body corporate's board of directors	the governing body of the agency of the Commonwealth (the <b>relevant agency</b> ) whose officer, employee or agent engaged in conduct constituting a physical element of the offence

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**Application of Part 2.5 of the *Criminal Code* to the Commonwealth**

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<b>Item</b>	<b>Part 2.5 of the <i>Criminal Code</i> applies as if a reference to ...</b>	<b>were a reference to ...</b>
2	a high managerial agent of a body corporate	a person who is an officer, employee or agent of the Commonwealth with duties of such responsibility that the person's conduct may fairly be assumed to represent the policy of the relevant agency
3	the corporate culture of a body corporate	one or more attitudes, policies, rules, courses of conduct or practices existing within the relevant agency or a part of the relevant agency

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*Determining penalty amounts for the Commonwealth*

- (3) If the Commonwealth is guilty of an offence against a provision mentioned in paragraph (1)(a) or (b), the penalty to be imposed on the Commonwealth is the penalty applicable to a body corporate.

*Meaning of **employee***

- (4) In this section, **employee** has its ordinary meaning.

*Meaning of **governing body***

- (5) The **governing body** of an agency of the Commonwealth is the body, or group of members of the agency, with primary responsibility for the governance of the agency.

**794C Responsible agencies for Australian governments**

- (1) If proceedings are brought against:
- (a) an Australian government in relation to a contravention of a civil remedy provision of this Act; or
  - (b) the Commonwealth for an offence against:
    - (i) subsection 327A(1) (offence for failing to pay amounts as required); or

- 1 (ii) a related offence provision, to the extent that the related  
2 offence provision relates to an offence against  
3 subsection 327A(1);  
4 the responsible agency in relation to the contravention, or the  
5 commission of the offence, may be specified in any document  
6 initiating, or relating to, the proceedings.
- 7 (2) The responsible agency in relation to the contravention, or the  
8 commission of the offence, is entitled to act in the proceedings and,  
9 subject to any relevant rules of court, the procedural rights and  
10 obligations of:  
11 (a) if paragraph (1)(a) applies—the Australian government as the  
12 respondent in the proceedings; or  
13 (b) if paragraph (1)(b) applies—the Commonwealth as the  
14 accused in the proceedings;  
15 are conferred or imposed on the responsible agency.
- 16 (3) With the court’s leave, the following person may change the  
17 responsible agency during the proceedings:  
18 (a) if paragraph (1)(a) applies—the person bringing the  
19 proceedings;  
20 (b) if paragraph (1)(b) applies—the person prosecuting the  
21 offence.
- 22 (4) The **responsible agency** in relation to a contravention of a civil  
23 remedy provision by an Australian government, or the commission  
24 of an offence by the Commonwealth, is:  
25 (a) for a contravention of a civil remedy provision by an  
26 Australian government—the agency of that government  
27 whose officer, employee or agent engaged in conduct  
28 constituting the contravention; or  
29 (b) for the commission of an offence by the Commonwealth—  
30 the agency of the Commonwealth whose officer, employee or  
31 agent engaged in conduct constituting a physical element of  
32 the offence; or  
33 (c) if the agency referred to in paragraph (a) or (b) has ceased to  
34 exist—the agency of the Australian government or the  
35 Commonwealth (as the case requires) that is the successor of  
36 that agency; or

(d) if there is no responsible agency under whichever of paragraph (a) or (b) applies, or paragraph (c)—the agency of the Australian government or the Commonwealth (as the case requires) that the court declares to be the responsible agency.

(5) This section applies in relation to:

(a) an Australian government in relation to a contravention of a civil remedy provision; and

(b) the Commonwealth in relation to the commission of an offence;

subject to any modifications that are prescribed by the regulations.

#### **794D Liability of the Commonwealth to pay civil and criminal penalties**

(1) This section applies if:

(a) the Commonwealth contravenes a civil remedy provision and a court makes a pecuniary penalty order that the Commonwealth pay all or part of a pecuniary penalty to itself; or

(b) the Commonwealth is given an infringement notice under the regulations in relation to an alleged contravention of a civil remedy provision; or

(c) the Commonwealth is convicted of an offence against either of the following provisions and the court imposes a pecuniary penalty on the Commonwealth in respect of the offence:

(i) subsection 327A(1) (offence for failing to pay amounts as required);

(ii) a related offence provision, to the extent that the related offence provision relates to an offence against subsection 327A(1).

(2) While the Commonwealth is not liable to pay a pecuniary penalty to itself, it is the Parliament's intention that the Commonwealth should be notionally liable to pay such a penalty.

(3) The Finance Minister may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (2) and, in particular, may give directions in relation to

1                   the transfer of money from an account operated by the responsible  
2                   agency under section 794C for the contravention or for the  
3                   commission of the offence to another account operated by the  
4                   Commonwealth.

5                   (4) Directions under subsection (3) have effect, and must be complied  
6                   with, despite any other Commonwealth law.

7                   ***Federal Court of Australia Act 1976***

8                   **236 After paragraph 23AB(4)(a)**

9                   Insert:

10                   (ab) an indictable offence against the *Fair Work Act 2009*;

**Part 15—Definition of employment**

***Fair Work Act 2009***

**237 After section 15**

Insert:

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

(1) For the purposes of this Act, whether an individual is an *employee* of a person within the ordinary meaning of that expression, or whether a person is an *employer* of an individual within the ordinary meaning of that expression, is to be determined by ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person.

(2) For the purposes of ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person:

(a) the totality of the relationship between the individual and the person must be considered; and

(b) in considering the totality of the relationship between the individual and the person, regard must be had not only to the terms of the contract governing the relationship, but also to other factors relating to the totality of the relationship including, but not limited to, how the contract is performed in practice.

Note: This section was enacted as a response to the decisions of the High Court of Australia in *CFMMEU v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2.

(3) Subsections (1) and (2) do not apply to the following provisions of this Act:

(a) Divisions 2A and 2B of Part 1-3;

(b) Part 3-1, to the extent that Part 3-1 applies only because of the operation of section 30G or 30R.

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

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

3 *Fair Work Act 2009*

4 **238 After section 40B**

5 Insert:

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

8 **Division 1—Guide to this Part**

9 **40C Guide to this Part**

10	This Part deals with special provisions relating to the road transport
11	industry.
12	Division 2 sets out the road transport objective.
13	The Expert Panel for the road transport industry must have regard
14	to the road transport objective when performing functions and
15	exercising powers under certain provisions of this Act. These
16	functions and powers cover both employees and employers and
17	regulated road transport contractors and road transport businesses.
18	Division 3 establishes the Road Transport Advisory Group. This
19	Group includes representatives from the road transport industry. It
20	has advisory functions under Chapter 3A (in relation to road
21	transport minimum standards) and the prioritisation of the FWC's
22	work so far as it relates to the road transport industry.
23	Division 4 provides for regulations in relation to the road transport
24	industry contractual chain.

**Division 2—The road transport objective**

**40D The road transport objective**

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

- (a) the need for standards that ensure that the road transport industry is safe, sustainable and viable;
- (b) the need to avoid unreasonable adverse impacts upon the following:
  - (i) sustainable competition among road transport industry participants;
  - (ii) road transport industry business viability, innovation and productivity;
  - (iii) administrative and compliance costs for road transport industry participants.

This is the *road transport objective*.

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

**Division 3—Road Transport Advisory Group**

**40E Establishment of Road Transport Advisory Group**

- (1) There is to be a Road Transport Advisory Group.
- (2) The function of the Road Transport Advisory Group is to advise the FWC in relation to matters that relate to the road transport industry including, but not limited to the following:
  - (a) the making and varying of modern awards that relate to the road transport industry;
  - (b) the making and varying of road transport minimum standards orders and road transport guidelines;

- 1 (c) the prioritisation by the FWC of matters relating to the road  
2 transport industry;  
3 (d) such other matters as are prescribed by the regulations.
- 4 (3) Before advising the FWC in relation to a matter, the Road  
5 Transport Advisory Group must consult any relevant subcommittee  
6 established under section 40G.
- 7 (4) The President must consult, and have regard to the views of, the  
8 Road Transport Advisory Group in determining priorities for the  
9 work of the FWC in relation to matters affecting the road transport  
10 industry.

11 **40F Membership of Road Transport Advisory Group**

- 12 (1) The Road Transport Advisory Group consists of such members as  
13 the Minister from time to time appoints.
- 14 (2) In appointing the members of the Road Transport Advisory Group,  
15 the Minister must ensure that the membership consists of persons  
16 who are members of or who are nominated by the following:  
17 (a) an organisation that is entitled to represent the industrial  
18 interests of one or more regulated road transport contractors;  
19 (b) an organisation that is entitled to represent the industrial  
20 interests of one or more road transport businesses.
- 21 (3) A member of the Road Transport Advisory Group holds office for  
22 the period specified in the instrument of appointment. The period  
23 must not exceed 3 years.
- 24 Note: A member of the Road Transport Advisory Group is eligible for  
25 reappointment (see subsection 33(4A) of the *Acts Interpretation Act*  
26 *1901*).
- 27 (4) The Minister may revoke a person's appointment to the Road  
28 Transport Advisory Group.
- 29 (5) The President may give the Road Transport Advisory Group  
30 directions as to the way in which the body is to carry out its  
31 functions.

- 1           (6) The President may appoint a member of the Expert Panel for the  
2           road transport industry to chair the Road Transport Advisory  
3           Group.

4           **40G Road Transport Advisory Group subcommittees**

- 5           (1) The Road Transport Advisory Group may establish subcommittees  
6           to advise it in relation to matters relevant to the performance of its  
7           functions.
- 8           (2) A subcommittee may include persons who are not members of the  
9           Road Transport Advisory Group, but a subcommittee must be  
10          chaired by a member.

11          **Division 4—Regulations relating to the road transport**  
12          **industry contractual chain**

13          **40H Meaning of *road transport industry contractual chain participant***

14                   A *road transport industry contractual chain participant* is a  
15                   person connected with the road transport industry:

- 16           (a) who is:
- 17               (i) a national system employer; or  
18               (ii) a national system employee; or  
19               (iii) a constitutional corporation; or  
20               (iv) a regulated road transport contractor; or  
21               (v) a road transport business; or
- 22           (b) who satisfies the requirements prescribed by the regulations  
23           for the purposes of this definition.

24          **40J Regulations about the road transport industry contractual chain**

- 25           (1) The regulations may make provision for and in relation to matters  
26           relating to the road transport industry contractual chain or road  
27           transport industry contractual chain participants.
- 28           (2) Without limiting subsection (1), the regulations may do the  
29           following:
- 30               (a) empower the FWC to make orders, to be known as road  
31               transport industry contractual chain orders, that confer rights

- 1 and impose obligations on road transport industry contractual  
2 chain participants;
- 3 (b) specify the matters that a road transport industry contractual  
4 chain order must, may or must not deal with;
- 5 (c) empower the FWC to vary, suspend or revoke road transport  
6 industry contractual chain orders;
- 7 (d) empower the FWC to deal with disputes between road  
8 transport industry contractual chain participants covered by  
9 road transport industry contractual chain orders;
- 10 (e) provide for and in relation to the interaction between road  
11 transport industry contractual chain orders, fair work  
12 instruments and other instruments under this Act or the  
13 regulations;
- 14 (f) provide for and in relation to the interaction between the  
15 regulations or road transport industry contractual chain  
16 orders and:
- 17 (i) a law of the Commonwealth, a State or a Territory; or  
18 (ii) an instrument made under such a law;
- 19 (g) provide for civil penalties for contraventions of the  
20 regulations, which must not exceed the following:
- 21 (i) for an individual—60 penalty units;  
22 (ii) for a body corporate—600 penalty units;
- 23 (h) empower the Fair Work Ombudsman to enforce road  
24 transport industry contractual chain orders.
- 25 (3) Before making regulations under subsection (1), the Minister must  
26 be satisfied that the regulations are for the purposes of promoting  
27 the following:
- 28 (a) equitable workplace relations outcomes;
- 29 (b) a safe, sustainable and viable road transport industry;
- 30 (c) sustainable competition among road transport industry  
31 participants;
- 32 (d) fairness between road transport industry contractual chain  
33 participants.

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

***Fair Work Act 2009***

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

Insert:

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

**240 After subsection 582(4)**

Insert:

(4A) If:

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

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

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

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

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

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

Insert:

*Expert Panel for road transport industry*

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

- (a) a modern award made under Part 2-3 that the President considers might relate to the road transport industry;
- (b) a determination made under subsection 157(1) varying or revoking a modern award that the President considers might relate to the road transport industry;
- (c) a road transport minimum standards order made under paragraph 536JY(1)(a) or a determination made under subsection 536KQ(1) varying or revoking a road transport minimum standards order;
- (d) road transport guidelines made under subsection 536KR(1) or a determination made under subsection 536KZ(1) varying or revoking road transport guidelines;
- (e) such other instruments as are prescribed that the President considers might relate to the road transport industry.

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

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

*President's considerations*

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

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

- (a) an employee-like worker minimum standards order or a determination varying or revoking an employee-like worker minimum standards order, if the President considers that the order might relate to the road transport industry or sector;

- (b) employee-like guidelines or a determination varying or revoking employee-like guidelines, if the President considers that the guidelines might relate to the road transport industry;
- (c) any other prescribed instrument or matter that the President considers might relate to the road transport industry;
- whether or not the President considers that the matter might also relate to another industry or sector.

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

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

Add:

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

**243 Subsection 617A(1)**

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

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

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

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

Insert:

*Constitution of Expert Panel for the road transport industry*

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

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

**246 Subsection 620(2A)**

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

**247 Subsection 620(2A)**

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

**Division 3—Minimum standards for regulated workers**

***Fair Work Act 2009***

**248 After section 15A**

Insert:

**Division 3A—Definitions relating to regulated workers**

**Subdivision A—General**

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

A *collective agreement* means the following:

- (a) an employee-like worker collective agreement (see subsection 536MK(4));
- (b) a road transport collective agreement (see subsection 536MK(5)).

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

- (1) Subject to this section, the *contractor high income threshold* is the amount prescribed by, or worked out in the manner prescribed by, the regulations.
- (2) A regulation made for the purposes of subsection (1) has no effect to the extent that it would have the effect of reducing the amount of the contractor high income threshold.
- (3) If:
  - (a) in prescribing a manner in which the contractor high income threshold is worked out, regulations made for the purposes of

- 1 subsection (1) specify a particular matter or state of affairs;  
2 and  
3 (b) as a result of a change in the matter or state of affairs, the  
4 amount of the contractor high income threshold worked out  
5 in that manner would, but for this subsection, be less than it  
6 was on the last occasion on which this subsection did not  
7 apply;  
8 the contractor high income threshold is the amount that it would be  
9 if the change had not occurred.

10 **15D Meaning of *minimum standards guidelines***

- 11 *Minimum standards guidelines* means the following:  
12 (a) employee-like worker guidelines (see subsection 536KR(2));  
13 (b) road transport guidelines (see subsection 536KR(3)).

14 **15E Meaning of *minimum standards order***

- 15 A *minimum standards order* means the following:  
16 (a) an employee-like worker minimum standards order (see  
17 subsection 536JY(2));  
18 (b) a road transport minimum standards order (see  
19 subsection 536JY(3)).

20 **15F Meaning of *regulated business***

- 21 A person is a *regulated business* if:  
22 (a) the person is a digital labour platform operator (see  
23 section 15M); or  
24 (b) the person is a road transport business (see subsection 15R).

25 **15G Meaning of *regulated worker***

- 26 A person is a *regulated worker* if:  
27 (a) the person is an employee-like worker (see section 15P); or  
28 (b) the person is a regulated road transport contractor (see  
29 section 15Q).

1 **15H Meaning of *services contract***

2 *General meaning*

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

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

10 *The requisite constitutional connection*

- 11 (2) A contract for services has the requisite constitutional connection  
12 if:  
13 (a) at least one party to the contract is:  
14 (i) a constitutional corporation; or  
15 (ii) the Commonwealth or a Commonwealth authority; or  
16 (iii) a body corporate incorporated in a Territory in  
17 Australia; or  
18 (b) one or more of the following subparagraphs is satisfied:  
19 (i) the work concerned is wholly or principally to be  
20 performed in a Territory in Australia;  
21 (ii) the contract was entered into in a Territory in Australia;  
22 (iii) at least one party to the contract is a natural person who  
23 is resident in, or a body corporate that has its principal  
24 place of business in, a Territory in Australia;  
25 (iv) the work concerned is done in the course of  
26 constitutional trade or commerce.

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

- 30 (3) For the purposes of Part 3A-2 (minimum standards for regulated  
31 workers), Part 3A-3 (unfair deactivation and unfair termination)  
32 and Part 3A-4 (collective agreements) to the extent to which those  
33 Parts relate to digital platform work, a contract for services also has  
34 the requisite constitutional connection if the contract was arranged

1 or facilitated through or by means of a digital labour platform,  
2 where the operator of the digital labour platform is:

- 3 (a) a constitutional corporation; or  
4 (b) the Commonwealth or a Commonwealth authority; or  
5 (c) a body corporate incorporated in a Territory in Australia; or  
6 (d) a natural person who is resident in, or a body corporate that  
7 has its principal place of business in, a Territory in Australia.

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

11 *Conditions and collateral arrangements*

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

16 **15J Prospective regulated workers**

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

20 **15K Effect of Chapter in determining whether a person is an**  
21 **employee or an employer**

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

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

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

1       **Subdivision B—Digital platform work**

2       **15L Meaning of *digital labour platform***

- 3               (1) A *digital labour platform* means an online enabled application,  
4               website or system operated to arrange, allocate or facilitate the  
5               provision of labour services, where:  
6               (a) the operator of the application, website or system:  
7               (i) engages independent contractors directly or indirectly  
8               through or by means of the application, website or  
9               system; or  
10              (ii) acts as an intermediary for or on behalf of more than  
11              one distinct but interdependent sets of users who  
12              interact with the independent contractors or the operator  
13              via the application, website or system; and  
14              (b) the operator of the application, website or system processes  
15              aggregated payments referable to the work performed by the  
16              independent contractors.
- 17              (2) A *digital labour platform* also means an online enabled  
18              application, website or system that is prescribed by the regulations  
19              for the purposes of this subsection.
- 20              (3) A *digital labour platform* does not include an online application,  
21              website or system prescribed by the regulations for the purposes of  
22              this subsection.
- 23              (4) For the purposes of this section:  
24              (a) an online application, website or system may be specified by  
25              name or by inclusion in a specified class or specified classes;  
26              (b) an online application, website or system may be specified in  
27              respect of all forms of digital platform work, or in respect of  
28              specified forms of digital platform work.

29       **15M Meaning of *digital labour platform operator***

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

1 **15N Meaning of *digital platform work***

2 (1) ***Digital platform work*** means:

3 (a) work performed by an independent contractor, where:

4 (i) the work is performed under a services contract through  
5 or by means of a digital labour platform, or the services  
6 contract under which the work is performed was  
7 arranged or facilitated through or by means of a digital  
8 labour platform; and

9 (ii) payment is made for that work; or

10 (b) work prescribed by the regulations for the purposes of this  
11 subsection.

12 (2) ***Digital platform work*** does not include work prescribed by the  
13 regulations for the purposes of this subsection.

14 (3) For the purposes of paragraph (1)(b) and subsection (2), work may  
15 be specified by name or by inclusion in a specified class or  
16 specified classes.

17 **15P Meaning of *employee-like worker***

18 (1) A person is an ***employee-like worker*** if:

19 (a) the person is:

20 (i) an individual who is a party to a services contract in  
21 their capacity as an individual (other than as a  
22 principal), and performs work under the contract; or

23 (ii) if a body corporate is a party to a services contract  
24 (other than as a principal)—an individual who is a  
25 director of the body corporate, or a member of the  
26 family of a director of a body corporate, and performs  
27 work under the contract; or

28 (iii) if a trustee of a trust is a party to a services contract in  
29 their capacity as a trustee (other than as a principal)—an  
30 individual who is a trustee of the same trust and  
31 performs work under the contract, whether or not the  
32 individual is a party to the contract; or

33 (iv) if a partner in a partnership is a party to a services  
34 contract in their capacity as a partner (other than as a  
35 principal)—an individual who is a partner in the same

- 1 partnership and performs work under the contract,  
2 whether or not the individual is a party to the contract;  
3 and  
4 (b) the person performs all, or a significant majority, of the work  
5 to be performed under the services contract; and  
6 (c) the work that the person performs under the services contract  
7 is digital platform work; and  
8 (d) the person does not perform any work under the services  
9 contract as an employee; and  
10 (e) the person satisfies one or more of the following:  
11 (i) the person has low bargaining power in negotiations in  
12 relation to the services contract under which the work is  
13 performed;  
14 (ii) the person receives remuneration at or below the rate of  
15 an employee performing comparable work;  
16 (iii) the person has a low degree of authority over the  
17 performance of the work;  
18 (iv) the person has such other characteristics as are  
19 prescribed by the regulations.
- 20 (2) In this Part, a reference to an independent contractor includes a  
21 reference to an individual who is an employee-like worker within  
22 the meaning of subsection (1).
- 23 (3) Regulations made for the purposes of subparagraph (1)(e)(iv) may  
24 specify that a person must have all or only one or some of the  
25 characteristics prescribed.
- 26 (4) For the purposes of determining whether an individual satisfies the  
27 criteria specified in paragraph (1)(e), the effect of a minimum  
28 standards order, minimum standards guidelines or a collective  
29 agreement applying to, or covering, the individual is to be  
30 disregarded.

## 31 Subdivision C—Road transport industry

### 32 15Q Meaning of *regulated road transport contractor*

- 33 (1) A person is a *regulated road transport contractor* if:  
34 (a) the person is:

- 1 (i) an individual who is a party to a services contract in  
2 their capacity as an individual (other than as a  
3 principal), and performs work under the contract; or  
4 (ii) if a body corporate is a party to a services contract  
5 (other than as a principal)—an individual who is a  
6 director of the body corporate, or a member of the  
7 family of a director of a body corporate, and performs  
8 work under the contract; or  
9 (iii) if a trustee of a trust is a party to a services contract in  
10 their capacity as a trustee (other than as a principal)—an  
11 individual who is a trustee of the same trust and  
12 performs work under the contract, whether or not the  
13 individual is a party to the contract; or  
14 (iv) if a partner in a partnership is a party to a services  
15 contract in their capacity as a partner (other than as a  
16 principal)—an individual who is a partner in the same  
17 partnership and performs work under the contract,  
18 whether or not the individual is a party to the contract;  
19 and  
20 (b) the person performs all, or a significant majority, of the work  
21 to be performed under the services contract; and  
22 (c) the person does not perform any work under the services  
23 contract as an employee; and  
24 (d) the work performed under the services contract is work in the  
25 road transport industry; and  
26 (e) the person is not an employee-like worker who performs  
27 work in the road transport industry under the services  
28 contract.  
29 (2) In this Part, a reference to an independent contractor includes a  
30 reference to an individual who is a regulated road transport  
31 contractor within the meaning of subsection (1).

32 **15R Meaning of *road transport business***

- 33 (1) A person is a ***road transport business*** if the person:  
34 (a) receives services under a services contract, where the  
35 services contract provides for the performance of work in the  
36 road transport industry; or

- 1 (b) is a constitutional corporation, or is included in a class of  
2 constitutional corporations, prescribed by the regulations for  
3 the purposes of this paragraph.
- 4 (2) For the purposes of paragraph (1)(b), a business or undertaking  
5 may be specified by name or by inclusion in a specified class or  
6 specified classes.

7 **15S Meaning of road transport industry**

- 8 (1) The *road transport industry* means:
- 9 (a) the *road transport and distribution industry* within the  
10 meaning of the Road Transport and Distribution Award 2020  
11 as in force on 1 July 2024, with such modifications (if any)  
12 as are prescribed by regulations for the purposes of this  
13 paragraph; and
- 14 (b) the *long distance operations in the private road transport*  
15 *industry* within the meaning of the Road Transport (Long  
16 Distance Operations) Award 2020 as in force on 1 July 2024,  
17 with such modifications (if any) as are prescribed by  
18 regulations for the purposes of this paragraph; and
- 19 (c) the *waste management industry* within the meaning of the  
20 Waste Management Award 2020 as in force on 1 July 2024,  
21 with such modifications (if any) as are prescribed by  
22 regulations for the purposes of this paragraph; and
- 23 (d) the *cash in transit industry* within the meaning of the  
24 Transport (Cash in Transit) Award 2020 as in force on 1 July  
25 2024, with such modifications (if any) as are prescribed by  
26 regulations for the purposes of this paragraph; and
- 27 (e) the *passenger vehicle transportation industry* within the  
28 meaning of clause 4.2 of the Passenger Vehicle  
29 Transportation Award 2020, not including paragraph 4.2(c)),  
30 as in force on 1 July 2024, with such modifications (if any)  
31 as are prescribed by regulations for the purposes of this  
32 paragraph; and
- 33 (f) any other industry (however described) prescribed by the  
34 regulations for the purposes of this paragraph.
- 35 (2) For the purposes of paragraph (1)(f), the regulations may prescribe  
36 an industry by applying, adopting or incorporating any matter

1 contained in a modern award as in force or existing from time to  
2 time.

