



Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

No. 79, 2022

**An Act to abolish the Registered Organisations
Commission and the Australian Building and
Construction Commission and to amend the law
relating to workplace relations, and workers'
compensation and rehabilitation, and for related
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title	2
2	Commencement	2
3	Schedules	6
4	Review of operation of amendments	6
Schedule 1—Amendments		8
Part 1—Abolition of the Registered Organisations Commission		8
Division 1—Main amendments		8
<i>Fair Work Act 2009</i>		8
<i>Fair Work (Registered Organisations) Act 2009</i>		8
Division 2—Consequential amendments		11
<i>Fair Work Act 2009</i>		11
<i>Fair Work (Registered Organisations) Act 2009</i>		12
Division 3—Application, saving and transitional provisions		27
Part 2—Additional registered organisations enforcement options		35
<i>Fair Work (Registered Organisations) Act 2009</i>		35
Part 3—Abolition of the Australian Building and Construction Commission		43
Division 1—General amendments		43
<i>Building and Construction Industry (Improving Productivity) Act 2016</i>		43
Division 2—Abolition of the Australian Building and Construction Commission etc.		57
<i>Building and Construction Industry (Improving Productivity) Act 2016</i>		57
Division 3—Consequential amendments		59
<i>Fair Work (Registered Organisations) Act 2009</i>		59
<i>Jurisdiction of Courts (Cross-vesting) Act 1987</i>		59
Division 4—Repeals		59
<i>Building and Construction Industry (Consequential and Transitional Provisions) Act 2016</i>		59

<i>Building and Construction Industry Improvement (Consequential and Transitional) Act 2005</i>	59
Division 5—General transitional provisions	59
Part 4—Objects of the Fair Work Act	82
<i>Fair Work Act 2009</i>	82
Part 5—Equal remuneration	83
<i>Fair Work Act 2009</i>	83
Part 6—Expert panels	86
<i>Fair Work Act 2009</i>	86
Part 7—Prohibiting pay secrecy	94
<i>Fair Work Act 2009</i>	94
Part 8—Prohibiting sexual harassment in connection with work	97
Division 1—Main amendments	97
<i>Fair Work Act 2009</i>	97
Division 2—Amendments relating to ILO Convention (No. 190)	116
<i>Fair Work Act 2009</i>	116
Part 9—Anti-discrimination and special measures	118
<i>Fair Work Act 2009</i>	118
Part 10—Fixed term contracts	123
<i>Fair Work Act 2009</i>	123
Part 11—Flexible work	132
Division 1—Family and domestic violence (main amendments)	132
<i>Fair Work Act 2009</i>	132
Division 2—Family and domestic violence (consequential amendments)	132
<i>Fair Work Act 2009</i>	132
Division 3—Grounds for refusing requests	133
<i>Fair Work Act 2009</i>	133
Division 4—Civil remedies and dispute resolution	136
<i>Fair Work Act 2009</i>	136

Division 5—Pregnancy	140
<i>Fair Work Act 2009</i>	140
Part 12—Termination of enterprise agreements after nominal expiry date	141
<i>Fair Work Act 2009</i>	141
<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	146
Part 13—Sunsetting of “zombie” agreements etc.	148
<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	148
Part 14—Enterprise agreement approval	162
<i>Fair Work Act 2009</i>	162
Part 15—Initiating bargaining	172
<i>Fair Work Act 2009</i>	172
Part 16—Better off overall test	173
<i>Fair Work Act 2009</i>	173
Part 17—Dealing with errors in enterprise agreements	184
<i>Fair Work Act 2009</i>	184
Part 18—Bargaining disputes	187
<i>Fair Work Act 2009</i>	187
Part 19—Industrial action	194
Division 2—Protected action ballot agents	194
<i>Fair Work Act 2009</i>	194
Division 3—Protected action ballots and multi-enterprise agreements	198
<i>Fair Work Act 2009</i>	198
Division 4—Notice requirements for industrial action	199
<i>Fair Work Act 2009</i>	199
Division 5—Mediation and conciliation	200
<i>Fair Work Act 2009</i>	200
Part 20—Supported bargaining	202
<i>Fair Work Act 2009</i>	202

Part 21—Single interest employer authorisations	218
<i>Fair Work Act 2009</i>	218
Part 22—Varying enterprise agreements to remove employers and their employees	239
<i>Fair Work Act 2009</i>	239
Part 23—Cooperative workplaces	242
<i>Fair Work Act 2009</i>	242
Part 23A—Excluded work	248
<i>Fair Work Act 2009</i>	248
Part 24—Enhancing the small claims processes	252
<i>Fair Work Act 2009</i>	252
Part 25—Prohibiting employment advertisements with pay rate that would contravene the Act	253
<i>Fair Work Act 2009</i>	253
Part 25AA—Having regard to certain additional matters in performing functions	255
<i>Fair Work Act 2009</i>	255
Part 25A—Establishment of the National Construction Industry Forum	256
<i>Fair Work Act 2009</i>	256
Part 25B—Unpaid parental leave	262
Division 1—Main amendments	262
<i>Fair Work Act 2009</i>	262
Division 2—Civil remedies and dispute resolution	265
<i>Fair Work Act 2009</i>	265
Part 26—Application, saving, transitional and miscellaneous consequential provisions	270
Division 1—Application, saving and transitional provisions	270
<i>Fair Work Act 2009</i>	270
Division 2—Consequential amendments relating to multiple measures dealing with variation of enterprise agreements	282

<i>Fair Work Act 2009</i>	282
Part 27—Amendment of the Safety, Rehabilitation and Compensation Act 1988	285
<i>Safety, Rehabilitation and Compensation Act 1988</i>	285
Part 28—Paid family and domestic violence leave	287
Division 1—Main amendments	287
<i>Fair Work Act 2009</i>	287
Division 2—Other amendments	287
<i>Fair Work Act 2009</i>	287



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[Assented to 6 December 2022]

The Parliament of Australia enacts:

No. 79, 2022 Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

1

1 Short title

This Act is the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	6 December 2022
2. Schedule 1, Part 1, Divisions 1 and 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, items 161 to 163	The day after this Act receives the Royal Assent.	7 December 2022
4. Schedule 1, items 164 to 170	At the same time as the provisions covered by table item 2.	
5. Schedule 1, Part 2	At the same time as the provisions covered by table item 2.	
6. Schedule 1, Part 3, Division 1	The day after this Act receives the Royal Assent.	7 December 2022
7. Schedule 1, Part 3, Divisions 2 to 4	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 2 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	that period.	
8. Schedule 1, Part 3, Division 5	The day after this Act receives the Royal Assent.	7 December 2022
9. Schedule 1, Part 4	The day after this Act receives the Royal Assent.	7 December 2022
10. Schedule 1, Part 5	The day after this Act receives the Royal Assent.	7 December 2022
11. Schedule 1, Part 6	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 3 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
12. Schedule 1, Part 7	The day after this Act receives the Royal Assent.	7 December 2022
13. Schedule 1, Part 8, Division 1	The day after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.	6 March 2023
14. Schedule 1, Part 8, Division 2	The later of: (a) immediately after the commencement of the provisions covered by table item 13; and (b) the start of the day the ILO Convention (No. 190) concerning Violence and Harassment, done at Geneva on 21 June 2019, comes into force for Australia. However, the provisions do not commence at all if the Convention does not come into force for Australia before the end of the period of 2 years beginning on the day the provisions covered by table item 13 commence. The Minister must announce, by notifiable instrument, the day the Convention comes into force for Australia, if that day is before the end of the period of 2 years beginning on	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	the day the provisions covered by table item 13 commence.	
15. Schedule 1, Part 9	The day after this Act receives the Royal Assent.	7 December 2022
16. Schedule 1, Part 10	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
17. Schedule 1, Part 11	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	6 June 2023
18. Schedule 1, Part 12	The day after this Act receives the Royal Assent.	7 December 2022
19. Schedule 1, Part 13	Immediately after the commencement of the provisions covered by table item 18.	7 December 2022
20. Schedule 1, Part 14	At the same time as the provisions covered by table item 27.	
21. Schedule 1, Part 15	The day after this Act receives the Royal Assent.	7 December 2022
22. Schedule 1, Part 16	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
23. Schedule 1, Part 17	The day after this Act receives the Royal Assent.	7 December 2022
24. Schedule 1, Part 18	At the same time as the provisions covered by table item 27.	
25. Schedule 1, Part 19	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent,	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	they commence on the day after the end of that period.	
27. Schedule 1, Part 20	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
28. Schedule 1, Part 21	At the same time as the provisions covered by table item 27.	
29. Schedule 1, Part 22	At the same time as the provisions covered by table item 27.	
30. Schedule 1, Part 23	At the same time as the provisions covered by table item 27.	
30A. Schedule 1, Part 23A	At the same time as the provisions covered by table item 27.	
31. Schedule 1, Part 24	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2023.	1 July 2023 (paragraph (b) applies)
32. Schedule 1, Parts 25 and 25AA	The day after this Act receives the Royal Assent.	7 December 2022
32A. Schedule 1, Part 25A	1 July 2023.	1 July 2023
32B. Schedule 1, Part 25B	Immediately after the commencement of the provisions covered by table item 17.	6 June 2023
33. Schedule 1, Part 26, Division 1	The day after this Act receives the Royal Assent.	7 December 2022
34. Schedule 1, Part 26, Division 2	At the same time as the provisions covered by table item 27.	
35. Schedule 1, Part 27	The day after this Act receives the Royal Assent.	7 December 2022

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
36. Schedule 1, Part 28, Division 1	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 1 to the <i>Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022</i> .	1 February 2023 (paragraph (b) applies)
37. Schedule 1, Part 28, Division 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the <i>Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022</i> .	
<p>Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.</p>		

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

3 Schedules

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

4 Review of operation of amendments

- (1) The Minister must cause a review to be conducted of the operation of the amendments made by this Act.
- (2) Without limiting the matters that may be considered when conducting the review, the review must:

-
- (a) consider whether the operation of the amendments made by this Act is appropriate and effective; and
 - (b) identify any unintended consequences of the amendments made by this Act; and
 - (c) consider whether amendments to the *Fair Work Act 2009*, or any other legislation, are necessary to:
 - (i) improve the operation of the amendments made by this Act; or
 - (ii) rectify any unintended consequences identified under paragraph (b).
- (3) The review must start no later than 2 years after this section commences.
- (4) The persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review.
- (5) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

Schedule 1—Amendments

Part 1—Abolition of the Registered Organisations Commission

Division 1—Main amendments

Fair Work Act 2009

1 Subsection 652(1) (at the end of note 2)

Add “Section 329D of the Registered Organisations Act sets out additional requirements for the General Manager’s report.”.

