Agreements

(1) **Govt (1) [Sheet PT206]**

Clause 193, page 182 (after line 15), at the end of the clause, add:

*FWA may assume employee better off overall in certain circumstances*

(7) For the purposes of determining whether an enterprise agreement passes the better off overall test, if a class of employees to which a particular employee belongs would be better off if the agreement applied to that class than if the relevant modern award applied to that class, FWA is entitled to assume, in the absence of evidence to the contrary, that the employee would be better off overall if the agreement applied to the employee.

(2) **Govt (2) [Sheet PT206]**

Clause 207, page 196 (lines 5 to 10), omit subclause (5).

(3) **Govt (3) [Sheet PT206]**

Clause 211, page 198 (line 6), omit “and”.

(4) **Govt (4) [Sheet PT206]**

Clause 211, page 198 (lines 7 to 9), omit paragraph (1)(c), substitute:

unless FWA is satisfied that there are serious public interest grounds for not approving the variation.

(5) **Govt (5) [Sheet PT206]**

Clause 211, page 198 (line 26), omit “those provisions”, substitute “sections 180 and 188”.

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2008-2009

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Fair Work Bill 2008

Schedule of the amendments made by the Senate
(6) **Govt (6) [Sheet PT206]**

Clause 211, page 199 (line 3), omit “and subparagraph 188(a)(ii)”.

(7) **Govt (7) [Sheet PT206]**

Clause 211, page 199 (after line 4), after paragraph (3)(h), insert:

- (ha) references in paragraphs 186(2)(c) and (d) to the agreement were references to the enterprise agreement as proposed to be varied; and
- (hb) subparagraph 188(a)(ii) were omitted; and

(8) **Govt (8) [Sheet PT206]**

Page 202 (after line 5), after clause 217, insert:

**217A FWA may deal with certain disputes about variations**

1. This section applies if a variation of an enterprise agreement is proposed.

2. An employer or employee organisation covered by the enterprise agreement or an affected employee for the variation may apply to FWA for FWA to deal with a dispute about the proposed variation if the employer and the affected employees are unable to resolve the dispute.

3. FWA must not arbitrate (however described) the dispute.

(9) **Govt (9) [Sheet PT206]**

Page 230 (after line 20), after clause 256, insert:

**256A How employees, employers and employee organisations are to be described**

1. This section applies if a provision of this Part requires or permits an instrument of any kind to specify the employers, employees or employee organisations covered, or who will be covered, by an enterprise agreement or other instrument.

2. The employees may be specified by class or by name.

3. The employers and employee organisations must be specified by name.

4. Without limiting the way in which a class may be described for the purposes of subsection (2), the class may be described by reference to one or more of the following:
   - a particular industry or part of an industry;
   - a particular kind of work;
   - a particular type of employment;
   - a particular classification, job level or grade.
Application of this Act

(10) **Govt (1) [Sheet PA442]**

Clause 27, page 45 (before line 33), before subclause (1), insert:

(1A) Section 26 does not apply to any of the following laws:
   (a) the *Anti-Discrimination Act 1977* of New South Wales;
   (b) the *Equal Opportunity Act 1995* of Victoria;
   (c) the *Anti-Discrimination Act 1991* of Queensland;
   (d) the *Equal Opportunity Act 1984* of Western Australia;
   (e) the *Equal Opportunity Act 1984* of South Australia;
   (f) the *Anti-Discrimination Act 1998* of Tasmania;
   (g) the *Discrimination Act 1991* of the Australian Capital Territory;
   (h) the *Anti-Discrimination Act* of the Northern Territory.

(11) **Govt (2) [Sheet PA442]**

Clause 27, page 45 (line 34) to page 46 (line 6), omit paragraph (1)(a).

(12) **Govt (3) [Sheet PA442]**

Clause 27, page 47 (lines 11 to 15), omit paragraph (2)(l), substitute:

(l) regulation of any of the following:
   (i) employee associations;
   (ii) employer associations;
   (iii) members of employee associations or of employer associations;

(13) **Govt (4) [Sheet PA442]**

Clause 29, page 48 (lines 5 to 13), omit subclause (2), substitute:

(2) Despite subsection (1), a term of a modern award or enterprise agreement applies subject to the following:
   (a) any law covered by subsection 27(1A);
   (b) any law of a State or Territory so far as it is covered by paragraph 27(1)(b), (c) or (d).

(14) **Govt (5) [Sheet PA442]**

Clause 34, page 52 (line 12), at the end of paragraph (3)(a), add “and”.

(15) **Govt (6) [Sheet PA442]**

Clause 34, page 52 (after line 13), after subclause (3), insert:

(3A) For the purposes of extending this Act in accordance with subsection (3):
   (a) any reference in a provision of this Act to an employer is taken to include a reference to:
      (i) an Australian employer; and
      (ii) an employer of an Australian-based employee; and
(b) any reference in a provision of this Act to an employee is taken to include a reference to:
   (i) an employee of an Australian employer; and
   (ii) an Australian-based employee.

(16) **Govt (7) [Sheet PA442]**

Page 53 (after line 16), after clause 35, insert:

**35A Regulations excluding application of Act**

(1) Regulations made for the purposes of section 32 or subsection 33(4) or 34(4) may exclude the application of the whole of this Act in relation to all or a part of an area referred to in section 32 or subsection 33(4) or 34(4) (as the case may be).

(2) If subsection (1) applies, this Act has effect as if it did not apply in relation to that area or that part of that area.

**Bargaining**

(17) **Govt (1) [Sheet PT205]**

Clause 174, page 165 (after line 12), at the end of the clause, add:

*Regulations may prescribe additional content and form requirements etc.*

(6) The regulations may prescribe other matters relating to the content or form of the notice, or the manner in which employers may give the notice to employees.

(18) **Govt (2) [Sheet PT205]**

Clause 176, page 166 (line 28), after “agreement”, insert “, or has revoked the status of the organisation as his or her bargaining representative for the agreement under subsection 178A(2)”.

(19) **Govt (3) [Sheet PT205]**

Clause 176, page 167 (line 21), at the end of subclause (2), add:

; or (f) the employee has revoked the status of the organisation as his or her bargaining representative for the agreement under subsection 178A(2).

(20) **Govt (4) [Sheet PT205]**

Page 169 (after line 8), after clause 178, insert:

**178A Revocation of appointment of bargaining representatives etc.**

(1) The appointment of a bargaining representative for an enterprise agreement may be revoked by written instrument.
If a person would, apart from this subsection, be a bargaining representative of an employee for an enterprise agreement because of the operation of paragraph 176(1)(b) or subsection 176(2) (which deal with employee organisations), the employee may, by written instrument, revoke the person’s status as the employee’s bargaining representative for the agreement.

A copy of an instrument under subsection (1) or (2):

(a) for an instrument made by an employee who will be covered by the agreement—must be given to the employee’s employer; and

(b) for an instrument made by an employer that will be covered by a proposed enterprise agreement—must be given to the bargaining representative and, on request, to a bargaining representative of an employee who will be covered by the agreement.

The regulations may prescribe matters relating to the content or form of the instrument of revocation, or the manner in which the copy of the instrument may be given.

(21) **Govt (5) [Sheet PT205]**

Clause 179, page 169 (lines 9 to 19), omit the clause.

(22) **Govt (6) [Sheet PT205]**

Clause 186, page 176 (lines 3 to 8), omit subclause (3), substitute:

(3) FWA must be satisfied that the group of employees covered by the agreement was fairly chosen.

(3A) If the agreement does not cover all of the employees of the employer or employers covered by the agreement, FWA must, in deciding whether the group of employees covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

(23) **Govt (7) [Sheet PT205]**

Clause 228, page 207 (after line 19), at the end of subclause (1), add:

; (f) recognising and bargaining with the other bargaining representatives for the agreement.

(24) **Govt (8) [Sheet PT205]**

Clause 229, page 209 (lines 6 to 10), omit subclause (5), substitute:

(5) FWA may consider the application even if it does not comply with paragraph (4)(b) or (c) if FWA is satisfied that it is appropriate in all the circumstances to do so.

(25) **Govt (9) [Sheet PT205]**

Clause 237, page 215 (lines 8 to 11), omit paragraph (2)(c), substitute:

(c) that the group of employees who will be covered by the agreement was fairly chosen; and
(26) **Govt (10) [Sheet PT205]**

Clause 237, page 215 (after line 16), after subclause (3), insert:

(3A) If the agreement will not cover all of the employees of the employer or employers covered by the agreement, FWA must, in deciding for the purposes of paragraph (2)(c) whether the group of employees who will be covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

(27) **Govt (11) [Sheet PT205]**

Clause 238, page 216 (lines 23 to 26), omit paragraph (4)(c), substitute:

(c) that the group of employees who will be covered by the agreement proposed to be specified in the scope order was fairly chosen; and

(28) **Govt (12) [Sheet PT205]**

Clause 238, page 216 (after line 27), after subclause (4), insert:

*Matters which FWA must take into account*

(4A) If the agreement proposed to be specified in the scope order will not cover all of the employees of the employer or employers covered by the agreement, FWA must, in deciding for the purposes of paragraph (4)(c) whether the group of employees who will be covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.

