2013-2014

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Fair Work Amendment Bill 2014

No. , 2014

(Employment)

A Bill for an Act to amend the Fair Work Act 2009, and for other purposes
## Contents

1  Short title ............................................................................................................. 1
2  Commencement ................................................................................................. 1
3  Schedule(s) ....................................................................................................... 3

### Schedule 1—Amendments

- **Part 1**—Extension of period of unpaid parental leave 4
  - *Fair Work Act 2009* 4

- **Part 2**—Payment for annual leave 5
  - *Fair Work Act 2009* 5

- **Part 3**—Taking or accruing leave while receiving workers’ compensation 6
  - *Fair Work Act 2009* 6

- **Part 4**—Individual flexibility arrangements 7
  - **Division 1**—Modern awards (genuine needs statements) 7
    - *Fair Work Act 2009* 7
  - **Division 2**—Modern awards (other matters) 7
    - *Fair Work Act 2009* 7
  - **Division 3**—Enterprise agreements 8
    - *Fair Work Act 2009* 8

- **Part 5**—Greenfields agreements 11
  - *Fair Work Act 2009* 11

- **Part 6**—Transfer of business 18
  - *Fair Work Act 2009* 18

- **Part 7**—Protected action ballot orders 19
  - *Fair Work Act 2009* 19

- **Part 8**—Right of entry 20
  - *Fair Work Act 2009* 20

- **Part 9**—FWC hearings and conferences 26
  - *Fair Work Act 2009* 26
Part 10—Unclaimed money  

Fair Work Act 2009  

Schedule 2—Application and transitional provisions  

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

The Parliament of Australia enacts:

1 **Short title**

This Act may be cited as the *Fair Work Amendment Act 2014*.

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

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Schedule 1, Parts 1, 2 and 3</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>3. Schedule 1, Part 4, Division 1</td>
<td>The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>4. Schedule 1, Part 4, Divisions 2 and 3</td>
<td>A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.</td>
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<tr>
<td>5. Schedule 1, Parts 5, 6 and 7</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>6. Schedule 1, Part 8</td>
<td>A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.</td>
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<tr>
<td>7. Schedule 1, Part 9</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>8. Schedule 1, Part 10</td>
<td>A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.</td>
<td></td>
</tr>
<tr>
<td>9. Schedule 2</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>
Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Part 1—Extension of period of unpaid parental leave

Fair Work Act 2009

1 After subsection 76(5)

Insert:

Discussion

(5A) The employer must not refuse the request unless the employer has given the employee a reasonable opportunity to discuss the request.
Part 2—Payment for annual leave

Fair Work Act 2009

2 Subsection 55(4) (paragraph (b) of note 2)
Omit “99),”, substitute “99); or”.

3 Subsection 55(4) (at the end of note 2)
Add:
(c) that provide that if, when the employment of an employee ends,
the employee has a period of untaken paid annual leave, the
employee is to be paid the amount that would have been payable
to the employee had the employee taken that period of leave (that
amount may be higher than the amount required by
subsection 90(2)).

4 Subsection 90(2)
Repeal the subsection, substitute:
(2) If, at the time (the termination time) when the employment of an
employee ends, the employee has a period of untaken paid annual
leave:
(a) the employer must pay the employee a rate for each hour of
the employee’s untaken paid annual leave; and
(b) that rate must not be less than the rate that, immediately
before the termination time, is the employee’s base rate of
pay (expressed as an hourly rate).