2 Subsection 657(1A) (note)

Omit “Note”, substitute “Note 1”.

3 At the end of subsection 657(1A)

Add:

Note 2: Section 329A of the Registered Organisations Act confers additional functions on the General Manager.

4 At the end of section 658

Add:

; or (d) the direction relates to the General Manager’s performance of functions or exercise of powers under the Registered Organisations Act.

Fair Work (Registered Organisations) Act 2009

5 Section 317

Omit:

Part 3A establishes the Registered Organisations Commission and Registered Organisations Commissioner, provides for the terms and conditions of appointment of the Commissioner and makes provision for staff to assist the Commissioner. The Registered
--

Organisations Commission Special Account is also established by the Part.

Part 3B sets out the circumstances in which the Commissioner or the General Manager may disclose information obtained in the performance of functions or exercise of powers under this Act.

Part 4 provides for the Commissioner to make inquiries as to compliance with financial accountability requirements and civil penalty provisions. The Commissioner may also conduct investigations.

substitute:

Part 3A confers certain functions on the General Manager. It imposes reporting requirements on the General Manager.

Part 3B sets out the circumstances in which the General Manager may disclose information obtained in the performance of functions or exercise of powers under this Act.

Part 4 provides for the General Manager to make inquiries as to compliance with financial accountability requirements and civil penalty provisions. The General Manager may also conduct investigations.

6 Part 3A of Chapter 11

Repeal the Part, substitute:

Part 3A—Functions of General Manager

329A Functions of the General Manager

- (1) The General Manager has the following functions:
 - (a) to promote:
 - (i) efficient management of organisations and high standards of accountability of organisations and their office holders to their members; and

- (ii) compliance with financial reporting and accountability requirements of this Act;
including by providing education, assistance and advice to organisations and their members;
- (b) to monitor acts and practices to ensure they comply with the provisions of this Act providing for the democratic functioning and control of organisations;
- (c) to do anything incidental to or conducive to the performance of any of the above functions.

Note: Section 657 of the Fair Work Act sets out the General Manager's powers.

- (2) In performing functions and exercising powers under this Act, the General Manager must seek to embed within organisations a culture of good governance and voluntary compliance with the law.

329C Minister may require reports

- (1) The Minister may, in writing, direct the General Manager to give the Minister specified reports relating to the General Manager's functions under this Act.
- (2) The General Manager must comply with the direction.
- (3) The direction, or the report (if made in writing), is not a legislative instrument.

329D Annual report

The annual report prepared by the General Manager and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include the following in relation to the period:

- (a) details of the number and types of investigations conducted by the General Manager under Part 4 of Chapter 11 of this Act;
- (b) details of:
 - (i) when each investigation was started; and
 - (ii) if the investigation has been completed—when it was completed; and

- (iii) if the investigation has not been completed—when it is expected to be completed;
- (c) details of any orders applied for under subsection 310(1) of this Act;
- (d) details of the types of education activities undertaken by the General Manager and whether the education activities were provided to:
 - (i) registered employer organisations; or
 - (ii) registered employee organisations; or
 - (iii) members of registered employer organisations; or
 - (iv) members of registered employee organisations;
- (e) any other matter prescribed by the regulations.

Division 2—Consequential amendments

Fair Work Act 2009

7 Paragraph 604(1)(b)

Repeal the paragraph, substitute:

- (b) made under the Registered Organisations Act by the General Manager (including a delegate of the General Manager);

8 Subsection 607(1)

Omit “, the General Manager or the Registered Organisations Commissioner”, substitute “or the General Manager”.

9 Subparagraph 613(2)(a)(ii)

Omit “Act; or”, substitute “Act; and”.

10 Subparagraph 613(2)(a)(iii)

Repeal the subparagraph.

11 At the end of section 696

Add:

- (3) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the Office of the Fair Work Ombudsman is a listed entity;
and
- (b) the Fair Work Ombudsman is the accountable authority of
the Office of the Fair Work Ombudsman; and
- (c) the following persons are officials of the Office of the Fair
Work Ombudsman:
 - (i) the Fair Work Ombudsman;
 - (ii) the staff of the Office of the Fair Work Ombudsman;
 - (iii) the inspectors appointed under section 700;
 - (iv) persons whose services are made available to the Fair
Work Ombudsman under section 698;
 - (v) consultants engaged under section 699; and
- (d) the purposes of the Office of the Fair Work Ombudsman
include:
 - (i) the functions of the Fair Work Ombudsman referred to
in section 682; and
 - (ii) the functions of inspectors under Subdivision D.

Fair Work (Registered Organisations) Act 2009

12 Section 6 (paragraph (a) of the definition of *authorised official*)

Repeal the paragraph.

13 Section 6

Repeal the following definitions:

- (a) definition of ***Commission***;
- (b) definition of ***Commissioner***.

14 Subsection 28(1A)

Omit “Commissioner may”, substitute “General Manager may”.

15 Subsection 28(1A) (note)

Omit “Commissioner”, substitute “General Manager”.

16 Paragraph 94A(4)(c)

Repeal the paragraph, substitute:

(c) the General Manager.

17 Subsection 95(3A)

Omit “or the Commissioner” (first occurring).

18 Paragraph 95(3A)(a)

Omit “or the Commissioner, as the case requires,”.

19 Subsections 95(3B) and (3C)

Omit “or the Commissioner”.

20 Subsection 95A(7)

Omit “or the Commissioner” (first occurring).

21 Paragraph 95A(7)(a)

Omit “or the Commissioner, as the case requires,”.

22 Subsections 95A(8) and (9)

Omit “or the Commissioner”.

23 Paragraph 102(1A)(a)

Omit “Commissioner”, substitute “General Manager”.

24 Subsection 183(1)

Omit “Commissioner”, substitute “FWC”.

25 Subsection 183(4)

Omit “Commissioner”, substitute “General Manager”.

26 Subsection 184(2)

Omit “Commissioner”, substitute “General Manager”.

27 Section 186 (heading)

Omit “**Commissioner**”, substitute “**General Manager**”.

28 Subsections 186(1) and (2)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

29 Subsection 187(3)

Omit “Commissioner”, substitute “FWC”.

30 Section 189 (heading)

Omit “Commissioner”, substitute “General Manager”.

31 Subsection 189(1)

Omit “Commissioner”, substitute “FWC”.

32 Subsection 189(2)

Omit “Commissioner”, substitute “General Manager”.

33 Subsection 189(3)

Repeal the subsection, substitute:

(3) If:

- (a) the prescribed information is lodged with the FWC by the organisation or branch (whether or not before the prescribed day or the later day allowed by the General Manager); and
 - (b) the General Manager is satisfied that an election is required to be held under the rules of the organisation or branch; and
 - (c) if the election is not an election for an office—the organisation or branch has made a request under section 187;
- the General Manager must arrange for the conduct of the election by the AEC.

34 Paragraph 192(2)(b)

Omit “Commissioner”, substitute “FWC”.

35 Paragraph 197(1)(a)

Omit “Commissioner”, substitute “General Manager”.

36 Subparagraph 198(6)(b)(i)

Omit “Commissioner”, substitute “FWC”.

37 Section 202 (heading)

Omit “Commissioner”, substitute “General Manager”.

38 Subsection 202(1)

Omit “Commissioner”, substitute “General Manager”.

39 Subsection 202(2)

Omit “Commissioner is authorised for the purposes of subsection (1), he or she”, substitute “General Manager is authorised for the purposes of subsection (1), the General Manager”.

40 Paragraph 202(2)(b)

Omit “he or she” (wherever occurring), substitute “the General Manager”.

41 Paragraph 202(2)(c)

Omit “him or her”, substitute “the General Manager”.

42 Paragraph 202(2)(e)

Omit “him or her, or of which he or she”, substitute “the General Manager, or of which the General Manager”.

43 Paragraph 202(5)(b)

Omit “Commissioner, or a person acting on his or her behalf”, substitute “General Manager, or a person acting on the General Manager’s behalf”.

44 Subsection 203(1)

Repeal the subsection, substitute:

Issue of identity card

- (1) The General Manager must issue an identity card to each member of the staff of the FWC (an *official*) to whom powers of the General Manager under section 202 have been delegated under section 343A.

45 Paragraph 203(6)(b)

Repeal the paragraph, substitute:

- (b) the person ceases to be a member of the staff of the FWC to whom powers of the General Manager under section 202 have been delegated under section 343A; and

46 Paragraph 203(6)(c)

Omit “Commissioner”, substitute “General Manager”.

47 Paragraph 206(4)(c)

Omit “Commissioner”, substitute “General Manager”.

48 Section 207 (heading)

Omit “Commissioner”, substitute “General Manager”.

49 Section 207

Omit “the Commissioner”, substitute “the General Manager”.

50 Subsection 215(5)

Omit “Commissioner”, substitute “General Manager”.

51 Section 229

Omit “Commissioner” (wherever occurring), substitute “FWC”.

52 Section 233 (heading)

Omit “Commissioner”, substitute “FWC”.

53 Subsections 233(1) and (2)

Omit “Commissioner”, substitute “FWC”.

54 Subsections 234(3) and (4)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

55 Section 235 (heading)

Omit “Commissioner”, substitute “General Manager”.

56 Subsection 235(1)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

57 Section 236 (heading)

Omit “**Commissioner**”, substitute “**General Manager**”.

58 Subsections 236(1) to (5)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

59 Subsection 237(1)

Omit “as the Commissioner allows), lodge with the Commissioner”, substitute “as the General Manager allows), lodge with the FWC”.

60 Subsections 237(2) and (4)

Omit “Commissioner”, substitute “FWC”.

61 Subsections 241(1) and (2)

Omit “Commissioner”, substitute “General Manager”.

62 Subsections 246(3), 247(1A) and 249(5A) and (6A)

Repeal the subsections.

63 Subsection 255(1)

Omit “Commissioner must, by written determination published in the *Gazette*,”, substitute “General Manager must, by legislative instrument,”.