(29) **Govt (13) [Sheet PT205]**

Clause 539, page 430 (table item 5), omit the table item.

**Commencement**

(30) **Govt (1) [Sheet PJ446]**

Clause 2, page 2 (table), omit the table, substitute:

<table>
<thead>
<tr>
<th>Commencement information</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Provision(s)</strong></td>
<td><strong>Commencement</strong></td>
<td><strong>Date/Details</strong></td>
<td></td>
</tr>
<tr>
<td>1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Sections 3 to 40</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Sections 41 to 572</td>
<td>A day or days to be fixed by Proclamation. A Proclamation must not specify a day that</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Column 1</td>
<td>Column 2</td>
<td>Column 3</td>
<td></td>
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<tr>
<td>---------</td>
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<td></td>
</tr>
<tr>
<td>Provision(s)</td>
<td>Commencement</td>
<td>Date/Details</td>
<td></td>
</tr>
<tr>
<td>occurs before the day on which the <em>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</em> receives the Royal Assent. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which the <em>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</em> receives the Royal Assent, they commence on the first day after the end of that period.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. Sections 573 to 718

At the same time as the provision(s) covered by table item 2.

5. Sections 719 to 800

A day or days to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the day on which the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* receives the Royal Assent. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* receives the Royal Assent, they commence on the first day after the end of that period.

6. Schedule 1

At the same time as the provision(s) covered by table item 2.

Definition of small business employer

(31) **Xenophon (1) [Sheet 5760]**

Clause 23, page 41 (line 31), omit “15 employees”, substitute “20 employees”.

(32) **Xenophon (2) [Sheet 5760]/Opp (3) [Sheet 5739 Revised 2]/FFP (2) [Sheet 5733 Revised 3]**

Clause 23, page 42 (line 5), at the end of subclause (2), add:

; and (c) the number is to be calculated in terms of full-time equivalent positions, not as an individual head count of employees; and

(d) the regulations must prescribe a method for the calculation of *full-time equivalent positions* for the purposes of this section.

(33) **Xenophon (3) [Sheet 5760]/Opp (4) [Sheet 5739 Revised 2]**

Clause 121, page 122 (line 5), before “Section”, insert “(1)”.
Clause 121, page 122 (after line 11), at the end of the clause, add:

(2) Subsection 23(1) has effect in relation to this section as if it were modified by omitting “20 employees” and substituting “15 employees”.

(3) Subsection 23(2) has effect in relation to this section as if it were modified by omitting paragraphs (c) and (d).

Description of employees

Page 251 (after line 26), at the end of Division 7, add:

281A How employees, employers and employee organisations are to be described

(1) This section applies if a provision of this Part requires or permits an instrument of any kind to specify the employers, employees or employee organisations covered, or who will be covered, by a workplace determination or other instrument.

(2) The employees may be specified by class or by name.

(3) The employers and employee organisations must be specified by name.

(4) Without limiting the way in which a class may be described for the purposes of subsection (2), the class may be described by reference to one or more of the following:

(a) a particular industry or part of an industry;
(b) a particular kind of work;
(c) a particular type of employment;
(d) a particular classification, job level or grade.

Fair Work Information Statement; functions of the Fair Work Ombudsman

Clause 124, page 126 (lines 3 to 17), omit the clause, substitute:

124 Fair Work Ombudsman to prepare and publish Fair Work Information Statement


Note: If the Fair Work Ombudsman changes the Statement, the Fair Work Ombudsman must publish the new version of the Statement in the Gazette.

(2) The Statement must contain information about the following:

(a) the National Employment Standards;
(b) modern awards;
(c) agreement-making under this Act;
(d) the right to freedom of association;
(e) the role of FWA and the Fair Work Ombudsman;
(f) termination of employment;
(g) individual flexibility arrangements;
(h) right of entry (including the protection of personal information by privacy laws).

(3) The Fair Work Information Statement is not a legislative instrument.
(4) The regulations may prescribe other matters relating to the content or form of the Statement, or the manner in which employers may give the Statement to employees.

(37) **Govt (2) [Sheet PJ447]**

Clause 576, page 461 (lines 8 and 9), omit “, and undertaking activities to promote public understanding of;”.

(38) **Govt (3) [Sheet PJ447]**

Clause 682, page 517 (line 8), before “The”, insert “(1)”.

(39) **Govt (4) [Sheet PJ447]**

Clause 682, page 517 (line 10), after “harmonious”, insert “, productive”.

(40) **Govt (5) [Sheet PJ447]**

Clause 682, page 517 (line 13), after “organisations”, insert “and producing best practice guides to workplace relations or workplace practices”.

(41) **Govt (6) [Sheet PJ447]**

Clause 682, page 517 (line 31), after “Note”, insert “1”.

(42) **Govt (7) [Sheet PJ447]**

Clause 682, page 517 (after line 32), at the end of the clause, add:

Note 2: In performing functions under paragraph (a), the Fair Work Ombudsman might, for example, produce a best practice guide to achieving productivity through bargaining.

(2) The Fair Work Ombudsman must consult with FWA in producing guidance material that relates to the functions of FWA.

**Fair Work Ombudsman; Fair Work Australia**

(43) **Govt (1) [Sheet PD364 Revised]**

Clause 12, page 20 (lines 10 and 11), omit “who is also a police, stipendiary or special magistrate”. 
(44) **Govt (2) [Sheet PD364 Revised]**

Clause 539, page 428 (lines 17 to 19), omit “if an undertaking given by the person in relation to the contravention has not been withdrawn (see subsection 715(4))”, substitute “in certain cases where an undertaking or compliance notice has been given (see subsections 715(4) and 716(4A))”.

(45) **Govt (3) [Sheet PD364 Revised]**

Clause 544, page 441 (line 15), after “Note”, insert “1”.

(46) **Govt (4) [Sheet PD364 Revised]**

Clause 544, page 441 (after line 17), at the end of the clause, add:

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Note 2: For time limits on orders relating to underpayments, see subsection 545(5).
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(47) **Govt (5) [Sheet PD364 Revised]**

Clause 545, page 442 (after line 24), at the end of the clause, add:

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Time limit for orders in relation to underpayments

(5) A court must not make an order under this section in relation to an underpayment that relates to a period that is more than 6 years before the proceedings concerned commenced.
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(48) **Govt (6) [Sheet PD364 Revised]**

Clause 573, page 458 (lines 21 and 22), omit “Division 7 deals with FWA’s seal, reviews and reports, and disclosing information obtained by FWA.”, substitute “Division 7 deals with FWA’s seal. It also deals with other powers and functions of the President and the General Manager (including in relation to annual reports, reports on making enterprise agreements, arrangements with certain courts, and disclosing information obtained by FWA).”.

(49) **Govt (7) [Sheet PD364 Revised]**

Page 459 (after line 2), after clause 574, insert:

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574A Schedule 1

Schedule 1 has effect.
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(50) **Govt (8) [Sheet PD364 Revised]**

Clause 576, page 461 (line 12), after “section 650”, insert “or 653A”.
(51) **Govt (9) [Sheet PD364 Revised]**

Clause 576, page 461 (after line 12), after paragraph (2)(c), insert:

\[(ca)\] mediating any proceedings, part of proceedings or matter arising out of any proceedings that, under section 53A of the *Federal Court of Australia Act 1976* or section 34 of the *Federal Magistrates Act 1999*, have been referred by the Fair Work Division of the Federal Court or Federal Magistrates Court to FWA for mediation;

(52) **Govt (1) [Sheet PV376]**

Clause 596, page 470 (after line 6), at the end of subclause (2), add:

\[Note: \] Circumstances in which FWA might grant permission for a person to be represented by a lawyer or paid agent include the following:

\[(a)\] where a person is from a non-English speaking background or has difficulty reading or writing;

\[(b)\] where a small business is a party to a matter and has no specialist human resources staff while the other party is represented by an officer or employee of an industrial association or another person with experience in workplace relations advocacy.