3 **249 After Chapter 3**

4 Insert:

5 **Chapter 3A—Minimum standards for**  
6 **regulated workers**

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

8 **Division 1—Introduction**

9 **536J Guide to this Part**

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

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

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

17 Division 4 specifies rules about certain retrospective variations.

18 **536JA Meaning of employee and employer**

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

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

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

**536JB Contravening a minimum standards order**

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

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

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

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

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

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

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

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

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

- 3                    (2) An employee-like minimum standards order **applies** to a digital  
4                    labour platform operator if:
- 5                    (a) the employee-like minimum standards order covers the  
6                    digital labour platform operator; and
  - 7                    (b) the employee-like minimum standards order covers  
8                    employee-like workers; and
  - 9                    (c) the digital labour platform operator:
    - 10                    (i) directly or indirectly engages, under services contracts,  
11                    employee-like workers covered by the employee-like  
12                    minimum standards order who perform work through or  
13                    by means of a digital labour platform operated by the  
14                    digital labour platform operator; or
    - 15                    (ii) arranges or facilitates services contracts through or by  
16                    means of a digital labour platform operated by the  
17                    digital labour platform operator, under which work is  
18                    performed by employee-like workers covered by the  
19                    employee-like minimum standards order; and
  - 20                    (d) the employee-like minimum standards order is in operation;  
21                    and
  - 22                    (e) no other provision of this Act provides, or has the effect, that  
23                    the employee-like minimum standards order does not apply  
24                    to the digital labour platform operator.

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

- 27                    (3) A road transport minimum standards order **applies** to a road  
28                    transport business if:
- 29                    (a) the road transport minimum standards order covers the road  
30                    transport business; and
  - 31                    (b) the road transport minimum standards order covers regulated  
32                    road transport contractors; and
  - 33                    (c) the road transport business receives the services under a  
34                    services contract of a regulated road transport contractor  
35                    covered by the road transport minimum standards order; and
  - 36                    (d) the road transport minimum standards order is in operation;  
37                    and

- 1 (e) no other provision of this Act provides, or has the effect, that  
2 the road transport minimum standards order does not apply to  
3 the road transport business.

4 *Minimum standards order applies in relation to services contracts*

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

8 **536JE When a minimum standards order covers a regulated worker**  
9 **or a regulated business**

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

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

- 15 (2) A minimum standards order also *covers* a regulated worker or a  
16 regulated business if any of the following provides, or has the  
17 effect, that the order covers the regulated worker or the regulated  
18 business:  
19 (a) a provision of this Act;  
20 (b) an FWC order made under a provision of this Act;  
21 (c) an order of a court.

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

29 *Minimum standards orders that have ceased to operate*

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

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

*When a minimum standards order comes into operation*

- (1) A minimum standards order comes into operation on the day specified in the order.
- (2) The specified day must not be earlier than the day on which the minimum standards order is made.
- (3) The specified day for a road transport minimum standards order must not be earlier than 24 months after the relevant notice of intent for the order was published.

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

- (4) A determination varying or revoking a minimum standards order comes into operation on the day specified in the determination.
- (5) The specified day must not be earlier than the day on which the determination is made, unless:
  - (a) the determination is made under subsection 536KQ(3); or
  - (b) the FWC is satisfied that there are exceptional circumstances that justify specifying an earlier day.

*Minimum standards orders operate until revoked*

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

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

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

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

- (2) Minimum standards guidelines also **cover** a regulated worker or a regulated business if any of the following provides, or has the effect, that the guidelines cover the regulated worker or the regulated business:

- (a) a provision of this Act;
- (b) an FWC order made under a provision of this Act;
- (c) an order of a court.

- (3) Despite subsections (1) and (2), minimum standards guidelines do not cover a regulated worker or a regulated business if any of the following provides, or has the effect, that the guidelines do not cover the regulated worker or the regulated business:

- (a) a provision of this Act;
- (b) an FWC order made under a provision of this Act;
- (c) an order of a court.

*Minimum standards guidelines that have ceased to operate*

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

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

*When minimum standards guidelines come into operation*

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

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

- (3) A determination varying or revoking minimum standards guidelines comes into operation on the day specified in the determination.

- 1 (4) The specified day must not be earlier than the day on which the  
2 determination is made.

3 *Minimum standards guidelines operate until revoked*

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

6 **Subdivision B—Coverage and operation of collective**  
7 **agreements**

8 **536JJ Contravening a collective agreement**

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

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

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

13 **536JK The significance of a collective agreement applying to a**  
14 **person**

- 15 (1) A collective agreement does not impose obligations on a person,  
16 and a person does not contravene a term of a collective agreement,  
17 unless the agreement applies to the person.

- 18 (2) A collective agreement does not give a person an entitlement  
19 unless the agreement applies to the person.

20 **536JL When a collective agreement *applies* to a person**

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

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

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

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

*Collective agreement applies in relation to services contracts*

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

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

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

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

- (2) A collective agreement also ***covers*** a regulated worker, a regulated business or an organisation if any of the following provides, or has the effect, that the agreement covers the regulated worker, the regulated business or the organisation:

- (a) a provision of this Act;
- (b) an FWC order made under a provision of this Act;
- (c) an order of a court.

- (3) Despite subsections (1) and (2), a collective agreement does not cover a regulated worker, a regulated business or an organisation if any of the following provides, or has the effect, that the agreement does not cover the regulated worker, the regulated business or the organisation:

- (a) a provision of this Act;
- (b) an FWC order made under a provision of this Act;
- (c) an order of a court.

*Collective agreements that have ceased to operate*

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

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

*When a collective agreement comes into operation*

- (1) A collective agreement comes into operation:

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

*When a collective agreement is terminated*

- (2) A collective agreement is terminated:

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

7 *Collective agreements operate until terminated*

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

9 *Interaction with minimum standards orders, etc.*

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

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

### 16 **536JP Exclusion of certain State and Territory laws**

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

1 matters to be conferred or imposed on the regulated business  
2 or regulated worker);

3 (c) without limiting paragraphs (a) and (b)—expressly provide  
4 for a court, commission or tribunal to do any of the following  
5 in relation to a services contract on an unfairness ground:

6 (i) make an order or determination (however described)  
7 setting aside, or declaring to be void or otherwise  
8 unenforceable, all or part of the services contract;

9 (ii) make an order or determination (however described)  
10 amending or varying all or part of the services contract.

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

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

13 (2) The rights, entitlements, obligations and liabilities of a regulated  
14 business, a regulated worker or a party to a services contract are  
15 not affected by a law of a State or Territory that is specified in  
16 regulations made for the purposes of this subsection, to the extent  
17 that the law is so specified.

18 (3) Subsection (1) does not apply in relation to:

19 (a) a law of a State or Territory, to the extent that the law deals  
20 with matters relating to outworkers (including entry of a  
21 representative of a trade union to premises for a purpose  
22 connected with outworkers), other than matters mentioned in  
23 paragraph (1)(c); or

24 (b) any of the following laws:

25 (i) Chapter 6 of the *Industrial Relations Act 1996* (NSW)  
26 (and any other provision of that Act to the extent that it  
27 relates to, or has effect for the purposes of, a provision  
28 of Chapter 6);

29 (ii) the *Owner Drivers and Forestry Contractors Act 2005*  
30 (Vic.); or

31 (c) a law of a State or Territory that is specified in regulations  
32 made for the purposes of this paragraph, to the extent that the  
33 law is so specified.

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

36 (a) is a law referred to in paragraph (3)(a) or (3)(b); or

- (b) deals with matters that, because of subsection 536JQ(2), are not workplace relations matters.

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

- (1) Subject to subsection (2), for the purposes of this Chapter, ***workplace relations matter*** means any of the following matters:
- (a) remuneration, allowances or other amounts payable to employees;
  - (b) leave entitlements of employees;
  - (c) hours of work of employees;
  - (d) enforcing or terminating contracts of employment;
  - (e) making, enforcing or terminating agreements (not being contracts of employment) determining terms and conditions of employment;
  - (f) disputes between employees and employers, or the resolution of such disputes;
  - (g) industrial action by employees or employers;
  - (h) any other matter that is substantially the same as a matter that relates to employees or employers and that is dealt with by or under:
    - (i) this Act; or
    - (ii) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or
    - (iii) a State or Territory industrial law;unless the matter is specified in regulations made for the purposes of this paragraph;
  - (i) any other matter specified in regulations made for the purposes of this paragraph.
- (2) For the purposes of subsection (1), none of the following is a ***workplace relations matter***:
- (a) prevention of discrimination or promotion of equal employment opportunity, but only if the State or Territory law concerned is neither a State or Territory industrial law nor contained in such a law;
  - (b) superannuation;
  - (c) workers' compensation;

- 1 (d) occupational health and safety;
- 2 (e) child labour;
- 3 (f) the observance of a public holiday, except the rate of
- 4 payment of an employee for the public holiday;
- 5 (g) deductions from wages or salaries;
- 6 (h) industrial action affecting essential services;
- 7 (i) attendance for service on a jury;
- 8 (j) professional or trade regulation;
- 9 (k) consumer protection;
- 10 (l) taxation;
- 11 (m) any other matter specified in regulations made for the
- 12 purposes of this paragraph.

13 **536JR What is an *unfairness ground***

- 14 (1) Subject to subsection (2), for the purposes of this Chapter, each of
- 15 the following grounds is an ***unfairness ground*** in relation to a
- 16 services contract:
- 17 (a) the services contract is unfair;
  - 18 (b) the services contract is harsh or unreasonable;
  - 19 (c) the services contract is unjust;
  - 20 (d) the services contract is against the public interest;
  - 21 (e) the services contract is designed to, or does, avoid the
  - 22 provisions of:
    - 23 (i) this Act; or
    - 24 (ii) the *Fair Work (Transitional Provisions and*
    - 25 *Consequential Amendments) Act 2009*; or
    - 26 (iii) a State or Territory industrial law; or
    - 27 (iv) an award, agreement or other instrument made under a
    - 28 law referred to in subparagraph (i), (ii) or (iii);
  - 29 (f) the services contract provides for remuneration at a rate that
  - 30 is, or is likely to be, less than the rate of remuneration for an
  - 31 employee performing similar work;
  - 32 (g) any other ground that is substantially the same as a ground
  - 33 specified in any of paragraphs (a) to (f);
  - 34 (h) any other ground specified in regulations made for the
  - 35 purposes of this paragraph.

- (2) A ground specified in subsection (1) is not an *unfairness ground* in relation to a services contract to the extent that the ground relates to matters that, because of subsection 536JQ(2), are not workplace relations matters.

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

- (1) A minimum standards order prevails over a law of a State or Territory, to the extent of any inconsistency.
- (2) Despite subsection (1), a term of a minimum standards order applies subject to the following:
- (a) a law of a State or Territory prescribed by the regulations;
  - (b) a law of a State or Territory that provides for rights or remedies by reference to a law prescribed for the purposes of paragraph (a);
  - (c) regulations, rules or other instruments (however prescribed) made pursuant to or for the purposes of a law referred to in paragraph (a) or (b).

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

*Conduct in accordance with order or collective agreement*

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

*Making a collective agreement*

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

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

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

*Certain conduct not protected*

- (4) Despite subsections (1), (2) and (3), conduct referred to in those subsections is not specified in or specifically authorised by this Act if the conduct is:
- (a) making a contract or arrangement, or arriving at an understanding, that is or contains a cartel provision that satisfies the purpose condition in either paragraph 45AD(3)(a) or 45AD(3)(b) of the *Competition and Consumer Act 2010* or the Competition Code within the meaning of that Act; or
  - (b) boycott conduct within the meaning of subsection 87AA(2) of the *Competition and Consumer Act 2010* or the Competition Code within the meaning of that Act.

## **Division 4—Other general matters**

### **536JU Special rules relating to retrospective variations of minimum standards orders**

- (1) This section applies if a determination varying a minimum standards order has a retrospective effect because it comes into operation on a day before the day on which the determination is made.

Note: Subsection 536JF(5) sets out when a determination can come into operation on a day before it is made.

*No creation of liability to pay pecuniary penalty for past conduct*

- (2) If:
- (a) a person engaged in conduct before the determination was made; and

- 1 (b) but for the retrospective effect of the determination, the  
2 conduct would not have contravened a term of the minimum  
3 standards order;  
4 a court must not order the person to pay a pecuniary penalty under  
5 Division 2 of Part 4-1 in relation to the conduct, on the grounds  
6 that the conduct contravened a term of the order.
- 7 Note: This subsection does not affect the powers of a court to make other  
8 kinds of orders under Division 2 of Part 4-1.

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

11 **Division 1—Introduction**

12 **536JV Guide to this Part**

- 13 This Part is about setting minimum standards for certain regulated  
14 workers, specifically, employee-like workers and regulated road  
15 transport contractors.
- 16 Division 2 of this Part sets out the minimum standards objective to  
17 which the FWC must have regard when performing a function or  
18 exercising a power under this Part.
- 19 Division 3 empowers the FWC to make minimum standards orders  
20 for regulated workers, which set minimum standards to which they  
21 are entitled in relation to certain matters including payment terms  
22 and working time.
- 23 Division 4 empowers the FWC to make minimum standards  
24 guidelines for regulated workers.
- 25 Division 5 provides for regulations to be made in relation to  
26 internal review of certain decisions.

27 **536JW Meaning of employee and employer**

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

**Division 2—The minimum standards objective**

**536JX The minimum standards objective**

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

- (a) the need for standards that:
  - (i) are clear and simple; and
  - (ii) are fair and relevant; and
  - (iii) recognise the perspectives of regulated workers, including their skills, the value of the work they perform and their preferences about their working arrangements; and
  - (iv) do not change the form of the engagement of regulated workers from independent contractor to employee; and
  - (v) do not give preference to one business model or working arrangement over another; and
  - (vi) are tailored to the relevant industry, occupation or sector and the relevant business models; and
  - (vii) are tailored to the type of work, working arrangements and regulated worker preferences;
- (b) in addition to the other matters provided for in this subsection, the need for standards that deal with minimum rates of pay that:
  - (i) take into account all necessary costs for regulated workers covered by a minimum standards order or minimum standards guidelines; and
  - (ii) compensate regulated workers covered by a minimum standards order or minimum standards guidelines in relation to their pay and conditions compared to employees performing comparable work; and
  - (iii) do not change the form of the engagement of regulated workers;
- (c) the need to avoid unreasonable adverse impacts upon the following:
  - (i) sustainable competition among industry participants;

- (ii) business viability, innovation and productivity;  
(iii) administrative and compliance costs for industry participants;  
(iv) the national economy;  
(d) the need to consider other orders or instruments (however described) made under this Chapter.  
This is the *minimum standards objective*.

## Division 3—Minimum standards orders

### Subdivision A—General matters

#### 536JY Minimum standards orders

- (1) The FWC may make an order (a *minimum standards order*) that sets standards for:
- (a) employee-like workers; or
  - (b) regulated road transport contractors.
- (2) A minimum standards order for employee-like workers is an *employee-like worker minimum standards order*.
- (3) A minimum standards order for regulated road transport contractors is a *road transport minimum standards order*.
- Note: The FWC must be constituted by an Expert Panel for the purposes of making a road transport minimum standards order (see subsection 617(10B)).
- (4) The FWC may make a minimum standards order under this section:
- (a) on its own initiative; or
  - (b) on application under subsection 536JZ(1).

#### 536JZ Applications for minimum standards orders

- (1) Any of the following may apply to the FWC for the making of a minimum standards order:
- (a) an organisation that is entitled to represent the industrial interests of one or more regulated workers who would be covered by the proposed minimum standards order;

- 1 (b) an organisation that is entitled to represent the industrial  
2 interests of one or more of the regulated businesses that  
3 would be covered by the proposed minimum standards order;  
4 (c) a regulated business that would be covered by the proposed  
5 minimum standards order;  
6 (d) the Minister.

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

9 *Matters to be specified in an application*

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

19 **Subdivision B—Initial matter to be considered for**  
20 **employee-like worker minimum standards orders**

21 **536K Initial matter to be considered for employee-like worker**  
22 **minimum standards orders**

- 23 (1) This section applies if:  
24 (a) an application is made for an employee-like worker  
25 minimum standards order under subsection 536JZ(1) or for a  
26 variation of an employee-like worker minimum standards  
27 order under section 536KP; or  
28 (b) the FWC is considering making or varying an employee-like  
29 worker minimum standards order on its own initiative.  
30 (2) Before making a decision under section 536KG, the FWC must  
31 consider whether, on the whole, the persons included in the class of  
32 employee-like worker to be covered by the minimum standards  
33 order are employee-like workers.

- 1 (3) If the FWC is not satisfied that, on the whole, the persons included  
2 in the class of employee-like workers to be covered by the  
3 minimum standards order, or the order as proposed to be varied,  
4 are employee-like workers, the FWC must decide to refuse to  
5 consider the application, or not to make or vary the order, as the  
6 case requires.

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

9 **536KA Particular matters FWC must take into account in making a**  
10 **decision on a road transport minimum standards order**

- 11 (1) This section applies if:  
12 (a) an application is made for a road transport minimum  
13 standards order under subsection 536JZ(1) or for a variation  
14 of a road transport minimum standards order under  
15 section 536KP; or  
16 (b) the FWC is considering making or varying a minimum  
17 standards order on its own initiative.
- 18 (2) The FWC:  
19 (a) must not make the road transport minimum standards order  
20 unless there has been genuine engagement with the parties to  
21 be covered; and  
22 (b) must not make the road transport minimum standards order  
23 unless the Road Transport Advisory Group has been  
24 consulted; and  
25 (c) must not make the road transport minimum standards order  
26 unless the consultation process set out in Subdivision D has  
27 been followed; and  
28 (d) must have regard to the commercial realities of the road  
29 transport industry; and  
30 (e) must be satisfied that making the road transport minimum  
31 standards order will not unduly affect the viability and  
32 competitiveness of owner drivers or other similar persons.

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

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

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

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

- (1) The FWC must ensure that affected persons have a reasonable opportunity to make written submissions to the FWC for its consideration in relation to the draft of a road transport minimum standards order published under subsection 536KB(2).
- (2) The FWC must publish submissions made to the FWC.
- (3) However, if a submission made by a person or body includes information that is claimed by the person or body to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive, the FWC:
  - (a) may decide not to publish the information; and
  - (b) may instead publish:
    - (i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive); or

- 1 (ii) if the FWC considers that it is not practicable to prepare  
2 a summary that would comply with subparagraph (i)—a  
3 statement that confidential or commercially sensitive  
4 information in the submission has not been published.
- 5 (4) The publishing of material under subsections (2) and (3) must be  
6 on the FWC's website and by any other means the FWC considers  
7 appropriate.
- 8 (5) A reference in this Act (other than in this section) to a submission  
9 under this section includes a reference to a summary or statement  
10 referred to in paragraph (3)(b).
- 11 (6) For the purposes of subsection (1), an *affected person*, in relation  
12 to a draft minimum standards order published under  
13 paragraph 536KB(1)(a), is a person likely to be affected by the  
14 making of a road transport minimum standards order based on the  
15 draft.

16 **536KD Hearings in relation to draft order**

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

19 **536KE Finalising draft order**

- 20 (1) The FWC may make any changes it thinks appropriate to a draft  
21 road transport minimum standards order.
- 22 (2) If changes made under subsection (1) are significant, the FWC  
23 must:
- 24 (a) decide not to make the road transport minimum standards  
25 order based on the draft; and
- 26 (b) publish a subsequent notice of intent under  
27 subsection 536KB(1) in relation to the revised draft road  
28 transport minimum standards order, and publish the revised  
29 draft; and
- 30 (c) follow the process set out in section 536KC in relation to the  
31 revised draft road transport minimum standards order (with  
32 the period of consultation under that section to be no shorter  
33 than 12 months starting when the subsequent notice of intent

1 and the revised draft required by paragraph (b) of this  
2 subsection were published).

3 **536KF Decision not to make order based on the draft**

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

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

9 **536KG Decisions on applications for minimum standards orders**

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

24 **536KH Terms that must be included in an employee-like worker**  
25 **minimum standards order**

26 *Terms relating to coverage*

- 27 (1) An employee-like worker minimum standards order must include  
28 terms setting out in accordance with this section:
- 29 (a) the digital platform work covered by the employee-like  
30 worker minimum standards order; and

- 1 (b) the digital labour platform operator or operators covered by  
2 the employee-like worker minimum standards order; and  
3 (c) the employee-like workers covered by the employee-like  
4 worker minimum standards order.
- 5 (2) An employee-like worker minimum standards order must be  
6 expressed to cover:  
7 (a) one or more specified digital labour platform operators; and  
8 (b) specified employee-like workers who:  
9 (i) are engaged through or by means of a digital labour  
10 platform operated by the digital labour platform  
11 operator or operators covered by the employee-like  
12 worker minimum standards order; or  
13 (ii) perform work under a contract arranged or facilitated  
14 through or by means of a digital labour platform  
15 operated by the digital labour platform operator or  
16 operators covered by the employee-like worker  
17 minimum standards order.
- 18 (3) An employee-like worker minimum standards order must specify  
19 the digital labour platform operator or digital labour platform  
20 operators that are primarily responsible for providing the  
21 entitlements of specified employee-like workers.
- 22 (4) For the purposes of subsections (1), (2) and (3):  
23 (a) digital labour platform operators may be specified by name  
24 or by inclusion in a specified class or specified classes; and  
25 (b) employee-like workers must be specified by inclusion in a  
26 specified class or specified classes.
- 27 (5) Without limiting the way in which a class may be described for the  
28 purposes of subsection (4), the class may be described by reference  
29 to a particular industry or sector, or part of an industry or sector, or  
30 particular kinds of work.

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

*Terms relating to coverage*

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

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

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

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

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

- 1 (a) payment terms;
- 2 (b) deductions;
- 3 (c) working time;
- 4 (d) record-keeping;
- 5 (e) insurance;
- 6 (f) consultation;
- 7 (g) representation;
- 8 (h) delegates' rights;
- 9 (i) cost recovery.

- 10 (2) The matters listed in subsection (1) do not limit the terms that may
- 11 be included in a minimum standards order.

12 **536KM Terms that must not be included in a minimum standards**  
13 **order**

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

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

4 **536KN Further terms that must not be included in a road transport**  
5 **minimum standards order**

- 6 (1) In addition to the matters in section 536KM, a road transport  
7 minimum standards order must not include terms about any of the  
8 following matters:  
9 (a) a matter relating to road transport that is otherwise  
10 comprehensively dealt with:  
11 (i) by the Heavy Vehicle National Law as set out in the  
12 Schedule to the *Heavy Vehicle National Law Act 2012*  
13 (Qld); or  
14 (ii) by another law of the Commonwealth, a State or a  
15 Territory;  
16 (b) a matter prescribed by the regulations, or belonging to a class  
17 of matter prescribed by the regulations.
- 18 (2) For the purposes of paragraph (1)(b):  
19 (a) the regulations may specify that a particular matter, or a  
20 matter included in a class of matters, is, or is not, dealt with  
21 comprehensively by the Heavy Vehicle National Law as set  
22 out in the Schedule to the *Heavy Vehicle National Law Act*  
23 *2012* (Qld) or another law of the Commonwealth, a State or a  
24 Territory; and  
25 (b) the regulations may prescribe one or more laws of the  
26 Commonwealth, a State or a Territory to which  
27 subparagraph (1)(a)(ii) does, or does not, not apply.

28 **536KP Applications to vary or revoke minimum standards orders**

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

- 31 (a) an organisation that is entitled to represent the industrial  
32 interests of one or more regulated workers covered by the  
33 minimum standards order or who would be covered by the  
34 minimum standards order as proposed to be varied;

- 1 (b) an organisation that is entitled to represent the industrial  
2 interests of one or more of the regulated businesses covered  
3 by the minimum standards order, or that would be covered by  
4 the minimum standards order as proposed to be varied;  
5 (c) a regulated business covered by the minimum standards order  
6 or that would be covered by the proposed minimum  
7 standards order as proposed to be varied;  
8 (d) the Minister.

9 **536KQ FWC may vary or revoke minimum standards orders if**  
10 **consistent with the minimum standards objective**

- 11 (1) The FWC may make a determination varying or revoking a  
12 minimum standards order if the FWC is satisfied that making the  
13 determination is consistent with the minimum standards objective.  
14 Note: In the case of a road transport minimum standards order, the FWC  
15 must also consider the road transport objective.  
16 (2) The FWC may make a determination varying a minimum standards  
17 order in such a way that not all of the elements of the variation  
18 sought in an application under section 536KP are implemented,  
19 including by refusing to make a variation to the extent that it would  
20 result in the order covering persons who are not regulated workers.  
21 (3) The FWC may make a determination varying a minimum standards  
22 order to remove an ambiguity or uncertainty or to correct an error.  
23 (4) The FWC may make a determination varying or revoking a  
24 minimum standards order:  
25 (a) on its own initiative; or  
26 (b) on application under section 536KP.