64 Subsection 255(4)

Omit “Commissioner”, substitute “General Manager”.

65 Subsection 255A(1)

Omit “Commissioner”, substitute “General Manager”.

66 Paragraph 255A(2)(a)

Omit “Commissioner”, substitute “General Manager”.

67 Section 255B (heading)

Omit “Commissioner”, substitute “General Manager”.

68 Subsections 255B(2) and (3)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

69 Paragraph 255C(1)(b)

Omit “Commissioner”, substitute “General Manager”.

70 Subsection 255C(2)

Omit “Commissioner’s”, substitute “General Manager’s”.

71 Section 255D (heading)

Omit “Commissioner”, substitute “General Manager”.

72 Subsections 255D(1) and (2)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

73 Subsections 255E(2) to (4)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

74 Section 255F (heading)

Omit “Commissioner”, substitute “General Manager”.

75 Subsection 255F(1)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

76 Subparagraph 255F(2)(b)(i)

Omit “Commissioner”, substitute “General Manager”.

77 Subsections 255G(1) to (4)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

78 Section 255H

Omit “Commissioner”, substitute “General Manager”.

79 Sections 255J and 255K

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

80 Section 255L (heading)

Omit “Commissioner”, substitute “General Manager”.

81 Subsections 255L(1) and (2)

Omit “Commissioner”, substitute “General Manager”.

82 Paragraph 255N(2)(a)

Omit “Commissioner”, substitute “General Manager”.

83 Subsection 256A(2)

Omit “Commissioner”, substitute “General Manager”.

84 Subsection 257(11)

Omit “Commissioner”, substitute “General Manager”.

85 Subsection 261(2)

Omit “Commissioner”, substitute “FWC”.

86 Subsection 265(5)

Omit “Commissioner”, substitute “General Manager”.

87 Subsection 266(1)

Omit “Commissioner”, substitute “General Manager”.

88 Section 268 (heading)

Omit “Commissioner”, substitute “FWC”.

89 Section 268

Omit “as the Commissioner allows”, substitute “as the General Manager allows”.

90 Section 268

Omit “with the Commissioner”, substitute “with the FWC”.

91 Paragraph 269(2)(a)

Omit “Commissioner”, substitute “General Manager”.

92 Paragraph 269(2)(c)

Omit “Commissioner”, substitute “FWC”.

93 Subsection 270(1)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

94 Paragraph 270(3)(c)

Omit “Commissioner” (wherever occurring), substitute “FWC”.

95 Subsection 270(7)

Omit “as the Commissioner allows”, substitute “as the General Manager allows”.

96 Subsection 270(7)

Omit “lodge with the Commissioner”, substitute “lodge with the FWC”.

97 Subsections 271(1) and (3)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

98 Section 272 (heading)

Omit “Commissioner”, substitute “General Manager”.

99 Subsections 272(1) and (4)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

100 Subsection 278(2)

Omit “Commissioner”, substitute “General Manager”.

101 Subsection 293H(1)

Omit “Commissioner”, substitute “General Manager”.

102 Subsections 293H(3), (4), (6) and (7)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

103 Subparagraphs 293J(1)(b)(ii) and (2)(b)(ii)

Omit “Commissioner”, substitute “FWC”.

104 Paragraph 293K(1)(a)

Omit “Commissioner”, substitute “General Manager”.

105 Subsection 293L(1)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

106 Section 293M (heading)

Omit “Commissioner”, substitute “General Manager”.

107 Subsections 293M(1) to (3)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

108 Paragraphs 310(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the General Manager;
- (b) a person authorised in writing by the General Manager to make the application.

109 Subsection 329G(1)

Repeal the subsection, substitute:

Information to which this section applies

- (1) This section applies to information acquired by the General Manager or a member of the staff of the FWC in the performance of functions or exercise of powers under this Act.

110 Subsection 329G(2)

Omit “Commissioner or General Manager may disclose, or authorise the disclosure of, the information if he or she”, substitute “General Manager may disclose, or authorise the disclosure of, the information if the General Manager”.

111 Paragraph 329G(2)(a)

Omit “his or her”, substitute “the General Manager’s”.

112 Section 330 (heading)

Omit “Commissioner”, substitute “General Manager”.

113 Subsections 330(1) and (2)

Omit “Commissioner”, substitute “General Manager”.

114 Section 331 (heading)

Omit “Commissioner”, substitute “General Manager”.

115 Subsections 331(1) to (4)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

116 Subsection 332(1)

Omit “the Commissioner must”, substitute “the General Manager must”.

117 Paragraph 332(1)(a)

Omit “Commissioner”, substitute “FWC”.

118 Paragraph 332(1)(b)

Omit “Commissioner”, substitute “General Manager”.

119 Subsections 332(2) and (3)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

120 Subsection 333(1)

Omit “lodged with the Commissioner”, substitute “lodged with the FWC”.

121 Subsection 333(1)

Omit “request the Commissioner”, substitute “request the General Manager”.

122 Subsections 333(2) and (3)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

123 Section 334

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

124 Subsections 335(1) and (2)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

125 Section 335B

Omit “Commissioner”, substitute “General Manager”.

126 Paragraph 335E(2)(b)

Repeal the paragraph, substitute:

- (b) the General Manager or a member of the staff of the FWC authorised by the General Manager to be present; or

127 Subsection 335K(1)

Omit “Commissioner”, substitute “General Manager”.

128 Subsection 335N(8)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

129 Subsection 336(1) (heading)

Omit “*Commissioner*”, substitute “*General Manager*”.

130 Subsection 336(1)

Omit “the Commissioner” (wherever occurring), substitute “the General Manager”.

131 Subsection 336(1A) (heading)

Omit “*Commissioner*”, substitute “*General Manager*”.

132 Subsection 336(1A)

Omit “The Commissioner”, substitute “The General Manager”.

133 Subsection 336(2) (heading)

Omit “*Commissioner*”, substitute “*General Manager*”.

134 Subsection 336(2)

Omit “the Commissioner”, substitute “the General Manager”.

135 Subsections 336(3) and (5)

Omit “Commissioner”, substitute “General Manager”.

136 Section 337 (heading)

Omit “**Commissioner**”, substitute “**General Manager**”.

137 Subparagraphs 337(1)(a)(ii) and (iii)

Omit “Commissioner”, substitute “General Manager”.

138 Paragraph 337(1)(c)

Omit “Commissioner”, substitute “General Manager”.

139 Subsection 337AC(1)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

140 Paragraphs 337AM(a) and (b)

Omit “Commissioner”, substitute “General Manager”.

141 Subsections 337AP(1) and (2)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

142 Subparagraph 337A(1)(b)(ia)

Repeal the subparagraph.

143 Paragraph 337BB(4)(b)

Repeal the paragraph.

144 Subsection 337CB(2)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

145 Paragraph 337CB(2)(a)

Omit “Commissioner’s”, substitute “General Manager’s”.

146 Paragraph 337CB(3)(a)

Omit “Commissioner”, substitute “General Manager”.

147 Paragraph 337CC(2)(b)

Omit “Commissioner”, substitute “General Manager”.

148 Paragraph 337K(3)(a)

Omit “and to the Commissioner”.

149 Paragraph 343A(2)(b)

Omit “154C(1),”.

150 After paragraph 343A(2)(b)

Insert:

- (c) subsection 183(4);
- (d) any provision of Part 3 or 4 of Chapter 7 (other than section 202);
- (e) any provision of Division 1, 2 or 3, or Subdivision B of Division 4, of Part 3 of Chapter 8;
- (f) subsection 278(2);

151 After paragraph 343A(2)(h)

Insert:

- (i) subsection 329G(2);
- (j) section 334;
- (ja) section 335;
- (jb) section 335K;
- (jc) subsection 336(1), (2), (3) or (5);

152 Paragraph 343A(3)(aa)

Repeal the paragraph.

153 After paragraph 343A(3)(c)

Insert:

- (d) Subdivision A of Division 4 of Part 3 of Chapter 8;
- (e) subsection 293L(1);

154 Paragraph 343A(3)(h)

After “other than”, insert “a provision of Part 4 of that Chapter or”.

155 After subsection 343A(3)

Insert:

- (3A) Despite subsection (1), the General Manager’s functions or powers under section 330, 331, 332 or 333 can only be delegated to:
 - (a) a member of the staff of the FWC; or
 - (b) any other person or body the General Manager is satisfied has substantial or significant experience or knowledge in at least one of the following fields:
 - (i) accounting;
 - (ii) auditing;
 - (iii) financial reporting;
 - (iv) conducting compliance audits or investigations;
 - (v) a field prescribed by the regulations for the purposes of this subparagraph.
- (3B) Despite subsection (1), functions and powers under Division 3 of Part 4 (questioning on oath or affirmation) can only be delegated to

a member of the staff of the FWC who is an SES employee or an acting SES employee.

156 Section 343B

Repeal the section.

157 Paragraph 347(1)(c)

Omit “with the Commissioner”.

158 Section 348

Omit “or the Commissioner”.

159 Section 349

Omit “lodged with the Commissioner”, substitute “lodged with the FWC”.

160 Section 349

Omit “certified by the Commissioner”, substitute “certified by the General Manager”.

Division 3—Application, saving and transitional provisions

161 Definitions

In this Division:

commencement time means the commencement of Division 1.

Commissioner means the Registered Organisations Commissioner holding office under Part 3A of Chapter 11 of the principal Act before the commencement time.

principal Act means the *Fair Work (Registered Organisations) Act 2009*.

162 Acts Interpretation Act 1901

This Division does not limit section 7 of the *Acts Interpretation Act 1901*.

163 General Manager can require information

The General Manager may, before the commencement time, for the purposes of performing or exercising the General Manager's functions or powers under the principal Act after the commencement time, require the Commissioner to disclose to the General Manager information acquired by the Commissioner or a member of the staff assisting the Commissioner in the performance or exercise of functions or powers under the principal Act before the commencement time.

164 General Manager to complete certain processes

- (1) This item applies if:
 - (a) a process begun under the principal Act is incomplete at the commencement time; and
 - (b) a function or power that the Commissioner was required, or able, to perform or exercise in relation to the process is, because of the amendments made by this Part, no longer conferred on the Commissioner; and
 - (c) after the commencement time, the function or power is conferred on the General Manager.
- (2) For the purposes of completing the process:
 - (a) the General Manager must or may, as the case requires, perform the function or exercise the power; and
 - (b) things done by or in relation to the Commissioner before the commencement time have effect as if they were done by or in relation to the General Manager.