(53) **Govt (10) [Sheet PD364 Revised]**

Clause 596, page 470 (lines 14 and 15), omit paragraph (4)(b), substitute:

\[(b)\] is an employee or officer of:

\[(i)\] an organisation; or

\[(ii)\] an association of employers that is not registered under the *Fair Work (Registered Organisations) Act 2009*; or

\[(iii)\] a peak council; or

\[(iv)\] a bargaining representative;

that is representing the person; or

(54) **Govt (11) [Sheet PD364 Revised]**

Clause 625, page 485 (after line 12), after paragraph (2)(d), insert:

\[(da)\] publishing the results of a protected action ballot under section 457;

(55) **Govt (12) [Sheet PD364 Revised]**

Clause 625, page 485 (after line 21), at the end of subclause (2), add:

\[; (i) \] any function or power prescribed by the regulations.

(56) **Govt (13) [Sheet PD364 Revised]**

Heading to Division 7, page 501 (lines 2 and 3), omit the heading, substitute:

**Division 7—Seals and additional powers and functions of the President and the General Manager**
(57) **Govt (14) [Sheet PD364 Revised]**

Heading to clause 653, page 502 (line 5), omit the heading, substitute “Reports about making enterprise agreements, individual flexibility arrangements etc.”.

(58) **Govt (15) [Sheet PD364 Revised]**

Clause 653, page 502 (lines 6 to 11), omit subclause (1), substitute:

*Review and research*

(1) The General Manager must:

(a) review the developments, in Australia, in making enterprise agreements; and

(b) conduct research into the extent to which individual flexibility arrangements under modern awards and enterprise agreements are being agreed to, and the content of those arrangements; and

(c) conduct research into the operation of the provisions of the National Employment Standards relating to:

(i) requests for flexible working arrangements under subsection 65(1); and

(ii) requests for extensions of unpaid parental leave under subsection 76(1); and

(d) conduct research into:

(i) the circumstances in which employees make such requests; and

(ii) the outcome of such requests; and

(iii) the circumstances in which such requests are refused.

(1A) The review and research must be conducted in relation to each of the following periods:

(a) the 3 year period that starts when this section commences;

(b) each later 3 year period.

(59) **Govt (16) [Sheet PD364 Revised]**

Clause 653, page 502 (lines 12 and 13), omit “review the effects that such bargaining has had”, substitute “, in conducting the review and research, consider the effect that the matters referred to in paragraphs (1)(a) to (d) have had”.

(60) **Govt (17) [Sheet PD364 Revised]**

Clause 653, page 502 (line 24), after “review”, insert “and research”.

(61) **Govt (18) [Sheet PD364 Revised]**

Page 502 (after line 31), after clause 653, insert:

**653A Arrangements with the Federal Court and the Federal Magistrates Court**

The General Manager may make a written arrangement with the Federal Court or the Federal Magistrates Court for FWA to provide administrative support to the Fair Work Division of the Court.
(62) **Govt (19) [Sheet PD364 Revised]**

Clause 655, page 503 (line 29), omit “under this Act”, substitute “of FWA”.

(63) **Govt (20) [Sheet PD364 Revised]**

Clause 657, page 505 (after line 8), after subclause (1), insert:

(1A) The General Manager also has the following functions:

(a) any function conferred on him or her by a fair work instrument;

(b) any function conferred on him or her by a law of the Commonwealth.

Note:  Sections 653 and 653A confer additional functions and powers on the General Manager.

(64) **Govt (21) [Sheet PD364 Revised]**

Clause 657, page 505 (lines 9 and 10), omit the note.

(65) **Govt (22) [Sheet PD364 Revised]**

Clause 657, page 505 (line 12), omit “assisting the President”, substitute “performing his or her functions”.

(66) **Govt (23) [Sheet PD364 Revised]**

Clause 658, page 505 (lines 24 and 25), omit “the General Manager’s review of developments in making enterprise agreements”, substitute “the conduct by the General Manager of the review and research, and the preparation of the report,”.

(67) **Govt (24) [Sheet PD364 Revised]**

Clause 671, page 509 (line 14), omit “in relation to assisting the President”.

(68) **Govt (25) [Sheet PD364 Revised]**

Clause 713, page 530 (lines 6 to 12), omit subclause (2), substitute:

(2) However, in the case of an individual none of the following are admissible in evidence against the individual in criminal proceedings:

(a) the record or document produced;

(b) producing the record or document;

(c) any information, document or thing obtained as a direct or indirect consequence of producing the record or document;

(d) any record or document that is inspected or copied under paragraph 709(e);

(e) any information, document or thing obtained as a direct or indirect consequence of inspecting or copying a record or document under paragraph 709(e).
Clause 716, page 533 (after line 11), after subclause (4), insert:

Relationship with civil remedy provisions

(4A) An inspector must not apply for an order under Division 2 of Part 4-1 in relation to a contravention of a civil remedy provision by a person if:
(a) the inspector has given the person a notice in relation to the contravention; and
(b) either of the following subparagraphs applies:
(i) the notice has not been withdrawn, and the person has complied with the notice;
(ii) the person has made an application under section 717 in relation to the notice that has not been completely dealt with.

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

(4B) A person who complies with a notice in relation to a contravention of a civil remedy provision is not taken:
(a) to have admitted to contravening the provision; or
(b) to have been found to have contravened the provision.

Page 575 (after line 13), at the end of the bill, add:

Schedule 1—Transitional provisions

Note: See section 574A.

1 Definitions

(1) For the purposes of this Schedule, unless a contrary intention appears, expressions used in this Schedule that are defined in the Workplace Relations Act 1996 (other than Schedule 1 to that Act) have the same meanings as they have in that Act.

(2) If:
(a) a provision of this Schedule uses an expression defined in both the Workplace Relations Act 1996 and this Act; and
(b) it is clear from the context of the provision which of those meanings is intended to apply in that provision;
the expression has that meaning.

2 Appointments to Fair Work Australia

(1) An appointment that is:
(a) to an office of the Commission mentioned in a table item below; and
(b) in force immediately before the commencement time for the table item;
is taken, after that time, to be an appointment, under section 626 of this Act, to the office of FWA mentioned in the table item.

Note: The person continues to be appointed to the Commission (see subclause (3)).
Appointments to FWA

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Office of the Commission</td>
<td>Office of FWA</td>
<td>Commencement time</td>
</tr>
<tr>
<td>1</td>
<td>President of the Commission</td>
<td>President of FWA</td>
<td>The day proclaimed for the purposes of item 2 of the table in subsection 2(1) of this Act.</td>
</tr>
<tr>
<td>2</td>
<td>Vice President of the Commission</td>
<td>Deputy President of FWA</td>
<td>The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act.</td>
</tr>
<tr>
<td>3</td>
<td>Senior Deputy President of the Commission</td>
<td>Deputy President of FWA</td>
<td>The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of the FW Act.</td>
</tr>
<tr>
<td>4</td>
<td>Deputy President of the Commission</td>
<td>Deputy President of FWA</td>
<td>The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act.</td>
</tr>
<tr>
<td>5</td>
<td>Commissioner of the Commission</td>
<td>Commissioner of FWA</td>
<td>The first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act.</td>
</tr>
</tbody>
</table>

(2) Subclause (1) does not apply to a member of the Commission who:
(a) was appointed as a member of a prescribed State industrial authority (within the meaning of the Workplace Relations Act 1996) before being appointed as a member of the Commission; and
(b) still holds that appointment as a member of the prescribed State industrial authority.

Dual appointments

(3) Despite any provision of the Workplace Relations Act 1996 or this Act, a person who is taken to have been appointed as an FWA Member under this clause continues also to hold office under the Workplace Relations Act 1996.

Note: The terms and conditions of a person who is taken to have been appointed as an FWA Member are the terms and conditions that attach to his or her appointment under the Workplace Relations Act 1996 (see clause 3).

3 Terms and conditions

(1) A person who is taken to have been appointed as an FWA Member under clause 2:
(a) holds office under this Act on the same terms and conditions as attach, or attached, to his or her appointment under the Workplace Relations Act 1996 (including under subsections 63(2) and (3) of that Act); and
(b) is entitled to the same designation as he or she is, or was, entitled to in relation to his or her appointment under the Workplace Relations Act 1996 (including the designation the person has, or had, because of subsection 80(2) of the Industrial Relations (Consequential Provisions) Act 1988).

(2) To avoid doubt, subclause (1):
(a) has effect despite subsections 633(1) and 644(1) of this Act; and
(b) continues the operation of the Judges’ Pensions Act 1968 in relation to a person taken to have been appointed under clause 2 and to whom that Act applied as a member of the Commission.

(3) For the purposes of determining the remuneration of a person who is taken to have been appointed as an FWA Member under clause 2:
(a) sections 635 and 637 of this Act do not apply; and
(b) sections 79 and 81 of the *Workplace Relations Act 1996* continue to apply in relation to the person’s appointment as both an FWA Member and a member of the Commission.