Note: See also section 55 (which deals with the interaction between the
National Employment Standards and a modern award or enterprise
agreement).
Part 3—Taking or accruing leave while receiving workers’ compensation

Fair Work Act 2009

5 Subsection 130(2)

   Repeal the subsection.
Part 4—Individual flexibility arrangements

Division 1—Modern awards (genuine needs statements)

_Fair Work Act 2009_

6 After paragraph 144(4)(c)

Insert:

(a) require the employer to ensure that any individual flexibility arrangement includes a statement by the employee setting out why the employee believes (at the time of agreeing to the arrangement) that the arrangement:

(i) meets the genuine needs of the employee; and

(ii) results in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to; and

Division 2—Modern awards (other matters)

_Fair Work Act 2009_

7 Paragraph 144(4)(d)

Repeal the paragraph, substitute:

(d) require the employer to ensure that any individual flexibility arrangement agreed to under the term must be able to be terminated:

(i) by either the employee, or the employer, giving 13 weeks notice of termination, in writing, to the other party to the arrangement; or

(ii) by the employee and the employer at any time if they agree, in writing, to the termination; and

8 At the end of subsection 144(4)

Add:

Note: Benefits other than an entitlement to a payment of money may be taken into account for the purposes of paragraph (c).
Schedule 1 Amendments

Part 4 Individual flexibility arrangements

9 At the end of subsection 145(3)

Add:

Note: An employer does not contravene a flexibility term in the circumstances set out in section 145AA.

10 After section 145

Insert:

145AA Contravention of flexibility term by employer

An employer does not contravene a flexibility term of a modern award in relation to a particular individual flexibility arrangement if, at the time when the arrangement is made, the employer reasonably believes that the requirements of the term were complied with, so far as the requirements are applicable to the arrangement.

Division 3—Enterprise agreements

Fair Work Act 2009

11 Before paragraph 203(2)(a)

Insert:

(aa) if the enterprise agreement includes terms that deal with one or more of the following matters:
   (i) arrangements about when work is performed;
   (ii) overtime rates;
   (iii) penalty rates;
   (iv) allowances;
   (v) leave loading;
   provide that the effect of those terms may be varied by an individual flexibility arrangement agreed to under the flexibility term; and

12 Paragraph 203(2)(a)

Omit “the terms”, substitute “any other terms”.

Fair Work Amendment Bill 2014 No. , 2014
Amendments Schedule 1
Individual flexibility arrangements Part 4

13 At the end of subsection 203(4)
Add:

Note: Benefits other than an entitlement to a payment of money may be
taken into account for the purposes of this subsection.

14 After subsection 203(4)
Insert:

Requirement for genuine needs statement

(4A) The flexibility term must require the employer to ensure that any
individual flexibility arrangement agreed to under the term
includes a statement by the employee setting out why the employee
believes (at the time of agreeing to the arrangement) that the
arrangement:
(a) meets the genuine needs of the employee; and
(b) results in the employee being better off overall than the
employee would have been if no individual flexibility
arrangement were agreed to.

15 Paragraph 203(6)(a)
Omit “written notice of not more than 28 days”, substitute “13 weeks
notice of termination, in writing, to the other party to the arrangement”.

16 At the end of subsection 204(3)
Add:

Note: An employer does not contravene a flexibility term in the
circumstances set out in section 204A.

17 Subsection 204(4)
Repeal the subsection, substitute:

Arrangement may be terminated by agreement or notice

(4) The flexibility term is taken to provide (in addition to any other
means of termination of the arrangement that the term provides)
that the arrangement can be terminated:
(a) by either the employee, or the employer, giving written
notice of not more than 28 days; or
(b) by the employee and the employer at any time if they agree, in writing, to the termination.

18 After section 204

Insert:

204A Contravention of flexibility term by employer

An employer does not contravene a flexibility term of an enterprise agreement in relation to a particular individual flexibility arrangement if, at the time when the arrangement is made, the employer reasonably believes that the requirements of the term were complied with, so far as the requirements are applicable to the arrangement.
Part 5—Greenfields agreements

Fair Work Act 2009

19 Section 12 (at the end of the definition of appointment)
Add “or 177(c)”.

20 Section 12 (definition of bargaining representative)
Omit “section 176”, substitute “sections 176 and 177”.

21 Section 12
Insert:

notified negotiation period for a proposed single-enterprise agreement that is a greenfields agreement: see section 178B.