165 General Manager substituted as party to proceedings

If, immediately before the commencement time, the Commissioner is a party to proceedings pending in any court or tribunal, the General Manager is substituted for the Commissioner as a party to the proceedings at the commencement time.

166 Conduct, events or circumstances occurring before the commencement time

To avoid doubt, the General Manager may perform a function, or exercise a power, under the principal Act, as amended by this Part, in relation to conduct engaged in, an event that occurred, or a circumstance that arose before the commencement time.

167 Extensions, exemptions, certificates, instruments, approvals and requests

Extensions

- (1) The principal Act, as amended by this Part, has effect, after the commencement time, as if any extension of time (however described) allowed by the Commissioner before the commencement time under a provision of the principal Act that relates to a time after the commencement time had been allowed by the General Manager under the provision as amended by this Part.

Exemptions and permissions

- (2) Any exemption or permission granted by the Commissioner that was in force immediately before the commencement time under one of the following provisions of the principal Act has effect, after the commencement time, as if it had been granted by the General Manager under the provision as amended by this Part:
- (a) subsection 186(1) (exemption in relation to elections);
 - (b) subsection 234(4) (permission to keep records at specified premises);
 - (c) section 293M (exemption from financial training).

Certificates

- (3) Any certificate issued by the Commissioner that was in force immediately before the commencement time under section 255F (certificate of registration as an auditor) of the principal Act has effect, after the commencement time, as if it had been issued by the General Manager under that section as amended by this Part.
- (4) Despite the amendments of section 348 of the principal Act made by this Part, that section continues to apply, in relation to any certificate stating that a specified person was at a specified time a member or officer of a specified organisation or a specified branch of a specified organisation issued by the Commissioner before the commencement time, as if those amendments had not been made.

Reporting guidelines

- (5) Any reporting guidelines issued by the Commissioner that are in force immediately before the commencement time under subsection 255(1) of the principal Act have effect, after the commencement time, as if they had been issued by the General Manager under that subsection as amended by this Part.

Determinations, declarations and orders

- (6) Any determination, declaration or order made by the Commissioner that was in force immediately before the commencement time under one of the following provisions of the principal Act has effect, after the commencement time, as if it had been made by the General Manager under the provision as amended by this Part:
- (a) subsection 241(1) (exemption from certain Australian Accounting Standards);
 - (b) subsection 256A(2) (declaration in relation to significant role in audit);
 - (c) subsection 293H(3) (order for alternative disclosure arrangement).

Training in relation to financial duties

- (7) The principal Act, as amended by this Part, has effect, after the commencement time, as if any training that was approved by the Commissioner as at immediately before the commencement time under subsection 293L(1) of the principal Act had been approved by the General Manager under that subsection as amended by this Part.

Requests for action following investigation

- (8) The principal Act, as amended by this Part, has effect, after the commencement time, as if any notice that was issued under paragraph 336(2)(a) of the principal Act before the commencement time requesting a reporting unit to take specified action within a period that ends after the commencement time had been issued by the General Manager under that paragraph as amended by this Part.

General

- (9) This item does not limit item 164.
-

168 Things given to the Commissioner before the commencement time

Requirements met if documents given to the Commissioner

- (1) After the commencement time:
- (a) for the purposes of paragraph 189(3)(a) of the principal Act, information lodged with the Commissioner under subsection 189(1) of the principal Act before the commencement time is taken to have been lodged with the FWC under that subsection; and
 - (b) for the purposes of subsection 236(5) of the principal Act, a copy of a document received by the Commissioner under section 236 of the principal Act before the commencement time is taken to have been received by the General Manager under that section; and
 - (c) for the purposes of paragraph 255C(1)(b) of the principal Act, a subject certified by an appropriate authority of a university or other institution to the Commissioner to represent a course of study mentioned in subparagraphs 255C(1)(b)(i) and (ii) before the commencement time is taken to have been certified to the General Manager; and
 - (d) for the purposes of paragraph 269(2)(c) of the principal Act, a copy of audited accounts lodged with the Commissioner under that paragraph before the commencement time is taken to have been lodged with the FWC under that paragraph; and
 - (e) for the purposes of paragraph 332(1)(a) and subsection 333(1) of the principal Act, documents lodged with the Commissioner under section 268 of the principal Act before the commencement time are taken to have been lodged with the FWC under that section.

References to documents lodged with the FWC or given to General Manager

- (2) After the commencement time:
- (a) the reference in subsection 237(4) of the principal Act to a statement lodged with the FWC under subsection 237(1) includes a reference to a statement lodged with the

Commissioner under subsection 237(1) of the principal Act before the commencement time; and

- (b) the reference in subsection 261(2) of the principal Act to a document required by or under the principal Act to be lodged with the FWC includes a reference to a document required by or under the principal Act to be lodged with the Commissioner before the commencement time; and
- (c) the reference in paragraph 270(3)(c) of the principal Act to documents lodged with the FWC in accordance with subsection 270(7) of the principal Act includes a reference to documents lodged with the Commissioner in accordance with subsection 270(7) of the principal Act before the commencement time; and
- (d) the reference in subsection 329G(1) of the principal Act to information acquired by the General Manager in the performance of functions or exercise of powers under the principal Act includes a reference to information acquired by the Commissioner or a member of the staff assisting the Commissioner in the performance of functions or exercise of powers under the principal Act before the commencement time; and
- (e) the reference in section 349 of the principal Act to a list of the officers of an organisation or a branch of an organisation lodged with the FWC on behalf of the organisation, or a copy of any such list certified by the General Manager, includes a reference to such a list lodged with the Commissioner on behalf of the organisation, or a copy of such a list certified by the Commissioner, before the commencement time.

169 Other matters

Auditors

- (1) Subitem (2) applies in relation to any of the following things done by the Commissioner before the commencement time under a provision of Subdivision A of Division 4 of Part 3 of Chapter 8 of the principal Act:
 - (a) suspension of the registration of a person as an auditor for a period wholly or partly after the commencement time;
 - (b) cancellation of the registration of a person as an auditor.

- (2) The principal Act, as amended by this Part, has effect, after the commencement time, as if the suspension or cancellation had been done by the General Manager under that provision as amended by this Part.

Consultants

- (3) Subitem (4) applies in relation to any person who, immediately before the commencement time, was a consultant engaged by the Commissioner under section 329CC of the principal Act.
- (4) The person is taken, after the commencement time, to be a consultant engaged by the General Manager under section 673 of the *Fair Work Act 2009* on the same terms and conditions.

Protected disclosures

- (5) Despite the repeal of subparagraph 337A(1)(b)(ia) of the principal Act by this Part, that subparagraph continues to apply after the commencement time in relation to any disclosure made to the Commissioner or a member of the staff assisting the Commissioner before the commencement time, as if the repeal had not happened.

Transfer of records

- (6) Subitem (7) applies to any records or documents that were in the possession of the Commissioner immediately before the commencement time.
- (7) The records and documents are to be transferred to the General Manager after the commencement time.

170 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
- (a) the amendments or repeals made by this Part; or
 - (b) the enactment of this Part.
- (2) The rules may provide that they apply despite subsection 7(2) of the *Acts Interpretation Act 1901*.
- (3) To avoid doubt, the rules may not do the following:

Schedule 1 Amendments

Part 1 Abolition of the Registered Organisations Commission

- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (4) Despite subsection 12(2) of the *Legislation Act 2003* and subject to subitem (5), the rules may be expressed to take effect from a date before the rules are registered under that Act.
- (5) If:
 - (a) the rules are expressed to take effect from a date before the rules are registered under the *Legislation Act 2003*; and
 - (b) a person engaged in conduct before the registration date; and
 - (c) but for the retrospective effect of the rules, the conduct would not have contravened a provision of an Act;then a court must not convict the person of an offence, or order the person to pay a pecuniary penalty, in relation to the conduct on the grounds that it contravened a provision of that Act.

Part 2—Additional registered organisations enforcement options

Fair Work (Registered Organisations) Act 2009

171 Section 6

Insert:

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

172 At the end of Chapter 1

Add:

16 Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the **conduct provision**) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

173 Chapter 10 (heading)

Repeal the heading, substitute:

Chapter 10—Compliance and enforcement

174 Section 304

Repeal the section, substitute:

304 Simplified outline

This Chapter provides for:

- (a) civil penalty orders for contraventions of civil penalty provisions; and

- (b) infringement notices; and
- (c) enforceable undertakings.

A civil penalty order may be sought from the Federal Court for the contravention of a civil penalty provision (see Part 2 of this Chapter).

Certain strict liability offences and civil penalty provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act (see Part 3 of this Chapter).

A person can be given an infringement notice for an alleged contravention of a specified strict liability offence or civil penalty provision. The person can choose to pay an amount as an alternative to proceedings being brought against the person in relation to the alleged contravention. However, if the person chooses not to do so, proceedings can be brought against the person in relation to the alleged contravention.

Undertakings to comply with this Act may be accepted and enforced under Part 6 of the Regulatory Powers Act (see Part 4 of this Chapter). If a person gives an undertaking, the undertaking may be enforced by a court order.