27 **Division 4—Minimum standards guidelines**

28 **536KR Minimum standards guidelines**

- 29 (1) The FWC may make minimum standards guidelines under this  
30 section that set standards for regulated workers performing work  
31 under a services contract.

- 1 (2) Minimum standards guidelines for employee-like workers are  
2 ***employee-like worker guidelines***.
- 3 (3) Minimum standards guidelines for regulated road transport  
4 contractors are ***road transport guidelines***.
- 5 (4) The FWC may make minimum standards guidelines under this  
6 section:  
7 (a) on its own initiative; or  
8 (b) on application under section 536KS.

9 **536KS Applications for minimum standards guidelines**

- 10 (1) Any of the following may apply to the FWC for the making of  
11 minimum standards guidelines:  
12 (a) an organisation that is entitled to represent the industrial  
13 interests of one or more regulated workers who would be  
14 covered by the proposed minimum standards guidelines;  
15 (b) an organisation that is entitled to represent the industrial  
16 interests of one or more of the regulated businesses that  
17 would be covered by the proposed minimum standards  
18 guidelines;  
19 (c) a regulated business that would be covered by the proposed  
20 minimum standards guidelines;  
21 (d) the Minister.

22 *Matters to be specified in an application*

- 23 (2) An application for the making of minimum standards guidelines  
24 must specify the class of regulated workers to be covered by the  
25 guidelines.
- 26 (3) Without limiting the way in which a class may be described for the  
27 purposes of subsection (2), the class may be described by reference  
28 to a particular industry or sector, or part of an industry or sector, or  
29 particular kinds of work.

30 **536KT Initial matter to be considered for employee-like worker**  
31 **minimum standards guidelines**

- 32 (1) This section applies if:

- 1 (a) an application is made for employee-like worker guidelines  
2 under subsection 536KS(1), or for a variation of  
3 employee-like worker guidelines under section 536L; or  
4 (b) the FWC is considering making or varying minimum  
5 standards guidelines on its own initiative.
- 6 (2) Before making a decision under section 536KU, the FWC must  
7 consider whether, on the whole, the persons included (or  
8 purportedly included) in the class of employee-like workers to be  
9 covered by the minimum standards guidelines, or the guidelines as  
10 proposed to be varied, are employee-like workers.
- 11 (3) If the FWC is not satisfied that, on the whole, the persons included  
12 (or purportedly included) in the class of employee-like workers to  
13 be covered by the minimum standards guidelines, or the guidelines  
14 as proposed to be varied, are employee-like workers, the FWC  
15 must decide to refuse to consider the application, or not to make or  
16 vary the guidelines, as the case requires.

17 **536KU Decisions on applications for minimum standards guidelines**

- 18 (1) If an application for minimum standards guidelines is made to the  
19 FWC under subsection 536KS(1), the FWC may decide to:  
20 (a) refuse to consider the application; or  
21 (b) make minimum standards guidelines; or  
22 (c) not make minimum standards guidelines; or  
23 (d) if the FWC considers it appropriate to do so, instead make a  
24 minimum standards order under subsection 536JY(1) instead,  
25 as if the application had been an application under  
26 subsection 536JZ(1) for a minimum standards order in  
27 relation to the regulated workers covered by the application  
28 under subsection 536KS(1).
- 29 (2) Without limiting subsection (1), the FWC may refuse to consider  
30 the application if it is not consistent with a direction of the  
31 President under subsection 582(4D) (prioritisation).

**536KV Minimum standards guidelines not to be made if a minimum standards order is in operation**

The FWC must not make minimum standards guidelines that cover the same regulated workers and the same regulated businesses in relation to the same matters as a minimum standards order that is in operation.

**536KW Terms that must be included in minimum standards guidelines**

Minimum standards guidelines must include terms setting out the same matters in relation to minimum standards orders as set out in the following:

- (a) in the case of employee-like worker guidelines—in section 536KH;
- (b) in the case of road transport guidelines—in section 536KJ.

**536KX Terms that may be included in minimum standards guidelines**

Minimum standards guidelines may include terms about any of the matters that may be included in minimum standards orders under section 536KL.

**536KY Terms that must not be included in minimum standards guidelines**

Minimum standards guidelines must not include terms about any of the matters that must not be included in minimum standards orders as set out in the following:

- (a) in the case of employee-like worker minimum standards orders and road transport minimum standards orders—in section 536KM;
- (b) in the case of road transport minimum standards orders—in section 536KN.

**536KZ FWC may vary or revoke minimum standards guidelines if consistent with the minimum standards objective and the road transport objective**

- (1) The FWC may make a determination varying or revoking minimum standards guidelines if the FWC is satisfied that making the determination is consistent with:
  - (a) the minimum standards objective; and
  - (b) if the President considers that the determination might relate to the road transport industry—the road transport objective.
- (2) The FWC may make a determination varying minimum standards guidelines in such a way that not all of the elements of the variation sought in an application under section 536L are implemented, including by refusing to make a variation to the extent that it would result in the guidelines covering persons who are not regulated workers.
- (3) The FWC may make a determination varying minimum standards guidelines to remove an ambiguity or uncertainty or to correct an error.
- (4) The FWC may make a determination varying or revoking minimum standards guidelines:
  - (a) on its own initiative; or
  - (b) on application under section 536L.
- (5) If the FWC makes a minimum standards order that covers the same regulated workers and the same regulated businesses in relation to the same matters as minimum standards guidelines, the FWC must revoke the minimum standards guidelines with effect on and from the day on which the minimum standards order comes into operation.
- (6) If the FWC makes a minimum standards order that covers some or all of the same regulated workers and the same regulated businesses in relation to some or all of the same matters as minimum standards guidelines, the FWC must vary the minimum standards guidelines so that the guidelines do not cover the regulated workers, regulated businesses or matters covered by the order, with effect on and from the day on which the order comes into operation.

**536L Applications to vary or revoke minimum standards guidelines**

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

- (a) an organisation that is entitled to represent the industrial  
interests of one or more regulated workers covered by the  
minimum standards guidelines, or who would be covered by  
the minimum standards guidelines as proposed to be varied;
- (b) an organisation that is entitled to represent the industrial  
interests of one or more of the regulated businesses covered  
by the minimum standards guidelines, or that would be  
covered by the minimum standards guidelines as proposed to  
be varied;
- (c) a regulated business covered by the minimum standards  
guidelines, or that would be covered by the minimum  
standards order as proposed to be varied;
- (d) the Minister.

**Division 5—Merits review of certain decisions relating to  
minimum standards orders**

**536LA Regulations may be made for internal merits review of  
decisions relating to road transport minimum standards  
orders**

- (1) The regulations may empower or require the FWC to review the  
following decisions:
  - (a) a decision to make a road transport minimum standards  
order;
  - (b) a decision to vary a road transport minimum standards order.
- (2) Without limiting subsection (1), the regulations may empower the  
FWC to do one of more of the following:
  - (a) to reconsider the decision;
  - (b) to confirm, revoke or vary the decision;
  - (c) to set the decision aside and substitute a new decision.
- (3) Without limiting subsection (1), the regulations may provide that a  
reconsideration, confirmation, revocation or variation of a decision,

- 1 a setting aside of a decision and a substitution of a new decision,  
2 may have the effect:
- 3 (a) that the operation of a road transport minimum standards  
4 order is suspended for a definite or indefinite period; or  
5 (b) that a road transport minimum standards order is revoked; or  
6 (c) that the day on which a road transport minimum standards  
7 order commences is varied; or  
8 (d) that the operation of one or more terms of a road transport  
9 minimum standards order is suspended for a definite or  
10 indefinite period.
- 11 (4) Without limiting subsection (1), the regulations may provide for  
12 and in relation to the following, in respect of the review of a  
13 decision mentioned in subsection (1):
- 14 (a) the circumstances in which an application for review can be  
15 made;  
16 (b) the persons who may apply for review;  
17 (c) time frames relating to applications and decisions on  
18 applications;  
19 (d) the enforcement of decisions made on review;  
20 (e) the circumstances in which a decision mentioned in  
21 subsection (2) may have an effect mentioned in  
22 subsection (3);  
23 (f) matters consequential on a decision made on review  
24 including, but not limited to requirements in respect of a  
25 decision that has the effect of suspending a road transport  
26 minimum standards order or varying its commencement;  
27 (g) how the FWC is constituted for the purposes of the review.

## **Part 3A-3—Unfair deactivation or unfair termination of regulated workers**

### **Division 1—Introduction**

#### **536LB Guide to this Part**

This Part is about:

- |    |                                                                      |                                                           |
|----|----------------------------------------------------------------------|-----------------------------------------------------------|
| 1  | (a)                                                                  | unfair deactivation from digital labour platforms of      |
| 2  |                                                                      | employee-like workers; and                                |
| 3  | (b)                                                                  | unfair termination of the services contracts of regulated |
| 4  |                                                                      | road transport contractors.                               |
| 5  | Division 2 sets out when a person is protected from unfair           |                                                           |
| 6  | deactivation or unfair termination.                                  |                                                           |
| 7  | Division 3 sets out the elements that make up unfair deactivation or |                                                           |
| 8  | unfair termination.                                                  |                                                           |
| 9  | Division 4 sets out the remedies that the FWC can grant for unfair   |                                                           |
| 10 | deactivation or unfair termination.                                  |                                                           |
| 11 | Division 5 is about the procedural aspects of getting remedies for   |                                                           |
| 12 | unfair deactivation or unfair termination.                           |                                                           |

13     **536LC Object of this Part**

- 14             (1) The object of this Part is:
- 15                 (a) to establish a framework for dealing with unfair deactivation
- 16                     of employee-like workers, and unfair termination of
- 17                     regulated road transport contractors, that balances:
- 18                         (i) the needs of regulated businesses; and
- 19                         (ii) the needs of regulated workers; and
- 20                 (b) to establish procedures for dealing with unfair deactivation
- 21                     and unfair termination that:
- 22                         (i) are quick, flexible and informal; and
- 23                         (ii) address the needs of regulated businesses and regulated
- 24                             workers; and
- 25                 (c) to provide remedies if a deactivation or termination is found
- 26                     to be unfair, with an emphasis on reactivation or
- 27                     reinstatement, as the case requires.
- 28             (2) The procedures and remedies referred to in paragraphs (1)(b) and
- 29                 (c), and the manner of deciding on and working out such remedies,
- 30                 are intended to ensure that a “fair go all round” is accorded to both
- 31                 the regulated businesses and regulated workers concerned.

Note: The expression “fair go all round” was used by Sheldon J in *in re Loty and Holloway v Australian Workers’ Union* [1971] AR (NSW) 95.

## Division 2—Protection from unfair deactivation or unfair termination

### 536LD When a person is protected from unfair deactivation

A person is *protected from unfair deactivation* at a time if, at that time:

- (a) the person is an employee-like worker; and
- (b) the person:
  - (i) performs work through or by means of a digital labour platform operated by a digital labour platform operator; or
  - (ii) performs work under a services contract arranged or facilitated through or by means of a digital labour platform operated by a digital labour platform operator; and
- (c) the person has been performing work through or by means of that digital labour platform, or under a contract, or a series of contracts, arranged or facilitated through or by means of the digital labour platform, on a regular basis for a period of at least 6 months.

### 536LE When a person is protected from unfair termination

A person is *protected from unfair termination* at a time if, at that time:

- (a) the person is a regulated road transport contractor; and
- (b) a road transport business receives services under a services contract (whether or not the business is a party to the services contract) under which the person performs work in the road transport industry; and
- (c) the person has been performing work in the road transport industry under a services contract under which that road transport business receives services for a period of at least 12 months.

**Division 3—What is an unfair deactivation or unfair termination**

**Subdivision A—Unfair deactivation**

**536LF What is an unfair deactivation**

A person has been *unfairly deactivated* if the FWC is satisfied that:

- (a) the person has been deactivated from a digital labour platform; and
- (b) the deactivation was unfair; and
- (c) the deactivation was not consistent with the Digital Labour Platform Deactivation Code.

**536LG Meaning of *deactivated***

A person has been *deactivated* from a digital labour platform if:

- (a) the person performed digital platform work through or by means of the digital labour platform; and
- (b) the digital labour platform operator modified, suspended, or terminated the person's access to the digital labour platform; and
- (c) the person is no longer able to perform work under an existing or prospective services contract, or the ability of the person to do so is so significantly altered that in effect the person is no longer able to perform such work.

**536LH Criteria for considering whether a deactivation was unfair etc.**

- (1) In considering whether it is satisfied that a person's deactivation was unfair, the FWC must take into account:
  - (a) whether there was a valid reason for the deactivation related to the person's capacity or conduct; and
  - (b) whether any relevant processes specified in the Digital Labour Platform Deactivation Code were followed; and
  - (c) any other matters that the FWC considers relevant.

- 1 (2) Despite subsection (1) and any other provision of this Part, a  
2 deactivation that occurs because of serious misconduct of the  
3 person who was deactivated is not unfair.

4 **536LJ Minister to make a Digital Labour Platform Deactivation**  
5 **Code**

- 6 (1) The Minister must, by legislative instrument, make code to be  
7 known as the Digital Labour Platform Deactivation Code.
- 8 (2) Without limiting the matters covered by the Digital Labour  
9 Platform Deactivation Code, the code must deal with the following  
10 matters:
- 11 (a) the circumstances in which work is performed on a regular  
12 basis;
- 13 (b) matters that constitute or may constitute a valid reason for  
14 deactivation;
- 15 (c) rights of response to deactivations;
- 16 (d) the internal processes of digital labour platform operators in  
17 relation to deactivation;
- 18 (e) communication between the employee-like worker and the  
19 digital labour platform operator in relation to deactivation;
- 20 (f) the accessibility in practice of the internal processes of digital  
21 labour platform operators in relation to deactivation;
- 22 (g) the treatment of data relating to the work performed by  
23 employee-like workers.
- 24 (3) A person's deactivation was *consistent with the Digital Labour*  
25 *Platform Deactivation Code* if, at the time of the deactivation, the  
26 digital labour platform operator complied with the Digital Labour  
27 Platform Deactivation Code in relation to the deactivation.

28 **Subdivision B—What is an unfair termination**

29 **536LK What is an unfair termination**

- 30 A person has been *unfairly terminated* if:
- 31 (a) the person was performing work in the road transport  
32 industry; and
- 33 (b) the person has been terminated; and

- (c) the termination was unfair; and
- (d) the termination was not consistent with the Road Transport Industry Termination Code.

**536LL Meaning of *terminated***

A person has been *terminated* if:

- (a) the person performed work as a regulated road transport contractor under a services contract; and
- (b) a road transport business received services under the services contract; and
- (c) the services contract was terminated by, or as a result of conduct of, the road transport business.

**536LM Criteria for considering whether a termination was unfair etc.**

- (1) In considering whether it is satisfied that a termination was unfair, the FWC must take into account:
  - (a) whether there was a valid reason for the termination related to the person's capacity or conduct; and
  - (b) whether any relevant processes specified in the Road Transport Industry Termination Code were followed; and
  - (c) any other matters that the FWC considers relevant.
- (2) Despite subsection (1) and any other provision of this Part, a termination that occurs because of serious misconduct of the person who was deactivated is not unfair.

**536LN Minister to make Road Transport Industry Termination Code**

- (1) The Minister may, by legislative instrument, make a code to be known as the Road Transport Industry Termination Code.
- (2) Without limiting the matters covered by the Road Transport Industry Termination Code, the code must deal with the following matters:
  - (a) matters that constitute or may constitute a valid reason for termination;

- 1 (b) rights of response to terminations;  
2 (c) the internal processes of road transport businesses in relation  
3 to a termination;  
4 (d) communication between the regulated road transport  
5 contractor and road transport business in relation to a  
6 termination.
- 7 (3) A person's termination was *consistent with the Road Transport*  
8 *Industry Termination Code* if, immediately before the time of the  
9 termination, or at the time the person was given notice of the  
10 termination (whichever happened first), the regulated road  
11 transport business that terminated the services contract concerned  
12 or as a result of whose conduct the services contract concerned was  
13 terminated, complied with the Road Transport Industry  
14 Termination Code.

## 15 Division 4—Remedies

### 16 Subdivision A—Remedies for unfair deactivation

#### 17 536LP When the FWC may order remedy for unfair deactivation

- 18 (1) Subject to subsection (3), the FWC may order a person's  
19 reactivation if:  
20 (a) the FWC is satisfied that the person was protected from  
21 unfair deactivation (see section 536LD) at the time of being  
22 deactivated; and  
23 (b) the person has been unfairly deactivated (see Division 2).
- 24 (2) The FWC may make the order only if the person has made an  
25 application under section 536LU.
- 26 (3) The FWC must not order the payment of compensation to the  
27 person.
- 28 Note: Division 5 deals with procedural matters such as applications for  
29 remedies.

1       **536LQ Remedy—reactivation etc.**

2                       *Reactivation*

3               (1) An order for a person’s reactivation must be an order that the  
4               digital labour platform operator who operated the digital platform  
5               at the time of the deactivation take measures to restore the person  
6               to the position they would have been in but for the deactivation,  
7               including as follows:

- 8                       (a) if the person’s access to the digital labour platform was  
9                       suspended—by removing the suspension;  
10                      (b) if the person’s access to the digital labour platform was  
11                      terminated—by reinstating the person’s access to the digital  
12                      labour platform;  
13                      (c) by modifying the person’s access to the digital labour  
14                      platform so that the access is as it was before the person’s  
15                      access to the digital labour platform was terminated or  
16                      suspended.

17               (2) If:

- 18                      (a) the digital labour platform (the *original digital labour*  
19                      *platform*) from which the person was deactivated no longer  
20                      exists; and  
21                      (b) a similar digital labour platform (the *second digital labour*  
22                      *platform*) is operated by an associated entity of the operator  
23                      of the original digital labour platform;

24               the order under subsection (1) may be an order to the associated  
25               entity to provide access to the second digital labour platform on  
26               terms and conditions no less favourable than those immediately  
27               before the person’s access to the original digital labour platform  
28               was terminated or suspended.

29                       *Order to restore lost pay*

30               (3) If the FWC makes an order under subsection (1) and considers it  
31               appropriate to do so, the FWC may also make any order that the  
32               FWC considers appropriate to cause the digital labour platform  
33               operator or the associated entity to pay to the person an amount for  
34               the remuneration lost, or likely to have been lost, by the person  
35               because of the deactivation.

- 1 (4) In determining an amount for the purposes of an order under  
2 subsection (3), the FWC must take into account:
- 3 (a) the amount of any remuneration earned by the person from  
4 work of any kind during the period between the deactivation  
5 and the making of the order for reactivation; and  
6 (b) the amount of any remuneration reasonably likely to be so  
7 earned by the person during the period between the making  
8 of the order for reactivation and the actual reactivation.

9 **Subdivision B—Remedies for unfair termination**

10 **536LR When the FWC may order remedy for unfair termination**

- 11 (1) Subject to subsection (3), the FWC may order that a new contract  
12 be entered into, or the payment of compensation to a person, if:
- 13 (a) the FWC is satisfied that the person was protected from  
14 unfair termination (see section 536LE) at the time of being  
15 terminated; and  
16 (b) the person has been unfairly terminated (see Division 3).
- 17 (2) The FWC may make the order only if the person has made an  
18 application under section 536LU.
- 19 (3) The FWC must not order the payment of compensation to the  
20 person unless:
- 21 (a) the FWC is satisfied that entering into a new services  
22 contract would be inappropriate; and  
23 (b) the FWC considers an order for payment of compensation is  
24 appropriate in all the circumstances of the case.

25 Note: Division 5 deals with procedural matters such as applications for  
26 remedies.

27 **536LS Remedy—new contract, etc.**

28 *Reinstatement*

- 29 (1) An order for a new contract must be an order that the road  
30 transport business at the time of the termination enter into a new  
31 contract in the same terms as the services contract at the time of the

1            termination or with such variations as the FWC considers  
2            appropriate.

3            (2) If:

4                    (a) the road transport business at the time of the termination is  
5                    no longer a road transport business; and

6                    (b) an associated entity of the road transport business is a road  
7                    transport business;

8            the order under subsection (1) may be an order to the associated  
9            entity to enter into a new contract on terms and conditions no less  
10           favourable than the services contract immediately before the  
11           termination, with such variations as the FWC considers  
12           appropriate.

13           *Order to restore lost pay*

14           (3) If the FWC makes an order under subsection (1) and considers it  
15           appropriate to do so, the FWC may also make any order that the  
16           FWC considers appropriate to cause the road transport business to  
17           pay to the person an amount for the remuneration lost, or likely to  
18           have been lost, by the person because of the termination.

19           (4) In determining an amount for the purposes of an order under  
20           subsection (3), the FWC must take into account:

21                    (a) the amount of any remuneration earned by the person from  
22                    work of any kind during the period between the termination  
23                    and the making of the order that the road transport business  
24                    enter into a new services contract with the person; and

25                    (b) the amount of any remuneration reasonably likely to be so  
26                    earned by the person during the period between the making  
27                    of the order that the road transport business enter into a new  
28                    services contract with the person and when the new services  
29                    contract is entered into.

## 30           **536LT Remedy—compensation**

31           *Compensation*

32           (1) An order for the payment of compensation to a person must be an  
33           order that the road transport business at the time of the termination

1 pay compensation to the person in lieu of entering into a new  
2 services contract.

3 *Criteria for deciding amounts*

- 4 (2) In determining an amount for the purposes of an order under  
5 subsection (1), the FWC must take into account all the  
6 circumstances of the case including:  
7 (a) the effect of the order on the viability of the road transport  
8 business; and  
9 (b) the remuneration that the person would have received, or  
10 would have been likely to receive, if the person had not been  
11 terminated; and  
12 (c) the efforts of the person (if any) to mitigate the loss suffered  
13 because of the termination; and  
14 (d) the amount of any remuneration earned by the person from  
15 work of any kind during the period between the termination  
16 and the making of the order for compensation; and  
17 (e) the amount of any income reasonably likely to be so earned  
18 by the person during the period between the making of the  
19 order for compensation and the actual compensation; and  
20 (f) any other matter that the FWC considers relevant.

21 *Misconduct reduces amount*

- 22 (3) If the FWC is satisfied that misconduct of a person contributed to  
23 the road transport business's decision to terminate the person, the  
24 FWC must reduce the amount it would otherwise order under  
25 subsection (1) by an appropriate amount on account of the  
26 misconduct.

27 *Shock, distress etc. disregarded*

- 28 (4) The amount ordered by the FWC to be paid to a person under  
29 subsection (1) must not include a component by way of  
30 compensation for shock, distress or humiliation, or other analogous  
31 hurt, caused to the person by the manner of the person's  
32 termination.

*Compensation cap*

- (5) The amount ordered by the FWC to be paid to a person under subsection (1) must not exceed the lesser of:
- (a) the amount worked out under subsection (6); and
  - (b) half the amount of the contractor high income threshold immediately before the termination.
- (6) The amount is the total amount of remuneration received by the person or to which the person was entitled (whichever is higher) for any period during which the person performed work under the services contract during the 26 weeks immediately before the termination.

**Division 5—Procedural matters**

**536LU Application for unfair deactivation or unfair termination remedy**

- (1) A person who has been deactivated or terminated may apply to the FWC for an order under Division 4 granting a remedy.

Note 1: Division 4 sets out when the FWC may order a remedy for unfair deactivation or unfair termination.

Note 2: For application fees, see section 536LV.

Note 3: Part 6-1 may prevent an application being made under this Part in relation to a deactivation or termination if an application or complaint has been made in relation to the deactivation or termination other than under this Part.

- (2) A person must not make an application under subsection (1) unless the sum of the person's annual rate of earnings, and such other amounts (if any) worked out in relation to the person in accordance with the regulations, is less than the contractor high income threshold.
- (3) The application must be made:
- (a) within 21 days after the deactivation or termination took effect; or
  - (b) within such further period as the FWC allows under subsection (4).

- 1 (4) The FWC may allow a further period for the application to be  
2 made by a person under subsection (1) if the FWC is satisfied that  
3 there are exceptional circumstances, taking into account:  
4 (a) the reason for the delay; and  
5 (b) whether the person first became aware of the deactivation or  
6 termination after it had taken effect; and  
7 (c) any action taken by the person to dispute the deactivation or  
8 termination; and  
9 (d) prejudice to the regulated business (including prejudice  
10 caused by the delay); and  
11 (e) the merits of the application; and  
12 (f) fairness as between the person and other regulated workers in  
13 a similar position; and  
14 (g) any processes specified in the Digital Labour Platform  
15 Deactivation Code or the Road Transport Industry  
16 Termination Code, as the case requires.