22 Subsection 172(1) (note 2)
After “enterprise agreement”, insert “that is not a greenfields agreement”.

23 After section 176
Insert:

177 Bargaining representatives for proposed enterprise agreements that are greenfields agreements
The following paragraphs set out the persons who are bargaining representatives for a proposed single-enterprise agreement that is a greenfields agreement:
(a) an employer that will be covered by the agreement;
(b) an employee organisation:
   (i) that is entitled to represent the industrial interests of one or more of the employees who will be covered by the agreement, in relation to work to be performed under the agreement; and
   (ii) with which the employer agrees to bargain for the agreement;
(c) a person who is a bargaining representative of an employer
that will be covered by the agreement if the employer
appoints, in writing, the person as his or her bargaining
representative for the agreement.

24 At the end of subsection 178(2)

Add:
; and (c) for an appointment made by an employer that will be covered
by a proposed single-enterprise agreement that is a
greenfields agreement—be given, on request, to an employee
organisation that is a bargaining representative for the
agreement.

25 Paragraph 178A(3)(b)

After “a proposed enterprise agreement”, insert “, other than a
single-enterprise agreement that is a greenfields agreement”.

26 After subsection 178A(3)

Insert:
(3A) A copy of an instrument under subsection (1) made by an employer
that will be covered by a proposed single-enterprise agreement that
is a greenfields agreement must be given to the bargaining
representative and, on request, to an employee organisation that is
a bargaining representative for the agreement.

27 At the end of Division 3 of Part 2-4

Add:

178B Notified negotiation period for a proposed single-enterprise
agreement that is a greenfields agreement

(1) If a proposed single-enterprise agreement is a greenfields
agreement, an employer that is a bargaining representative for the
agreement may give written notice:
(a) to each employee organisation that is a bargaining
representative for the agreement; and
(b) stating that the period of 3 months beginning on a specified
day is the notified negotiation period for the agreement.

(2) The specified day must be later than:
(a) if only one employee organisation is a bargaining representative for the agreement—the day on which the employer gave the notice to the organisation; or
(b) if 2 or more employee organisations are bargaining representatives for the agreement—the last day on which the employer gave the notice to any of those organisations.

Multiple employers—agreement to giving of notice

(3) If 2 or more employers are bargaining representatives for the agreement, the notice has no effect unless the other employer or employers agree to the giving of the notice.

28 At the end of section 182

Add:

(4) If:

(a) a proposed single-enterprise agreement is a greenfields agreement that has not been made under subsection (3); and
(b) there has been a notified negotiation period for the agreement; and
(c) the notified negotiation period has ended; and
(d) the employer or employers that were bargaining representatives for the agreement (the relevant employer or employers) gave each of the employee organisations that were bargaining representatives for the agreement a reasonable opportunity to sign the agreement; and
(e) the relevant employer or employers apply to the FWC for approval of the agreement;

the agreement is taken to have been made:

(f) by the relevant employer or employers with each of the employee organisations that were bargaining representatives for the agreement; and

(g) when the application is made to the FWC for approval of the agreement.

Note: See also section 185A (material that must accompany an application).

29 Subsection 185(1A)

After “the agreement is a”, insert “multi-enterprise agreement that is a”.
30 At the end of section 185

Add:

*Single-enterprise agreements that are greenfields agreements*

(6) This section does not apply to an agreement made under subsection 182(4).

31 At the end of Subdivision A of Division 4 of Part 2-4

Add:

185A Material that must accompany an application under subsection 182(4) for approval of a greenfields agreement

An application under subsection 182(4) for approval of an agreement must be accompanied by:

(a) a copy of the agreement; and

(b) any declarations that are required by the procedural rules to accompany the application.

32 Subsection 186(1)

After “made under”, insert “subsection 182(4) or”.

