Fair Work Bill 2008

(Government)

(1) Clause 12, page 10 (after line 15), after paragraph (a) of the definition of affected employer, insert:

(aa) in relation to an entry under section 483A other than a designated outworker terms entry: see paragraph 483B(3)(a); and

(ab) in relation to a designated outworker terms entry under section 483A: see paragraph 483B(3)(b); and

[right of entry: TCF outworkers]

(2) Clause 12, page 10 (line 17), omit “subsection 495(2)”, substitute “paragraph 495(2)(a)”.

[right of entry: State or Territory OHS rights]

(3) Clause 12, page 10 (line 17), at the end of the definition of affected employer, add:

; and (c) in relation to a State or Territory OHS right to inspect or otherwise access an employee record: see paragraph 495(2)(b).

[right of entry: State or Territory OHS rights]

(4) Clause 12, page 14 (before line 3), before the definition of discriminatory term, insert:

designated outworker terms entry: see subsection 483A(5).

[right of entry: TCF outworkers]

(5) Clause 12, page 28 (after line 20), after the definition of step-child, insert:

TCF award means an instrument prescribed by the regulations for the purposes of this definition.

[right of entry: TCF outworkers]

(6) Clause 12, page 28 (before line 21), before the definition of termination of industrial action instrument, insert:
**TCF outworker** means an outworker in the textile, clothing or footwear industry whose work is covered by a TCF award.

(7) Clause 478, page 390 (line 10), after “instruments.”, insert “The Division makes special provision in relation to TCF outworkers.”.

(8) Clause 478, page 390 (line 12), after “employees”, insert “and TCF outworkers”.

(9) Clause 480, page 391 (line 6), after “employees”, insert “and TCF outworkers”.

(10) Clause 482, page 393 (line 3), before “relevant”, insert “that is directly”.

(11) Clause 482, page 393 (line 3), after “contravention”, insert “and”.

(12) Clause 482, page 393 (lines 7 to 10), omit the note, substitute:

| Note 1: | The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504). |
| Note 2: | The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*. |

(13) Clause 482, page 393 (after line 10), after subclause (1), insert:

(1A) However, an occupier or affected employer is not required under paragraph (1)(c) to allow the permit holder to inspect, or make copies of, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

(14) Clause 483, page 393 (line 26), before “relevant”, insert “that is directly”.

(15) Clause 483, page 393 (after line 28), after subclause (1), insert:

(1A) However, an affected employer is not required under subsection (1) to produce, or provide access to, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

(16) Clause 483, page 394 (lines 14 to 17), omit the note, substitute:

| Note 1: | The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504). |
| Note 2: | The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*. |

(17) Page 394 (before line 18), before Subdivision B, insert:
Subdivision AA—Entry to investigate suspected contravention relating to TCF outworkers

483A Entry to investigate suspected contravention relating to TCF outworkers

(1) A permit holder may enter premises and exercise a right under section 483B or 483C for the purpose of investigating a suspected contravention of:

(a) this Act, or a term of a fair work instrument, that relates to, or affects, a TCF outworker:
   (i) whose industrial interests the permit holder’s organisation is entitled to represent; and
   (ii) who performs work on the premises; or
(b) a designated outworker term that is in an instrument that relates to TCF outworkers whose industrial interests the permit holder’s organisation is entitled to represent.

Note: Particulars of the suspected contravention must be specified in an entry notice, unless the entry is a designated outworker terms entry (see subsection 518(2)).

(2) The permit holder must reasonably suspect that the contravention has occurred, or is occurring.

(3) The burden of proving that the suspicion is reasonable lies on the person asserting that fact.

(4) Subsections (2) and (3) do not apply in relation to a designated outworker terms entry.

(5) A designated outworker terms entry is an entry under paragraph (1)(b) for the purpose of investigating a suspected contravention of a designated outworker term.

483B Rights that may be exercised while on premises

Rights that may be exercised while on premises

(1) While on the premises, the permit holder may do the following:

(a) inspect any work, process or object relevant to the suspected contravention;
(b) interview any person about the suspected contravention:
   (i) who agrees to be interviewed; and
   (ii) whose industrial interests the permit holder’s organisation is entitled to represent;
(c) require the occupier or an affected employer to allow the permit holder to inspect, and make copies of, any record or document that is directly relevant to the suspected contravention and that:
   (i) is kept on the premises; or
   (ii) is accessible from a computer that is kept on the premises.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the Privacy Act 1988.

(2) However, an occupier or affected employer is not required under paragraph (1)(c) to allow the permit holder to inspect, or make copies of, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.
Meaning of affected employer

(3) A person is an affected employer:

(a) in relation to an entry onto premises under section 483A other than a designated outworker terms entry, if:

(i) the person employs a TCF outworker whose industrial interests the permit holder’s organisation is entitled to represent; and
(ii) the TCF outworker performs work on the premises; and
(iii) the suspected contravention relates to, or affects, the TCF outworker; or
(b) in relation to a designated outworker terms entry under section 483A, if the person is covered by a TCF award.