175 Part 2 of Chapter 10 (heading)

Repeal the heading, substitute:

Part 2—Civil penalties

176 At the end of Chapter 10

Add:

Part 3—Infringement notices

316A Basic provisions for infringement notices under Part 5 of the Regulatory Powers Act

Provisions subject to an infringement notice

- (1) The provisions listed in the following table are subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Provisions that are subject to an infringement notice	
Item	Provision
1	Subsection 51(2)
2	Subsection 52(1)
3	Subsection 95(3C)
4	Subsection 103(2)
5	Subsection 104(1)
6	Section 169
7	Subsection 172(1)
8	Subsection 189(2)
9	Subsection 191(2)
10	Subsection 192(1)
11	Subsection 193(2)
12	Subsection 198(1)
13	Subsection 198(4)
14	Subsection 198(5)
15	Subsection 199(3)
16	Subsection 199(5)
17	Subsection 230(1)
18	Subsection 230(2)
19	Subsection 231(1)
20	Subsection 231(2)
21	Subsection 233(1)
22	Subsection 233(2)

Schedule 1 Amendments**Part 2** Additional registered organisations enforcement options

Provisions that are subject to an infringement notice	
Item	Provision
23	Subsection 235(2)
24	Subsection 236(1)
25	Subsection 236(2)
26	Subsection 237(1)
27	Subsection 253(4)
28	Subsection 254(4)
29	Subsection 256(1)
30	Subsection 256(3)
31	Subsection 256(4)
32	Subsection 256(4A)
33	Subsection 256(5)
34	Subsection 256(6A)
35	Subsection 256A(1)
36	Section 259
37	Subsection 263(5)
38	Subsection 264(3)
39	Subsection 265(1)
40	Subsection 265(4)
41	Subsection 265(5)
42	Subsection 266(1)
43	Section 268
44	Subsection 270(4)
45	Subsection 270(5)
46	Subsection 270(6)
47	Subsection 270(7)
48	Subsection 272(3)
49	Subsection 272(5)
50	Subsection 276(1)
51	Subsection 276(2)
52	Subsection 293B(1)
53	Subsection 293B(2)

Provisions that are subject to an infringement notice	
Item	Provision
54	Subsection 293C(2)
55	Subsection 293C(3)
56	Subsection 293C(6)
57	Subsection 293C(7)
58	Subsection 293F(1)
59	Subsection 293F(2)
60	Subsection 293J(1)
61	Subsection 293J(2)
62	Subsection 293K(2)
63	Subsection 337AA(1)
64	Subsection 337AA(2)

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

- (2) A provision in the regulations is subject to an infringement notice under Part 5 of the Regulatory Powers Act if:
- (a) it is a strict liability offence provision, or a civil penalty provision (within the meaning of the Regulatory Powers Act); and
 - (b) the regulations prescribe the provision for the purposes of this subsection.

Infringement officer

- (3) For the purposes of Part 5 of the Regulatory Powers Act, each of the following persons is an infringement officer in relation to the provisions mentioned in subsection (1) or (2):
- (a) the General Manager;
 - (b) a person appointed as an infringement officer under subsection 316B(1).

Relevant chief executive

- (4) For the purposes of Part 5 of the Regulatory Powers Act, the General Manager is the relevant chief executive in relation to the provisions mentioned in subsection (1) or (2).

- (5) The relevant chief executive may, in writing, delegate the relevant chief executive's powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) or (2) to a member of the staff of the FWC who is an SES employee or an acting SES employee.
- (6) A person exercising powers or performing functions under a delegation under subsection (5) must comply with any directions of the relevant chief executive.

Amount to be stated in an infringement notice

- (7) If a civil penalty provision mentioned in subsection (1) specifies a penalty for a serious contravention and a penalty for any other contravention, the penalty specified for a serious contravention is to be disregarded for the purposes of paragraphs 104(2)(a) and (3)(a) of the Regulatory Powers Act.

316B Infringement officers

Appointment

- (1) The General Manager may, in writing, appoint a member of the staff of the FWC as an infringement officer for the purposes of this Part.
- (2) The General Manager must not appoint a person as an infringement officer unless the General Manager is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of an infringement officer.
- (3) The functions and powers conferred on an infringement officer by Part 5 of the Regulatory Powers Act are subject to such conditions and restrictions as are specified in the infringement officer's instrument of appointment.

General directions by the General Manager

- (4) The General Manager may, by legislative instrument, give a written direction to infringement officers relating to the performance of their functions or the exercise of their powers as infringement officers.

- (5) A direction given under subsection (4) must be of a general nature only, and cannot relate to a particular case.
- (6) An infringement officer must comply with a direction given under subsection (4).

Particular directions by the General Manager

- (7) The General Manager may give a direction to an infringement officer relating to the performance of the infringement officer's functions or the exercise of the infringement officer's powers as an infringement officer.
- (8) The infringement officer must comply with a direction given to the infringement officer under subsection (7).
- (9) If a direction given under subsection (7) is in writing, the direction is not a legislative instrument.

Part 4—Enforceable undertakings

316C Enforceable undertakings

Enforceable provisions

- (1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the General Manager is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) The General Manager may, in writing, delegate the General Manager's powers and functions under Part 6 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) to a member of the staff of the FWC who is an SES employee or an acting SES employee.

Relevant court

- (4) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

Enforceable undertaking may be published on the FWC's website

- (5) The General Manager may publish on the FWC's website an undertaking given in relation to a provision mentioned in subsection (1).

177 Application provision—infringement notices

Part 3 of Chapter 10 of the *Fair Work (Registered Organisations) Act 2009*, as added by this Part, applies in relation to any alleged contravention of a provision mentioned in subsection 316A(1) or (2) of the *Fair Work (Registered Organisations) Act 2009* that occurs before, on or after the commencement of this item.

Part 3—Abolition of the Australian Building and Construction Commission

Division 1—General amendments

Building and Construction Industry (Improving Productivity) Act 2016

178 Section 3

Repeal the section, substitute:

3 Object

The object of this Act is to promote work health and safety in relation to building work undertaken by a constitutional corporation, the Commonwealth or a corporate Commonwealth entity.

179 Section 4 (paragraph beginning “This Act”)

Repeal the paragraph.

180 Section 4 (paragraph beginning “The Australian Building and Construction Commissioner”)

Repeal the paragraph.

181 Section 4 (paragraph beginning “Unlawful industrial action”)

Repeal the paragraph.

182 Section 4 (paragraph beginning “The ABC Commissioner, inspectors”)

Omit “The ABC Commissioner, inspectors and”.

183 Section 4 (paragraph beginning “The ABC Commissioner, inspectors”)

Omit “An examination notice, issued by a nominated AAT presidential member on application by the ABC Commissioner, may require a person to give information. Inspectors and”.

184 Section 4 (paragraph beginning “Inspectors and”)

Repeal the paragraph.

185 Section 4 (paragraph beginning “The ABC Commissioner can”)

Repeal the paragraph.

186 Section 5

Repeal the following definitions:

- (a) definition of *AAT presidential member*;
- (b) definition of *ancillary site*.

187 Section 5 (paragraph (a) of the definition of *authorised applicant*)

Repeal the paragraph.

188 Section 5

Repeal the following definitions:

- (a) definition of *authorised officer*;
- (b) definition of *bargaining representative*;
- (c) definition of *building agreement*;
- (d) definition of *building association*;
- (e) definition of *Building Code*;
- (f) definition of *building enterprise agreement*;
- (g) definition of *building industry law enforcement*;
- (h) definition of *building industry participant*;
- (i) definition of *building matter*;
- (j) definition of *building site*;
- (k) definition of *Commonwealth industrial instrument*;
- (l) definition of *Commonwealth Ombudsman*.

189 Section 5 (definition of *compliance powers*)

Omit “an authorised officer”, substitute “a Federal Safety Officer”.

190 Section 5 (definition of *compliance purposes*)

Repeal the definition, substitute:

compliance purposes means the purposes referred to in subsection 70(2).

191 Section 5

Repeal the following definitions:

- (a) definition of *constitutionally-covered entity*;
- (b) definition of *designated building law*;
- (c) definition of *enterprise agreement*;
- (d) definition of *entrusted person*;
- (e) definition of *examination*.

192 Section 5 (definition of *examination notice*)

After “under”, insert “repealed”.

193 Section 5

Repeal the following definitions:

- (a) definition of *funding entity*;
- (b) definition of *FW Transitional Act*;
- (c) definition of *independent contractor*;
- (d) definition of *industrial action*;
- (e) definition of *industrial association*.

194 Section 5 (paragraph (b) of the definition of *inspector*)

After “under”, insert “repealed”.

195 Section 5

Repeal the following definitions:

- (a) definition of *lawyer*;
- (b) definition of *lockout*;
- (c) definition of *nominated AAT presidential member*;
- (d) definition of *officer*;

- (e) definition of *official employment*;
- (f) definition of *organisation*;
- (g) definition of *person*;
- (h) definition of *protected industrial action*;
- (i) definition of *protected information*;
- (j) definition of *protected person*;
- (k) definition of *quarter*;
- (l) definition of *single enterprise*;
- (m) definition of *unlawful industrial action*;
- (n) definition of *unlawful picket*.

196 Sections 7, 8 and 9

Repeal the sections.

197 Part 1 of Chapter 2 (heading)

Omit “Simplified outline of this Chapter”, substitute “Introduction”.

198 Section 14 (paragraph beginning “Many of”)

Repeal the paragraph.

199 At the end of Part 1 of Chapter 2

Add:

14A Object

Section 3 (object) does not apply to this Chapter.

200 Section 16

Repeal the section, substitute:

16 Functions of ABC Commissioner

The ABC Commissioner has the following functions:

- (a) to provide the Fair Work Ombudsman with information and assistance for the purposes of ensuring that the Fair Work Ombudsman can perform the Fair Work Ombudsman’s functions, and exercise the Fair Work Ombudsman’s powers,

under the FW Act, so far as those functions and powers relate to the building industry;

- (b) to provide the Fair Work Ombudsman with information and assistance for the purposes of ensuring that the Fair Work Ombudsman can perform the Fair Work Ombudsman's functions, and exercise the Fair Work Ombudsman's powers, under Division 5 of Part 3 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*;
- (c) to prepare for the amendments made by Division 2 of Part 3 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*;
- (d) any other functions conferred on the ABC Commissioner by this Act or by another Act.

201 Subsection 19(2)

Repeal the subsection.

202 Section 20 (heading)

Repeal the heading, substitute:

20 Annual reports

203 Subsection 20(1A)

Repeal the subsection.

204 Subsection 20(2)

Omit "quarterly report, and each".

205 Subparagraph 20(2)(a)(i)

Omit "quarter or".

206 Subparagraph 20(2)(a)(i)

Omit "(as the case requires)".

207 Subparagraph 20(2)(a)(ii)

Omit "quarter or".

208 Paragraph 20(2)(b)

Omit “quarter or”.

209 Paragraph 20(2)(c)

Repeal the paragraph.

210 Subparagraphs 20(2)(d)(i) and (ii)

Omit “quarter or”.

211 Subparagraphs 20(2)(e)(i) and (ii)

Omit “quarter or”.

212 Paragraphs 20(2)(f), (g), (h) and (i)

Omit “quarter or”.