33 At the end of section 187

Add:

(6) If an agreement is made under subsection 182(4) (which deals with a single-enterprise agreement that is a greenfields agreement), the FWC must be satisfied that the agreement, considered on an overall basis, provides for pay and conditions that are consistent with the prevailing pay and conditions within the relevant industry for equivalent work.

Note: In considering the prevailing pay and conditions within the relevant industry for equivalent work, the FWC may have regard to the prevailing pay and conditions in the relevant geographical area.

34 Paragraph 190(1)(a)

After “made under”, insert “subsection 182(4) or”.

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*Fair Work Amendment Bill 2014*
35 **Subsection 192(1)**
   After “made under”, insert “subsection 182(4) or”.

36 **Subsection 193(6)**
   After “made under”, insert “subsection 182(4) or”.

37 **After subsection 201(2)**
   Insert:
   
   (2A) If:
      
      (a) an agreement is made under subsection 182(4) (which deals
          with a single-enterprise agreement that is a greenfields
          agreement); and
      
      (b) the FWC approves the agreement;
      the FWC must note in its decision to approve the agreement that
      the agreement covers each employee organisation that was a
      bargaining representative for the agreement.

38 **Paragraph 211(1)(a)**
   After “made under”, insert “subsection 182(4) or”.

39 **Paragraph 211(4)(d)**
   After “(6) to”, insert “subsection 182(4) or”.

40 **At the end of subsection 228(1)**
   Add:
   
   Note:  See also section 255A (limitations relating to greenfields agreements).

41 **At the end of subsection 229(1)**
   Add:
   
   Note:  See also section 255A (limitations relating to greenfields agreements).

42 **At the end of subsection 230(1)**
   Add:
   
   Note:  See also section 255A (limitations relating to greenfields agreements).

43 **At the end of section 232**
   Add:

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No. 2014  
*Fair Work Amendment Bill 2014*  
15
Schedule 1  Amendments
Part 5  Greenfields agreements

Note: See also section 255A (limitations relating to greenfields agreements).

44 Section 234 (note)
After “Note”, insert “1”.

45 At the end of section 234
Add:
Note 2: See also section 255A (limitations relating to greenfields agreements).

46 At the end of subsection 235(1)
Add:
Note: See also section 255A (limitations relating to greenfields agreements).

47 Subsection 238(1)
After “a proposed single-enterprise agreement”, insert “(other than a greenfields agreement)”.

48 At the end of subsection 240(1)
Add:
Note: See also section 255A (limitations relating to greenfields agreements).

49 At the end of subsection 255(1)
Add:
; or (d) an employer to give a notice under section 178B; or
(e) an employer to specify a particular day in a notice under section 178B; or
(f) an employer to agree to the giving of a notice under section 178B.

50 After section 255
Insert:

255A Limitations relating to greenfields agreements

(1) If:
(a) a proposed single-enterprise agreement is a greenfields agreement; and
(b) there has been a notified negotiation period for the agreement; and
(c) the notified negotiation period has ended;
then:
(d) the following provisions do not apply in relation to the agreement at any time after the end of the notified negotiation period:
(i) section 228 (which deals with good faith bargaining requirements);
(ii) sections 229 and 230 (which deal with bargaining orders);
(iii) sections 234 and 235 (which deal with serious breach declarations);
(iv) section 240 (which deals with bargaining disputes); and
(e) a bargaining order that relates to the agreement ceases to have effect at the end of the notified negotiation period.

(2) Paragraph (1)(e) has effect despite anything in section 232 (which deals with the operation of bargaining orders).

51 At the end of subsection 269(1)
Add:

Note 3: See also section 271A (limitations relating to greenfields agreements).