4 Seniority of FWA Members

(1) If a person who is a member of the Commission is taken to have been appointed as an FWA Member under clause 2, the day on which the person’s appointment took effect is, for the purposes of section 619 of this Act, taken to be the day on which the person was appointed as such a member of the Commission.

(2) If 2 or more such persons were appointed to the Commission on the same day, their seniority is, for the purposes of section 619 of this Act, to be determined in accordance with the precedence assigned to them under section 65 of the *Workplace Relations Act 1996*.

5 Procedural rules

Section 609 of this Act has effect, in relation to any time at which the President is the only FWA Member, as if the words “After consulting the other FWA Members,” were omitted from subsection (1) of that section.

6 Transfer of assets and liabilities

(1) The person referred to in column 1 of an item of the following table must arrange for the transfer, on the first day proclaimed for the purposes of item 3 of the table in subsection 2(1) of this Act, of assets and liabilities of the body referred to in column 2 of the item of the following table to the body referred to in column 3 of the item of the following table.

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Office-holder who enters arrangement with FWA</td>
<td>Body whose assets and liabilities are transferred</td>
<td>Body to which assets and liabilities are transferred</td>
</tr>
<tr>
<td>1</td>
<td>Director of the AFPC Secretariat</td>
<td>AFPC Secretariat</td>
<td>FWA</td>
</tr>
<tr>
<td>2</td>
<td>Industrial Registrar</td>
<td>Australian Industrial Registry</td>
<td>FWA</td>
</tr>
<tr>
<td>3</td>
<td>Workplace Authority Director</td>
<td>Workplace Authority</td>
<td>Office of the Fair Work Ombudsman</td>
</tr>
<tr>
<td>4</td>
<td>Workplace Ombudsman</td>
<td>Office of the Workplace Ombudsman</td>
<td>Office of the Fair Work Ombudsman</td>
</tr>
</tbody>
</table>

(2) Despite subclause (1), the Minister may, before the day mentioned in that subclause, determine one or more of the following by writing:

  (a) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred to a different body (as specified in the determination) from the one referred to in column 3 of the table;

  (b) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred on a different day (as specified in the determination) from the one referred to in subclause (1);
that some or all assets and liabilities of the body (as specified in the
determination) are to be transferred in accordance with regulations made, or to
be made, for the purposes of this paragraph.

(3) A determination under subclause (2):
   (a) has effect accordingly; and
   (b) is not a legislative instrument.

(4) In this clause, a reference to an asset of a body includes a reference to a record or any
other information that is in the custody of, or under the control of, the body.

7 Additional function and power of the General Manager

The General Manager of FWA may enter into an arrangement with the person referred
to in column 1 of an item of the following table for FWA to provide assistance to the
body referred to in column 2 of the item for the purpose of performing functions on
and after the WR Act repeal day.

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Industrial Registrar</td>
<td>Australian Industrial Registry</td>
</tr>
<tr>
<td>2</td>
<td>Workplace Authority Director</td>
<td>Workplace Authority</td>
</tr>
<tr>
<td>3</td>
<td>Director of the AFPC Secretariat</td>
<td>AFPC Secretariat</td>
</tr>
</tbody>
</table>

General protections

(71) **Govt (1) [Sheet QC300]**

Clause 12, page 10 (after line 24), after the definition of *annual wage review*, insert:

anti-discrimination law: see subsection 351(3).

(72) **Govt (3) [Sheet QC300]**

Clause 12, page 28 (line 13), omit the definition of *State or Territory anti-discrimination
law*.

(73) **Govt (5) [Sheet QC300]**

Clause 347, page 301 (line 31), after “association”, insert “, or to someone in lieu of an
industrial association”.

(74) **Govt (6) [Sheet QC300]**

Clause 351, page 304 (lines 12 and 13), omit paragraph (2)(a), substitute:

(a) not unlawful under any anti-discrimination law in force in the place where the
action is taken; or
(75) Govt (7) [Sheet QC300]

Clause 351, page 304 (lines 22 and 23), omit the note.

(76) Govt (8) [Sheet QC300]

Clause 351, page 304 (line 24), omit “a State or Territory”, substitute “an”.

(77) Govt (9) [Sheet QC300]

Clause 351, page 304 (before line 26), before paragraph (3)(a), insert:

(aa) the Age Discrimination Act 2004;
(ab) the Disability Discrimination Act 1992;
(ac) the Racial Discrimination Act 1975;
(ad) the Sex Discrimination Act 1984;

(78) Govt (15) [Sheet QC300]

Clause 734, page 543 (line 22), omit “another”, substitute “an anti-discrimination”.

Greenfields agreements

(79) Govt (1) [Sheet PJ444]

Clause 12, page 11 (lines 8 and 9), omit “or 177(b)”.

(80) Govt (2) [Sheet PJ444]

Clause 12, page 12 (line 5), omit “sections 176 and 177”, substitute “section 176”.

(81) Govt (3) [Sheet PJ444]

Clause 172, page 162 (line 3), at the end of subparagraph (2)(b)(ii), add “and will be covered by the agreement”.

(82) Govt (4) [Sheet PJ444]

Clause 172, page 162 (line 19), at the end of subparagraph (3)(b)(ii), add “and will be covered by the agreement”.

(83) Govt (5) [Sheet PJ444]/Opp (19) [Sheet 5739 Revised 2]

Clause 175, page 165 (line 13) to page 166 (line 10), omit the clause.

(84) Govt (6) [Sheet PJ444]/Opp (20) [Sheet 5739 Revised 2]

Clause 177, page 168 (lines 3 to 17), omit the clause.
(85) Govt (7) [Sheet PJ444]

Clause 178, page 168 (line 32), omit “; and”.

(86) Govt (8) [Sheet PJ444]

Clause 178, page 169 (lines 1 to 4), omit paragraph (2)(c).

(87) Govt (9) [Sheet PJ444]

Clause 182, page 172 (lines 24 and 25), omit “will be covered by the agreement”, substitute “the agreement is expressed to cover (which need not be all of the relevant employee organisations for the agreement)”.

(88) Govt (10) [Sheet PJ444]

Clause 182, page 172 (lines 26 to 30), omit subclause (4).

(89) Govt (11) [Sheet PJ444]

Clause 185, page 174 (after line 11), after subclause (1), insert:

(1A) Despite subsection (1), if the agreement is a greenfields agreement, the application must be made by:
   (a) an employer covered by the agreement; or
   (b) a relevant employee organisation that is covered by the agreement.

(90) Govt (12) [Sheet PJ444]

Clause 187, page 177 (after line 23), at the end of the clause, add:

Requirements relating to greenfields agreements

(5) If the agreement is a greenfields agreement, FWA must be satisfied that:
   (a) the relevant employee organisations that will be covered by the agreement are (taken as a group) entitled to represent the industrial interests of a majority of the employees who will be covered by the agreement, in relation to work to be performed under the agreement; and
   (b) it is in the public interest to approve the agreement.

(91) Govt (13) [Sheet PJ444]

Clause 193, page 181 (lines 19 to 22), omit all the words from and including “that” to the end of subclause (3), substitute “that each prospective award covered employee for the agreement would be better off overall if the agreement applied to the employee than if the relevant modern award applied to the employee”.

(92) Govt (14) [Sheet PJ444]

Clause 207, page 196 (line 4), after “concerned”, insert “and are covered by the agreement”.
Clause 219, page 203 (line 20), after “concerned”, insert “and are covered by the agreement”.

Independent contractors

Clause 194, page 183 (line 13), at the end of the clause, add:
; or (h) any matter that restricts, controls or dictates the use or non-use of independent contractors.

Industrial action

Clause 12, page 14 (line 22), at the end of the definition of employee claim action, add “and paragraph 471(4A)(c)”.

Clause 12, page 14 (line 29), at the end of the definition of employee response action, add “and paragraph 471(4A)(d)”.

Clause 19, page 37 (after line 8), at the end of the clause, add:
Note: In this section, employee and employer have their ordinary meanings (see section 11).

Clause 409, page 336 (line 17), before “about”, insert “only”.

Clause 409, page 336 (line 18), after “to”, insert “only”.

Clause 413, page 341 (line 22), omit “Neither”, substitute “None”.

Clause 413, page 341 (line 24), omit “the industrial action”, substitute “industrial action in relation to the agreement”.
(102) **Govt (8) [Sheet PT207]**

Clause 413, page 341 (line 26), omit “the industrial action.”, substitute “industrial action in relation to the agreement;”.

(103) **Govt (9) [Sheet PT207]**

Clause 413, page 341 (after line 26), at the end of subclause (7), add:

; (c) a serious breach declaration in relation to the agreement.

(104) **Govt (10) [Sheet PT207]**

Clause 417, page 344 (lines 17 and 18), omit “to whom the agreement or determination applies”, substitute “who is covered by the agreement or determination”.