17 **536LV Application fees**

- 18 (1) An application to the FWC under this Division must be  
19 accompanied by any fee prescribed by the regulations.  
20 (2) The regulations may prescribe:  
21 (a) a fee for making an application to the FWC under this  
22 Division; and  
23 (b) a method for indexing the fee; and  
24 (c) the circumstances in which all or part of the fee may be  
25 waived or refunded.

26 **536LW Initial matters to be considered before merits**

- 27 The FWC must decide the following matters relating to an  
28 application for an order under Division 4 before considering the  
29 merits of the application:  
30 (a) whether the application was made within the period required  
31 in subsection 536LU(3);  
32 (b) whether the person was protected from unfair deactivation or  
33 unfair termination, as the case requires;

- 1 (c) whether the deactivation or termination was consistent with  
2 the Digital Labour Platform Deactivation Code or the Road  
3 Transport Industry Termination Code, as the case requires.

4 **536LX Matters involving contested facts**

5 The FWC must conduct a conference or hold a hearing in relation  
6 to a matter arising under this Part if, and to the extent that, the  
7 matter involves facts the existence of which is in dispute.

8 **536LY Conferences**

- 9 (1) This section applies in relation to a matter arising under this Part if  
10 the FWC conducts a conference in relation to the matter.
- 11 (2) Despite subsection 592(3), the FWC must conduct the conference  
12 in private.
- 13 (3) The FWC must take into account any difference in the  
14 circumstances of the parties to the matter in:  
15 (a) considering the application; and  
16 (b) informing itself in relation to the application.
- 17 (4) The FWC must take into account the wishes of the parties to the  
18 matter as to the way in which the FWC:  
19 (a) considers the application; and  
20 (b) informs itself in relation to the application.

21 **536LZ Hearings**

- 22 (1) The FWC must not hold a hearing in relation to a matter arising  
23 under this Part unless the FWC considers it appropriate to do so,  
24 taking into account:  
25 (a) the views of the parties to the matter; and  
26 (b) whether a hearing would be the most effective and efficient  
27 way to resolve the matter.
- 28 (2) If the FWC holds a hearing in relation to a matter arising under this  
29 Part, it may decide not to hold the hearing in relation to parts of the  
30 matter.

- 1 (3) The FWC may decide at any time (including before, during or after  
2 conducting a conference in relation to a matter) to hold a hearing in  
3 relation to the matter.

4 **536M Dismissing applications**

- 5 (1) The FWC may, subject to subsection (2), dismiss an application for  
6 an order under Division 4 if the FWC is satisfied that the applicant  
7 has unreasonably:  
8 (a) failed to attend a conference conducted by the FWC, or a  
9 hearing held by the FWC, in relation to the application; or  
10 (b) failed to comply with a direction or order of the FWC  
11 relating to the application; or  
12 (c) failed to discontinue the application after a settlement  
13 agreement has been concluded.

14 Note 1: For another power of the FWC to dismiss applications for orders  
15 under Division 4, see section 587.

16 Note 2: The FWC may make an order for costs if the applicant's failure causes  
17 the other party to the matter to incur costs (see section 536MB).

- 18 (2) The FWC may exercise its power under subsection (1) on  
19 application by a regulated business.  
20 (3) This section does not limit when the FWC may dismiss an  
21 application.

22 **536MA Appeal rights**

- 23 (1) Despite subsection 604(2), the FWC must not grant permission to  
24 appeal from a decision made by the FWC under this Part unless the  
25 FWC considers that it is in the public interest to do so.  
26 (2) Despite subsection 604(1), an appeal from a decision made by the  
27 FWC in relation to a matter arising under this Part can only, to the  
28 extent that it is an appeal on a question of fact, be made on the  
29 ground that the decision involved a significant error of fact.

30 **536MB Costs orders against parties**

- 31 (1) The FWC may make an order for costs against a party to a matter  
32 arising under this Part (the *first party*) for costs incurred by the

1           other party to the matter if the FWC is satisfied that the first party  
2           caused those costs to be incurred because of an unreasonable act or  
3           omission of the first party in connection with the conduct or  
4           continuation of the matter.

5           (2) The FWC may make an order under subsection (1) only if the other  
6           party to the matter has applied for it in accordance with  
7           section 536MD.

8           (3) This section does not limit the FWC's power to order costs under  
9           section 611.

10       **536MC Costs orders against lawyers and paid agents**

11           (1) This section applies if:

12               (a) an application for an unfair deactivation or unfair termination  
13               remedy has been made under section 536LU; and

14               (b) a person who is a party to the matter has engaged a lawyer or  
15               paid agent (the *representative*) to represent the person in the  
16               matter; and

17               (c) under section 596, the person is required to seek the FWC's  
18               permission to be represented by the representative.

19           (2) The FWC may make an order for costs against the representative  
20           for costs incurred by the other party to the matter if the FWC is  
21           satisfied that the representative caused those costs to be incurred  
22           because:

23               (a) the representative encouraged the person to start, continue or  
24               respond to the matter and it should have been reasonably  
25               apparent that the person had no reasonable prospect of  
26               success in the matter; or

27               (b) of an unreasonable act or omission of the representative in  
28               connection with the conduct or continuation of the matter.

29           (3) The FWC may make an order under this section only if the other  
30           party to the matter has applied for it in accordance with  
31           section 536MD.

32           (4) This section does not limit the FWC's power to order costs under  
33           section 611.

**536MD Applications for costs orders**

An application for an order for costs under section 611 in relation to a matter arising under this Part, or for costs under section 536MB or 536MC, must be made within 14 days after:

- (a) the FWC determines the matter; or
- (b) the matter is discontinued.

**536ME Schedule of costs**

(1) A schedule of costs may be prescribed in relation to items of expenditure likely to be incurred in relation to matters that can be covered by an order:

(a) under section 611 in relation to a matter arising under this Part; or

(b) under section 536MB or 536MC;

including expenses arising from the representation of a party by a person or organisation other than on a legal professional basis.

(2) If a schedule of costs is prescribed for the purposes of subsection (1), then, in awarding costs under section 611 in relation to a matter arising under this Part, or awarding costs under section 536MB or 536MC, the FWC:

(a) is not limited to the items of expenditure appearing in the schedule; but

(b) if an item does appear in the schedule—must not award costs in relation to that item at a rate or of an amount that exceeds the rate or amount appearing in the schedule.

**536MF Security for costs**

The procedural rules may provide for the furnishing of security for the payment of costs in relation to matters arising under this Part.

**536MG Contravening orders under this Part**

A person to whom an order under this Part applies must not contravene a term of the order.

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

1 **Part 3A-4—Collective agreements for regulated**  
2 **workers**

3 **Division 1—Introduction**

4 **536MH Guide to this Part**

5 This Part is about collective agreements. A collective agreement is  
6 made between a regulated business, specifically a digital labour  
7 platform operator or a road transport business, and an organisation.

8 A collective agreement provides terms and conditions for the  
9 regulated workers to whom it applies.

10 Division 2 deals with the making of collective agreements and  
11 provides for the giving of consultation notices, and for the  
12 notification of regulated workers.

13 Division 3 deals with the registration of collective agreements by  
14 the FWC.

15 Division 4 deals with the variation of collective agreements.

16 Division 5 deals with the termination of collective agreements.

17 Division 6 deals with terms of a collective agreement that are of no  
18 effect.

19 **536MJ Object of this Part**

20 The object of this Part is to provide a simple, flexible and fair  
21 framework that enables collective agreements to be made by  
22 consent for:

- 23 (a) employee-like workers;  
24 (b) regulated road transport contractors.

**Division 2—Regulated workers and regulated businesses  
may make collective agreements**

**536MK Making a collective agreement**

- (1) This section provides for the making of an agreement (a *collective agreement*) between a regulated business and an organisation that is entitled to represent the industrial interests of one or more regulated workers.

*Collective agreement for employee-like workers*

- (2) A collective agreement may be made between a digital labour platform operator and an organisation that is entitled to represent the industrial interests of one or more employee-like workers, in respect of the following:
- (a) the terms and conditions on which employee-like workers covered by the collective agreement perform digital platform work:
    - (i) under a services contract to which the digital labour platform operator is a party; or
    - (ii) under a services contract arranged or facilitated through or by means of the digital labour platform operated by the digital labour platform operator;
  - (b) how the collective agreement will operate.

Note: For when a collective agreement *covers* a digital labour platform operator, an employee-like worker or an organisation, see section 536JM.

*Collective agreement for regulated road transport contractors*

- (3) A collective agreement may be made between a road transport business and an organisation that is entitled to represent the industrial interests of one or more regulated road transport contractors, in respect of the following:
- (a) the terms and conditions on which regulated road transport contractors covered by the collective agreement perform work under services contracts to which the road transport business is a party;
  - (b) how the collective agreement will operate.

Note: For when a collective agreement ***covers*** a road transport business, a regulated road transport contractor or an organisation, see section 536JM.

- (4) A collective agreement referred to in subsection (2) is an ***employee-like worker collective agreement***.
- (5) A collective agreement referred to in subsection (3) is a ***road transport collective agreement***.

**536ML Notice of consultation period for a proposed collective agreement**

- (1) The following entities may initiate a consultation period for a proposed collective agreement by giving a notice under this section (a ***consultation notice*** for the agreement):
- (a) a regulated business that will be covered by the proposed collective agreement;
  - (b) an organisation that is entitled to represent the industrial interests of one or more regulated workers who will be covered by the proposed collective agreement.

*General matters to be specified in a consultation notice*

- (2) A consultation notice for a proposed collective agreement must specify the following:
- (a) that the entity giving the notice (the ***notifying entity***) proposes to try to make a collective agreement under this Part;
  - (b) whichever of the following is applicable:
    - (i) if the notifying entity is a regulated business—the name of the organisation to which the consultation notice is given;
    - (ii) otherwise—the name of the organisation giving the consultation notice;
  - (c) the matters that are to be dealt with by the proposed collective agreement;
  - (d) the regulated business that will be covered by the proposed collective agreement;
  - (e) the class of regulated workers who will be covered by the proposed collective agreement.

**536MM Consultation notice to be given to FWC, etc.**

- (1) A consultation notice for a proposed collective agreement must be given on the same day:
  - (a) to the FWC; and
  - (b) to whichever of the following is applicable:
    - (i) if the notifying entity is a regulated business—to an organisation that is entitled to represent the industrial interests of the regulated workers who will be covered by the proposed collective agreement;
    - (ii) otherwise—to the regulated business that will be covered by the agreement.
- (2) The notifying entity for a consultation notice, and the entity to which the consultation notice is given, are the *negotiating entities* for the proposed collective agreement.
- (3) The FWC must publish a copy of the consultation notice on the FWC's website.

**536MN Notice to be given to regulated workers**

- (1) After a consultation notice has been given for a proposed collective agreement, either negotiating entity for the agreement must, with the consent of the other negotiating entity, make reasonable efforts to give a notice under this section to whichever of the following is applicable:
  - (a) for a proposed employee-like worker collective agreement—each eligible employee-like worker for the proposed collective agreement (see subsection (3));
  - (b) for a proposed road transport collective agreement—each eligible regulated road transport contractor for the proposed collective agreement (see subsection (4)).
- (2) A notice given under subsection (1) must specify the following:
  - (a) the regulated business that will be covered by the proposed collective agreement;
  - (b) the class of regulated workers that will be covered by the proposed collective agreement, and that the regulated worker to whom the notice is given is included in that class;

- 1 (c) the organisation that will sign the proposed collective  
2 agreement on behalf of the regulated workers;  
3 (d) the matters proposed to be dealt with in the proposed  
4 collective agreement.
- 5 (3) For the purposes of this section, an *eligible employee-like worker*  
6 for a proposed employee-like worker collective agreement is an  
7 employee-like worker who, at any time during the period of 28  
8 days before the consultation notice was given, was performing  
9 work under a services contract:
- 10 (a) through or by means of a digital labour platform operated by  
11 the digital labour platform operator that will be covered by  
12 the proposed collective agreement; or  
13 (b) arranged or facilitated through or by means of a digital labour  
14 platform operated by the digital labour platform operator that  
15 will be covered by the proposed collective agreement.
- 16 (4) For the purposes of this section, an *eligible regulated road*  
17 *transport contractor* for a proposed road transport collective  
18 agreement is a regulated road transport contractor who, at any time  
19 during the period of 28 days before the consultation notice was  
20 given, was performing work under a services contract to which a  
21 road transport business that will be covered by the proposed  
22 collective agreement is a party.

23 **536MP Application for the FWC to deal with a dispute**

- 24 (1) If the negotiating entities for a proposed collective agreement are  
25 unable to resolve a dispute about the making of the agreement,  
26 either negotiating entity may, with the consent of the other entity,  
27 apply to the FWC for the FWC to deal with the dispute.
- 28 (2) If an application is made under subsection (1), the FWC must deal  
29 with the dispute (other than by arbitration).

30 **536MQ Negotiating entity may request that other negotiating entity**  
31 **sign a proposed collective agreement**

- 32 (1) A negotiating entity for a proposed collective agreement may  
33 request the other negotiating entity for the agreement to sign the  
34 agreement.

(2) A request under subsection (1) must not be made earlier than 30 days after the last day on which a notice was given to an employee-like worker or a regulated road transport contractor, as the case requires, under subsection 536MN(1) in relation to the proposed collective agreement.

(3) The collective agreement is *made* when both of the negotiating parties for the agreement sign the agreement.

### Division 3—Registration of collective agreements by the FWC

#### 536MR Application to the FWC to register a collective agreement

(1) If a collective agreement is made, a negotiating entity for the agreement that signed the agreement may, with the consent of the other negotiating entity for the agreement, apply to the FWC to register the agreement.

##### *Material to accompany the application*

(2) The application must be accompanied by a signed copy of the collective agreement, which must identify the following:

- (a) the regulated business covered by the collective agreement;
- (b) the organisation covered by the collective agreement;
- (c) the class of regulated workers covered by the collective agreement.

(3) The application must be accompanied by a declaration signed by the regulated business and the organisation covered by the collective agreement, which must:

- (a) state that the regulated business and the organisation explained the terms of the agreement and their effect to the regulated workers covered by the agreement, and a description of the explanation; and
- (b) state that the regulated business or the organisation, as the case requires, made reasonable efforts to give a notice under paragraph 536MN(1)(a) or (b) to the regulated workers referred to in whichever of those paragraphs is applicable; and

- 1 (c) state that none of the following were subject to any form of  
2 duress in relation to the making of the collective agreement:  
3 (i) the regulated business covered by the collective  
4 agreement;  
5 (ii) the organisation covered by the collective agreement;  
6 (iii) a regulated worker to whom a notice was given under  
7 paragraph 536MN(1)(a) or (b); and  
8 (e) if a minimum standards order is in operation that covers the  
9 same class of regulated workers as the collective agreement  
10 covers—specify:  
11 (i) the minimum standards order; and  
12 (ii) in relation to each matter dealt with by a term of the  
13 collective agreement that is also dealt with by a term of  
14 the minimum standards order—how the term of the  
15 collective agreement is more beneficial to the regulated  
16 workers covered by the collective agreement in relation  
17 to that matter than the term of the order in relation to  
18 that matter.
- 19 (4) The application must be accompanied by any other declaration  
20 required by the procedural rules.

21 **536MS FWC must register collective agreement**

- 22 (1) If an application for the registration of a collective agreement is  
23 made under subsection 536MR(1), the FWC must register the  
24 agreement if the requirements of section 536MR and subsection (2)  
25 of this section are met in relation to the agreement.
- 26 (2) The FWC must be satisfied that the collective agreement includes a  
27 term that provides a procedure that requires or allows the FWC, or  
28 another person who is independent of the persons covered by the  
29 agreement, to settle disputes:  
30 (a) about any matters arising under the collective agreement; and  
31 (b) that allows for the representation of regulated workers  
32 covered by the collective agreement for the purposes of that  
33 procedure.
- 34 (3) The FWC must be satisfied that the collective agreement includes  
35 the following:

- 1 (a) a term that provides for its period of operation;
- 2 (b) a term that provides for requirements in relation to
- 3 terminating the collective agreement before the end of that
- 4 period.
- 5 (4) The FWC must publish a copy of the collective agreement and the
- 6 declaration referred to in subsection 536MR(3) on the FWC's
- 7 website.

## 8 **Division 4—Variation of collective agreements**

### 9 **536MT Application for variation of a collective agreement**

- 10 (1) The following may apply for a variation of a collective agreement
- 11 that is in operation:
- 12 (a) the regulated business covered by the collective agreement;
- 13 (b) the organisation covered by the collective agreement.
- 14 *Material to accompany the application*
- 15 (2) The application must be accompanied by a signed copy of the
- 16 collective agreement as proposed to be varied, which must identify
- 17 the following:
- 18 (a) the regulated business covered by the collective agreement;
- 19 (b) the organisation covered by the collective agreement;
- 20 (c) the class of regulated workers covered by the collective
- 21 agreement as proposed to be varied.
- 22 (3) The application must be accompanied by a declaration signed by
- 23 the regulated business and the organisation covered by the
- 24 collective agreement, which must:
- 25 (a) state that the regulated business and the organisation
- 26 explained the terms of the agreement and their effect to the
- 27 regulated workers covered by the agreement as proposed to
- 28 be varied, and a description of the explanation; and
- 29 (b) if a minimum standards order is in operation that covers the
- 30 same class of regulated workers as the collective agreement
- 31 as proposed to be varied—specify:
- 32 (i) the minimum standards order; and

- 1 (ii) in relation to each matter dealt with by a term of the  
2 collective agreement as proposed to be varied that is  
3 also dealt with by a term of the minimum standards  
4 order—how the term of the collective agreement as  
5 proposed to be varied is more beneficial to the regulated  
6 workers covered by the collective agreement as  
7 proposed to be varied, in relation to that matter, than the  
8 term of the order in relation to that matter; and  
9 (c) that no regulated worker, regulated business or organisation  
10 covered by the collective agreement as proposed to be varied  
11 was subject to any form of duress in relation to the variation.
- 12 (4) The application must be accompanied by any other declaration  
13 required by the procedural rules.

14 **536MU FWC must vary collective agreement**

- 15 (1) If an application for a variation of a collective agreement is made  
16 under subsection 536MT(1), the FWC must register the agreement  
17 as varied if the requirements of section 536MT are met in relation  
18 to the variation.
- 19 (2) The FWC must publish a copy of the collective agreement as  
20 varied and the declaration referred to in subsection 536MT(3) on  
21 the FWC's website.
- 22 (3) The variation comes into operation when the agreement as varied is  
23 registered.

24 **Division 5—Termination of collective agreements**

25 **536MV FWC must be notified of termination**

- 26 (1) This section applies if a collective agreement has been terminated  
27 in accordance with the process specified in the agreement for  
28 terminating the agreement before the end of its period of operation.
- 29 (2) The regulated business or the organisation covered by the  
30 collective agreement must, with the consent of the other, notify the  
31 FWC of the termination on the date the agreement is terminated.

*Declaration that must accompany application*

- (3) The notice under subsection (2) must be accompanied by a declaration signed by the regulated business and the organisation covered by the collective agreement:
- (a) stating that the collective agreement has been terminated in accordance with the process; and
  - (b) specifying the date of effect of the termination.
- (4) The notice must be accompanied by any other declaration required by the procedural rules.

**536MW FWC must register termination notice**

- (1) If a notice is given to the FWC under subsection 536MV(2) in relation to a collective agreement, the FWC must register the termination by publishing a notice on the FWC's website:
- (a) stating that the collective agreement has been terminated; and
  - (b) specifying the date of effect of the termination specified in the declaration under paragraph 536MV(3)(b).
- (2) The collective agreement ceases to operate on the date of effect of the termination specified in the declaration under paragraph 536MV(3)(b).

**Division 6—Other matters**

**536MX Terms of a collective agreement that are of no effect**

- (1) A term of a collective agreement has no effect to the extent that it is a term about a matter other than a matter mentioned in subsection 536MK(2) or (3).
- (2) A term of a collective agreement has no effect to the extent that it deals with matters that are primarily of a commercial nature that do not affect the terms and conditions of engagement of regulated workers covered by the agreement.
- (3) However, if a collective agreement includes a term that has no effect because of subsection (1) or (2), the inclusion of the term does not prevent the agreement from being a collective agreement.

**Part 3A-5—Unfair contract terms of services contracts**

**Division 1—Introduction**

**536MY Guide to this Part**

This Part is about unfair contract terms of services contracts.  
It provides a framework for dealing with unfair contract terms.

**536MZ Meaning of employee and employer**

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

**Division 2—Object of Part**

**536N Object of Part**

- (1) The object of this Part is:
- (a) to establish a framework for dealing with unfair contract terms of services contracts that:
    - (i) balances the needs of principals and the needs of independent contractors; and
    - (ii) addresses the need for a level playing field between independent contractors and principals by creating disincentives to the inclusion of unfair contract terms in services contracts; and
    - (iii) recognises and protects the freedom of independent contractors to enter into services contracts; and
  - (b) to establish procedures for dealing with unfair contract terms that:
    - (i) are quick, flexible and informal; and
    - (ii) address the needs of principals and independent contractors; and
  - (c) to provide appropriate remedies if a term of a services contract is found to be unfair.

- 1 (2) The procedures and remedies referred to in paragraphs (1)(b) and  
2 (c), and the manner of deciding on and working out such remedies,  
3 are intended to ensure that a “fair go all round” is accorded to both  
4 the principals and independent contractors concerned.

5 Note: The expression “fair go all round” was used by Sheldon J in *re Loty*  
6 *and Holloway v Australian Workers’ Union* [1971] AR (NSW) 95.

7 **Division 3—Orders in relation to unfair contract terms of**  
8 **services contracts**

9 **536NA When the FWC may make an order in relation to an unfair**  
10 **contract term of a services contract**

- 11 (1) The FWC may make an order under this Part in relation to a  
12 services contract if the FWC is satisfied that the services contract  
13 includes one or more unfair contract terms which, in an  
14 employment relationship, would relate to workplace relations  
15 matters.
- 16 (2) The FWC may make the order only if a person has made an  
17 application under section 536ND in relation to the services  
18 contract.
- 19 (3) The FWC must take into account fairness between the parties  
20 concerned in deciding whether to make an order under this  
21 Division, and the kind of order to make.

22 **536NB Matters to be considered in deciding whether a term of a**  
23 **services contract is an unfair contract term**

- 24 (1) In determining whether a term of a services contract is an unfair  
25 contract term, the FWC may take into account the following  
26 matters:
- 27 (a) the relative bargaining power of the parties to the services  
28 contract;
- 29 (b) whether the services contract as a whole displays a  
30 significant imbalance between the rights and obligations of  
31 the parties;

- 1 (c) whether the contract term under consideration is reasonably  
2 necessary to protect the legitimate interests of a party to the  
3 contract;  
4 (d) whether the contract term under consideration imposes a  
5 harsh, unjust or unreasonable requirement on a party to the  
6 contract;  
7 (e) whether the services contract as a whole provides for a total  
8 remuneration for performing work that is:  
9 (i) less than regulated workers performing the same or  
10 similar work would receive under a minimum standards  
11 order or minimum standards guidelines; or  
12 (ii) less than employees performing the same or similar  
13 work would receive;  
14 (f) any other matter the FWC considers relevant.  
15 (2) The matters in paragraphs (1)(b) to (f) are to be assessed as at the  
16 time the FWC considers the application.

17 **536NC Remedy—order to set aside etc. contract**

- 18 The FWC may make an order under this section:  
19 (a) setting aside all or part of a services contract which, in an  
20 employment relationship, would relate to a workplace  
21 relations matter; or  
22 (b) amending or varying all or part of a services contract which,  
23 in an employment relationship, would relate to a workplace  
24 relations matter.

25 **Division 4—Procedural matters**

26 **536ND Application for unfair contract term remedy**

- 27 (1) A person who is party to a services contract, or an organisation that  
28 represents the industrial interests of a person who is party to a  
29 services contract, may apply to the FWC for an order under  
30 Division 3 granting a remedy on the basis that the services contract  
31 contains a term that is unfair.  
32 (2) An application must not be made in relation to a services contract  
33 unless, in the year the application is made, the sum of the person's

1                   annual rate of earnings, and such other amounts (if any) worked  
2                   out in relation to the person in accordance with the regulations, is  
3                   less than the contractor high income threshold.

4                   Note:       Division 3 sets out when the FWC may order a remedy for an unfair  
5                   contract term.

6                   **536NE Application fees**

7                   (1) An application to the FWC under this Division must be  
8                   accompanied by any fee prescribed by the regulations.

9                   (2) The regulations may prescribe:

- 10                   (a) a fee for making an application to the FWC under this  
11                   Division; and  
12                   (b) a method for indexing the fee; and  
13                   (c) the circumstances in which all or part of the fee may be  
14                   waived or refunded.

15                   **536NF Conferences**

16                   (1) This section applies in relation to a matter arising under this Part if  
17                   the FWC conducts a conference in relation to the matter.