52 At the end of Division 4 of Part 2-5
Add:

271A Limitations relating to greenfields agreements

If:
(a) a proposed single-enterprise agreement is a greenfields agreement; and
(b) there has been a notified negotiation period for the agreement; and
(c) the notified negotiation period has ended;
section 269 (which deals with bargaining related workplace determinations) does not apply in relation to the agreement at any time after the end of the notified negotiation period.
Part 6—Transfer of business

Fair Work Act 2009

53 Section 12 (paragraph (a) of the definition of transfer of business)

Omit “subsection 311(1)”, substitute “subsections 311(1) and (1A)”.  

54 After subsection 311(1)

Insert:

(1A) However, there is not a transfer of business if:

(a) the new employer is an associated entity of the old employer when the employee becomes employed by the new employer;

and

(b) before the termination of the employee’s employment with the old employer, the employee sought to become employed by the new employer at the employee’s initiative.

55 At the end of section 768AD

Add:

Exception

(5) Subsections (2), (3) and (4) do not apply if:

(a) the new employer is an associated entity of the old State employer when the person becomes employed by the new employer as mentioned in paragraph (1)(b); and

(b) before the termination of the person’s employment with the old State employer, the person sought to become employed by the new employer at the person’s initiative.

(6) For the purposes of sections 768BL, 768BM and 768BN, assume that subsection (5) of this section had not been enacted.
Part 7—Protected action ballot orders

_Fair Work Act 2009_

56 After subsection 437(2)

Insert:

(2A) Subsection (1) does not apply unless there has been a notification time in relation to the proposed enterprise agreement.

Note: For _notification time_, see subsection 173(2). Protected industrial action cannot be taken until after bargaining has commenced (including where the scope of the proposed enterprise agreement is the only matter in dispute).
Part 8—Right of entry

Fair Work Act 2009

57 Section 12 (definition of accommodation arrangement)
Repeal the definition.

58 Section 12
Insert:

invitation certificate: see subsection 520A(1).

59 Section 12 (definition of transport arrangement)
Repeal the definition.

60 Section 478
Omit:

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

61 Section 484
Repeal the section, substitute:

484 Entry to hold discussions

Permit holder’s organisation is covered by an enterprise agreement

(1) A permit holder may enter premises for the purposes of holding discussions with one or more employees or TCF award workers:
(a) who perform work on the premises; and
(b) whose industrial interests the permit holder’s organisation is entitled to represent; and
(c) who wish to participate in those discussions;
if:
(d) an enterprise agreement applies to work performed on the premises; and

(e) the permit holder’s organisation is covered by the enterprise agreement.

Note 1: A permit holder, or the organisation to which the permit holder belongs, may be subject to an order by the FWC under section 508 if rights under this Subdivision are misused.

Note 2: A person must not refuse or unduly delay entry by a permit holder, or intentionally hinder or obstruct a permit holder, exercising rights under this Subdivision (see sections 501 and 502).

Note 3: Under paragraph 487(1)(b), the permit holder must give the occupier of the premises notice for the entry. Having given that notice, the permit holder may hold the relevant discussions on the premises.

Permit holder’s organisation is not covered by an enterprise agreement

(2) A permit holder may enter premises for the purposes of holding discussions with one or more employees or TCF award workers:

(a) who perform work on the premises; and

(b) whose industrial interests the permit holder’s organisation is entitled to represent; and

(c) who wish to participate in those discussions;

if:

(d) either:

(i) an enterprise agreement applies to work performed on the premises, but the enterprise agreement does not cover the permit holder’s organisation; or

(ii) no enterprise agreement applies to work performed on the premises; and

(e) a member, or prospective member, of the permit holder’s organisation:

(i) who performs work on the premises; and

(ii) whose industrial interests the organisation is entitled to represent;

has invited the organisation to send a representative to the premises for the purposes of holding those discussions.

Note 1: The FWC may issue an invitation certificate under section 520A. The certificate will state that the FWC is satisfied that the organisation has been invited.
Note 2: A permit holder, or the organisation to which the permit holder belongs, may be subject to an order by the FWC under section 508 if rights under this Subdivision are misused.