(105) **Govt (11) [Sheet PT207]**

Clause 417, page 344 (lines 19 and 20), omit “to which the agreement or determination applies”, substitute “that is covered by the agreement or determination”.

(106) **Govt (16) [Sheet PT207]**

Clause 438, page 363 (line 5), omit “apply to”, substitute “cover”.

(107) **Govt (17) [Sheet PT207]**

Clause 470, page 383 (lines 19 to 31), omit subclause (4), substitute:

(4) If the industrial action is, or includes, an overtime ban, this section does not apply, in relation to a period of overtime to which the ban applies, unless:

    (a) the employer requested or required the employee to work the period of overtime; and

    (b) the employee refused to work the period of overtime; and

    (c) the refusal was a contravention of the employee’s obligations under a modern award, enterprise agreement or contract of employment.

(5) If:

    (a) the industrial action is, or includes, an overtime ban; and

    (b) this section applies in relation to a period of overtime to which the ban applies;

then for the purposes of this section, the total duration of the industrial action is, or includes, the period of overtime to which the ban applies.

(108) **Govt (18) [Sheet PT207]**

Clause 471, page 384 (lines 28 to 30), omit paragraph (4)(c), substitute:

(c) the employer gives to the employee a written notice stating that, because of the ban:

    (i) the employee will not be entitled to any payments; and
(ii) the employer refuses to accept the performance of any work by the employee until the employee is prepared to perform all of his or her normal duties;

(109) Govt (19) [Sheet PT207]
Clause 471, page 384 (after line 32), after subclause (4), insert:

(4A) If:
   (a) an employer has given an employee a notice under paragraph (4)(c); and
   (b) the employee fails or refuses to attend for work, or fails or refuses to perform any work at all if he or she attends for work, during the industrial action period;
   then:
   (c) the failure or refusal is employee claim action, even if it does not satisfy subsections 409(2) and 413(4), if the related industrial action referred to in paragraph (4)(a) is employee claim action; or
   (d) the failure or refusal is employee response action, even if it does not satisfy subsection 413(4), if the related industrial action referred to in paragraph (4)(a) is employee response action.

(110) Govt (20) [Sheet PT207]
Clause 474, page 387 (after line 25), after subclause (2), insert:

(2A) If:
   (a) the industrial action is, or includes, an overtime ban; and
   (b) this section applies in relation to a period of overtime to which the ban applies;
   then, for the purposes of this section:
   (c) the total duration of the industrial action is, or includes, the period of overtime to which the ban applies; and
   (d) if paragraph (1)(b) applies—the period of 4 hours mentioned in that paragraph includes the period of overtime to which the ban applies.

(111) Govt (21) [Sheet PT207]
Clause 539, page 433 (table item 14, paragraph (c) of column 2), omit “to which the enterprise agreement or workplace determination concerned applies”, substitute “covered by the enterprise agreement or workplace determination concerned”.

Multiple actions

(112) Govt (14) [Sheet QC300]
Clause 734, page 543 (line 19), before “A”, insert “(1)”.

(113) Govt (16) [Sheet QC300]
Clause 734, page 543 (after line 27), at the end of the clause, add:

(2) A person must not make an application or complaint under an anti-discrimination law in relation to conduct that does not involve the dismissal of the person if:
(a) a general protections court application has been made by, or on behalf of, the person in relation to the conduct; and
(b) the application has not:
   (i) been withdrawn by the person who made the application; or
   (ii) failed for want of jurisdiction.

National Employment Standards; dealing with disputes

(114) Govt (1) [Sheet QU427]

Clause 12, page 10 (before line 25), before the definition of applicable award-derived long service leave terms, insert:

applicable agreement-derived long service leave terms: see subsection 113(5).

(115) Govt (2) [Sheet QU427]

Clause 16, page 34 (line 15), omit “However”, substitute “Despite subsection (1)”.

(116) Govt (3) [Sheet QU427]

Clause 16, page 34 (after line 28), at the end of the clause, add:

Meaning for pieceworkers for the purpose of section 206

(3) The regulations may prescribe, or provide for the determination of, the base rate of pay, for the purpose of section 206, of an employee who is a pieceworker. If the regulations do so, the employee’s base rate of pay, for the purpose of that section, is as prescribed by, or determined in accordance with, the regulations.

Note: Section 206 deals with an employee’s base rate of pay under an enterprise agreement.

(117) Govt (4) [Sheet QU427]

Clause 55, page 68 (line 8), omit “only if the”, substitute “only to the extent that the”.

(118) Govt (5) [Sheet QU427]

Clause 55, page 68 (lines 30 to 36), omit subclause (5), substitute:

Enterprise agreements may include terms that have the same effect as provisions of the National Employment Standards

(5) An enterprise agreement may include terms that have the same (or substantially the same) effect as provisions of the National Employment Standards, whether or not ancillary or supplementary terms are included as referred to in subsection (4).

Effect of terms that give an employee the same entitlement as under the National Employment Standards

(6) To avoid doubt, if a modern award includes terms permitted by subsection (4), or an enterprise agreement includes terms permitted by subsection (4) or (5), then, to the extent that the terms give an employee an entitlement (the award or agreement entitlement) that is the same as an entitlement (the NES entitlement) of the employee under the National Employment Standards:
(a) those terms operate in parallel with the employee’s NES entitlement, but not so as to give the employee a double benefit; and

(b) the provisions of the National Employment Standards relating to the NES entitlement apply, as a minimum standard, to the award or agreement entitlement.

Note: For example, if the award or agreement entitlement is to 6 weeks of paid annual leave per year, the provisions of the National Employment Standards relating to the accrual and taking of paid annual leave will apply, as a minimum standard, to 4 weeks of that leave.

Terms permitted by subsection (4) or (5) do not contravene subsection (1)

(7) To the extent that a term of a modern award or enterprise agreement is permitted by subsection (4) or (5), the term does not contravene subsection (1).

Note: A term of a modern award has no effect to the extent that it contravenes this section (see section 56). An enterprise agreement that includes a term that contravenes this section must not be approved (see section 186) and a term of an enterprise agreement has no effect to the extent that it contravenes this section (see section 56).

(119) Govt (6) [Sheet QU427]

Clause 61, page 72 (lines 5 and 6), omit subclause (1), substitute:

(1) This Part sets minimum standards that apply to the employment of employees which cannot be displaced, even if an enterprise agreement includes terms of the kind referred to in subsection 55(5).

Note: Subsection 55(5) allows enterprise agreements to include terms that have the same (or substantially the same) effect as provisions of the National Employment Standards.

(120) Govt (7) [Sheet QU427]

Clause 113, page 114 (line 3) to page 115 (line 19), omit the clause, substitute:

113 Entitlement to long service leave

Entitlement in accordance with applicable award-derived long service leave terms

(1) If there are applicable award-derived long service leave terms (see subsection (3)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms.

Note: This Act does not exclude State and Territory laws that deal with long service leave, except in relation to employees who are entitled to long service leave under this Division (see paragraph 27(2)(g)), and except as provided in subsection 113A(3).

(2) However, subsection (1) does not apply if:

(a) a workplace agreement, or an AWA, that came into operation before the commencement of this Part applies to the employee; or

(b) one of the following kinds of instrument that came into operation before the commencement of this Part applies to the employee and expressly deals with long service leave:

(i) an enterprise agreement;

(ii) a preserved State agreement;

(iii) a workplace determination;

(iv) a pre-reform certified agreement;

(v) a pre-reform AWA;

(vi) a section 170MX award;

(vii) an old IR agreement.
Note: If there ceases to be any agreement or instrument of a kind referred to in paragraph (a) or (b) that applies to the employee, the employee will, at that time, become entitled under subsection (1) to long service leave in accordance with applicable award-derived long service leave terms.

(3) **Applicable award-derived long service leave terms**, in relation to an employee, are:

(a) terms of an award that (disregarding the effect of any instrument of a kind referred to in subsection (2)):
   (i) would have applied to the employee immediately before the commencement of this Part if the employee had, at that time, been in his or her current circumstances of employment; and
   (ii) would have entitled the employee to long service leave; and
(b) any terms of the award that are ancillary or incidental to the terms referred to in paragraph (a).

**Entitlement in accordance with applicable agreement-derived long service leave terms**

(4) If there are applicable agreement-derived long service leave terms (see subsection (5)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms.

(5) There are applicable agreement-derived long service leave terms, in relation to an employee if:

(a) an order under subsection (6) is in operation in relation to terms of an instrument; and
(b) those terms of the instrument would have applied to the employee immediately before the commencement of this Part if the employee had, at that time, been in his or her current circumstances of employment; and
(c) there are no applicable award-derived long service leave terms in relation to the employee.