18                   (2) Despite subsection 592(3), the FWC must conduct the conference  
19                   in private.

20                   (3) The FWC must take into account any difference in the  
21                   circumstances of the parties to the matter in:

- 22                   (a) considering the application; and  
23                   (b) informing itself in relation to the application.

24                   (4) The FWC must take into account the wishes of the parties to the  
25                   matter as to the way in which the FWC:

- 26                   (a) considers the application; and  
27                   (b) informs itself in relation to the application.

28                   **536NG Hearings**

29                   (1) The FWC must not hold a hearing in relation to a matter arising  
30                   under this Part unless the FWC considers it appropriate to do so,  
31                   taking into account:

- 1 (a) the views of the parties to the matter; and  
2 (b) whether a hearing would be the most effective and efficient  
3 way to resolve the matter.
- 4 (2) If the FWC holds a hearing in relation to a matter arising under this  
5 Part, it may decide not to hold the hearing in relation to parts of the  
6 matter.
- 7 (3) The FWC may decide at any time (including before, during or after  
8 conducting a conference in relation to a matter) to hold a hearing in  
9 relation to the matter.

10 **536NH Dismissing applications**

- 11 (1) The FWC may, subject to subsection (2), dismiss an application for  
12 an order under Division 3 if the FWC is satisfied that the applicant  
13 has unreasonably:
- 14 (a) failed to attend a conference conducted by the FWC, or a  
15 hearing held by the FWC, in relation to the application; or  
16 (b) failed to comply with a direction or order of the FWC  
17 relating to the application; or  
18 (c) failed to discontinue the application after a settlement  
19 agreement has been concluded.
- 20 Note: For another power of the FWC to dismiss applications for orders  
21 under Division 3, see section 587.
- 22 (2) The FWC may exercise its power under subsection (1) on  
23 application by a party to the matter or an organisation entitled to  
24 represent the industrial interests of a party to the matter.
- 25 (3) This section does not limit when the FWC may dismiss an  
26 application.

27 **536NJ Appeal rights**

- 28 (1) Despite subsection 604(2), the FWC must not grant permission to  
29 appeal from a decision made by the FWC under this Part unless the  
30 FWC considers that it is in the public interest to do so.
- 31 (2) Despite subsection 604(1), an appeal from a decision made by the  
32 FWC in relation to a matter arising under this Part can only, to the

1 extent that it is an appeal on a question of fact, be made on the  
2 ground that the decision involved a significant error of fact.

3 **536NK Contravening orders under this Part**

4 A person must not contravene an order under this Part.

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

6 **Division 4—Consequential amendments**

7 ***Fair Work Act 2009***

8 **250 After paragraph 3(c)**

9 Insert:

- 10 (ca) ensuring a safety net of fair and relevant minimum terms and  
11 conditions for regulated workers through enforceable  
12 minimum standards orders and related measures; and  
13 (cb) providing appropriate remedies in relation to unfair terms of  
14 services contracts; and

15 **251 After paragraph 4(1)(b)**

16 Insert:

- 17 (ba) provides for minimum terms and conditions for regulated  
18 workers (Chapter 3A); and  
19 (bb) sets out measures to deal with unfair terms of services  
20 contracts (Chapter 3A); and

21 **252 At the end of subsection 4(2)**

22 Add:

- 23 ; (c) certain matters relating to the road transport industry  
24 (Part 1-4).

25 **253 After section 6**

26 Insert:

**6A Rights and responsibilities of regulated workers, regulated businesses, organisations etc. (Chapter 3A)**

- (1) Chapter 3A sets out rights and responsibilities of certain regulated workers who perform work under services contracts, and of certain regulated businesses, organisations and others.
- (2) Part 3A-1 has the core provisions for the Chapter. It deals with compliance with the instruments made under the Chapter (minimum standards orders, minimum standards guidelines and collective agreements) and interaction issues.
- (3) Part 3A-2 is about minimum standards orders and minimum standards guidelines, which can be made for certain regulated workers.
- (4) Part 3A-3 deals with unfair termination and unfair deactivation of certain regulated workers, and the granting of remedies when that happens.
- (5) Part 3A-4 is about collective agreements. A collective agreement is made between a regulated business and an organisation. It provides terms and conditions for those regulated workers to whom it applies.
- (6) Part 3A-5 is about unfair contract terms of services contracts. It provides for certain remedies if a services contract includes an unfair term.

**254 Section 12 (after paragraph (b) of the definition of *applies*)**

Insert:

- (ba) in relation to a minimum standards order: see section 536JD; and
- (bb) in relation to a collective agreement: see section 536JL; and

**255 Section 12**

Insert:

*collective agreement*: see section 15B.

1                    *consistent with the Digital Labour Platform Deactivation Code:*  
2                    see subsection 536LJ(3).

3                    *consistent with the Road Transport Industry Termination Code:*  
4                    see subsection 536LN(3).

5                    *consultation notice* for a collective agreement: see  
6                    subsection 536ML(1).

7                    *contractor high income threshold*: see section 15C.

8                    **256 Section 12 (after paragraph (c) of the definition of covers)**

9                    Insert:

10                    (ca) in relation to a minimum standards order: see section 536JE;  
11                    and

12                    (cb) in relation to minimum standards guidelines: see  
13                    section 536JG; and

14                    (cc) in relation to a collective agreement: see section 536JM; and

15                    **256A Section 12**

16                    Insert:

17                    *deactivated*: see section 536LG.

18                    *digital labour platform*: see section 15L.

19                    *Digital Labour Platform Deactivation Code* means the code made  
20                    under subsection 536LJ(1).

21                    *digital labour platform operator*: see section 15M.

22                    *digital platform work*: see section 15N.

23                    *employee-like worker*: see section 15P.

24                    *employee-like worker collective agreement*: see  
25                    subsection 536MK(4).

26                    *employee-like worker guidelines*: see subsection 536KR(2).

27                    *employee-like worker minimum standards order*: see  
28                    subsection 536JY(2).

1     **257 Section 12 (paragraph (d) of the definition of *fair work***  
2     ***instrument*)**

3     After “order”, insert “, including a minimum standards order but not  
4     including minimum standards guidelines, even if the guidelines are  
5     made by order”.

6     **258 Section 12**

7     Insert:

8     *minimum standards guidelines*: see section 15D.

9     *minimum standards objective*: see section 536JX.

10    *minimum standards order*: see section 15E.

11    *protected from unfair deactivation*: see section 536LD.

12    *protected from unfair termination*: see section 536LE.

13    *regulated business*: see section 15F.

14    *regulated road transport contractor*: see section 15Q.

15    *regulated worker*: see section 15G.

16    *Road Transport Advisory Group*: see section 40E.

17    *road transport business*: see section 15R.

18    *road transport collective agreement*: see subsection 536MK(5).

19    *road transport guidelines*: see subsection 536KR(3).

20    *road transport industry*: see section 15S.

21    *road transport industry contractual chain participant*: see  
22    section 40H.

23    *Road Transport Industry Termination Code* means the code made  
24    under subsection 536LN(1).

25    *road transport minimum standards order*: see  
26    subsection 536JY(3).

27    *services contract*: see section 15H.

1                    *terminated*: see section 536LL.

2                    *unfairly deactivated*: see section 536LF.

3                    *unfairly terminated*: see section 536LK.

4                    *unfairness ground*: see section 536JR.

5                    **259 Section 12 (paragraph (b) of the definition of *workplace***  
6                    ***instrument*)**

7                    Repeal the paragraph, substitute:

8                    (b) concerns the relationships between:

9                    (i) employers and employees; or

10                    (ii) digital labour platform operators and employee-like  
11                    workers; or

12                    (iii) road transport businesses and regulated road transport  
13                    contractors.

14                    **260 After section 19**

15                    Insert:

16                    **19A Meaning of *industrial action*: regulated workers**

17                    (1) This section applies to a regulated worker and to a regulated  
18                    business if:

19                    (a) the regulated worker is covered by a minimum standards  
20                    order, or is mentioned in an application for a minimum  
21                    standards order as a regulated worker who would be covered  
22                    by the order if it is made; and

23                    (b) the regulated business is covered by the same minimum  
24                    standards order, or is mentioned in an application for the  
25                    same minimum standards order as a regulated business that  
26                    would be covered by the order if it is made; and

27                    (c) if the regulated business is a digital labour platform  
28                    operator—the regulated worker is an employee-like worker:

29                    (i) from whom the digital labour platform operator receives  
30                    services under a services contract; or

31                    (ii) who performs services under a services contract that  
32                    was arranged or facilitated through or by means of the

- 1 digital labour platform operated by the digital labour  
2 platform operator; and
- 3 (d) if the regulated business is a road transport business—the  
4 regulated road transport contractor performs work under the  
5 services contract for the regulated business.
- 6 (2) **Industrial action**, in relation to the regulated worker and the  
7 regulated business, means action of any of the following kinds:
- 8 (a) the performance of work under the services contract by the  
9 regulated worker in a manner different from that in which it  
10 is customarily performed, or the adoption of a practice in  
11 relation to work by the regulated worker, the result of which  
12 is a restriction or limitation on, or a delay in, the performance  
13 of the work;
- 14 (b) a ban, limitation or restriction on the performance of work  
15 under the services contract by the regulated worker or on the  
16 acceptance of or offering for work by the regulated worker;
- 17 (c) a failure or refusal by the regulated worker to attend for work  
18 under the services contract or, if the regulated worker attends  
19 for work, a refusal to perform any work at all;
- 20 (d) the lockout of the regulated worker by the regulated business.
- 21 (3) The action referred to in paragraph (2)(a), (b) or (c) must be  
22 directed against the regulated business (whether or not the  
23 regulated business is a party to the services contract).
- 24 (4) However, industrial action does not include the following:
- 25 (a) action by a regulated worker that is authorised or agreed to  
26 by the regulated business that is covered by the same  
27 minimum standards order as the regulated worker;
- 28 (b) action by a regulated business referred to in paragraph (2)(d)  
29 that is authorised or agreed to by, or on behalf of, regulated  
30 workers covered by the same minimum standards order as  
31 the regulated business;
- 32 (c) action by the regulated worker, if:
- 33 (i) the action was based on a reasonable concern of the  
34 regulated worker about an imminent risk to the health or  
35 safety of the regulated worker; and
- 36 (ii) the regulated worker did not unreasonably fail to  
37 comply with a direction of the regulated business to

1 perform other available work, whether at the same or  
2 another workplace, that was safe and appropriate for the  
3 regulated worker to perform.

4 (5) A regulated business ***locks out*** a regulated worker if either or both  
5 of the following apply:

6 (a) the regulated business prevents the regulated worker from  
7 performing work under a services contract without  
8 terminating the contract;

9 (b) if the regulated business is a digital labour platform operator  
10 and the regulated worker is an employee-like worker—the  
11 digital labour platform operator modifies, limits or suspends  
12 the employee-like worker’s access to a digital labour  
13 platform operated by the digital labour platform operator.

14 **261 Subsection 134(2) (note)**

15 Omit “Note”, substitute “Note 1”.

16 **262 At the end of subsection 134(2)**

17 Add:

18 Note 2: Further, the FWC must take into account the road transport objective  
19 when performing certain functions: see section 40D and  
20 subsection 617(10B).

21 **263 After section 338**

22 Insert:

23 **338A Meaning of *independent contractor***

24 A reference in this Part to an independent contractor includes a  
25 reference to a regulated worker.

26 Note: A regulated worker must be an individual: see section 15G and related  
27 definitions.

28 **264 Subsection 342(1) (after table item 3)**

29 Insert:

30

- 3A a digital labour platform operator that has entered into a contract with an employee-like worker for use of, or access to, a digital labour platform against the employee-like worker
- the digital labour platform operator:
- (a) terminates the contract; or
  - (b) injures the employee-like worker in relation to the terms and conditions of the contract; or
  - (c) alters the position of the employee-like worker to the employee-like worker's prejudice; or
  - (d) refuses to make use of, or agree to make use of, services offered by the employee-like worker; or
  - (e) refuses to provide to the employee-like worker use of or access to the digital labour platform.

1 **265 Subsection 342(1) (after table item 4)**

2 Insert:

- 3
- 4A a digital labour platform operator that proposes to enter into a contract with an employee-like worker for use of, or access to, a digital labour platform against the employee-like worker
- the digital labour platform operator:
- (a) refuses to agree to provide to the employee-like worker use of, or access to, the digital labour platform; or
  - (b) discriminates against the employee-like worker in relation to the terms and conditions on which the digital labour platform operator agrees to provide to the employee-like worker use of, or access to, the digital labour platform; or
  - (c) refuses to make use of, or agree to make use of, services offered by the employee-like worker.

4 **266 Subsection 342(1) (after table item 6)**

5 Insert:

6

- |    |                                                                                                                                                                                       |                                                                                                |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| 6A | an employee-like worker against a digital labour platform operator that has entered into a contract with the employee-like worker for use of, or access to, a digital labour platform | the employee-like worker takes industrial action against the digital labour platform operator. |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|

**267 Subsection 342(1) (at the end of the table)**

Add:

- |   |                                                                                                                  |                                                                                                                                                                                                                                                                      |
|---|------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8 | an industrial association, or an officer or member of an industrial association, against an employee-like worker | the industrial association, or the officer or member of the industrial association, takes action that has the effect, directly or indirectly, of prejudicing the employee-like worker in relation to a contract for use of, or access to, a digital labour platform. |
|---|------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**268 After subsection 350(2)**

Insert:

- (2A) A regulated business must not induce a regulated contractor to take, or propose to take, membership action.

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

**269 At the end of section 354**

Add:

- (3) A person must not discriminate against a regulated business because:
- (a) regulated workers in relation to the regulated business are covered, or not covered, by a particular type of workplace instrument (including a particular kind of workplace instrument within a type of workplace instrument); or
  - (b) it is proposed that regulated workers in relation to the regulated business are covered, or not covered, by a particular type of workplace instrument (including a particular kind of workplace instrument within a type of workplace instrument).

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

1     **270 Subsection 539(2) (table item 11, column 1)**

2             After “350(2)”, insert “350(2A)”.

3     **271 Subsection 539(2) (table item 11, column 1)**

4             After “354(1)”, insert “354(3)”.

5     **272 Subsection 539(2) (after table item 29AA)**

6             Insert:

7

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

29A	536JB	(a) a regulated worker covered by the relevant minimum standards order;	(a) the Federal Court;	for a serious contravention
B		(b) a regulated business covered by the relevant minimum standards order;	(b) the Federal Circuit and Family Court of Australia (Division 2);	—600 penalty units; or
		(c) an organisation;	(c) an eligible State or Territory court	otherwise—60 penalty units
		(d) an inspector		

**Part 3A-3—Unfair deactivation and unfair termination**

29A	536MG	(a) a party to the relevant services contract;	(a) the Federal Court;	60 penalty units
C		(b) a digital labour platform operator that arranged or facilitated entry into the relevant services contract;	(b) the Federal Circuit and Family Court of Australia (Division 2);	
		(c) an organisation;	(c) an eligible State or Territory court	
		(d) an inspector		

**Part 3A-4—Collective agreements**

29A	536JJ	(a) a regulated worker covered by the collective agreement;	(a) the Federal Court;	for a serious contravention
D			(b) the Federal Circuit and	—600 penalty units; or

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		(b) a regulated business covered by the collective agreement; (c) an organisation	Family Court of Australia (Division 2); (c) an eligible State or Territory court	otherwise—60 penalty units
<b>Part 3A-5—Unfair contract terms of services contracts</b>				
29A E	536NK	(a) a party to the relevant services contract; (b) an organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	60 penalty units

**273 After subsection 540(7)**

Insert:

*Regulated workers and regulated businesses*

(7A) The following persons may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the person is affected by the contravention, or will be affected by the proposed contravention:

- (a) a regulated worker;
- (b) a regulated business.

*Parties to services contracts*

(7B) A person who is a party to a services contract to which an order under Division 4 of Part 3A-5 relates may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the person is affected by the contravention, or will be affected by the proposed contravention.

**274 After paragraph 557(2)(oa)**

Insert:

- 1 (ob) section 536JB (which deals with contraventions of minimum  
2 standards orders);  
3 (oc) section 536JJ (which deals with contraventions of collective  
4 agreements);  
5 (od) section 536NK (which deals with contraventions of orders  
6 under Division 4 of Part 3A-5);

7 **275 After paragraph 576(1)(m)**

8 Insert:

- 9 (ma) minimum standards for regulated workers (Part 3A-2);  
10 (mb) unfair deactivation or unfair termination of regulated workers  
11 (Part 3A-3);  
12 (mc) collective agreements for regulated workers (Part 3A-4);  
13 (md) unfair contract terms of services contracts (Part 3A-5);

14 **276 After paragraph 581(b)**

15 Insert:

- 16 ; and (c) adequately serves the needs of persons covered by  
17 Chapter 3A.

18 **277 After paragraph 582(4)(ab)**

19 Insert:

- 20 (ac) a direction about the exercise of powers under Part 3A-2  
21 (which deals with minimum standards for regulated  
22 workers);

23 **278 Paragraph 582(4)(c)**

24 Omit “or one or more Full Benches”, insert “, one or more Full Benches  
25 or one or more Expert Panels”.

26 **279 Before subsection 582(5)**

27 Insert:

- 28 (4D) In addition to giving a direction of a general nature under  
29 subsection (2), the President must give a direction as to how the  
30 FWC is to prioritise its work under Part 3A-2 including, but not  
31 limited to, prioritising specified cohorts of workers.

1 (4E) The FWC must publish a direction under subsection (4D) on the  
2 FWC's website, or by any other means that the FWC considers  
3 appropriate, as soon as reasonably practicable after the President  
4 gives the direction.

5 **280 Subsection 587(2)**

6 After "365", insert ", 536LU".

7 **281 Subsection 602(1)**

8 Omit "or national minimum wage order", substitute ", national  
9 minimum wage order, minimum standards order or minimum standards  
10 guidelines".

11 **282 At the end of subsection 602(1)**

12 Add:

13 Note 3: The FWC corrects minimum standards orders and minimum standards  
14 guidelines under subsections 536KQ(3) and 536KZ(3).

15 **283 After paragraph 603(3)(g)**

16 Insert:

17 (ga) a decision under Part 3A-2 (which deals with minimum  
18 standards orders);

19 (gb) a decision under Part 3A-4 (which deals with collective  
20 agreements);

21 **284 Subsection 604(2) (note)**

22 After "section 400)", insert "or for an unfair deactivation or an unfair  
23 termination (see section 536MA)".

24 **285 Subsection 616(1)**

25 Omit "subsection 617(8)", substitute "subsections 617(8) and (10B)".

26 **286 Subsection 616(3B)**

27 Omit "subsection 617(8)", substitute "subsections 617(8) and (10B)".

28 **287 Subsections 616(3C) and (3D)**

29 After "(9)" (wherever occurring), insert ", (10B)".

**288 After subsection 616(4)**

Insert:

*Minimum standards orders*

(4A) Subject to subsections 582(4A) and 617(10D), the following must be made under Chapter 3A by a Full Bench:

- (a) an employee-like worker minimum standards order;
- (b) a determination under subsection 536KQ(1) varying or revoking an employee-like worker minimum standards order;
- (c) employee-like worker minimum standards guidelines;
- (d) a determination under subsection 536KZ(1) varying or revoking employee-like worker minimum standards guidelines.

Note 1: A determination under subsection 536KQ(3) or 536KZ(3) (which deal with minor technical variations) does not need to be made by a Full Bench.

Note 2: Subsection 617(10D) provides for the President to direct that certain matters relating to the road transport industry be dealt with by an Expert Panel for the road transport industry.

**289 Paragraph 622(2)(aa)**

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

**290 Subparagraph 622(2)(aa)(ii)**

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

**291 Subsection 622(4)**

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

**292 Subsection 622(4)**

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

**293 At the end of subsection 627(4)**

Add:

; (k) the road transport industry.

**294 After paragraph 675(2)(k)**

Insert:

- ; (l) a minimum standards order;
- (m) an order made under regulations under section 40J (which deals with the road transport industry contractual chain).

**295 Paragraph 682(1)(a)**

After “employers,”, insert “regulated workers, regulated businesses,”.

**296 Paragraph 682(1)(f)**

After “employees” (wherever occurring), insert “, regulated workers,”.

**297 At the end of section 682**

Add:

- (3) The Fair Work Ombudsman has the function of providing education, assistance and advice to regulated workers, regulated businesses and organisations, and producing best practice guides, in relation to minimum standards guidelines.

**298 After subparagraph 712AA(1)(a)(vii)**

Insert:

- (viiia) the underpayment of monetary entitlements under a minimum standards order; or
- (viiib) the unfair deactivation of an employee-like worker or the unfair termination of a regulated road transport contractor; or

**299 After paragraph 716(1)(fa)**

Insert:

- (fb) a term of a minimum standards order;

**299A At the end of Part 6-1**

Add:

**Subdivision E—Services contract actions**

**734C Limitation on applications for review of services contracts—  
other proceedings in progress**

- (1) An application to review a services contract under Division 4 of Part 3A-5 (unfair contract terms) must not be made if other review proceedings have been commenced in relation to the services contract, unless the other review proceedings:
- (a) have been discontinued by the person who commenced them; or
  - (b) have failed for want of jurisdiction.
- (2) A person must not commence other review proceedings in relation to a services contract if an application to review the contract has been made under Division 4 of Part 3A-5, unless:
- (a) the application has been discontinued by the person who made it; or
  - (b) the proceedings in relation to the application have failed for want of jurisdiction.
- (3) In this section:

*other review proceedings* means:

- (a) proceedings under a provision of a law of a State or Territory that makes provision as mentioned in paragraph 536JP(1)(c) and is not affected by the exclusion provisions; or;
- (b) proceedings in relation to a services contract under a provision of a law of the Commonwealth, or of a State or Territory, that is specified in regulations made for the purposes of this paragraph.

**300 Section 735**

After “their employers”, insert “and regulated workers and regulated businesses”.

**301 Section 735**

After “agreement”, insert “, instrument made under Chapter 3A”.

**302 After paragraph 738(b)**

Insert:

- (ba) a minimum standards order includes a term that provides a procedure for dealing with disputes; or
- (bb) a collective agreement includes a term that provides a procedure for dealing with disputes; or

**303 At the end of section 738**

Add:

- ; (e) an order made under regulations under section 40J (which deals with the road transport industry contractual chain) includes a term that provides a procedure for dealing with disputes.

**304 Section 796A**

After “functions”, insert “or powers”.

**305 At the end of section 798**

Add:

- (3) Subsection (2) does not apply to civil penalties for a contravention of regulations under section 40J, or an order made under regulations under section 40J.

**Division 5—Amendment of the Independent Contractors Act 2006**

***Independent Contractors Act 2006***

**306 After subsection 12(2)**

Insert:

- (2A) An application must not be made in relation to a services contract unless, in the year the application is made, the sum of the independent contractor’s annual rate of earnings, and such other amounts (if any) worked out in relation to the person in accordance with the regulations made for the purposes of subsection 536ND(2) of the *Fair Work Act 2009*, is more than the contractor high income threshold within the meaning of the *Fair Work Act 2009*.

1                   Note:       Division 3 of Part 3A-5 of the *Fair Work Act 2009* sets out when the  
2                               FWC may order a remedy for an unfair contract term.

1     **Part 17—Technical amendment**

2     ***Fair Work Act 2009***

3     **307 Clause 27 of Schedule 1**

4         Repeal the clause.

1 **Part 18—Application and transitional provisions**

2 ***Fair Work Act 2009***

3 **308 At the end of Schedule 1**

4 Add:

5 **Part 15—Main amendments made by the Fair**  
6 **Work Legislation Amendment (Closing**  
7 **Loopholes) Act 2023**

8 **Division 1—Definitions**

9 **91 Definitions**

10 In this Part:

11 ***amended Act*** means this Act as amended by the *Fair Work*  
12 *Legislation Amendment (Closing Loopholes) Act 2023*.

13 ***amending Act*** means the *Fair Work Legislation Amendment*  
14 *(Closing Loopholes) Act 2023*.

15 **Division 2—Amendments made by Part 1 of Schedule 1 to**  
16 **the amending Act**

17 **92 Resolving uncertainties and difficulties about interaction between**  
18 **fair work instruments and the definition of casual**  
19 **employee and employee choice**

20 (1) The FWC may make a determination varying a fair work  
21 instrument that is a modern award, enterprise agreement or  
22 workplace determination that was made before the commencement  
23 of this clause:

24 (a) for an enterprise agreement or workplace determination—on  
25 application by an employer, employee or employee

- 1 organisation covered by the enterprise agreement or  
2 workplace determination; or  
3 (b) for a modern award:  
4 (i) by the FWC on its own initiative; or  
5 (ii) on application by an employer organisation or employee  
6 organisation entitled to represent the industrial interests  
7 of an employer or employee covered by the award.
- 8 (2) The FWC may make a determination varying the instrument:  
9 (a) to resolve an uncertainty or difficulty relating to the  
10 interaction between the instrument and any of the following:  
11 (i) the definition of casual employee in section 15A of the  
12 amended Act (including to deal with uncertainty or  
13 difficulty arising from the circumstances in which  
14 employees are to be employed as casual employees  
15 under the agreement);  
16 (ii) the provisions of Division 4A of Part 2-2 of the  
17 amended Act; or  
18 (b) to make the instrument operate effectively with that section  
19 or those provisions.
- 20 (3) A variation of a fair work instrument under this clause operates  
21 from the day specified in the determination, which may be a day  
22 before the determination is made.
- 23 (4) If the determination relates to a modern award, the FWC must  
24 publish the award as varied as soon as practicable on the FWC's  
25 website or by any other means the FWC considers appropriate.