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

Note 4: Under paragraph 487(1)(b), the permit holder must give the occupier of the premises notice for the entry. Having given that notice, the permit holder may hold the relevant discussions on the premises.

62 Sections 492 and 492A

Repeal the sections, substitute:

492 Conduct of interviews in particular room etc.

(1) The permit holder must comply with any reasonable request by the occupier of the premises to:

(a) conduct interviews or hold discussions in a particular room or area of the premises; or

(b) take a particular route to reach a particular room or area of the premises.

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

(2) Without limiting when a request under subsection (1) might otherwise be unreasonable, a request under paragraph (1)(a) is unreasonable if:

(a) the room or area is not fit for the purpose of conducting the interviews or holding the discussions; or

(b) the request is made with the intention of:

(i) intimidating persons who might participate in the interviews or discussions; or

(ii) discouraging persons from participating in the interviews or discussions; or

(iii) making it difficult for persons to participate in the interviews or discussions, whether because the room or area is not easily accessible during mealtimes or other breaks, or for some other reason.
(3) However, a request under subsection (1) is not unreasonable only
because the room, area or route is not that which the permit holder
would have chosen.

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

63 Subsection 505(1)

Repeal the subsection, substitute:

(1) The FWC may deal with a dispute about the operation of this Part
(including a dispute about whether a request under section 491,
492 or 499 is reasonable).

Note: Sections 491, 492 and 499 deal with requests for permit holders to use
particular rooms or areas, and comply with occupational health and
safety requirements.

64 Subsection 505(5)

Repeal the subsection, substitute:

(5) In dealing with the dispute, the FWC must not confer rights on a
permit holder that are additional to, or inconsistent with, rights
exercisable in accordance with Division 2 or 3 of this Part, unless
the dispute is about whether a request under section 491, 492 or
499 is reasonable.

65 Subsection 505A(4)

Repeal the subsection.

66 Subsection 505A(6)

Repeal the subsection, substitute:

(6) In dealing with the dispute, the FWC must take into account:

(a) fairness between the parties concerned; and

(b) if the dispute relates to an employer—the combined impact
on the employer’s operations of entries onto the premises by
permit holders of organisations; and

(c) if the dispute relates to an occupier of premises—the
combined impact on the occupier’s operations of entries onto
the premises by permit holders of organisations.
(7) For the purposes of paragraphs (6)(b) and (c), it is immaterial whether the organisations, or their permit holders, are parties to the dispute.

67 After Subdivision D of Division 6 of Part 3-4

Insert:

Subdivision DA—Invitation certificates

520A Invitation certificates

(1) The FWC must, on application by an organisation, issue a certificate (an invitation certificate) to the organisation if the FWC is satisfied that:
   (a) a member, or prospective member, of the organisation performs work on particular premises; and
   (b) the organisation is entitled to represent the industrial interests of the member or prospective member; and
   (c) the member or prospective member has invited the organisation to send a representative to the premises for the purposes of holding discussions with one or more employees or TCF award workers.

(2) An invitation certificate must state the following:
   (a) the premises to which it relates;
   (b) the organisation to which it relates;
   (c) that the FWC is satisfied of the matters referred to in paragraphs (1)(a), (b) and (c).

(3) The FWC must specify an expiry date in an invitation certificate. The certificate ceases to have effect at the end of that date.

(4) In specifying an expiry date in an invitation certificate, the FWC must comply with any limitations, restrictions or requirements prescribed by the regulations.

(5) An invitation certificate must not reveal the identity of the member or prospective member to whom it relates.
68 Paragraphs 521(a), (b), (c) and (d)
Omit “and affected member certificates”, substitute “, affected member certificates and invitation certificates”.