(6) If FWA is satisfied that:

(a) any of the following instruments that was in operation immediately before the commencement of this Part contained terms entitling employees to long service leave:
   (i) an enterprise agreement;
   (ii) a collective agreement;
   (iii) a pre-reform certified agreement;
   (iv) an old IR agreement; and
(b) those terms constituted a long service leave scheme that was applying in more than one State or Territory; and
(c) the scheme, considered on an overall basis, is no less beneficial to the employees than the long service leave entitlements that would otherwise apply in relation to the employees under State and Territory laws;
FWA may, on application by, or on behalf of, a person to whom the instrument applies, make an order that those terms of the instrument (and any terms that are ancillary or incidental to those terms) are applicable agreement-derived long service leave terms.

**References to instruments**

(7) References in this section to a kind of instrument (other than an enterprise agreement) are references to a transitional instrument of that kind, as continued in existence by Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. 

25
113A Enterprise agreements may contain terms discounting service under prior agreements etc. in certain circumstances

(1) This section applies if:

(a) an instrument (the *first instrument*) of one of the following kinds that came into operation before the commencement of this Part applies to an employee on or after the commencement of this Part:

(i) an enterprise agreement;
(ii) a workplace agreement;
(iii) a workplace determination;
(iv) a preserved State agreement;
(v) an AWA;
(vi) a pre-reform certified agreement;
(vii) a pre-reform AWA;
(viii) an old IR agreement;
(ix) a section 170MX award; and

(b) the instrument states that the employee is not entitled to long service leave; and

(c) the instrument ceases, for whatever reason, to apply to the employee; and

(d) immediately after the first instrument ceases to apply, an enterprise agreement (the *replacement agreement*) starts to apply to the employee.

(2) The replacement agreement may include terms to the effect that an employee’s service with the employer during a specified period (the *excluded period*) (being some or all of the period when the first instrument applied to the employee) does not count as service for the purpose of determining whether the employee is qualified for long service leave, or the amount of long service leave to which the employee is entitled, under this Division or under a law of a State or Territory.

(3) If the replacement agreement includes terms as permitted by subsection (2), the excluded period does not count, and never again counts, as service for the purpose of determining whether the employee is qualified for long service leave, or the amount of long service leave to which the employee is entitled, under this Division or under a law of a State or Territory, unless a later agreement provides otherwise. This subsection has effect despite sections 27 and 29.

(4) References in this section to a kind of instrument (other than an enterprise agreement) are references to a transitional instrument of that kind, as continued in existence by Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

(121) **Govt (8) [Sheet QU427]**

Clause 117, page 119 (lines 24 to 28), omit paragraph (2)(b), substitute:

(b) the employer has paid to the employee (or to another person on the employee’s behalf) payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee (or to another person on the employee’s behalf) at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.

(122) **Govt (9) [Sheet QU427]**

Clause 121, page 122 (line 5), before “Section”, insert “(1)”.

26
Clause 121, page 122 (after line 11), at the end of the clause, add:

(2) A modern award may include a term specifying other situations in which section 119 does not apply to the termination of an employee’s employment.

(3) If a modern award that is in operation includes such a term (the award term), an enterprise agreement may:
   (a) incorporate the award term by reference (and as in force from time to time) into the enterprise agreement; and
   (b) provide that the incorporated term covers some or all of the employees who are also covered by the award term.

Clause 123, page 124 (lines 11 to 19), omit paragraph (3)(a).

Clause 186, page 176 (line 27), after “Note”, insert “1”.

Clause 186, page 176 (after line 29), after the note at the end of subclause (6), add:

Note 2: However, this does not prevent FWA from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4).

Clause 738, page 545 (line 16), after “employment”, insert “or other written agreement”.

Clause 738, page 545 (after line 20), at the end of the clause, add:

; or (d) a determination under the Public Service Act 1999 includes a term that provides a procedure for dealing with disputes arising under the determination or in relation to the National Employment Standards.

Clause 739, page 545 (line 26), omit “76(4)”, substitute “76(4), unless:

(a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to FWA dealing with the matter; or
(b) a determination under the Public Service Act 1999 authorises FWA to deal with the matter.”
(130) **Govt (17) [Sheet QU427]**

Clause 739, page 545 (after line 26), at the end of subclause (2), add:

Note: This does not prevent FWA from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4) (see also subsection 55(5)).

(131) **Govt (18) [Sheet QU427]**

Clause 740, page 546 (line 16), omit “76(4)”, substitute “76(4), unless:

(a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to the person dealing with the matter; or

(b) a determination under the *Public Service Act 1999* authorises the person to deal with the matter”.

(132) **Govt (19) [Sheet QU427]**

Clause 740, page 546 (after line 16), at the end of subclause (2), add:

Note: This does not prevent a person from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4) (see also subsection 55(5)).

(133) **Govt (20) [Sheet QU427]**

Clause 758, page 554 (lines 5 to 12), omit the clause, substitute:

758 **Object of this Division**

The object of this Division is to give effect, or further effect, to:

(a) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and

(b) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website (www.ilo.org).

(134) **Govt (21) [Sheet QU427]**

Clause 771, page 559 (lines 12 to 14), omit paragraph 771(c), substitute:

(c) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and

(d) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.
Clause 784, page 565 (lines 5 to 12), omit the clause, substitute:

784 **Object of this Division**

The object of this Division is to give effect, or further effect, to:

(a) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and

(b) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website (www.ilo.org).

**Objects of the Act**

(136) **Opp (1)** [Sheet 5739 Revised 2] *(As amended by FFP)*

Clause 3, page 3 (line 34), omit “enterprise-level”, substitute “enterprise-level or workplace-level”.

**Other safety net entitlements**

(137) **Govt (1)** [Sheet RE403]

Clause 12, page 19 (line 8), omit “means redundancy”, substitute “means redundancy or termination payment”.

(138) **Govt (4)** [Sheet RE403]

Clause 154, page 144 (line 27), omit paragraph (1)(b), substitute:

(b) are expressed to operate in one or more, but not every, State and Territory.

(139) **Govt (5)** [Sheet RE403]

Clause 287, page 257 (line 21) to page 258 (line 4), omit the clause, substitute:

287 **When national minimum wage orders come into operation etc.**

*Orders come into operation on 1 July*

(1) A national minimum wage order that is made in an annual wage review comes into operation on 1 July in the next financial year (the *year of operation*).

*Setting of different wages or loadings only permitted in exceptional circumstances*

(2) The national minimum wage or the casual loading for award/agreement free employees set by the order must be the same for all employees, unless:

(a) FWA is satisfied that there are exceptional circumstances justifying setting different wages or loadings; and
(b) the setting of different wages or loadings is limited just to the extent necessary because of the particular situation to which the exceptional circumstances relate.

(3) A special national minimum wage set by the order for a specified class of employees must be the same for all employees in that class, unless:
   (a) FWA is satisfied that there are exceptional circumstances justifying setting different wages; and
   (b) the setting of different wages is limited just to the extent necessary because of the particular situation to which the exceptional circumstances relate.

Adjustments taking effect during year of operation only permitted in exceptional circumstances

(4) The order may provide that an adjustment of the national minimum wage, the casual loading for award/agreement free employees, or a special national minimum wage, set by the order takes effect (whether for some or all employees to whom that wage or loading applies) on a specified day in the year of operation that is later than 1 July, but only if:
   (a) FWA is satisfied that there are exceptional circumstances justifying the adjustment taking effect on that day; and
   (b) the adjustment is limited just to the particular situation to which the exceptional circumstances relate.

When orders take effect

(5) The order takes effect in relation to a particular employee from the start of the employee’s first full pay period that starts on or after 1 July in the year of operation. However, an adjustment referred to in subsection (4) takes effect in relation to a particular employee from the start of the employee’s first full pay period that starts on or after the day specified as referred to in that subsection.

(140) Govt (6) [Sheet RE403]

Clause 289, page 258 (line 27) to page 259 (line 2), omit subclauses (2) and (3), substitute:

(2) FWA must publish all submissions made to FWA for consideration in the review.

(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 FWA is satisfied that the information is confidential or commercially sensitive, FWA:
   (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
      (ii) if FWA considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.

(4) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).

(5) FWA must ensure that all persons and bodies have a reasonable opportunity to make comments to FWA, for consideration in the review, on the material published under subsections (2) and (3).
(6) The publishing of material under subsections (2) and (3) may be on FWA’s website or by any other means that FWA considers appropriate.

(141) Govt (7) [Sheet RE403]

Clause 306, page 266 (lines 29 and 30), omit all the words from and including “to the extent” to and including “equal remuneration order”, substitute “in relation to an employee to the extent that it is less beneficial to the employee than a term of an equal remuneration order that applies to the employee”.