Occupier and affected employer must not contravene requirement

(4) An occupier or affected employer must not contravene a requirement under paragraph (1)(c).

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

483C Later access to record or document

Later access to record or document

(1) The permit holder may, by written notice, require the occupier or an affected employer to produce, or provide access to, a record or document that is directly relevant to the suspected contravention on a later day or days specified in the notice.

(2) However, an occupier or affected employer is not required under subsection (1) to produce, or provide access to, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

Other rules relating to notices

(3) The day or days specified in the notice must not be earlier than 14 days after the notice is given.

(4) The notice may be given:

(a) while the permit holder is on the premises; or
(b) within 5 days after the entry.

Occupier and affected employer must not contravene requirement

(5) An occupier or affected employer must not contravene a requirement under subsection (1).

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

Where record or document may be inspected or copied

(6) The permit holder may inspect, and make copies of, the record or document at:

(a) the premises; or
(b) if another place is agreed upon by the permit holder and the occupier or affected employer—that other place.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).
Note 2: The use or disclosure of personal information obtained under this section is regulated under the Privacy Act 1988.

483D Entry onto other premises to access records and documents

(1) A permit holder who may enter premises under paragraph 483A(1)(a) for the purpose of investigating a suspected contravention may enter other premises and exercise a right under subsection (2) or section 483E if the permit holder reasonably suspects that records or documents that are directly relevant to the suspected contravention:
   (a) are kept on the other premises; or
   (b) are accessible from a computer that is kept on the other premises.

Note: Particulars of the suspected contravention must be specified in an entry notice (see subsection 518(2)).

Rights that may be exercised while on premises

(2) While on the other premises, the permit holder may require the occupier to allow the permit holder to inspect, and make copies of, any such record or document.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the Privacy Act 1988.

(3) However, an occupier is not required under subsection (2) to allow the permit holder to inspect, or make copies of, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

Occupier must not contravene requirement

(4) An occupier must not contravene a requirement under subsection (2).

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

483E Later access to record or document—other premises

Later access to record or document

(1) The permit holder may, by written notice, require the occupier of the other premises to produce, or provide access to, a record or document that is directly relevant to the suspected contravention on a later day or days specified in the notice.

(2) However, an occupier is not required under subsection (1) to produce, or provide access to, a record or document if to do so would contravene a law of the Commonwealth or a law of a State or Territory.

Other rules relating to notices

(3) The day or days specified in the notice must not be earlier than 14 days after the notice is given.

(4) The notice may be given:
   (a) while the permit holder is on the other premises; or
   (b) within 5 days after the entry.
Occupier must not contravene requirement

(5) An occupier must not contravene a requirement under subsection (1).

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

Where record or document may be inspected or copied

(6) The permit holder may inspect, and make copies of, the record or document at:
   (a) the other premises; or
   (b) if another place is agreed upon by the permit holder and the occupier—that other place.

Note 1: The use or disclosure of information or documents obtained under this section is strictly controlled (see section 504).

Note 2: The use or disclosure of personal information obtained under this section is regulated under the Privacy Act 1988.

(right of entry: TCF outworkers/protection of employee information)

(18) Clause 484, page 394 (line 20), omit “to hold”, substitute “for the purposes of holding”.

(right of entry: entry to hold discussions)

(19) Clause 484, page 394 (line 21), omit “persons”, substitute “employees or TCF outworkers”.

(right of entry: entry to hold discussions/TCF outworkers)

(20) Clause 486, page 395 (line 27), omit “Neither Subdivision A nor B authorises”, substitute “Subdivisions A, AA and B do not authorise”.

(right of entry: TCF outworkers)

(21) Clause 487, page 396 (after line 1), before subclause (1), insert:

Entry under Subdivision A or B

(right of entry: TCF outworkers)

(22) Clause 487, page 396 (line 11), after “notice”, insert “for an entry under Subdivision A or B”.

(right of entry: TCF outworkers)

(23) Clause 487, page 396 (after line 20), at the end of the clause, add:

Entry under Subdivision AA

(5) If the permit holder enters premises under Subdivision AA, the permit holder must, either before or as soon as practicable after entering the premises, give an entry notice for the entry to the occupier of the premises or another person who apparently represents the occupier if the occupier or other person is present at the premises.

(right of entry: TCF outworkers)

(24) Clause 489, page 396 (line 25), after “A”, insert “or AA”.

(right of entry: TCF outworkers)

(25) Clause 489, page 396 (lines 30 and 31), omit “under paragraph 482(1)(c) or subsection 483(1)”, substitute “under:
   (i) paragraph 482(1)(c) or 483B(1)(c), or subsection 483D(2); or
   (ii) subsection 483(1), 483C(1) or 483E(1)”.