69 Division 7 of Part 3-4
Repeal the Division.

70 Subsection 539(2) (cell at table item 25, column headed “Civil remedy provision”)
Omit:
521C(3)
521D(3)

71 After paragraph 601(5)(f)
Insert:
(fa) a decision to issue, or to refuse to issue, an invitation certificate under section 520A:
Part 9—FWC hearings and conferences

Fair Work Act 2009

72 Section 12

Insert:

*designated application-dismissal power* means:

(a) the power conferred by section 399A (which deals with
    dismissing applications for orders under Division 4 of
    Part 3-2); or

(b) the power conferred by section 587 to dismiss an application
    for an order under Division 4 of Part 3-2.

Note: Division 4 of Part 3-2 deals with remedies for unfair dismissal of
employees.

73 Section 397

Before “The FWC”, insert “(1)”.

74 At the end of section 397

Add:

(2) This section does not apply for the purposes of deciding whether to
    exercise a designated application-dismissal power.

75 At the end of section 399

Add:

*Designated application-dismissal power*

(4) To avoid doubt, a reference in this section to a *hearing in relation
to a matter arising under this Part* includes a reference to a
hearing for the purposes of deciding whether to exercise a
designated application-dismissal power.

76 After section 399A

Insert:
399B Hearings and conferences—dismissing applications

(1) If the FWC decides not to hold a hearing, or conduct a conference, for the purposes of deciding whether to exercise a designated application-dismissal power, the FWC must, before deciding whether to exercise the power:
(a) invite the parties to the matter concerned to provide further information that relates to whether the power should be exercised; and
(b) take account of any such information.

(2) If, as a result of information provided as mentioned in subsection (1), the FWC considers that it would be desirable to hold a hearing, or conduct a conference, for the purposes of deciding whether to exercise a designated application-dismissal power, the FWC may do so.

(3) An invitation under paragraph (1)(a) must:
(a) be given by written notice to the parties to the matter concerned; and
(b) specify the time by which the information referred to in the invitation is to be provided.

77 Subsection 587(1) (note)
After “Note”, insert “1”.

78 At the end of subsection 587(1)
Add:

Note 2: Section 399 deals with hearings for the purposes of deciding whether to exercise the power conferred by this section to dismiss an application for an order under Division 4 of Part 3-2.

Note 3: Section 399B sets out requirements that apply if the FWC decides not to hold a hearing, or conduct a conference, for the purposes of deciding whether to exercise the power conferred by this section to dismiss an application for an order under Division 4 of Part 3-2.
Part 10—Unclaimed money

Fair Work Act 2009

79 Before subsection 559(4)

Insert:

Interest

(3A) If:

(a) an amount is paid to a person under subsection (3) at a particular time; and
(b) the amount is at least $100; and
(c) the amount is attributable to an amount that was paid to the Commonwealth under subsection (1) more than 6 months before that time;
the Fair Work Ombudsman, on behalf of the Commonwealth, must also pay to the person the amount of interest (if any) worked out in accordance with an instrument under subsection (3B).

(3B) The Minister may make an instrument for the purposes of subsection (3A).

(3C) An instrument under subsection (3B) may involve different rates of interest for different periods over which the interest accrues. For this purpose, rate includes a nil rate.

(3D) An instrument made under subsection (3B) is a legislative instrument.

80 Subsection 559(4)

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

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Schedule 1 Amendments
Part 10 Unclaimed money
Schedule 2—Application and transitional provisions

Fair Work Act 2009

1 At the end of the Act

Add:

Schedule 5—Amendments made by the Fair Work Amendment Act 2014

Note: See section 795A.

1 Definition

In this Schedule:

amending Act means the Fair Work Amendment Act 2014.

2 Part 1 of Schedule 1 to the amending Act

The amendment made by Part 1 of Schedule 1 to the amending Act applies in relation to a request made after the commencement of that Part.

3 Part 2 of Schedule 1 to the amending Act

The amendments made by Part 2 of Schedule 1 to the amending Act apply in relation to the end of the employment of an employee, if the end of the employment occurs after the commencement of that Part.