### **93 Application of amendments**

#### *Application of definition of casual employee*

- 28 (1) Section 15A of the amended Act applies on and after  
29 commencement in relation to employment relationships entered  
30 into before, on or after commencement.
- 31 (2) Despite subclause (1), for the purposes of applying section 15A of  
32 the amended Act on and after commencement in relation to  
33 employment relationships entered into before commencement:

- 1 (a) conduct of an employer and employee that occurred before  
2 commencement is to be disregarded for the purposes of  
3 applying subsections 15A(2) and (3) in relation to that  
4 employee; and  
5 (b) if an employee's contract of employment immediately before  
6 commencement included a term of a kind referred to in  
7 subsection 15A(4)—that subsection is taken not to apply in  
8 relation to the employee for the remainder of the term of that  
9 contract.

10 *Continuing casual employees*

- 11 (3) For the purposes of subclause (1), an employee who was,  
12 immediately before commencement, a casual employee of an  
13 employer within the meaning of section 15A as in force at that  
14 time, is taken to be a casual employee of the employer within the  
15 meaning of section 15A of the amended Act on and after  
16 commencement.  
17 (4) An employer of an employee referred to in subclause (3) must,  
18 despite subsection 125B(2), give the employee a Casual  
19 Employment Information Statement within 3 months after  
20 commencement.

21 *Application of employee choice and casual conversion provisions*

- 22 (5) The amendments of Division 4A of Part 2-2 made by the amending  
23 Act apply on and after commencement in relation to employment  
24 relationships entered into before, on or after commencement  
25 (6) For the purposes of applying subclause (5) in relation to  
26 employment relationships entered into before commencement, any  
27 period of employment as a casual employee that occurred before  
28 commencement is to be disregarded for the purposes of paragraphs  
29 66AAB(c) and (d) of the amended Act.  
30 (7) Despite subclause (5), sections 66M and 739 as in force  
31 immediately before commencement continue to apply to disputes  
32 relating to the operation of Division 4A of Part 2-2 that arose  
33 before that commencement.

1 *Definitions*

2 (8) In this clause:

3 *commencement* means the commencement of Part 1 of Schedule 1  
4 to the amending Act.

5 **94 Transitional provision**

6 For the purposes of applying section 66L of this Act during the  
7 period beginning when this clause commences and ending when  
8 Part 1 of Schedule 1 to the amending Act commences, the  
9 reference to “this Division” in that provision is taken to include a  
10 reference to that Division as amended by that Part.

11 **Division 3—Amendments made by Part 2 of Schedule 1 to**  
12 **the amending Act**

13 **95 Application—section 121**

14 Despite the amendment made by item 28 of Part 2 of Schedule 1 to  
15 the amending Act, section 121, as in force immediately before the  
16 commencement of that item, continues to apply in relation to the  
17 termination of an employee’s employment if any of the following  
18 occurred before that commencement:

- 19 (a) the termination of the employee;  
20 (b) any other termination covered by that section as amended  
21 that caused the employer to become a small business  
22 employer.

23 **Division 4—Amendments made by Part 4 of Schedule 1 to**  
24 **the amending Act**

25 **96 Replacement agreements**

- 26 (1) Subsections 58(4) and (5), as inserted by the amending Act, apply  
27 in relation to single-enterprise agreements made after the  
28 commencement of Part 4 of Schedule 1 to that Act, whether the  
29 single interest employer agreement or supported bargaining  
30 agreement was made before or after that commencement.

- 1                   (2) Section 180B and subsection 240A(4), as inserted by the amending  
2                   Act, apply in relation to single interest employer agreements and  
3                   supported bargaining agreements whether made before or after the  
4                   commencement of Part 4 of Schedule 1 to that Act.
- 5                   (3) Subsections 236(1B) and 238(2), as inserted by the amending Act,  
6                   apply in relation to applications made after the commencement of  
7                   Part 4 of Schedule 1 to that Act, whether the single interest  
8                   employer agreement or supported bargaining agreement was made  
9                   before or after that commencement.

10           **97 Variation of supported bargaining authorisations**

11                   Subsection 245(2), as inserted by the amending Act, applies in  
12                   relation to enterprise agreements and workplace determinations  
13                   that come into operation before or after the commencement of  
14                   Part 4 of Schedule 1 to that Act.

15           **98 Application of better off overall test to replacement agreements**

16                   Sections 193 and 193A, as amended by the amending Act, apply in  
17                   relation to single-enterprise agreements made on or after the  
18                   commencement of Part 4 of Schedule 1 to that Act, whether the  
19                   supported bargaining agreement or single interest employer  
20                   agreement was made before or after that commencement.

21           **Division 5—Amendments made by Part 5 of Schedule 1 to**  
22           **the amending Act**

23           **99 Model terms and enterprise agreements**

- 24                   (1) Despite the amendments made by Part 5 of Schedule 1 to the  
25                   amending Act, sections 202, 205 and 737, as in force immediately  
26                   before the commencement of that Part, continue to apply in  
27                   relation to an enterprise agreement if:
- 28                   (a) before that commencement, the employer concerned asks the  
29                   employees to approve the agreement by voting for it; and  
30                   (b) by that vote, the employees approve the agreement; and  
31                   (c) the FWC approves the agreement.

- (2) In deciding, after the commencement of that Part, whether to approve the agreement mentioned in subclause (1) (in that form), the FWC must disregard the amendments made by that Part.

#### 100 Model terms and copied State instruments

Despite the amendments made by Part 5 of Schedule 1 to the amending Act, section 768BK, as in force immediately before the commencement of that Part, continues to apply in relation to a model term that is taken, before that commencement, to be a term of a copied State instrument.

#### 101 Disallowance—model terms made before commencement

Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a determination made in the exercise of a power under subsection 202(5), 205(3), 737(1) or 768BK(1A) of the amended Act, before the commencement of Part 5 of Schedule 1 to the amending Act, relying on subsection 4(1) of the *Acts Interpretation Act 1901*.

Note: Subsection 4(1) of the *Acts Interpretation Act 1901* provides for the exercise of powers between the passing and commencement of an Act.

### Division 6—Amendments made by Part 6 of Schedule 1 to the amending Act

#### 102 Application of amendments—regulated labour hire arrangement orders

*Application of requirement to pay protected rate of pay*

- (1) Section 306F of the amended Act (protected rate of pay payable to employees if a regulated labour hire arrangement order is in force) applies on and after 1 November 2024 regardless of whether any agreement resulting in the performance of work by a regulated employee is entered into before, on or after that day.

*Anti-avoidance provisions apply retrospectively in relation to certain conduct and schemes*

- (2) Division 4 of Part 2-7A of the amended Act (anti-avoidance) applies, on and after the introduction day, in relation to:
- (a) conduct engaged in; or
  - (b) a scheme that is entered into, begun to be carried out or carried out;
- on or after the introduction day.

- (3) In this section:

*introduction day* means the day on which the Bill for the amending Act was introduced into the Parliament.

## **Division 7—Amendments made by Part 7 of Schedule 1 to the amending Act**

### **103 Application of section 149E of amended Act**

- (1) Section 149E (delegates' rights terms) of the amended Act applies in relation to a modern award that is in operation on or after 1 July 2024, whether or not the award was made before that day.
- (2) However, a modern award is not invalid on or after 1 July 2024 only because it does not include a delegates' rights term.

### **104 FWC to vary certain modern awards**

- (1) This clause applies in relation to a modern award if the award:
- (a) is made before 1 July 2024; and
  - (b) is to be in operation on that day.
- (2) The FWC must, by 30 June 2024, make a determination varying the modern award to include a delegates' rights term.
- (3) A determination made under subclause (2) comes into operation on (and takes effect from) 1 July 2024.
- (4) Section 168 applies to a determination made under subclause (2) as if it were a determination made under Part 2-3.

**105 Application of section 205A of amended Act**

- (1) Section 205A (enterprise agreements to include delegates' rights terms etc.) of the amended Act does not apply in relation to an enterprise agreement if:
- (a) before 1 July 2024, the employer concerned asks the employees to approve the agreement by voting for it; and
  - (b) by that vote, the employees approve the agreement; and
  - (c) the FWC approves the agreement.
- (2) In deciding, after 1 July 2024, whether to approve the agreement mentioned in subclause (1) (in that form), the FWC must disregard section 205A.

**106 Application of subsections 273(6) and (7) of amended Act**

- (1) Subsections 273(6) and (7) (delegates' rights terms) of the amended Act apply in relation to a workplace determination made on or after 1 July 2024.
- (2) However, a workplace determination is not invalid on or after 1 July 2024 only because it does not include a delegates' rights term.

**Division 8—Amendments made by Part 9 of Schedule 1 to the amending Act**

**107 Application of amendments**

Section 357, as amended by Part 9 of Schedule 1 to the amending Act, applies in relation to representations made on or after the commencement of that Part.

**Division 9—Amendments made by Part 10 of Schedule 1 to the amending Act**

**108 Application of amendments—right of entry**

The amendments of subsection 510(1) made by Part 10 of Schedule 1 to the amending Act apply in relation to each entry

1 permit held by a permit holder whether issued before, on or after  
2 the commencement of that Part.

3 **Division 10—Amendments made by Part 11 of Schedule 1**  
4 **to the amending Act**

5 **109 Penalties for contravention of civil remedy provisions**

6 *Changes to amounts of pecuniary penalties and serious*  
7 *contraventions*

- 8 (1) The amendments of Part 4-1 made by Division 1 of Part 11 of  
9 Schedule 1 to the amending Act apply in relation to conduct  
10 engaged in after the commencement of that Division.
- 11 (2) For the purposes of section 557, conduct engaged in before that  
12 commencement cannot constitute the same course of conduct as  
13 conduct engaged in after that commencement.

14 *Changes relating to underpayments*

- 15 (3) The amendments of Part 4-1 made by Division 3 of Part 11 of  
16 Schedule 1 to the amending Act apply in relation to conduct  
17 engaged in after the commencement of that Division.
- 18 (4) For the purposes of section 557, conduct engaged in before that  
19 commencement cannot constitute the same course of conduct as  
20 conduct engaged in after that commencement.

21 **Division 11—Amendments made by Part 14 of Schedule 1**  
22 **to the amending Act**

23 **110 Offence relating to failure to pay certain amounts as required**

24 Subsection 327A(1) of the amended Act applies in relation to  
25 conduct that occurs after the commencement of Part 14 of  
26 Schedule 1 to the amending Act, including conduct that occurs  
27 after that commencement that is part of a course of conduct that  
28 began before that commencement.

**Part 16—Amendments made by Part 15 of  
Schedule 1 to the Fair Work Legislation  
Amendment (Closing Loopholes) Act 2023**

**Division 1—Definitions**

**112 Definitions**

In this Part:

*amended Act* means this Act as amended by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

*amending Act* means the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

*commencement* means the commencement of item 237 of Part 15 of Schedule 1 to the amending Act.

*old Act* means this Act as in force immediately before commencement.

**Division 2—Transitional provisions**

**113 Relationships in existence as at commencement or entered into on or after commencement**

(1) Subject to this Schedule, section 15AA of the amended Act applies on and after commencement to the following:

(a) a relationship between an individual and a person entered into before commencement that is in existence as at commencement;

(b) a relationship between an individual and a person entered into on or after commencement.

(2) Despite section 40A, section 7 of the *Acts Interpretation Act 1901*, as in force from time to time, applies in relation to the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act.

Note: Section 7 of the *Acts Interpretation Act 1901* provides for the effect of amendment and repeal of provisions of Acts, including in relation to

1 rights, liabilities, penalties and forfeitures etc. accrued or incurred  
2 before the repeal.

**114 References to employees etc. in fair work instruments made before commencement**

- (1) This clause applies to a fair work instrument that:
  - (a) was made before commencement; and
  - (b) is in operation on or after commencement.
- (2) A reference in the fair work instrument to an employee or an employer is taken, on and after commencement, to include a reference to an employee or an employer, as the case requires, within the meaning of section 15AA of the amended Act.

**115 Entitlements determined by reference to length of a period of employment etc.**

- (1) This clause applies if:
  - (a) immediately before commencement, an individual was not an employee of a person within the ordinary meaning of that expression; and
  - (b) because of the operation of section 15AA of the amended Act, on commencement, the individual becomes an employee of the person, within the ordinary meaning of that expression, in respect of that relationship.
- (2) For the purposes of determining whether the individual has a right or entitlement under the amended Act or under a fair work instrument in respect of the employment of the individual, being a right or entitlement calculated by reference to:
  - (a) the individual's length of service (however described) as an employee; or
  - (b) a minimum period of employment (however described) of the individual;the nature of the relationship between the individual and the person in respect of a period or periods before commencement is to be ascertained in accordance with the old Act.

**116 Old Act applies to proceedings on foot as at commencement**

- (1) Despite the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act, the old Act continues to apply, on and after commencement, as if that amendment had not been made, in relation to the following:
- (a) an application made, or proceedings on foot, as at commencement, other than an application or proceedings prescribed by the regulations;
  - (b) an application for review of, or an appeal relating to, an application or proceedings referred to in paragraph (a) (whether the application for review was made, or the appeal proceedings were brought, before, on or after commencement).
- (2) For the purposes of paragraph (1)(a), an application or proceedings are on foot until all rights of review and appeal in relation to the application or proceedings have expired or have been exhausted.

**117 FWC power to deal with uncertainties or difficulties arising from the operation of section 15AA of the amended Act**

- (1) The FWC may make a determination varying a fair work instrument in order to resolve an uncertainty or difficulty relating to the operation or effect of the fair work instrument, being an uncertainty or difficulty arising as a result of, or in connection with, the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act.
- (2) The FWC may make a determination under subclause (1) varying a modern award:
- (a) on its own initiative; or
  - (b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or
  - (c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees covered by the modern award; or
  - (d) if the modern award includes outworker terms—on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the outworker terms relate.

- 1           (3) The FWC may make a determination under subclause (1) varying  
2           an enterprise agreement or a workplace determination:  
3           (a) on its own initiative; or  
4           (b) on application by any of the following:  
5               (i) one or more of the employers covered by the enterprise  
6               agreement or workplace determination;  
7               (ii) an employee covered by the enterprise agreement or  
8               workplace determination;  
9               (iii) an employee organisation covered by the enterprise  
10              agreement or workplace determination.
- 11           (4) The FWC may make a determination under subclause (1) varying  
12           an FWC order:  
13           (a) on its own initiative; or  
14           (b) on application:  
15               (i) by a person affected by the order; or  
16               (ii) if the FWC order is of a kind prescribed by the  
17               regulations—by a person prescribed by the regulations  
18               in relation to that kind of order.
- 19           (5) A variation of a fair work instrument under this clause operates  
20           from the day specified in the determination, which may be a day  
21           before the determination was made.
- 22           (6) The regulations may provide as follows:  
23               (a) that this clause applies, or does not apply, to a specified fair  
24               work instrument or a specified class of fair work instrument;  
25               (b) that this clause applies, or does not apply, to a specified  
26               uncertainty or difficulty, or a specified class of uncertainty or  
27               difficulty.

## 28           **Division 3—Regulations about transitional matters**

### 29           **118 General power for regulations to deal with transitional etc.** 30           **matters**

- 31           (1) The regulations may make provisions of a transitional, application  
32           or saving nature in relation to the amendment made by item 237 of  
33           Part 15 of Schedule 1 to the amending Act.

- (2) The regulations may make provisions of a transitional, application or saving nature in relation to the following:
- (a) a person becoming an employer because of the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act;
  - (b) an individual becoming an employee because of the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act.

## 119 Other general provisions about regulations

- (1) This clause applies to regulations made for the purposes of this Part.
- (2) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the regulations.
- (3) If:
- (a) regulations are expressed to commence from a date (the **registration date**) before the regulations are registered under the *Legislation Act 2003*; and
  - (b) a person engaged in conduct before the registration date; and
  - (c) but for the retrospective effect of the regulations, the conduct would not have contravened a provision of this Act;
- then a court must not convict the person of an offence, or order the person to pay a pecuniary penalty, in relation to the conduct on the grounds that it contravened a provision of this Act.

## Part 17—Amendments made by Part 16 of Schedule 1 to the Fair Work Legislation Amendment (Closing Loopholes) Act 2023

### Division 1—Definitions

#### 120 Definitions

In this Part:

**amended Act** means this Act as amended by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

**amending Act** means the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

**commencement** means the commencement of item 238 of Part 16 of Schedule 1 to the amending Act.

**old Act** means this Act as in force immediately before commencement.

## **Division 2—Transitional provisions**

### **121 Unfair deactivation and unfair termination**

- (1) Part 3A-3 (Unfair deactivation or unfair termination of regulated workers) applies to a deactivation or termination that occurs after commencement.
- (2) For the purposes of determining under paragraph 536LD(c) whether an employee-like worker has been performing work for a period of at least 6 months, a period or periods before commencement are not to be counted.
- (3) For the purposes of determining under paragraph 536LE(c) whether a regulated road transport contractor has been performing work for a period of at least 12 months, a period or periods before commencement are not to be counted.

### **122 New applications relating to unfair contracts**

An application in relation to a services contract may be made under section 536ND only if the contract was entered into on or after the commencement of this item.

### **123 Services contracts entered into before commencement**

- (1) This section applies to a services contract entered into before commencement.
- (2) Despite the amendments of the *Independent Contractors Act 2006* made by the *Fair Work Legislation Amendment (Closing*

**Schedule 1** Main amendments

**Part 18** Application and transitional provisions

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- 1                    *Loopholes) Act 2023*, the *Independent Contractors Act 2006*  
2                    continues to apply to the services contract after commencement of  
3                    this item as if those amendments had not been made.

**Schedule 2—Amendment of the Asbestos  
Safety and Eradication Agency Act  
2013**

**Part 1—Main amendments**

*Asbestos Safety and Eradication Agency Act 2013*

**1 Title**

Omit “Asbestos”, substitute “Asbestos and Silica”.

**2 Section 1**

Omit “*Asbestos Safety and Eradication Agency Act 2013*”, substitute  
“*Asbestos and Silica Safety and Eradication Agency Act 2013*”.

Note: This item amends the short title of the Act. If another amendment of the Act is  
described by reference to the Act’s previous short title, that other amendment has effect  
after the commencement of this item as an amendment of the Act under its amended  
short title (see section 10 of the *Acts Interpretation Act 1901*).

**3 Section 2A**

Repeal the section, substitute:

**2A Object of this Act**

The object of this Act is to establish the Asbestos and Silica Safety  
and Eradication Agency to lead coordinated and national action to  
eliminate asbestos-related diseases and silica-related diseases in  
Australia by:

(a) fostering collaboration between:

(i) persons and bodies involved in the regulation,  
management and control of asbestos safety and silica  
safety; and

(ii) persons and bodies involved in dealing with issues  
related to asbestos-related diseases and silica-related  
diseases; and

(b) supporting and monitoring the implementation of the  
National Strategic Plans by the Commonwealth and State,  
Territory and local governments; and

- 1 (c) promoting national consistency in relation to asbestos safety,  
2 asbestos-related diseases, silica safety and silica-related  
3 diseases; and  
4 (d) improving the state of knowledge and awareness of issues  
5 relating to asbestos safety, asbestos-related diseases, silica  
6 safety and silica-related diseases.

7 **4 Section 3 (definition of Agency)**

8 Repeal the definition, substitute:

9 *Agency* means the Asbestos and Silica Safety and Eradication  
10 Agency referred to in section 6.

11 **5 Section 3**

12 Insert:

13 *Asbestos and Silica Safety and Eradication Agency* means the  
14 Agency referred to in section 6.

15 *Asbestos and Silica Safety and Eradication Council* means the  
16 Council referred to in section 28.

17 *Asbestos National Strategic Plan* has the meaning given by  
18 section 5A.

19 **6 Section 3 (definition of Asbestos Safety and Eradication  
20 Council)**

21 Repeal the definition.

22 **7 Section 3 (definition of Chair)**

23 Omit “Asbestos Safety and Eradication”.

24 **8 Section 3**

25 Insert:

26 *Council* means the Asbestos and Silica Safety and Eradication  
27 Council.

28 **9 Section 3 (definition of Council member)**

29 Omit “Asbestos Safety and Eradication”.

1 **10 Section 3 (definition of *National Strategic Plan*)**

2 Repeal the definition.

3 **11 Section 3**

4 Insert:

5 *National Strategic Plans* means the Asbestos National Strategic  
6 Plan and the Silica National Strategic Plan.

7 *Silica National Strategic Plan* has the meaning given by  
8 section 5B.

9 *silica safety* includes, but is not limited to, matters relating to  
10 awareness, education and information sharing in relation to  
11 respirable crystalline silica and products that contain silica.

12 **12 Part 1A**

13 Repeal the Part, substitute:

14 **Part 1A—National Strategic Plans**  
15

16 **5A Asbestos National Strategic Plan**

17 (1) The *Asbestos National Strategic Plan* is the plan with that name  
18 that:

19 (a) aims:

20 (i) to eliminate asbestos-related diseases in Australia by  
21 preventing exposure to asbestos fibres; and

22 (ii) to support workers and others who are affected by  
23 asbestos-related diseases; and

24 (b) represents a commitment to implement an agreed set of  
25 strategic actions and national targets focussing on:

26 (i) identifying asbestos and preventing exposure risks,  
27 including through prioritised safe removal and effective  
28 waste management; and

29 (ii) improving awareness of asbestos safety and  
30 asbestos-related diseases; and

- (iii) improving research and national data in relation to asbestos safety and asbestos-related diseases; and
- (iv) facilitating international collaboration in relation to asbestos safety and asbestos-related diseases; and
- (v) any other relevant priorities.

Note: The *Asbestos National Strategic Plan* is available on the Agency's website.

- (2) The plan referred to in subsection (1) represents a commitment to implement an agreed set of strategic actions and national targets focussing on the priorities referred to in subparagraphs (1)(b)(i) to (v) only if the plan has been agreed to by at least 6 of the governments of the Commonwealth and each State and Territory.

## **5B Silica National Strategic Plan**

- (1) The *Silica National Strategic Plan* is the plan with that name that:

- (a) aims:

- (i) to eliminate silica-related diseases in Australia by preventing exposure to respirable crystalline silica; and
- (ii) to support workers and others who are affected by silica-related diseases; and

- (b) represents a commitment to implement an agreed set of strategic actions and national targets focussing on:

- (i) eliminating or minimising exposure to respirable crystalline silica in workplaces; and
- (ii) improving awareness of silica safety and silica-related diseases; and
- (iii) improving research and national data in relation to silica safety and silica-related diseases; and
- (iv) facilitating international collaboration in relation to silica safety and silica-related diseases; and
- (v) any other relevant priorities.

- (2) The plan referred to in subsection (1) represents a commitment to implement an agreed set of strategic actions and national targets focussing on the priorities referred to in subparagraphs (1)(b)(i) to (v) only if the plan has been agreed to by at least 6 of the governments of the Commonwealth and each State and Territory.

1 **13 Part 2 (heading)**

2 Repeal the heading, substitute:

3 **Part 2—Asbestos and Silica Safety and Eradication**  
4 **Agency**

5 **14 Section 6**

6 Repeal the section, substitute:

7 **6 Asbestos and Silica Safety and Eradication Agency**

8 The body known immediately before the commencement of this  
9 section as the Asbestos Safety and Eradication Agency is  
10 continued in existence with the new name, Asbestos and Silica  
11 Safety and Eradication Agency.