213 After subsection 20(2)

Insert:

- (2A) For the purposes of this section, *building industry participant* has the same meaning as in this Act as in force immediately before the commencement of this subsection.

214 Subsection 20(3)

Omit “quarterly report, and each”.

215 Paragraphs 20(3)(a) and (b)

Omit “quarter or”.

216 Subsection 20(4)

Repeal the subsection.

217 Subsection 20(5)

Omit “each quarterly report and”.

218 Subsection 32A(2)

Repeal the subsection, substitute:

- (2) The function of the Working Group is to assist the Chair of the Working Group in preparing the report mentioned in section 32K.

219 Section 32K

Repeal the section, substitute:

32K Final annual report on the Security of Payments Working Group

The Chair of the Security of Payments Working Group must prepare and give to the Minister, for presentation to the Parliament, a report on:

- (a) the membership of the Security of Payments Working Group during the period:
 - (i) beginning on 1 July 2022; and
 - (ii) ending at the commencement of this section; and
- (b) the operations of the Security of Payments Working Group during the period:
 - (i) beginning on 1 July 2022; and
 - (ii) ending at the commencement of this section.

220 Chapter 3

Repeal the Chapter.

221 Before paragraph 38(a)

Insert:

- (aa) promoting the object of this Act (see section 3);

222 After paragraph 40(1)(b)

Insert:

- (ba) an APS employee whose duties relate to the performance of the Federal Safety Commissioner's functions or the exercise of the Federal Safety Commissioner's powers; or

223 Chapter 5

Repeal the Chapter.

224 Chapter 6

Repeal the Chapter.

225 Section 60 (paragraph beginning “A person”)

Repeal the paragraph.

226 Section 60 (paragraph beginning “Australian Building and Construction Inspectors”)

Omit “Australian Building and Construction Inspectors and Federal Safety Officers (who together are called authorised officers)”, substitute “Federal Safety Officers”.

227 Section 60 (paragraph beginning “Australian Building and Construction Inspectors”)

Omit “Authorised officers have”, substitute “Federal Safety Officers have”.

228 Section 60 (paragraph beginning “Intentionally hindering”)

Omit “an authorised officer”, substitute “a Federal Safety Officer”.

229 Part 2 of Chapter 7

Repeal the Part.

230 Part 3 of Chapter 7 (heading)

Omit “Australian Building and Construction Inspectors and”.

231 Division 1 of Part 3 of Chapter 7

Repeal the Division.

232 Division 3 of Part 3 of Chapter 7 (heading)

Omit “authorised officers”, substitute “Federal Safety Officers”.

233 Section 70 (heading)

Omit “authorised officers”, substitute “Federal Safety Officers”.

234 Subsection 70(1)

Repeal the subsection.

235 Subsection 70(3)

Omit “an authorised officer”, substitute “a Federal Safety Officer”.

236 Subsection 70(3) (note)

Repeal the note.

237 Section 71 (heading)

Omit “authorised officers”, substitute “**Federal Safety Officers**”.

238 Section 71

Omit “An authorised officer”, substitute “A Federal Safety Officer”.

239 Paragraph 71(b)

Omit “authorised officer”, substitute “Federal Safety Officer”.

240 Section 72 (heading)

Omit “authorised officers”, substitute “**Federal Safety Officers**”.

241 Subsection 72(1)

Repeal the subsection.

242 Subsection 72(3) (heading)

Omit “*authorised officers*”, substitute “*Federal Safety Officers*”.

243 Subsection 72(3)

Omit “subparagraph (1)(a)(i) and paragraph (2)(a), an authorised officer”, substitute “paragraph (2)(a), a Federal Safety Officer”.

244 Subsection 72(3)

Omit “subparagraph or”.

245 Subsection 72(4)

Omit “subparagraphs (1)(b)(ii) and (2)(b)(ii), an authorised officer”, substitute “subparagraph (2)(b)(ii), a Federal Safety Officer”.

246 Subsection 72(4)

Omit “either of those subparagraphs if the authorised officer”, substitute “that subparagraph if the Federal Safety Officer”.

247 Section 73

Omit “An authorised officer”, substitute “A Federal Safety Officer”.

248 Section 74 (heading)

Omit “authorised officers”, substitute “Federal Safety Officers”.

249 Subsection 74(1) (heading)

Omit “72(1)(b)(ii) or (2)(b)(ii)”, substitute “72(2)(b)(ii)”.

250 Subsection 74(1)

Omit “An authorised officer”, substitute “A Federal Safety Officer”.

251 Subsection 74(1)

Omit “paragraph 72(1)(a) or (2)(a), or subparagraph 72(1)(b)(i) or (2)(b)(i),”, substitute “paragraph 72(2)(a) or subparagraph 72(2)(b)(i)”.

252 Paragraphs 74(1)(c) and (d)

Omit “authorised officer” (wherever occurring), substitute “Federal Safety Officer”.

253 Subsection 74(2) (heading)

Omit “72(1)(b)(ii) or (2)(b)(ii)”, substitute “72(2)(b)(ii)”.

254 Subsection 74(2)

Omit “An authorised officer”, substitute “A Federal Safety Officer”.

255 Subsection 74(2)

Omit “72(1)(b)(ii) or (2)(b)(ii)”, substitute “72(2)(b)(ii)”.

256 Section 75 (heading)

Omit “authorised officers”, substitute “Federal Safety Officers”.

257 Subsection 75(1)

Omit “an authorised officer”, substitute “a Federal Safety Officer”.

258 Subsection 75(1)

Omit “the authorised officer if”, substitute “the Federal Safety Officer if”.

259 Subsection 75(1)

Omit “ABC Commissioner or Federal Safety Commissioner (as the case requires)”, substitute “Federal Safety Commissioner”.

260 Paragraphs 75(1)(b), (2)(a) and (2)(b)

Omit “authorised officer” (wherever occurring), substitute “Federal Safety Officer”.

261 Subsection 75(3)

Omit “authorised officer”, substitute “Federal Safety Officer”.

262 Subsection 76(1)

Omit “An authorised officer”, substitute “A Federal Safety Officer”.

263 Section 76

Omit “the authorised officer” (wherever occurring), substitute “the Federal Safety Officer”.

264 Subsection 77(1)

Omit “An authorised officer”, substitute “A Federal Safety Officer”.

265 Subsection 77(1)

Omit “the authorised officer”, substitute “the Federal Safety Officer”.

266 Section 78 (heading)

Omit “authorised officers”, substitute “Federal Safety Officers”.

267 Section 78

Omit “an authorised officer”, substitute “a Federal Safety Officer”.

268 Subsection 79(1)

Omit “an authorised officer”, substitute “a Federal Safety Officer”.

269 Subsection 79(1)

Omit “or Part 2 (examination notices)”.

270 Subsections 79(1) and (2)

Omit “the authorised officer”, substitute “the Federal Safety Officer”.

271 Paragraphs 79(3)(a) to (f)

Repeal the paragraphs.

272 Section 80 (paragraph beginning “An authorised applicant”)

Omit “an inspector or”.

273 Section 80 (paragraph beginning “The ABC Commissioner”)

Repeal the paragraph.

274 Subsection 81(1) (note)

Repeal the note.

275 Subsection 81(4)

Repeal the subsection.

276 Sections 95, 96 and 97

Repeal the sections.

277 Part 3 of Chapter 8

Repeal the Part.

278 Section 101 (paragraph beginning with “Part 3”)

Repeal the paragraph.

279 Subsection 102(1)

Omit “giving information, producing a record or document, or answering a question, under an examination notice, or”, substitute “producing a record or document”.

280 Subsection 102(1) (note)

Repeal the note.

281 Subsection 102(2)

Repeal the subsection.

282 Subsection 102(3)

Omit “gives information,”.

283 Subsection 102(3)

Omit “, or answers a question,”.

284 Paragraph 102(3)(a)

Omit “the information or answer given or”.

285 Paragraph 102(3)(b)

Omit “giving the information or answer or”.

286 Subsection 102(3)

Omit “proceedings referred to in paragraphs (2)(d) and (e) of this section”, substitute “proceedings to which subsection (4) of this section applies”.

287 At the end of section 102

Add:

- (4) This subsection applies to the following proceedings:
- (a) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act (false or misleading information or documents);
 - (b) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act (obstruction of Commonwealth officials).

288 Section 103

Repeal the section.

289 Section 105 (heading)

Omit “ABC Commissioner or”.

290 Paragraphs 105(1)(a) to (g)

Repeal the paragraphs.

291 Subsection 105(1)

Omit “However, the ABC Commissioner must not under this section disclose, or authorise the disclosure of, protected information.”.

292 Subsections 105(2) and (3)

Omit “ABC Commissioner or”.

293 Subsection 105(3)

Omit “under:”, substitute “under this Act.”.

294 Paragraphs 105(3)(a) and (b)

Repeal the paragraphs.

295 Subsection 105(4)

Omit “ABC Commissioner or”.

296 Subsection 105(4)

Omit “under:”, substitute “under this Act.”.

297 Paragraphs 105(4)(c) and (d)

Repeal the paragraphs.

298 Subsection 105(5)

Repeal the subsection.

299 Section 106

Repeal the section.

300 Subsection 107(1)

Omit “quarterly and”.

301 Part 3 of Chapter 9

Repeal the Part.

302 Section 117

Repeal the section.

303 Section 118 (heading)

Omit “ABC Commissioner”, substitute “**Federal Safety Commissioner**”.

304 Subsection 118(1)

Omit “subsection (2):”, substitute “subsection (2) in the exercise, or purported exercise, of functions, powers or duties under, or in relation to, this Act.”.

305 Paragraphs 118(1)(a) and (b)

Repeal the paragraphs.

306 Sections 119 and 119A

Repeal the sections.

Division 2—Abolition of the Australian Building and Construction Commission etc.

***Building and Construction Industry (Improving Productivity)
Act 2016***

307 Title

Omit “to re-establish the Australian Building and Construction Commissioner”, substitute “relating to the Federal Safety Commissioner”.

308 Section 1

Omit “*Building and Construction Industry (Improving Productivity) Act 2016*”, substitute “*Federal Safety Commissioner Act 2022*”.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

309 Section 5

Repeal the following definitions:

- (a) definition of *ABC Commissioner*;
- (b) definition of *Commission*;
- (c) definition of *Commissioner*;
- (d) definition of *Deputy ABC Commissioner*;
- (e) definition of *designated official*;
- (f) definition of *examination notice*;
- (g) definition of *full-time Commissioner*;
- (h) definition of *FWC*;
- (i) definition of *inspector*;
- (j) definition of *part-time Commissioner*;
- (k) definition of *Working Group*.