4 Part 3 of Schedule 1 to the amending Act

The amendment made by Part 3 of Schedule 1 to the amending Act applies in relation to a compensation period beginning after the commencement of that Part.
5 Division 1 of Part 4 of Schedule 1 to the amending Act

Paragraph 144(4)(ca) applies in relation to a modern award that is in operation after the commencement of Division 1 of Part 4 of Schedule 1 to the amending Act, whether or not the award was made before the commencement of that Division.

6 FWC to vary certain modern awards—genuine needs statement

Scope

(1) This clause applies in relation to a modern award if:
   (a) the award is in operation at any time during the period of 6 months ending at the commencement of Division 1 of Part 4 of Schedule 1 to the amending Act; and
   (b) at any time during that 6-month period, the award includes a flexibility term that does not comply with paragraph 144(4)(ca) (if it were assumed that paragraph 144(4)(ca) applied in relation to the award).

Variation

(2) The FWC must, before the commencement of Division 1 of Part 4 of Schedule 1 to the amending Act, make a determination varying the modern award so as to ensure that the flexibility term complies with paragraph 144(4)(ca).

(3) A determination made under subclause (2) comes into operation at (and takes effect from) the commencement of Division 1 of Part 4 of Schedule 1 to the amending Act.

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

7 Division 2 of Part 4 of Schedule 1 to the amending Act

Section 145AA applies in relation to an individual flexibility arrangement made after the commencement of Division 2 of Part 4 of Schedule 1 to the amending Act.
8 Division 3 of Part 4 of Schedule 1 to the amending Act

(1) The amendments of subsections 203(2) and (6) made by Division 3 of Part 4 of Schedule 1 to the amending Act apply in relation to an enterprise agreement made after the commencement of that Division.

(2) Subsection 203(4A) applies in relation to an enterprise agreement made after the commencement of Division 3 of Part 4 of Schedule 1 to the amending Act.

(3) The amendment of section 204 made by Division 3 of Part 4 of Schedule 1 to the amending Act applies in relation to an enterprise agreement made after the commencement of that Division.

(4) Section 204A applies in relation to an individual flexibility arrangement made after the commencement of Division 3 of Part 4 of Schedule 1 to the amending Act.

9 Part 5 of Schedule 1 to the amending Act

The amendments made by Part 5 of Schedule 1 to the amending Act, so far as they concern proposed enterprise agreements, apply in relation to a proposed enterprise agreement if an employer agrees to bargain for the proposed enterprise agreement after the commencement of that Part.

10 Part 6 of Schedule 1 to the amending Act

(1) Subsection 311(1A) applies in relation to an employee who becomes employed by a new employer after the commencement of Part 6 of Schedule 1 to the amending Act.

(2) Subsections 768AD(5) and (6) apply in relation to a person who becomes employed by a new employer after the commencement of Part 6 of Schedule 1 to the amending Act.

11 Part 7 of Schedule 1 to the amending Act

The amendment of section 437 made by Part 7 of Schedule 1 to the amending Act applies in relation to an application made under that section, if the application was made after the commencement of that Part.
12 Part 8 of Schedule 1 to the amending Act

(1) The amendments made by item 62 of Schedule 1 to the amending Act apply in relation to interviews conducted, and discussions held, after the commencement of that item.

(2) The amendments of section 505A made by Part 8 of Schedule 1 to the amending Act apply to a dispute if the FWC commences to deal with the dispute:
   (a) on its own initiative after the commencement of that Part; or
   (b) on application made after the commencement of that Part.

13 Part 9 of Schedule 1 to the amending Act

The amendments made by Part 9 of Schedule 1 to the amending Act apply in relation to an application for an order under Division 4 of Part 3-2, if the application was made after the commencement of Part 9 of Schedule 1 to the amending Act.

14 Part 10 of Schedule 1 to the amending Act

Paragraph 559(3A)(c) applies in relation to an amount that was paid to the Commonwealth under subsection 559(1) after the commencement of Part 10 of Schedule 1 to the amending Act.