12 Note: See also section 25B of the *Acts Interpretation Act 1901*.

13 **15 Subsection 8(1)**

14 Repeal the subsection, substitute:

- 15 (1) The Agency has the following functions:
- 16 (a) to encourage, coordinate, monitor and report on the  
17 implementation of the National Strategic Plans;
  - 18 (b) to review, amend or replace, publish and promote the  
19 National Strategic Plans;
  - 20 (c) to provide advice to the Minister about asbestos safety,  
21 asbestos-related diseases, silica safety and silica-related  
22 diseases;
  - 23 (d) to collaborate with Commonwealth, State, Territory, local  
24 and other governments, agencies or bodies (including  
25 international governments, agencies and bodies) about:
    - 26 (i) the development, implementation, review and  
27 amendment of the National Strategic Plans; and
    - 28 (ii) asbestos safety, asbestos-related diseases, silica safety  
29 and silica-related diseases;
  - 30 (e) to conduct, commission, monitor and promote research about  
31 asbestos safety, asbestos-related diseases, silica safety and  
32 silica-related diseases;

- 1 (f) to raise awareness of asbestos safety, asbestos-related  
2 diseases, silica safety and silica-related diseases, including by  
3 developing and promoting materials on asbestos safety,  
4 asbestos-related diseases, silica safety and silica-related  
5 diseases;  
6 (g) to collect and analyse data required for measuring progress  
7 on preventing exposure to asbestos fibres, or respirable  
8 crystalline silica, and for informing evidence-based policies  
9 and strategies;  
10 (h) to promote consistent messages, policies and practices in  
11 relation to asbestos safety, asbestos-related diseases, silica  
12 safety and silica-related diseases;  
13 (i) such other functions as are conferred on the Agency by or  
14 under this Act, the rules or any other law of the  
15 Commonwealth;  
16 (j) to do anything incidental or conducive to the performance of  
17 any of the above functions.

18 **16 Subsection 8(3)**

19 Omit “performing it”, substitute “performing its”.

20 **17 Subsection 8(3)**

21 Omit “National Strategic Plan”, substitute “National Strategic Plans”.

22 **18 After section 8**

23 Insert:

24 **8A Annual reports in relation to National Strategic Plans**

25 *Annual report in relation to Asbestos National Strategic Plan*

- 26 (1) The Agency must, before the end of 31 December in each financial  
27 year, prepare a written report relating to the progress made by the  
28 Commonwealth and State and Territory governments in  
29 implementing the Asbestos National Strategic Plan during the  
30 previous financial year. The report may also include information  
31 relating to any other matter the Agency considers relevant.

- 1 (2) As soon as practicable after the Agency has prepared a report  
2 under subsection (1), the Agency must give a copy of the report to  
3 the following:  
4 (a) the Minister who administers this Act;  
5 (b) the Minister who administers the *National Health Act 1953*;  
6 (c) the Minister who administers the *Environment Protection*  
7 *and Biodiversity Conservation Act 1999*;  
8 (d) each State or Territory Minister who is responsible, or  
9 principally responsible, for matters relating to work health  
10 and safety in the State or Territory;  
11 (e) each State or Territory Minister who is responsible, or  
12 principally responsible, for matters relating to health in the  
13 State or Territory;  
14 (f) each State or Territory Minister who is responsible, or  
15 principally responsible, for matters relating to the protection  
16 of the environment in the State or Territory.

17 *Annual report in relation to Silica National Strategic Plan*

- 18 (3) The Agency must, before the end of 31 December in each financial  
19 year, prepare a written report relating to the progress made by the  
20 Commonwealth and State and Territory governments in  
21 implementing the Silica National Strategic Plan during the  
22 previous financial year. The report may also include information  
23 relating to any other matter the Agency considers relevant.
- 24 (4) As soon as practicable after the Agency has prepared a report  
25 under subsection (3), the Agency must give a copy of the report to  
26 the following:  
27 (a) the Minister who administers this Act;  
28 (b) the Minister who administers the *National Health Act 1953*;  
29 (c) each State or Territory Minister who is responsible, or  
30 principally responsible, for matters relating to work health  
31 and safety in the State or Territory;  
32 (d) each State or Territory Minister who is responsible, or  
33 principally responsible, for matters relating to health in the  
34 State or Territory.

*Annual reports must be publicly available*

- (5) The Agency must make each report prepared under subsection (1) or (3) publicly available.

Example: A report may be published on the Agency's website.

**19 Section 12 (heading)**

Omit "Asbestos Safety and Eradication".

**20 Subsections 12(1), (1A) and (2)**

Omit "Asbestos Safety and Eradication".

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

Add:

**14A CEO may obtain information**

- (1) This section applies to a person if:
- (a) the CEO believes on reasonable grounds that the person has information that is relevant to the performance of any of the functions of the Agency referred to in paragraphs 8(1)(a), (b) and (g); and
  - (b) the CEO is satisfied that the information:
    - (i) is necessary for the performance of that function; and
    - (ii) is not otherwise available to the CEO.
- (2) The CEO may, by written notice given to the person, request the person to give to the CEO, within the period and in the manner and form specified in the notice, any such information.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.
- (4) A manner specified in a notice under subsection (2) must involve the use of a service to which paragraph 51(v) of the Constitution applies.
- (5) A person may comply with a request under subsection (2).
- (6) Subsection (5) has effect despite anything in:
- (a) a law of the Commonwealth (other than this Act); or

1 (b) a law of a State or Territory.

2 **22 Subsection 23A(1)**

3 After “functions or powers”, insert “under this Act (other than  
4 section 14A which confers power on the CEO to obtain information in  
5 certain circumstances)”.

6 **23 Paragraph 24(1)(b)**

7 Omit “Asbestos Safety and Eradication”.

8 **24 Part 5 (heading)**

9 Repeal the heading, substitute:

10 **Part 5—Asbestos and Silica Safety and Eradication**  
11 **Council**

12 **25 Division 1 of Part 5 (heading)**

13 Omit “Asbestos Safety and Eradication”.

14 **26 Section 28**

15 Repeal the section, substitute:

16 **28 Asbestos and Silica Safety and Eradication Council**

17 The body known immediately before the commencement of this  
18 section as the Asbestos Safety and Eradication Council is  
19 continued in existence with the new name, Asbestos and Silica  
20 Safety and Eradication Council.

21 Note: See also section 25B of the *Acts Interpretation Act 1901*.

22 **27 Section 29 (heading)**

23 Omit “Asbestos Safety and Eradication”.

24 **28 Subsection 29(1)**

25 Omit “Asbestos Safety and Eradication”.

**29 Paragraph 29(1)(b)**

After “safety”, insert “, asbestos-related diseases, silica safety and silica-related diseases”.

**30 Paragraphs 29(1)(c) and (d)**

Omit “National Strategic Plan”, substitute “National Strategic Plans”.

**31 Subsections 29(2), (2A) and (3)**

Omit “Asbestos Safety and Eradication”.

**32 Section 30 (heading)**

Omit “Asbestos Safety and Eradication”.

**33 Subsections 30(1) and (2)**

Omit “Asbestos Safety and Eradication”.

**34 Subsections 30A(1), (2) and (3)**

Omit “Asbestos Safety and Eradication”.

**35 Division 2 of Part 5 (heading)**

Omit “Asbestos Safety and Eradication”.

**36 Section 31**

Omit “Asbestos Safety and Eradication”.

**37 Paragraph 31(d)**

Omit “1 member”, substitute “2 members”.

**38 Paragraph 31(e)**

Omit “1 member”, substitute “2 members”.

**39 After paragraph 31(e)**

Insert:

- (ea) 1 member who has expertise relevant to asbestos safety, asbestos-related diseases, silica safety or silica-related diseases; and

**40 Subsection 32(3)**

Repeal the subsection, substitute:

- (3) A person is eligible for appointment as a Council member under paragraph 31(a), (d), (e) or (f) only if the Minister is satisfied that:
- (a) the person has knowledge or experience in one or more of the following:
    - (i) asbestos safety;
    - (ii) public health issues relating to asbestos;
    - (iii) asbestos-related diseases;
    - (iv) the representation of, or the provision of support to, persons with asbestos-related diseases and their families;
    - (v) silica safety;
    - (vi) silica-related diseases;
    - (vii) the representation of, or the provision of support to, persons with silica-related diseases and their families;
    - (viii) financial management;
    - (ix) corporate governance; or
  - (b) the person:
    - (i) has, or has had, an asbestos-related disease; or
    - (ii) has lived experience as a family member, carer or advocate in providing support to a person who has, or has had, an asbestos-related disease; or
    - (iii) has, or has had, a silica-related disease; or
    - (iv) has lived experience as a family member, carer or advocate in providing support to a person who has, or has had, a silica-related disease.

**41 Paragraph 40(d)**

Omit “Asbestos Safety and Eradication”.

**42 Division 4 of Part 5 (heading)**

Omit “Asbestos Safety and Eradication”.

**43 Section 41 (heading)**

Omit “Asbestos Safety and Eradication”.

1 **44 Subsection 41(1)**

2 Omit “Asbestos Safety and Eradication”.

3 **45 Subsection 41A(1)**

4 Omit “Asbestos Safety and Eradication”.

5 **46 Paragraph 41A(1)(b)**

6 Omit “4”, substitute “6”.

7 **47 Paragraph 41A(2)(a)**

8 Omit “Asbestos Safety and Eradication”.

9 **48 Sections 41B, 41C, 41D and 41E**

10 Omit “Asbestos Safety and Eradication” (wherever occurring).

11 **49 Subparagraph 41F(a)(ii)**

12 Omit “Asbestos Safety and Eradication”.

13 **50 Paragraph 41F(b)**

14 Omit “Asbestos”, substitute “Asbestos and Silica”.

15 **51 Subparagraph 41F(e)(iii)**

16 Omit “Asbestos Safety and Eradication”.

17 **52 Subsection 42(3)**

18 Omit “the National Strategic Plan”, substitute “either of the National  
19 Strategic Plans”.

20 **53 At the end of section 42**

21 Add:

- 22 (4) The annual operational plan is taken to be a corporate plan for the  
23 purposes of the *Public Governance, Performance and*  
24 *Accountability Act 2013*.

25 **54 Section 47**

26 Repeal the section, substitute:

**47 Review of the Agency's role and functions**

- (1) The Minister must cause a review of the Asbestos and Silica Safety and Eradication Agency's ongoing role and functions to be conducted.
- (2) The review must:
  - (a) start 5 years after the commencement of this section; and
  - (b) be completed within 6 months.
- (3) The Minister must cause a written report about the review to be prepared.
- (4) The Minister must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the completion of the report.

1 **Part 2—Application, saving and transitional**  
2 **provisions**

3 **55 Definitions**

4 In this Part:

5 *amended Act* means the *Asbestos Safety and Eradication Agency Act*  
6 *2013*, as in force after the commencement day.

7 *commencement day* means the day this Part commences.

8 *Silica Plan agreement day* means the day after the day the Silica  
9 National Strategic Plan has been agreed to by at least 6 of the  
10 governments of the Commonwealth and each State and Territory.

11 **56 Functions of the Agency—Silica National Strategic Plan**

12 Paragraphs 8(1)(a) and (b) and subsection 8(3) of the amended Act  
13 apply to the Asbestos and Silica Safety and Eradication Agency in  
14 relation to the Silica National Strategic Plan on and after the Silica Plan  
15 agreement day.

16 **57 Functions of the Agency—annual report relating to**  
17 **implementation of Asbestos National Strategic Plan**

18 *General*

- 19 (1) Subsection 8A(1) of the amended Act applies in relation to the Asbestos  
20 and Silica Safety and Eradication Agency subject to subitems (2) and  
21 (3) of this item.

22 *First annual report after commencement day*

- 23 (2) If the commencement day is before 1 September 2024, the first report  
24 prepared by the Asbestos and Silica Safety and Eradication Agency  
25 under subsection 8A(1) of the amended Act must:
- 26 (a) relate to progress made by the Commonwealth and State and  
27 Territory governments in implementing the Asbestos  
28 National Strategic Plan during the period beginning on  
29 1 January 2024 and ending at the end of 30 June 2024; and  
30 (b) be prepared before the end of 31 December 2024.

- 1 (3) If the commencement day is on or after 1 September 2024, the first  
2 report prepared by the Asbestos and Silica Safety and Eradication  
3 Agency under subsection 8A(1) of the amended Act must:
- 4 (a) relate to progress made by the Commonwealth and State and  
5 Territory governments in implementing the Asbestos  
6 National Strategic Plan during the period (the ***first reporting***  
7 ***period***) beginning on 1 January 2024 and ending at the end of  
8 the financial year that includes the commencement day; and  
9 (b) be prepared before the end of 31 December in the financial  
10 year beginning after the end of the first reporting period.
- 11 (4) Subsections 8A(2) and (5) of the amended Act apply in relation to a  
12 report prepared under subitem (2) or (3) of this item as if the report  
13 were a report prepared under subsection 8A(1) of the amended Act.

14 **58 Functions of the Agency—annual report relating to**  
15 **implementation of Silica National Strategic Plan**

16 ***General***

- 17 (1) Subject to subitems (2), (3) and (4) of this item, subsections 8A(3) and  
18 (4) of the amended Act apply in relation to the Asbestos and Silica  
19 Safety and Eradication Agency on and after the Silica Plan agreement  
20 day.

21 ***First annual report after Silica Plan agreement day***

- 22 (2) If the Silica Plan agreement day is between 1 July and 31 December in a  
23 financial year (the ***first financial year***), the first report prepared by the  
24 Asbestos and Silica Safety and Eradication Agency under  
25 subsection 8A(3) of the amended Act must:
- 26 (a) instead of relating to the matters referred to in that  
27 subsection, include information relating to:
- 28 (i) the matters covered by the Silica National Strategic  
29 Plan; and  
30 (ii) the activities undertaken by the Commonwealth and  
31 State and Territory governments in relation to the  
32 implementation of the Silica National Strategic Plan  
33 during the period (the ***first reporting period***) beginning  
34 on the Silica Plan agreement day and ending at the end  
35 of the first financial year; and

- 1 (iii) any other matter the Agency considers relevant; and  
2 (b) be prepared before the end of 31 December in the financial  
3 year beginning after the end of the first reporting period.
- 4 (3) If the Silica Plan agreement day is between 1 January and 30 June in a  
5 financial year (the ***first financial year***), the first report prepared by the  
6 Asbestos and Silica Safety and Eradication Agency under  
7 subsection 8A(3) of the amended Act must:
- 8 (a) relate to progress made by the Commonwealth and State and  
9 Territory governments in implementing the Silica National  
10 Strategic Plan during the period (the ***first reporting period***)  
11 beginning on the Silica Plan agreement day and ending at the  
12 end of the next financial year after the first financial year;  
13 and  
14 (b) be prepared before the end of 31 December in the financial  
15 year beginning after the end of the first reporting period.
- 16 (4) Subsections 8A(4) and (5) of the amended Act apply in relation to a  
17 report prepared under subitem (2) or (3) of this item as if the report  
18 were a report prepared under subsection 8A(3) of the amended Act.

## 19 **59 CEO of the Agency**

- 20 The person holding office as the CEO of the Asbestos Safety and  
21 Eradication Agency under section 15 of the *Asbestos Safety and*  
22 *Eradication Agency Act 2013* immediately before the commencement  
23 day continues, on and after the commencement day, to hold office as the  
24 CEO of the Asbestos and Silica Safety and Eradication Agency:
- 25 (a) on the terms and conditions that applied to the person  
26 immediately before the commencement day; and  
27 (b) for the balance of the person's term of appointment that  
28 remained immediately before the commencement day.

## 29 **60 Functions of the CEO of the Agency—annual operational** 30 **plan**

- 31 Subsection 42(3) of the amended Act applies to the CEO of the  
32 Asbestos and Silica Safety and Eradication Agency in relation to the  
33 Silica National Strategic Plan on and after the Silica Plan agreement  
34 day.

1     **61 Functions of the Council—Silica National Strategic Plan**

2             Paragraphs 29(1)(c) and (d) of the amended Act apply to the Asbestos  
3             and Silica Safety and Eradication Council in relation to the Silica  
4             National Strategic Plan on and after the Silica Plan agreement day.

5     **62 Members of the Council**

6             A person holding office as a member of the Asbestos Safety and  
7             Eradication Council under section 32 of the *Asbestos Safety and*  
8             *Eradication Agency Act 2013* immediately before the commencement  
9             day continues, on and after the commencement day, to hold office as a  
10            member of the Asbestos and Silica Safety and Eradication Council:

- 11            (a) on the terms and conditions that applied to the person  
12            immediately before the commencement day; and  
13            (b) for the balance of the person's term of appointment that  
14            remained immediately before the commencement day.

1       **Schedule 3—Amendment of the Safety,**  
2                   **Rehabilitation and Compensation Act**  
3                   **1988**  
4

5       *Safety, Rehabilitation and Compensation Act 1988*

6       **1 Before subsection 7(8)**

7           Insert:

8                   *Diseases suffered by firefighters*

9       **2 At the end of section 7**

10          Add:

11                   *Post-traumatic stress disorder suffered by first responders*

12       (11) If:

13           (a) an employee has suffered, or is suffering, from  
14               post-traumatic stress disorder in accordance with a legislative  
15               instrument determined under subsection (12); and

16           (b) at any time before symptoms of post-traumatic stress disorder  
17               became apparent, the employee was employed as a first  
18               responder in accordance with subsection (13);

19           the employee's employment as a first responder is, for the purposes  
20           of this Act, taken to have contributed, to a significant degree, to the  
21           contraction of the post-traumatic stress disorder, unless the  
22           contrary is established.

23       (12) For the purposes of paragraph (11)(a), the Minister may, by  
24           legislative instrument, determine the circumstances in which an  
25           employee is taken to have suffered, or be suffering, from  
26           post-traumatic stress disorder.

27       (13) For the purposes of paragraph (11)(b), an employee was employed  
28           as a first responder at a time if, at that time, the employee:

29           (a) was the Commissioner of the Australian Federal Police, a  
30               Deputy Commissioner of the Australian Federal Police or an

- 1                               AFP employee (all within the meaning of the *Australian*  
2                               *Federal Police Act 1979*); or  
3                               (b) was employed as a firefighter; or  
4                               (c) was employed as an ambulance officer (including as a  
5                               paramedic); or  
6                               (d) was employed as an emergency services communications  
7                               operator; or  
8                               (e) was a member of an emergency service (within the meaning  
9                               of the *Emergencies Act 2004* (ACT)).  
10                              (14) Subsection (11) does not limit, and is not limited by,  
11                              subsections (1) and (2).

### 12   **3 Application of amendments**

13                              The amendments made by this Schedule apply in relation to an injury,  
14                              being a disease or an aggravation of a disease, that is sustained by an  
15                              employee after the commencement of this Schedule.

## Schedule 4—Amendment of the Work Health and Safety Act 2011

### Part 1—Industrial manslaughter

#### *Work Health and Safety Act 2011*

#### **1 After section 30**

Insert:

#### **30A Industrial manslaughter**

(1) A person commits an offence if:

(a) the person is:

(i) a person conducting a business or undertaking; or

(ii) an officer of a person conducting a business or undertaking; and

(b) the person has a health and safety duty; and

(c) the person intentionally engages in conduct; and

(d) the conduct breaches the health and safety duty; and

(e) the conduct causes the death of an individual; and

(f) the person was reckless, or negligent, as to whether the conduct would cause the death of an individual.

Note: There is no limitation period for bringing proceedings for an offence against this subsection (see subsection 232(2A)).

Penalty:

(a) In the case of an offence committed by an individual—25 years imprisonment.

(b) In the case of an offence committed by a body corporate—\$18,000,000.

*When conduct causes death*

(2) For the purposes of subsection (1), a person's conduct **causes** a death if the conduct substantially contributes to the death.

*No substitution of pecuniary penalty for imprisonment*

- (3) Subsection 4B(2) of the *Crimes Act 1914* does not apply in relation to an offence against subsection (1) of this section.

*Alternative verdicts*

- (4) If, in proceedings for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
- (a) is not satisfied that the person is guilty of the prosecuted offence; and
  - (b) is satisfied that the person is guilty of an offence (the ***alternative offence***) that is a Category 1 offence or a Category 2 offence;
- the trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence, so long as the person has been accorded procedural fairness in relation to that finding of guilt.

*No limitation period in relation to alternative verdicts*

- (5) For the purposes of subsection (4), it does not matter whether the proceedings mentioned in that subsection were brought at a time when, or in circumstances in which, bringing proceedings for the alternative offence would have been permitted under section 232 (limitation period for prosecutions).

**2 Subsection 216(2)**

Omit “for a contravention”, substitute “in relation to a contravention”.

**3 At the end of subsection 216(2)**

Add “or an offence against subsection 30A(1) (industrial manslaughter)”.

**4 Subparagraphs 231(1)(a)(i) and (ii)**

Omit “or a Category 2 offence”, substitute “, a Category 2 offence or an offence against subsection 30A(1) (industrial manslaughter)”.

**5 Subsection 231(3)**

Omit “a Category 1 or Category 2 offence”, substitute “a Category 1 offence, a Category 2 offence or an offence against subsection 30A(1) (industrial manslaughter)”.

**6 Before subsection 232(2)**

Insert:

*Exceptions*

**7 After subsection 232(2)**

Insert:

(2A) Despite subsection (1), proceedings for an offence against subsection 30A(1) (industrial manslaughter) may be brought at any time.

**8 Before subsection 232(3)**

Insert:

*Definitions*

**9 Application provision**

Section 30A of the *Work Health and Safety Act 2011*, as inserted by this Part, applies in relation to conduct engaged in on or after the commencement of this Part.

1 **Part 2—Category 1 offence**

2 ***Work Health and Safety Act 2011***

3 **10 Paragraph 31(1)(b)**

4 Repeal the paragraph, substitute:

5 (b) the person, without reasonable excuse, engages in conduct  
6 that:

7 (i) exposes an individual to whom the duty is owed to a  
8 risk of death or serious injury or illness; or

9 (ii) if the person is an officer of a person conducting a  
10 business or undertaking—exposes an individual, to  
11 whom the person conducting a business or undertaking  
12 owes a health and safety duty, to a risk of death or  
13 serious injury or illness; and

**Part 3—Corporate criminal liability**

***Work Health and Safety Act 2011***

**11 Section 4**

Insert:

***authorised person***, for a body corporate, in Division 4 of Part 13—  
see section 244.

***board of directors***, of a body corporate, in Division 4 of Part 13—  
see section 244.

***fault element***, in relation to an offence, has the same meaning as in  
the *Criminal Code*.

***physical element***, in relation to an offence, has the same meaning  
as in the *Criminal Code*.

**12 Before subsection 12F(1)**

Insert:

*Application of the Crimes Act 1914*

**13 Before subsection 12F(2)**

Insert:

*Application of the Criminal Code*

**14 At the end of section 12F**

Add:

(4) Part 2.5 of the *Criminal Code* (which deals with corporate criminal  
responsibility) does not apply to an offence against this Act.

Note: For the purposes of this Act, corporate criminal responsibility is dealt  
with by Division 4 of Part 13 of this Act.

**15 Section 244**

Repeal the section, substitute:

1       **244 Definitions**

2               In this Division:

3               ***authorised person***, for a body corporate, means an officer,  
4               employee or agent of the body corporate acting within the  
5               officer's, employee's or agent's actual or apparent authority.

6               ***board of directors***, of a body corporate, means the body, whatever  
7               it is called, exercising the executive authority of the body  
8               corporate.

9       **244A Physical elements**

10              The conduct constituting the physical element of an offence is  
11              taken to have been engaged in by a body corporate if the conduct is  
12              engaged in by:

- 13              (a) the body corporate's board of directors; or  
14              (b) one or more authorised persons for the body corporate; or  
15              (c) one or more persons acting at the direction of or with the  
16              express or implied agreement or consent of:  
17                  (i) an authorised person for the body corporate; or  
18                  (ii) the body corporate's board of directors.

19       **244B Fault elements other than negligence**

- 20              (1) If it is necessary to establish that a body corporate had a state of  
21              mind in relation to a physical element of an offence, it is sufficient  
22              to show that:

- 23              (a) the body corporate's board of directors:  
24                  (i) engaged in the conduct constituting the offence and had  
25                  that state of mind in relation to the physical element of  
26                  the offence; or  
27                  (ii) expressly, tacitly or impliedly authorised or permitted  
28                  the conduct constituting the offence; or  
29              (b) an authorised person for the body corporate:  
30                  (i) engaged in the conduct constituting the offence and had  
31                  that state of mind in relation to the physical element of  
32                  the offence; or

- 1 (ii) expressly, tacitly or impliedly authorised or permitted  
2 the conduct constituting the offence; or  
3 (c) a corporate culture existed within the body corporate that  
4 directed, encouraged, tolerated or led to the conduct  
5 constituting the offence.
- 6 (1A) For the purposes of subsection (1), having a state of mind in  
7 relation to a physical element of an offence does not include being  
8 negligent with respect to that physical element.
- 9 Note: For how negligence applies in relation a body corporate, see  
10 section 244BA.
- 11 (2) For the purposes of subsection (1):  
12 (a) paragraphs (1)(b) and (c) do not apply if the body corporate  
13 proves it took reasonable precautions to prevent the conduct  
14 constituting the offence; and  
15 (b) subparagraph (1)(b)(ii) does not apply if the body corporate  
16 proves it took reasonable precautions to prevent the  
17 authorised person authorising or permitting the conduct  
18 constituting the offence.
- 19 (3) Factors relevant to the application of paragraph (1)(c) include:  
20 (a) whether authority or permission to engage in the conduct  
21 constituting an offence, of the same or a similar character,  
22 had previously been given by a corporate officer of the body  
23 corporate; and  
24 (b) whether the person who engaged in the conduct constituting  
25 the offence believed on reasonable grounds, or had a  
26 reasonable expectation, that a corporate officer of the body  
27 corporate would have authorised or permitted the conduct.
- 28 (4) In this section:  
29 **corporate culture**, within a body corporate, means one or more  
30 attitudes, policies, rules, courses of conduct or practices existing  
31 within the body corporate generally or in the part of the body  
32 corporate in which the relevant activity takes place.  
33 **corporate officer**, of a body corporate, means an officer of the  
34 body corporate within the meaning of section 9 of the  
35 *Corporations Act 2001*.