310 Chapter 2

Repeal the Chapter.

311 Section 107

Repeal the section.

312 Paragraph 118(2)(a)

Repeal the paragraph.

Division 3—Consequential amendments

Fair Work (Registered Organisations) Act 2009

313 Subsection 93(1) (paragraph (c) of the definition of workplace or safety law)

Omit “*Building and Construction Industry (Improving Productivity) Act 2016*”, substitute “*Federal Safety Commissioner Act 2022*”.

314 Subparagraphs 337A(1)(b)(iii), (iiia) and (iv)

Repeal the subparagraphs.

Jurisdiction of Courts (Cross-vesting) Act 1987

315 Paragraph 4(4)(aba)

Omit “*Building and Construction Industry (Improving Productivity) Act 2016*”, substitute “*Federal Safety Commissioner Act 2022*”.

Division 4—Repeals

Building and Construction Industry (Consequential and Transitional Provisions) Act 2016

316 The whole of the Act

Repeal the Act.

Building and Construction Industry Improvement (Consequential and Transitional) Act 2005

317 The whole of the Act

Repeal the Act.

Division 5—General transitional provisions

318 Definitions

In this Division:

ABCC Enterprise Agreement means the *Australian Building and Construction Commission Enterprise Agreement 2017-2020*.

ABCC abolition time means the commencement of Division 2.

Agency has the same meaning as in the *Public Service Act 1999*.

consideration period has the same meaning as in Part I of the ABCC Enterprise Agreement.

Fair Work Inspector means a person appointed as a Fair Work Inspector under section 700 of the *Fair Work Act 2009*.

National Employment Standards has the same meaning as in the *Fair Work Act 2009*.

retention period has the same meaning as in Part I of the ABCC Enterprise Agreement.

transition time means the commencement of Division 1.

319 Non-SES staff

Scope

- (1) This item applies to a person if, immediately before the ABCC abolition time, the person:
- (a) was an APS employee (other than an SES employee); and
 - (b) was a member of the staff of the Australian Building and Construction Commission; and
 - (c) was covered by the ABCC Enterprise Agreement; and
 - (d) was not covered by an agreement under section 26 of the *Public Service Act 1999* for the person to move to an Agency from the Australian Building and Construction Commission; and
 - (e) had not otherwise arranged to move to an Agency from the Australian Building and Construction Commission.

Note 1: For the definition of **APS employee**, see section 2B of the *Acts Interpretation Act 1901*.

Note 2: For the definition of **SES employee**, see section 2B of the *Acts Interpretation Act 1901*.

Termination of employment

- (2) The following provisions have effect:
- (a) the person's employment is taken to have been terminated at the ABCC abolition time under section 29 of the *Public*

Service Act 1999 on the ground that the person is excess to the requirements of the Australian Building and Construction Commission;

- (b) for the purposes of section 119 of the *Fair Work Act 2009*, the person's employment is taken to have been terminated at the ABCC abolition time at the employer's initiative because the employer no longer requires the job done by the person to be done by anyone;
- (c) the person is to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, any amounts that are payable by the Commonwealth to the person as a result of the termination of the person's employment.

Termination payments—person not offered voluntary redundancy

(3) If:

- (a) immediately before the ABCC abolition time, the person:
 - (i) was an ongoing employee; and
 - (ii) was not on probation; and
- (b) the person was not offered a voluntary redundancy under clause 252 of the ABCC Enterprise Agreement before the ABCC abolition time;

then, after the termination of the person's employment:

- (c) the ABCC Enterprise Agreement does not apply to the person; and
- (d) the person is entitled to be reimbursed by the Fair Work Ombudsman, on behalf of the Commonwealth, for expenditure incurred by the person within 2 months after the ABCC abolition time in obtaining independent financial advice (up to a limit of \$1,000); and
- (e) the person is entitled to be reimbursed by the Fair Work Ombudsman, on behalf of the Commonwealth, for expenditure incurred by the person within 2 months after the ABCC abolition time in obtaining career counselling (up to a limit of \$1,000); and
- (f) the person is entitled to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, a lump sum payment equal to 2 months of the person's pay; and

- (g) the person is entitled to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, a lump sum payment equal to the greater of the following amounts:
 - (i) the person's notional involuntary redundancy amount worked out under subitem (7);
 - (ii) the person's notional voluntary redundancy amount worked out under subitem (8).

Termination payments—person offered voluntary redundancy and consideration period had not ended before ABCC abolition time

- (4) If:
 - (a) immediately before the ABCC abolition time, the person:
 - (i) was an ongoing employee; and
 - (ii) was not on probation; and
 - (b) the person was offered a voluntary redundancy under clause 252 of the ABCC Enterprise Agreement, but did not accept the voluntary redundancy; and
 - (c) the person's consideration period had not ended before the ABCC abolition time;then, after the termination of the person's employment:
 - (d) the ABCC Enterprise Agreement does not apply to the person; and
 - (e) the person is entitled to be reimbursed by the Fair Work Ombudsman, on behalf of the Commonwealth, for expenditure incurred by the person within 2 months after the ABCC abolition time in obtaining independent financial advice (up to a limit of \$1,000 reduced by any amount the person received from the Commonwealth as reimbursement for expenditure incurred by the person before the ABCC abolition time in obtaining independent financial advice); and
 - (f) the person is entitled to be reimbursed by the Fair Work Ombudsman, on behalf of the Commonwealth, for expenditure incurred by the person within 2 months after the ABCC abolition time in obtaining career counselling (up to a limit of \$1,000 reduced by any amount the person received from the Commonwealth as reimbursement for expenditure

incurred by the person before the ABCC abolition time in obtaining career counselling); and

- (g) the person is entitled to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, a lump sum payment equal to 2 months (reduced by the number of days in so much of the consideration period as occurred before the ABCC abolition time) of the person's pay; and
- (h) the person is entitled to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, a lump sum payment equal to the greater of the following amounts:
 - (i) the person's notional involuntary redundancy amount worked out under subitem (7);
 - (ii) the person's notional voluntary redundancy amount worked out under subitem (8).

Termination payments—person offered voluntary redundancy and retention period had not ended before ABCC abolition time

(5) If:

- (a) immediately before the ABCC abolition time, the person:
 - (i) was an ongoing employee; and
 - (ii) was not on probation; and
- (b) the person was offered a voluntary redundancy under clause 252 of the ABCC Enterprise Agreement before the ABCC abolition time, but did not accept the voluntary redundancy; and
- (c) the person's consideration period ended before the ABCC abolition time; and
- (d) the person's retention period had not ended before the ABCC abolition time;

then, after the termination of the person's employment:

- (e) the ABCC Enterprise Agreement does not apply to the person; and
- (f) the person is entitled to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, a lump sum payment equal to 7 months (reduced by the number of weeks for which the person is entitled to redundancy pay under the National Employment Standards and by the number of days

in so much of the retention period as occurred before the ABCC abolition time) of the person's pay; and

- (g) the person is entitled to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, the person's National Employment Standards entitlement to redundancy pay.

Termination payments—person accepted voluntary redundancy and notice period had not ended before ABCC abolition time

(6) If:

- (a) immediately before the ABCC abolition time, the person:
 - (i) was an ongoing employee; and
 - (ii) was not on probation; and
- (b) the person was offered a voluntary redundancy under clause 252 of the ABCC Enterprise Agreement before the ABCC abolition time; and
- (c) the person accepted the voluntary redundancy before the ABCC abolition time; and
- (d) the person's notice period had not ended before the ABCC abolition time;

then, after the termination of the person's employment:

- (e) the ABCC Enterprise Agreement does not apply to the person; and
- (f) if the person had not been paid a redundancy payment benefit under clause 256 of the ABCC Enterprise Agreement before the ABCC abolition time—the person is entitled to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, a lump sum payment equal to the redundancy benefit that would have become payable to the person under clause 256 of the ABCC Enterprise Agreement if (despite paragraph (e) of this subitem):
 - (i) that clause were applicable to the person; and
 - (ii) clause 257 of the ABCC Enterprise Agreement were applicable to the person; and
 - (iii) that redundancy benefit were calculated in accordance with clauses 259 to 264 of the ABCC Enterprise Agreement as in force immediately before the ABCC abolition time; and

- (g) the person is entitled to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, a lump sum payment equal to the person's pay for the unexpired portion of the notice period.

Notional involuntary redundancy amount

- (7) If, immediately before the ABCC abolition time, the person:

- (a) was an ongoing employee; and
- (b) was not on probation;

the person's notional involuntary redundancy amount is the sum of the following amounts:

- (c) 7 months (reduced by the number of weeks for which the person is entitled to redundancy pay under the National Employment Standards) of the person's pay;
- (d) the person's National Employment Standards entitlement to redundancy pay;
- (e) if:
 - (i) at the ABCC abolition time, the person has reached the age of 45 years; and
 - (ii) at the ABCC abolition time, the person has at least 5 years of continuous service (calculated in accordance with clauses 261 to 264 of the ABCC Enterprise Agreement as in force immediately before the ABCC abolition time);payment in lieu of notice equal to 5 weeks of the person's pay;
- (f) if, at the ABCC abolition time, paragraph (e) does not apply to the person—payment in lieu of notice equal to 4 weeks of the person's pay.

Notional voluntary redundancy amount

- (8) If, immediately before the ABCC abolition time, the person:

- (a) was an ongoing employee; and
- (b) was not on probation;

the person's notional voluntary redundancy amount is the sum of the following amounts:

- (c) the redundancy benefit that would have been payable to the person under clause 256 of the ABCC Enterprise Agreement if (despite paragraphs (3)(c) and (4)(d) of this item):
 - (i) that clause were applicable to the person; and
 - (ii) clause 257 of the ABCC Enterprise Agreement were applicable to the person; and
 - (iii) that redundancy benefit were calculated in accordance with clauses 259 to 264 of the ABCC Enterprise Agreement as in force immediately before the ABCC abolition time;
- (d) if:
 - (i) at the ABCC abolition time, the person has reached the age of 45 years; and
 - (ii) at the ABCC abolition time, the person has at least 5 years of continuous service (calculated in accordance with clauses 261 to 264 of the ABCC Enterprise Agreement as in force immediately before the ABCC abolition time);payment in lieu of notice equal to 5 weeks of the person's pay;
- (e) if, at the ABCC abolition time, paragraph (d) does not apply to the person—payment in lieu of notice equal to 4 weeks of the person's pay.