(142) Govt (8) [Sheet RE403]

Clause 324, page 282 (line 2), before “An”, insert “(1)”.

(143) Govt (9) [Sheet RE403]

Clause 324, page 282 (after line 22), at the end of the clause, add:

(2) An authorisation for the purposes of paragraph (1)(a):
   (a) must specify the amount of the deduction; and
   (b) may be withdrawn in writing by the employee at any time.

(3) Any variation in the amount of the deduction must be authorised in writing by the employee.

(144) Govt (10) [Sheet RE403]

Clause 326, page 283 (line 6), omit “the”, substitute “an”.

(145) Govt (11) [Sheet RE403]

Clause 326, page 283 (lines 10 to 12), omit all the words from and including “the deduction” to the end of subclause (1), substitute:
   either of the following apply:
   (c) the deduction or payment is:
      (i) directly or indirectly for the benefit of the employer, or a party related to the employer; and
      (ii) unreasonable in the circumstances;
   (d) if the employee is under 18—the deduction or payment is not agreed to in writing by a parent or guardian of the employee.

(146) Govt (12) [Sheet RE403]

Clause 333, page 289 (line 9), omit “The”, substitute “(1) Subject to this section, the”.

(147) Govt (13) [Sheet RE403]

Clause 333, page 289 (after line 10), at the end of the clause, add:

(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 high income threshold.
(3) If:
   (a) in prescribing a manner in which the high income threshold is worked out, regulations made for the purposes of subsection (1) specify a particular matter or state of affairs; and
   (b) as a result of a change in the matter or state of affairs, the amount of the high income threshold worked out in that manner would, but for this subsection, be less than it was on the last occasion on which this subsection did not apply; the high income threshold is the amount that it would be if the change had not occurred.

(148) Govt (14) [Sheet RE403]

Page 289 (after line 10), at the end of Division 3, add:

333A Prospective employees

If:
   (a) an employer, or a person who may become an employer, gives to another person an undertaking that would have been a guarantee of annual earnings if the other person had been the employer’s or person’s employee; and
   (b) the other person subsequently becomes the employer’s or person’s employee; and
   (c) the undertaking relates to the work that the other person performs for the employer or person;

this Division applies in relation to the undertaking, after the other person becomes the employer’s or person’s employee, as if the other person had been the employer’s or person’s employee at the time the undertaking was given.

Outworkers

(149) Govt (1) [Sheet PV414]

Clause 12, page 14 (after line 2), after the definition of Deputy President, insert:

designated outworker term of a modern award, enterprise agreement, workplace determination or other instrument, means any of the following terms, so far as the term relates to outworkers in the textile, clothing or footwear industry:
   (a) a term that deals with the registration of an employer or outworker entity;
   (b) a term that deals with the making and retaining of, or access to, records about work to which outworker terms of a modern award apply;
   (c) a term imposing conditions under which an arrangement may be entered into by an employer or an outworker entity for the performance of work, where the work is of a kind that is often performed by outworkers;
   (d) a term relating to the liability of an employer or outworker entity for work undertaken by an outworker under such an arrangement, including a term which provides for the outworker to make a claim against an employer or outworker entity;
   (e) a term that requires minimum pay or other conditions, including the National Employment Standards, to be applied to an outworker who is not an employee;
   (f) any other terms prescribed by the regulations.
(150) **Govt (2) [Sheet PY414]**

Clause 12, page 24 (lines 10 to 12), omit paragraph (e) of the definition of *outworker entity*, substitute:

(e) a person who carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, so far as:

(i) the person arranges for work to be performed for the person (either directly or indirectly); and

(ii) the work is of a kind that is often performed by outworkers; and

(iii) the work is, or is reasonably likely, to be performed in the Territory or in connection with the activity carried on in the Territory.

(151) **Govt (3) [Sheet PY414]**

Clause 27, page 46 (line 22), at the end of paragraph (2)(d), add “(within the ordinary meaning of the term)”.

(152) **Govt (4) [Sheet PY414]**

Clause 46, page 61 (lines 1 to 3), omit the note, substitute:

Note: Subsection (2) does not affect the ability of outworker terms in a modern award to be enforced under Part 4-1 in relation to outworkers who are not employees.

(153) **Govt (5) [Sheet PY414]**

Page 69, after clause 57 (after line 14), insert:

**57A Designated outworker terms of a modern award continue to apply**

(1) This section applies if, at a particular time:

(a) an enterprise agreement applies to an employer; and

(b) a modern award covers the employer (whether the modern award covers the employer in the employer’s capacity as an employer or an outworker entity); and

(c) the modern award includes one or more designated outworker terms.

(2) Despite section 57, the designated outworker terms of the modern award apply at that time to the following:

(a) the employer;

(b) each employee who is both:

(i) a person to whom the enterprise agreement applies; and

(ii) a person who is covered by the modern award;

(c) each employee organisation that is covered by the modern award.

(3) To avoid doubt:

(a) designated outworker terms of a modern award can apply to an employer under subsection (2) even if none of the employees of the employer is an outworker; and

(b) to the extent to which designated outworker terms of a modern award apply to an employer, an employee or an employee organisation because of subsection (2), the modern award applies to the employer, employee or organisation.
(154) **Govt (6) [Sheet PY414]**

Clause 140, page 136 (lines 25 and 26), omit “is, or is reasonably likely to be,”; substitute “is of a kind that is often”.

(155) **Govt (7) [Sheet PY414]**

Clause 186, page 176 (after line 11), after subclause (4), insert:

> Requirement that there be no designated outworker terms

(4A) FWA must be satisfied that the agreement does not include any designated outworker terms.

(156) **Govt (8) [Sheet PY414]**

Clause 200, page 186 (line 22), after “employee”, insert “in any respect”.

(157) **Govt (9) [Sheet PY414]**

Clause 253, page 229 (line 6), at the end of subclause (1), add:

; or (c) it is a designated outworker term.

(158) **Govt (10) [Sheet PY414]**

Clause 272, page 244 (line 18), at the end of subclause (3), add:

; or (c) any designated outworker terms.

(159) **Govt (11) [Sheet PY414]**

Clause 545, page 442 (after line 20), after subclause (3), insert:

(3A) An eligible State or Territory court may order an outworker entity to pay an amount to, or on behalf of, an outworker if the court is satisfied that:

(a) the outworker entity was required to pay the amount under a modern award; and

(b) the outworker entity has contravened a civil remedy provision by failing to pay the amount.

Note 1: For the court’s power to make pecuniary penalty orders, see section 546.

Note 2: For limitations on orders in relation to costs, see section 570.

(160) **Govt (12) [Sheet PY414]**

Clause 547, page 443 (lines 25 and 26), omit “an employer was required to pay to, or on behalf of, an employee”; substitute “a person was required to pay to, or on behalf of, another person”.

(161) **Govt (13) [Sheet PY414]**

Clause 548, page 445 (lines 9 to 14), omit paragraph (1)(b), substitute:

(b) the order relates to an amount referred to in subsection (1A); and
(162) Govt (14) [Sheet PY414]

Clause 548, page 445 (after line 17), after subclause (1), insert:

(1A) The amounts are as follows:
   (a) an amount that an employer was required to pay to, or on behalf of, an employee:
       (i) under this Act or a fair work instrument; or
       (ii) because of a safety net contractual entitlement; or
       (iii) because of an entitlement of the employee arising under subsection 542(1);
   (b) an amount that an outworker entity was required to pay to, or on behalf of, an
      outworker under a modern award.

(163) Govt (15) [Sheet PY414]

Clause 679, page 516 (line 9), after “employers”, insert “, outworkers, outworker entities”.

(164) Govt (16) [Sheet PY414]

Clause 682, page 517 (line 13), after “employers”, insert “, outworkers, outworker
entities”.

(165) Govt (17) [Sheet PY414]

Clause 682, page 517 (lines 23 to 26), after “employees” (wherever occurring), insert “or
outworkers”.

Requests for flexible working arrangements

(166) AG (4) [Sheet 5744]

Clause 65, page 76 (lines 5 to 8), omit subclause (1), substitute:

(1) An employee who is a parent, or has responsibility for the care, of a child may request
the employer for a change in working arrangements to assist the employee to care for
the child if the child:
   (a) is under school age; or
   (b) is under 18 and has a disability.

Right of entry

(167) Govt (1) [Sheet QW366 Revised]

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
(168) **Govt (2) [Sheet QW366 Revised]**

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

(169) **Govt (3) [Sheet QW366 Revised]**

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).

(170) **Govt (4) [Sheet QW366 Revised]**

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

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

(171) **Govt (1) [Sheet PV373]**

Clause 12, page 21 (after line 26), after the definition of *non-excluded matters*, insert:

*non-member record or document*: see subsection 482(2A).