(right of entry: TCF outworkers)
(26) Clause 489, page 397 (lines 1 to 3), omit the note, substitute:

Note: Paragraphs 482(1)(c) and 483B(1)(c) and subsection 483D(2) deal with access to records and documents while the permit holder is on the premises. Subsections 483(1), 483C(1) and 483E(1) deal with access to records and documents at later times.

[**right of entry: TCF outworkers**]

(27) Clause 489, page 397 (line 7), omit “A”, substitute “A, AA”.

[**right of entry: TCF outworkers**]

(28) Clause 490, page 397 (line 15), omit “A”, substitute “A, AA”.

[**right of entry: TCF outworkers**]

(29) Clause 490, page 397 (line 19), omit “A”, substitute “A, AA”.

[**right of entry: TCF outworkers**]

(30) Clause 495, page 401 (lines 2 to 4), omit subclause (2), substitute:

(2) A person is an affected employer:

(a) in relation to an entry onto premises in accordance with this Division—if one or more of the person’s employees perform work on the premises; and

(b) in relation to a right to inspect or otherwise access an employee record in accordance with this Division—if the person employs the employee to whom the record relates.

[**right of entry: State or Territory OHS rights**]

(31) Clause 502, page 402 (line 18), omit “483(5)(b)”, substitute “483(5)(b), 483C(6)(b) or 483E(6)(b)”.

[**right of entry: TCF outworkers**]

(32) Clause 504, page 403 (lines 3 to 14), omit the clause, substitute:

504 Unauthorised use or disclosure of information or documents

A person must not use or disclose information or a document obtained under section 482, 483, 483B, 483C, 483D or 483E in the investigation of a suspected contravention for a purpose that is not related to the investigation or rectifying the suspected contravention, unless:

(a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent:

(i) a serious and imminent threat to an individual’s life, health or safety; or

(ii) a serious threat to public health or public safety; or

(b) the person has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the information or document as a necessary part of an investigation of the matter or in reporting concerns to relevant persons or authorities; or

(c) the use or disclosure is required or authorised by or under law; or

(d) the person reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by, or on behalf of, an enforcement body (within the meaning of the Privacy Act 1988):

(i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
(ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
(iii) the protection of the public revenue;
(iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
(v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or

(e) if the information is, or the document contains, personal information (within the meaning of the Privacy Act 1988)—the use or disclosure is made with the consent of the individual to whom the information relates.

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

[right of entry: protection of employee information/TCF outworkers]

(33) Clause 510, page 407 (line 11), omit “subsection 504(1)”, substitute “section 504”.

[right of entry: protection of employee information/TCF outworkers]

(34) Clause 510, page 407 (lines 12 and 13), omit “employee records”, substitute “information or documents”.

[right of entry: protection of employee information]

(35) Clause 510, page 407 (lines 16 to 18), omit “an employee record of an employee obtained under section 482 or 483”, substitute “information or documents obtained under section 482, 483, 483B, 483C, 483D or 483E”.

[right of entry: protection of employee information/TCF outworkers]

(36) Clause 518, page 412 (lines 25 and 26), omit “481 (which deals with entry to investigate suspected contraventions)”, substitute “481, 483 A or 483D”.

[right of entry: TCF outworkers]

(37) Clause 518, page 413 (line 1), before “specify”, insert “unless the entry is a designated outworker terms entry under section 483A—”.

[right of entry: TCF outworkers]

(38) Clause 518, page 413 (line 3), before “contain”, insert “for an entry under section 481—”.

[right of entry: TCF outworkers]

(39) Clause 518, page 413 (after line 10), after paragraph (2)(c), insert:

(ca) for an entry under section 483A other than a designated outworker terms entry—contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of a TCF outworker, who performs work on the premises, and:

(i) to whom the suspected contravention or contraventions relate; or
(ii) who is affected by the suspected contravention or contraventions; and

(cb) for a designated outworker terms entry under section 483A—contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of TCF outworkers; and

(cc) for an entry under section 483D—contain a declaration by the permit holder for the entry that the permit holder’s organisation is entitled to represent the industrial interests of a TCF outworker:

(i) to whom the suspected contravention or contraventions relate; or
(ii) who is affected by the suspected contravention or contraventions; and

[right of entry: TCF outworkers]
(40) Clause 518, page 413 (line 12), at the end of paragraph (2)(d), add “or TCF outworker”.

[right of entry: TCF outworkers]

(41) Clause 518, page 413 (line 20), omit “a person”, substitute “an employee or TCF outworker”.

[right of entry: entry to hold discussions/TCF outworkers]

(42) Clause 518, page 413 (line 23), omit “person”, substitute “employee or TCF outworker”.

[right of entry: entry to hold discussions/TCF outworkers]

(43) Clause 539, page 435 (table item 25, column 1), after “483(4)”, insert:

483B(4)
483C(5)
483D(4)
483E(5)

[right of entry: TCF outworkers]

(44) Clause 539, page 435 (table item 25, column 1), omit “504(1)”, substitute “504”.

[right of entry: protection of employee information]