1       **244BA Negligence**

- 2               (1) The test of negligence for a body corporate is that set out in  
3               section 5.5 of the *Criminal Code*.
- 4               (2) If:
- 5                     (a) negligence is a fault element in relation to a physical element  
6                     of an offence; and
- 7                     (b) no individual employee, agent or officer of the body  
8                     corporate has that fault element;
- 9               that fault element may exist on the part of the body corporate if the  
10              body corporate's conduct is negligent when viewed as a whole  
11              (that is, by aggregating the conduct of any number of its  
12              employees, agents or officers).
- 13              (3) Negligence may be evidenced by the fact that the prohibited  
14              conduct was substantially attributable to:
- 15                     (a) inadequate management, control or supervision of the  
16                     conduct of one or more of the body corporate's employees,  
17                     agents or officers; or
- 18                     (b) failure to provide adequate systems for conveying relevant  
19                     information to relevant persons in the body corporate.

20       **244C Mistake of fact**

- 21               If mistake of fact is relevant to determining liability for an offence,  
22               a body corporate may rely on mistake of fact only if:
- 23                     (a) the employee, agent or officer of the body corporate who  
24                     engaged in the conduct constituting the offence was under a  
25                     mistaken but reasonable belief about facts that, had they  
26                     existed, would have meant the conduct would not have  
27                     constituted the offence; and
- 28                     (b) the body corporate proves it took reasonable precautions to  
29                     prevent the conduct.

30       **244D Failure to take reasonable precautions**

31               For the purposes of subsection 244B(2) and paragraph 244C(b), a  
32               failure to take reasonable precautions may be evidenced by the fact  
33               that the conduct constituting the offence was substantially  
34               attributable to:

- 1 (a) inadequate management, control or supervision of the  
2 conduct of one or more of the body corporate's employees,  
3 agents or officers; or  
4 (b) failure to provide adequate systems for conveying relevant  
5 information to relevant persons in the body corporate.

6 **244E How this Division applies to public authorities**

7 If a body corporate is a public authority, this Division applies in  
8 relation to the body corporate in accordance with section 251.

1 **Part 4—Commonwealth criminal liability**

2 ***Work Health and Safety Act 2011***

3 **16 Section 4**

4 Insert:

5 ***authorised person***, for the Commonwealth, in Division 5 of  
6 Part 13—see section 245.

7 ***executive***, of an agency of the Commonwealth, in Division 5 of  
8 Part 13—see section 245.

9 **17 Section 4 (definition of officer)**

10 Repeal the definition, substitute:

11 ***officer***, of an entity, means:

- 12 (a) if the entity is the Commonwealth—an officer of the  
13 Commonwealth within the meaning of section 247; or  
14 (b) if the entity is a public authority—an officer of the public  
15 authority within the meaning of section 252; or  
16 (c) in Division 5 of Part 13, if the entity is an agency of the  
17 Commonwealth—an officer of the agency within the  
18 meaning of section 245; or  
19 (d) if paragraphs (a), (b) and (c) of this definition do not apply—  
20 an officer of the entity within the meaning of section 9 of the  
21 *Corporations Act 2001* other than, if the entity is a  
22 partnership, a partner in the partnership;  
23 but does not include, if the entity is a local authority, an elected  
24 member of the local authority acting in that capacity.

25 **18 Section 245**

26 Repeal the section, substitute:

27 **245 Definitions**

28 In this Division:

*authorised person*, for the Commonwealth, means an officer, employee or agent of the Commonwealth acting within the officer's, employee's or agent's actual or apparent authority.

*executive*, of an agency of the Commonwealth, means the person or body, whatever the person or body is called, exercising the executive authority of the agency.

*officer*, of an agency of the Commonwealth, means a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the agency.

#### **245A Offences and the Commonwealth—physical elements**

The conduct constituting the physical element of an offence is taken to have been engaged in by the Commonwealth if the conduct is engaged in by:

- (a) the executive of an agency of the Commonwealth; or
- (b) one or more authorised persons for the Commonwealth; or
- (c) one or more persons acting at the direction of or with the express or implied agreement or consent of:
  - (i) an authorised person for the Commonwealth; or
  - (ii) the executive of an agency of the Commonwealth.

#### **245B Offences and the Commonwealth—fault elements other than negligence**

- (1) If it is necessary to establish that the Commonwealth had a state of mind in relation to a physical element of an offence, it is sufficient to show that:

- (a) the executive of an agency of the Commonwealth:
  - (i) engaged in the conduct constituting the offence and had that state of mind in relation to the physical element of the offence; or
  - (ii) expressly, tacitly or impliedly authorised or permitted the conduct constituting the offence; or
- (b) an authorised person for the Commonwealth:
  - (i) engaged in the conduct constituting the offence and had that state of mind in relation to the physical element of the offence; or

- (ii) expressly, tacitly or impliedly authorised or permitted the conduct constituting the offence; or
- (c) a corporate culture existed within an agency of the Commonwealth that directed, encouraged, tolerated or led to the conduct constituting the offence.

(1A) For the purposes of subsection (1), having a state of mind in relation to a physical element of an offence does not include being negligent with respect to that physical element.

Note: For how negligence applies in relation to the Commonwealth, see section 245BA.

(2) For the purposes of subsection (1):

- (a) paragraphs (1)(b) and (c) do not apply if the Commonwealth proves it took reasonable precautions to prevent the conduct constituting the offence; and
- (b) subparagraph (1)(b)(ii) does not apply if the Commonwealth proves it took reasonable precautions to prevent the authorised person authorising or permitting the conduct constituting the offence.

(3) Factors relevant to the application of paragraph (1)(c) include:

- (a) whether authority or permission to engage in the conduct constituting an offence, of the same or a similar character, had previously been given by an officer of the agency; and
- (b) whether the person who engaged in the conduct constituting the offence believed on reasonable grounds, or had a reasonable expectation, that an officer of the agency would have authorised or permitted the conduct.

*Definitions*

(4) In this section:

**corporate culture**, within an agency of the Commonwealth, means one or more attitudes, policies, rules, courses of conduct or practices existing within the agency generally or in the part of the agency in which the relevant activity takes place.

**245BA Offences and the Commonwealth—negligence**

- (1) The test of negligence for the Commonwealth is that set out in section 5.5 of the *Criminal Code*.
- (2) If:
- (a) negligence is a fault element in relation to a physical element of an offence; and
  - (b) no individual employee, agent or officer of the Commonwealth has that fault element;
- that fault element may exist on the part of the Commonwealth if the conduct of the Commonwealth is negligent when viewed as a whole (that is, by aggregating the conduct of any number of the employees, agents or officers of the Commonwealth).
- (3) Negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to:
- (a) inadequate management, control or supervision of the conduct of one or more employees, agents or officers of the Commonwealth; or
  - (b) failure to provide adequate systems for conveying relevant information to relevant persons in the Commonwealth.

**245C Offences and the Commonwealth—mistake of fact**

- If mistake of fact is relevant to determining liability for an offence, the Commonwealth may rely on mistake of fact only if:
- (a) the employee, agent or officer of the Commonwealth who engaged in the conduct constituting the offence was under a mistaken but reasonable belief about facts that, had they existed, would have meant the conduct would not have constituted the offence; and
  - (b) the Commonwealth proves it took reasonable precautions to prevent the conduct.

**245D Offences and the Commonwealth—failure to take reasonable precautions**

For the purposes of subsection 245B(2) and paragraph 245C(b), a failure to take reasonable precautions may be evidenced by the fact

1           that the conduct constituting the offence was substantially  
2           attributable to:

- 3           (a) inadequate management, control or supervision of the  
4           conduct of one or more employees, agents or officers of the  
5           Commonwealth; or  
6           (b) failure to provide adequate systems for conveying relevant  
7           information to relevant persons in the Commonwealth.

8           **245E Offences and the Commonwealth—penalties**

9           If the Commonwealth is guilty of an offence against this Act, the  
10          penalty to be imposed on the Commonwealth is the penalty  
11          applicable to a body corporate.

1 **Part 5—Criminal liability of public authorities**

2 ***Work Health and Safety Act 2011***

3 **19 Section 251**

4 Repeal the section, substitute:

5 **251 Offences and public authorities**

6 (1) Division 4 of this Part (which deals with offences by bodies  
7 corporate) applies in relation to a public authority that is a body  
8 corporate in the same way that the Division applies in relation to  
9 any other body corporate, subject to subsection (2) of this section.

10 (2) For the purposes of the application of Division 4 of this Part in  
11 relation to a public authority that is a body corporate:  
12 (a) each reference in that Division to an officer of a body  
13 corporate is taken to be a reference to an officer of the public  
14 authority (within the meaning of section 252); and  
15 (b) the references in paragraphs 244B(3)(a) and (b) to a  
16 corporate officer of the body corporate are taken to be  
17 references to an officer of the public authority (within the  
18 meaning of section 252).

**Part 6—Penalties**

**Division 1—Definitions**

***Work Health and Safety Act 2011***

**20 Section 4**

Insert:

*category 1 monetary penalty*—see clause 1 of Schedule 4.

*category 2 monetary penalty*—see clause 1 of Schedule 4.

*category 3 monetary penalty*—see clause 1 of Schedule 4.

*tier A monetary penalty*—see clause 2 of Schedule 4.

*tier B monetary penalty*—see clause 2 of Schedule 4.

*tier C monetary penalty*—see clause 2 of Schedule 4.

*tier D monetary penalty*—see clause 2 of Schedule 4.

*tier E monetary penalty*—see clause 2 of Schedule 4.

*tier F monetary penalty*—see clause 2 of Schedule 4.

*tier G monetary penalty*—see clause 2 of Schedule 4.

*tier H monetary penalty*—see clause 2 of Schedule 4.

*tier I monetary penalty*—see clause 2 of Schedule 4.

*WHS civil penalty provision tier 1*—see clause 3 of Schedule 4.

*WHS civil penalty provision tier 2*—see clause 3 of Schedule 4.

*WHS civil penalty provision tier 3*—see clause 3 of Schedule 4.

*WHS civil penalty provision tier 4*—see clause 3 of Schedule 4.

**Division 2—Categorised monetary penalties for offences**

***Work Health and Safety Act 2011***

**21 Subsection 31(1) (penalty)**

Repeal the penalty, substitute:

Penalty:

(a) In the case of an individual—the category 1 monetary penalty or 15 years imprisonment or both.

(b) In the case of a body corporate—the category 1 monetary penalty.

**22 Section 32 (penalty)**

Repeal the penalty, substitute:

Penalty: The category 2 monetary penalty.

**23 Section 33 (penalty)**

Repeal the penalty, substitute:

Penalty: The category 3 monetary penalty.

**Division 3—Tier A monetary penalties for offences**

***Work Health and Safety Act 2011***

**24 Subsections 104(1), 107(1), 108(1) and 109(1) (penalty)**

Repeal the penalty, substitute:

Penalty: The tier A monetary penalty.

**25 Section 197 (penalty)**

Repeal the penalty, substitute:

Penalty: The tier A monetary penalty.

**Division 4—Tier B monetary penalties for offences**

***Work Health and Safety Act 2011***

**26 Section 41 (penalty)**

Repeal the penalty, substitute:

Penalty: The tier B monetary penalty.

**27 Subsection 99(2) (penalty)**

Repeal the penalty, substitute:

Penalty: The tier B monetary penalty.

**28 Section 190 (penalty)**

Repeal the penalty, substitute:

Penalty:

(a) In the case of an individual—the tier B monetary penalty or imprisonment for 2 years or both.

(b) In the case of a body corporate—the tier B monetary penalty.

**29 Section 193 (penalty)**

Repeal the penalty, substitute:

Penalty: The tier B monetary penalty.

**30 Subsection 200(1) (penalty)**

Repeal the penalty, substitute:

Penalty: The tier B monetary penalty.

**31 Section 219 (penalty)**

Repeal the penalty, substitute:

Penalty: The tier B monetary penalty.

**32 Subsection 242(1) (penalty)**

Repeal the penalty, substitute:

1                   Penalty: The tier B monetary penalty.

2       **Division 5—Tier C monetary penalties for offences**

3       *Work Health and Safety Act 2011*

4       **33 Subsections 42(1) and (2), 43(1) and (2) and 44(1) and (2)**  
5                   **(penalty)**

6                   Repeal the penalty, substitute:

7                   Penalty: The tier C monetary penalty.

8       **34 Section 45 (penalty)**

9                   Repeal the penalty, substitute:

10                  Penalty: The tier C monetary penalty.

11       **35 Section 46 (penalty)**

12                  Repeal the penalty, substitute:

13                  Penalty: The tier C monetary penalty.

14       **36 Subsection 47(1) (penalty)**

15                  Repeal the penalty, substitute:

16                  Penalty: The tier C monetary penalty.

17       **Division 6—Tier D monetary penalties for offences**

18       *Work Health and Safety Act 2011*

19       **37 Subsections 38(1) and 39(1) (penalty)**

20                  Repeal the penalty, substitute:

21                  Penalty: The tier D monetary penalty.

22       **38 Subsection 52(5) (penalty)**

23                  Repeal the penalty, substitute:

24                  Penalty: The tier D monetary penalty.

1 **39 Subsection 56(2) (penalty)**

2 Repeal the penalty, substitute:

3 Penalty: The tier D monetary penalty.

4 **40 Subsection 61(4) (penalty)**

5 Repeal the penalty, substitute:

6 Penalty: The tier D monetary penalty.

7 **41 Subsections 70(1) and (2), 71(2) and 72(7) (penalty)**

8 Repeal the penalty, substitute:

9 Penalty: The tier D monetary penalty.

10 **42 Subsections 79(1), (3) and (4) (penalty)**

11 Repeal the penalty, substitute:

12 Penalty: The tier D monetary penalty.

13 **43 Subsection 155(5) (penalty)**

14 Repeal the penalty, substitute:

15 Penalty: The tier D monetary penalty.

16 **44 Subsection 165(2) (penalty)**

17 Repeal the penalty, substitute:

18 Penalty: The tier D monetary penalty.

19 **45 Subsections 171(6) and 177(2) and (6) (penalty)**

20 Repeal the penalty, substitute:

21 Penalty: The tier D monetary penalty.

22 **46 Subsection 185(4) (penalty)**

23 Repeal the penalty, substitute:

24 Penalty: The tier D monetary penalty.

1     **47 Sections 188 and 189 (penalty)**

2             Repeal the penalty, substitute:

3                     Penalty: The tier D monetary penalty.

4     **48 Subsections 271(2) and (4) (penalty)**

5             Repeal the penalty, substitute:

6                     Penalty: The tier D monetary penalty.

7     **Division 7—Tier F monetary penalties for offences**

8     ***Work Health and Safety Act 2011***

9     **49 Subsection 38(7) (penalty)**

10            Repeal the penalty, substitute:

11                    Penalty: The tier F monetary penalty.

12    **50 Subsection 75(1) (penalty)**

13            Repeal the penalty, substitute:

14                    Penalty: The tier F monetary penalty.

15    **51 Subsections 97(1) and (2) (penalty)**

16            Repeal the penalty, substitute:

17                    Penalty: The tier F monetary penalty.

18    **52 Subsections 210(1) and (2) (penalty)**

19            Repeal the penalty, substitute:

20                    Penalty: The tier F monetary penalty.

21    **53 Section 273 (penalty)**

22            Repeal the penalty, substitute:

23                    Penalty: The tier F monetary penalty.

**Division 8—Tier H monetary penalties for offences**

***Work Health and Safety Act 2011***

**54 Subsections 53(1) and (2) (penalty)**

Repeal the penalty, substitute:

Penalty: The tier H monetary penalty.

**55 Subsections 57(1) and (2) (penalty)**

Repeal the penalty, substitute:

Penalty: The tier H monetary penalty.

**56 Subsection 74(1) (penalty)**

Repeal the penalty, substitute:

Penalty: The tier H monetary penalty.

**Division 9—Penalties for WHS civil penalty provisions**

***Work Health and Safety Act 2011***

**57 Subsection 118(3) (penalty)**

Repeal the penalty (not including the heading), substitute:

Penalty: The WHS civil penalty provision tier 2.

**58 Section 123 (penalty)**

Repeal the penalty (not including the heading), substitute:

Penalty: The WHS civil penalty provision tier 1.

**59 Sections 124 to 126, 128 and 129 (penalty)**

Repeal the penalty (not including the heading), substitute:

Penalty: The WHS civil penalty provision tier 2.

1       **60 Section 143 (penalty)**

2               Repeal the penalty (not including the heading), substitute:

3                       Penalty: The WHS civil penalty provision tier 2.

4       **61 Subsection 144(1) (penalty)**

5               Repeal the penalty (not including the heading), substitute:

6                       Penalty: The WHS civil penalty provision tier 2.

7       **62 Sections 145 and 146 (penalty)**

8               Repeal the penalty (not including the heading), substitute:

9                       Penalty: The WHS civil penalty provision tier 2.

10      **63 Subsection 147(1) (penalty)**

11              Repeal the penalty (not including the heading), substitute:

12                     Penalty: The WHS civil penalty provision tier 2.

13      **64 Section 148 (penalty)**

14              Repeal the penalty (not including the heading), substitute:

15                     Penalty: The WHS civil penalty provision tier 2.

16      **65 Subsection 149(1) (penalty)**

17              Repeal the penalty (not including the heading), substitute:

18                     Penalty: The WHS civil penalty provision tier 4.

19      **66 Section 150 (penalty)**

20              Repeal the penalty (not including the heading), substitute:

21                     Penalty: The WHS civil penalty provision tier 3.

22      **67 Paragraphs 254(1)(a) and (2)(a)**

23              Omit “1 or more amounts by way of monetary penalty are”, substitute  
24              “a penalty, expressed as a WHS civil penalty provision tier, is”.

1     **68 Subsection 259(2)**

2             Omit “maximum”.

3     **69 Application provision**

4             The amendments of the *Work Health and Safety Act 2011* made by this  
5             Division apply in relation to a contravention of a WHS civil penalty  
6             provision that occurs on or after the commencement of this Division.

7     **Division 10—Penalties prescribed by the regulations**

8     ***Work Health and Safety Act 2011***

9     **70 Paragraph 276(3)(h)**

10            Repeal the paragraph, substitute:

11               (h) prescribe any of the following as the penalty for an offence  
12               under the regulations:

- 13                   (i) a tier E monetary penalty;
- 14                   (ii) a tier F monetary penalty;
- 15                   (iii) a tier G monetary penalty;
- 16                   (iv) a tier H monetary penalty;
- 17                   (v) a tier I monetary penalty; or

18     **71 Transitional provision—existing penalty provisions**

- 19     (1)     This item applies to a provision (an *existing penalty provision*) in the  
20             *Work Health and Safety Regulations 2011* if, immediately before the  
21             commencement of this Division, the provision prescribed a monetary  
22             penalty for an offence against those regulations.
- 23     (2)     Despite the amendment of paragraph 276(3)(h) of the *Work Health and*  
24             *Safety Act 2011* by this Division, but subject to subitem (3) of this item,  
25             an existing penalty provision continues in force on and after the  
26             commencement of this Division.
- 27     (3)     An existing penalty provision may, on or after the commencement of  
28             this Division, be repealed or amended by regulations made under  
29             section 276 of the *Work Health and Safety Act 2011*.

## Division 11—Penalty amounts

### *Work Health and Safety Act 2011*

#### 72 At the end of the Act

Add:

### Schedule 4—Penalty amounts

#### 1 Monetary penalties—categories 1 to 3

A penalty referred to in column 1 of an item of the following table, for a person referred to in the heading to another column of the table, is the amount specified in that other column of that item, as indexed under clause 4 and rounded under clause 5.

##### Monetary penalties—categories 1 to 3

Item	Column 1 Kind of penalty	Column 2 An individual who commits an offence as: (a) a person conducting a business undertaking; or (b) an officer of a person conducting a business undertaking	Column 3 An individual who commits an offence (other than as mentioned in column 2)	Column 4 A body corporate
1	the <i>category 1</i> <i>monetary</i> <i>penalty</i>	\$3,000,000	\$1,500,000	\$15,000,000
2	the <i>category 2</i> <i>monetary</i> <i>penalty</i>	\$418,000	\$209,000	\$2,090,000
3	the <i>category 3</i> <i>monetary</i> <i>penalty</i>	\$140,000	\$70,000	\$700,000

## 2 Monetary penalties—tiers A to I

A penalty referred to in column 1 of an item of the following table, for a person referred to in the heading to another column of the table, is the amount specified in that other column of that item, as indexed under clause 4 and rounded under clause 5.

<b>Monetary penalties—tiers A to I</b>			
<b>Item</b>	<b>Column 1</b> <b>Kind of penalty</b>	<b>Column 2</b> <b>An individual</b>	<b>Column 3</b> <b>A body corporate</b>
1	the <i>tier A monetary penalty</i>	\$139,000	\$695,000
2	the <i>tier B monetary penalty</i>	\$70,000	\$350,000
3	the <i>tier C monetary penalty</i>	\$28,000	\$140,000
4	the <i>tier D monetary penalty</i>	\$14,000	\$70,000
5	the <i>tier E monetary penalty</i>	\$8,400	\$42,000
6	the <i>tier F monetary penalty</i>	\$7,000	\$35,000
7	the <i>tier G monetary penalty</i>	\$5,000	\$25,000
8	the <i>tier H monetary penalty</i>	\$2,800	\$14,000
9	the <i>tier I monetary penalty</i>	\$1,700	\$8,500

## 3 Monetary penalties—WHS civil penalty provision—tiers 1 to 4

A penalty referred to in column 1 of an item of the following table, for a person referred to in the heading to another column of the table, is the amount specified in that other column of that item, as indexed under clause 4 and rounded under clause 5.

<b>WHS civil penalty provision—tiers 1 to 4</b>			
<b>Item</b>	<b>Column 1</b> <b>Kind of penalty</b>	<b>Column 2</b> <b>An individual</b>	<b>Column 3</b> <b>A body corporate</b>
1	the <i>WHS civil penalty provision tier 1</i>	\$28,000	\$140,000
2	the <i>WHS civil penalty provision tier 2</i>	\$14,000	\$70,000
3	the <i>WHS civil penalty provision tier 3</i>	\$7,000	\$35,000
4	the <i>WHS civil penalty provision tier 4</i>	\$2,800	\$14,000

**4 Indexation of penalty amounts**

- (1) The amount of each monetary penalty set out in clause 1, 2 or 3 must be indexed for the year commencing on 1 July 2024, and for each subsequent year, in accordance with this clause.
- (2) The amount of a monetary penalty applying in each year is to be calculated as follows:

$$A \times \frac{B}{C}$$

where:

*A* is the amount of the monetary penalty set out in clause 1, 2 or 3.

*B* is the CPI number for the March quarter in the year immediately preceding the year for which the amount is calculated.

*C* is the CPI number for the March quarter of 2022.

Note: For *CPI number* and *year*, see clause 7.

- (3) If the amount of a monetary penalty calculated for a year is less than the amount that applied in the previous year, then the amount for the previous year continues to apply.

**5 Rounding of penalty amounts**

If, after indexation under clause 4, the amount of a monetary penalty applying in a year is:

- (a) less than \$10,000 and not a multiple of \$100:
- (i) the amount must be rounded to the nearest \$100; and
  - (ii) an amount of \$50 is rounded down; or
- (b) more than \$10,000 and not a multiple of \$1,000:
- (i) the amount must be rounded to the nearest \$1,000; and
  - (ii) an amount of \$500 is rounded down.

1     **6 Public notification of adjusted penalty amounts**

2             As soon as practicable after publication by the Australian  
3             Statistician of the CPI number for the March quarter in a year, the  
4             regulator must, by notifiable instrument, give notice of the amount  
5             of each monetary penalty calculated under this Schedule.

6     **7 Definitions**

7             In this Schedule:

8             ***CPI number*** means the All Groups Consumer Price Index number,  
9             that is, the weighted average of the 8 Australian capital cities,  
10            published by the Australian Statistician.

11            ***year*** means a period of 12 months starting on 1 July.

1     **Part 7—Tied amendments**

2     *Work Health and Safety Act 2011*

3     **73 Subsections 272A(1) and 272B(1) (penalty)**

4         Repeal the penalty, substitute:

5             Penalty: The tier B monetary penalty.