(172) **Govt (5) [Sheet QW366 Revised]**

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.

(173) **Govt (6) [Sheet QW366 Revised]**

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.

(174) **Govt (7) [Sheet QW366 Revised]**

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

(175) **Govt (8) [Sheet QW366 Revised]**

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

(176) **Govt (9) [Sheet QW366 Revised]**

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

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(177) **Govt (1) [Sheet PV374]/FFP (R6) [Sheet 5733 Revised 3]**

Clause 481, page 392 (after line 22), at the end of the clause, add:

> **Note:** A permit holder who seeks to exercise rights under this Part without reasonably suspecting that a contravention has occurred, or is occurring, is liable to be penalised under subsection 503(1) (which deals with misrepresentations about things authorised by this Part).

(178) **Govt (2) [Sheet PV373]**

Clause 482, page 393 (line 3), after “document”, insert “(other than a non-member record or document)”.

(179) **Govt (10) [Sheet QW366 Revised]**

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

(180) **Govt (11) [Sheet QW366 Revised]**

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

(181) **Govt (12) [Sheet QW366 Revised]**

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.

(182) **Govt (13) [Sheet QW366 Revised]**

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.

(183) **Govt (3) [Sheet PV373]**

Clause 482, page 393 (after line 18), after subclause (2), insert:

**Meaning of non-member record or document**

**(2A)** A **non-member record or document** is a record or document that:

(a) relates to the employment of a person who is not a member of the permit holder’s organisation; and

(b) does not also substantially relate to the employment of a person who is a member of the permit holder’s organisation;

but does not include a record or document that relates only to a person or persons who are not members of the permit holder’s organisation if the person or persons have consented in writing to the record or document being inspected or copied by the permit holder.
(184) Govt (4) [Sheet PV373]

Clause 483, page 393 (line 26), after “document”, insert “(other than a non-member record or document)”.

(185) Govt (14) [Sheet QW366 Revised]

Clause 483, page 393 (line 27), before “relevant”, insert “that is directly”.

(186) Govt (15) [Sheet QW366 Revised]

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.

(187) Govt (16) [Sheet QW366 Revised]

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.

(188) Govt (5) [Sheet PV373]

Page 394 (after line 17), after clause 483, insert:

483AA Application to FWA for access to non-member records

(1) The permit holder may apply to FWA for an order allowing the permit holder to do either or both of the following:

(a) require the occupier or an affected employer to allow the permit holder to inspect, and make copies of, specified non-member records or documents (or parts of such records or documents) under paragraph 482(1)(c);

(b) require an affected employer to produce, or provide access to, specified non-member records or documents (or parts of such records or documents) under subsection 483(1).

(2) FWA may make the order if it is satisfied that the order is necessary to investigate the suspected contravention. Before doing so, FWA must have regard to any conditions imposed on the permit holder’s entry permit.

(3) If FWA makes the order, this Subdivision has effect accordingly.

(4) An application for an order under this section:

(a) must be in accordance with the regulations; and

(b) must set out the reason for the application.
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.

(190) Govt (18) [Sheet QW366 Revised]

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

(191) Govt (19) [Sheet QW366 Revised]

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

(192) Govt (20) [Sheet QW366 Revised]

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

(193) Govt (21) [Sheet QW366 Revised]

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

Entry under Subdivision A or B

(194) Govt (22) [Sheet QW366 Revised]

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

(195) Govt (23) [Sheet QW366 Revised]

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.

(196) Govt (24) [Sheet QW366 Revised]

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

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(197) **Govt (25) [Sheet QW366 Revised]**

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)”.

(198) **Govt (26) [Sheet QW366 Revised]**

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.

(199) **Govt (27) [Sheet QW366 Revised]**

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

(200) **Govt (28) [Sheet QW366 Revised]**

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

(201) **Govt (29) [Sheet QW366 Revised]**

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

(202) **Govt (30) [Sheet QW366 Revised]**

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.

(203) **Govt (31) [Sheet QW366 Revised]**

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

(204) **Govt (32) [Sheet QW366 Revised]**

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

504 **Unauthorized 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 orremedying 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).

(205) Govt (2) [Sheet PV374]/FFP (R14) [Sheet 5733 Revised 3]

Clause 508, page 406 (lines 18 to 25), omit subclause (4), substitute:

(4) Without limiting subsection (1), an official misuses rights exercisable under this Part if:

   (a) the official exercises those rights repeatedly with the intention or with the effect of hindering, obstructing or otherwise harassing an occupier or employer; or
   (b) in exercising a right under Subdivision B of Division 2 of this Part, the official encourages a person to become a member of an organisation and does so in a way that is unduly disruptive:
      (i) because the exercise of the right is excessive in the circumstances; or
      (ii) for some other reason.

(206) Govt (33) [Sheet QW366 Revised]

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

(207) Govt (34) [Sheet QW366 Revised]

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

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(208) **Govt (35) [Sheet QW366 Revised]**

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”.

(209) **Govt (36) [Sheet QW366 Revised]**

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

(210) **Govt (37) [Sheet QW366 Revised]**

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

(211) **Govt (38) [Sheet QW366 Revised]**

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

(212) **Govt (39) [Sheet QW366 Revised]**

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

(213) **Govt (40) [Sheet QW366 Revised]**

Clause 518, page 413 (line 12), at the end of paragraph (2)(d), add “or TCF outworker”.

(214) **Govt (41) [Sheet QW366 Revised]**

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

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

Clause 539, page 435 (table item 25, column 1), after “483(4)”, insert:
- 483B(4)
- 483C(5)
- 483D(4)
- 483E(5)

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

Right of entry – conscientious objection certificate

Clause 12, page 13 (line 2), omit the definition of conscientious objection certificate.

Clause 485, page 394 (line 26) to page 395 (line 24), omit the clause.

Clause 601, page 472 (lines 15 and 16), omit paragraph (5)(b).

Clause 625, page 485 (lines 13 and 14), omit paragraph (2)(e).

Stand down

Clause 524, page 417 (line 23), omit “Note:”, substitute “Note 1:”.

Clause 524, page 417 (after line 25), at the end of subclause 524(2), add:

Note 2: An enterprise agreement or a contract of employment may also include terms that impose additional requirements that an employer must meet before standing down an employee (for example requirements relating to consultation or notice).
Transfer of business

(224) **Govt (1) [Sheet QC301]**

Clause 318, page 276 (line 12), omit paragraph (3)(d), substitute:

(d) whether the transferable instrument would have a negative impact on the productivity of the new employer’s workplace;

(e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument covering the new employer;

(f) the degree of business synergy between the transferable instrument and any workplace instrument that already covers the new employer;

(g) the public interest.

(225) **Govt (2) [Sheet QC301]**

Clause 319, page 277 (line 34), omit paragraph (3)(d), substitute:

(d) whether the transferable instrument would have a negative impact on the productivity of the new employer’s workplace;

(e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument covering the new employer;

(f) the degree of business synergy between the transferable instrument and any workplace instrument that already covers the new employer;

(g) the public interest.

(226) **Govt (3) [Sheet QC301]**

Clause 320, page 278 (line 23), at the end of subclause (2), add:

; or (c) to enable the transferable instrument to operate in a way that is better aligned to the working arrangements of the new employer’s enterprise.

(227) **Govt (4) [Sheet QC301]**

Clause 320, page 279 (line 14), omit paragraph (4)(d), substitute:

(d) whether the transferable instrument, without the variation, would have a negative impact on the productivity of the new employer’s workplace;

(e) whether the new employer would incur significant economic disadvantage as a result of the transferable instrument, without the variation;

(f) the degree of business synergy between the transferable instrument, without the variation, and any workplace instrument that already covers the new employer;

(g) the public interest.

Unfair dismissal

(228) **Govt (2) [Sheet QC300]**

Clause 12, page 26 (after line 22), after the definition of *registered employee association*, insert:

reinstatement includes appointment by an associated entity in the circumstances provided for in an order to which subsection 391(1A) applies.
Clause 391, page 325 (after line 28), after subclause (1), insert:

(1A) If:

(a) the position in which the person was employed immediately before the dismissal is no longer a position with the person’s employer at the time of the dismissal; and

(b) that position, or an equivalent position, is a position with an associated entity of the employer;

the order under subsection (1) may be an order to the associated entity to:

(c) appoint the person to the position in which the person was employed immediately before the dismissal; or

(d) appoint the person to another position on terms and conditions no less favourable than those on which the person was employed immediately before the dismissal.

Clause 391, page 326 (line 7), at the end of paragraph (2)(b), add “, or (if subsection (1A) applies) the associated entity”.

Clause 394, page 329 (line 13), omit “7”, substitute “14”.

HARRY EVANS
Clerk of the Senate

The Senate
20 March 2009 a.m.