Amounts payable by the Commonwealth

- (9) To avoid doubt, an amount payable to the person under subitem (3), (4), (5) or (6) is taken to be an amount that is payable by the Commonwealth as a result of the termination of the person's employment.

Redundancy benefit

- (10) For the purposes of section 66 of the *Australian Public Service Commissioner's Directions 2022*:
 - (a) so much of an amount payable to the person under paragraph (3)(g) or (4)(h) of this item as is attributable to paragraph (7)(c) or (8)(c) of this item is taken to be a redundancy benefit from an APS agency; and

- (b) an amount payable to the person under paragraph (5)(f) or (6)(f) of this item is taken to be a redundancy benefit from an APS agency.

Pay

- (11) For the purposes of this item, the person's pay:
 - (a) is to be calculated on the basis of the person's salary at the time of the termination of the person's employment; and
 - (b) includes allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, but does not include allowances which are:
 - (i) a reimbursement for expenses incurred; or
 - (ii) a payment for disabilities associated with the performance of duty.

Exemption from the Age Discrimination Act 2004

- (12) Part 4 of the *Age Discrimination Act 2004* does not make unlawful anything done in direct compliance with this item.

320 SES staff

If, immediately before the ABCC abolition time, a person:

- (a) was an SES employee; and
- (b) was a member of the staff of the Australian Building and Construction Commission; and
- (c) was not covered by the ABCC Enterprise Agreement; and
- (d) was not covered by an agreement under section 26 of the *Public Service Act 1999* for the person to move to an Agency from the Australian Building and Construction Commission; and
- (e) had not otherwise arranged to move to an Agency from the Australian Building and Construction Commission;

then:

- (f) the person's employment is taken to have been terminated at the ABCC abolition time under section 29 of the *Public Service Act 1999* on the ground that the person is excess to the requirements of the Australian Building and Construction Commission; and

- (g) section 38 of the *Public Service Act 1999* does not apply to the termination of the person's employment; and
- (h) for the purposes of section 119 of the *Fair Work Act 2009*, the person's employment is taken to have been terminated at the ABCC abolition time at the employer's initiative because the employer no longer requires the job done by the person to be done by anyone; and
- (i) the person is to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, any amounts that are payable by the Commonwealth to the person as a result of the termination of the person's employment.

Note: For the definition of *SES employee*, see section 2B of the *Acts Interpretation Act 1901*.

321 Consultants

If, immediately before the ABCC abolition time, a person was engaged as a consultant to the Australian Building and Construction Commissioner under section 32 of the *Building and Construction Industry (Improving Productivity) Act 2016*:

- (a) the person's engagement as a consultant is terminated at the ABCC abolition time; and
- (b) the person is to be paid by the Fair Work Ombudsman, on behalf of the Commonwealth, any amounts that, under the terms and conditions of the person's engagement, are payable by the Commonwealth to the person as a result of the termination of the person's engagement.

322 Civil remedy provisions

An application must not be made after the transition time under subsection 81(1) of the *Building and Construction Industry (Improving Productivity) Act 2016* in relation to a contravention of a civil remedy provision that was repealed by this Part.

323 Legal proceedings

- (1) If any civil proceedings to which the Australian Building and Construction Commissioner or an inspector is a party were pending in a court immediately before the transition time:
 - (a) the Fair Work Ombudsman is, after the transition time, substituted for the Australian Building and Construction

- Commissioner or the inspector as a party to those proceedings; and
- (b) if the proceedings are for an order relating to a contravention of a civil remedy provision—the Fair Work Ombudsman is taken to be an authorised applicant for the order.
- (2) If an application is made after the transition time for judicial review of a decision made before the transition time by the Australian Building and Construction Commissioner or an inspector, the Fair Work Ombudsman is to be the respondent to the application.
- (3) Civil proceedings do not lie for loss, damage or injury of any kind suffered by a person as a result of anything done, or omitted to be done, in good faith and without negligence by:
- (a) the Fair Work Ombudsman; or
 - (b) a member of the staff of the Office of the Fair Work Ombudsman; or
 - (c) a person assisting the Fair Work Ombudsman under section 698 of the *Fair Work Act 2009*; or
 - (d) a person engaged as a consultant under section 699 of the *Fair Work Act 2009*; or
 - (e) a Fair Work Inspector;
- in relation to:
- (f) proceedings covered by subitem (1); or
 - (g) an application covered by subitem (2).

324 Fair Work Commission proceedings etc.

- (1) If:
- (a) before the transition time, the Australian Building and Construction Commissioner intervened in a proceeding before the Fair Work Commission; and
 - (b) the intervention was under subsection 110(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*; and
 - (c) the proceeding is pending immediately before the transition time;
- then:

- (d) the Fair Work Ombudsman is, after the transition time, substituted for the Australian Building and Construction Commissioner as a party to the proceeding; and
- (e) the Fair Work Ombudsman may discontinue the Fair Work Ombudsman's involvement as a party to the proceeding.

(2) If:

- (a) before the transition time, the Australian Building and Construction Commissioner made a submission in a matter before the Fair Work Commission; and
- (b) the submission was under subsection 110(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*; and
- (c) the matter is pending immediately before the transition time;

then:

- (d) the amendments made by this Part do not prevent the Fair Work Commission from considering the submission; and
- (e) the making of the submission does not result in:
 - (i) the former Australian Building and Construction Commissioner; or
 - (ii) a person acting on behalf of the former Australian Building and Construction Commissioner;being entitled to participate in the matter after the transition time; and
- (f) the submission has effect as if it had been made by the Fair Work Ombudsman; and
- (g) the Fair Work Ombudsman may amend or withdraw the submission.

(3) If:

- (a) an inspector made an application to the Fair Work Commission before the transition time in accordance with subsection 111(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*; and
- (b) the application is pending immediately before the transition time;

then:

- (c) the application is continued after the transition time; and

- (d) the Fair Work Ombudsman is, after the transition time, substituted for the inspector as the applicant; and
- (e) paragraph (c) does not prevent the Fair Work Ombudsman from discontinuing the application under section 588 of the *Fair Work Act 2009*.

325 Investigations

(1) If:

- (a) before the transition time, the Australian Building and Construction Commissioner commenced an investigation of a suspected contravention by a building industry participant of:
 - (i) the *Fair Work Act 2009*; or
 - (ii) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or
 - (iii) a Commonwealth industrial instrument; and
- (b) the investigation is pending immediately before the transition time;

the investigation may be continued by the Fair Work Ombudsman, or a Fair Work Inspector, after the transition time as an investigation under the *Fair Work Act 2009*.

(2) If:

- (a) before the transition time, the Australian Building and Construction Commissioner commenced an investigation of a suspected contravention by a building industry participant of:
 - (i) the *Building and Construction Industry (Improving Productivity) Act 2016*; or
 - (ii) the *Independent Contractors Act 2006*; or
 - (iii) the Building Code; and
- (b) the investigation is pending immediately before the transition time;

the investigation is discontinued at the transition time.

- (3) This item does not, by implication, limit the power of the Fair Work Ombudsman, or a Fair Work Inspector, to commence an investigation under the *Fair Work Act 2009*.

326 Compliance notices

- (1) This item applies if:
- (a) a compliance notice was in force under section 99 of the *Building and Construction Industry (Improving Productivity) Act 2016* immediately before the transition time; and
 - (b) the notice relates to a contravention of:
 - (i) a provision; or
 - (ii) a term; or
 - (iii) a direction;covered by a paragraph of subsection 716(1) of the *Fair Work Act 2009*.
- (2) The *Fair Work Act 2009* has effect, after the transition time, as if:
- (a) the notice had been given by a Fair Work Inspector under subsection 716(2) of that Act; and
 - (b) in a case where the notice complied with subsection 99(2) of the *Building and Construction Industry (Improving Productivity) Act 2016*—the notice had complied with subsection 716(2) of the *Fair Work Act 2009*; and
 - (c) in a case where the notice complied with subsection 99(3) of the *Building and Construction Industry (Improving Productivity) Act 2016*—the notice had complied with subsection 716(3) of the *Fair Work Act 2009*.

Review of notice

- (3) If an application was made before the transition time under section 100 of the *Building and Construction Industry (Improving Productivity) Act 2016* for a review of the notice, then, despite the repeal of that section by this Part, that section continues to apply, in relation to the notice, as if that section had not been repealed.
- (4) Subitem (3) does not, by implication, limit section 717 of the *Fair Work Act 2009*.

Relationship with civil remedy provisions

- (5) A Fair Work Inspector must not apply for an order under Division 2 of Part 4-1 of the *Fair Work Act 2009* in relation to a contravention of a civil remedy provision by a person if:

- (a) the notice relates 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 100 of the *Building and Construction Industry (Improving Productivity) Act 2016* in relation to the notice that has not been completely dealt with.
- (6) Subitem (5) does not, by implication, limit subsection 716(4A) of the *Fair Work Act 2009*.
- (7) For the purposes of this item, **Fair Work Inspector** includes the Fair Work Ombudsman in the Fair Work Ombudsman's capacity as a Fair Work Inspector under section 701 of the *Fair Work Act 2009*.

327 Payment for reasonable expenses incurred by a member of the Security of Payments Working Group

- (1) Despite the repeal of section 32E of the *Building and Construction Industry (Improving Productivity) Act 2016* by this Part, that section continues to apply, in relation to an expense incurred before the ABCC abolition time, as if that section had not been repealed.
- (2) The Fair Work Ombudsman must, on behalf of the Commonwealth, reimburse an expense that:
 - (a) is required by section 32E of the *Building and Construction Industry (Improving Productivity) Act 2016* to be reimbursed; and
 - (b) was incurred before the ABCC abolition time.

328 Payment for expenses incurred in attending an examination

- (1) Despite the repeal of:
 - (a) section 63 of the *Building and Construction Industry (Improving Productivity) Act 2016*; and
 - (b) item 14 of Schedule 2 to the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016*;

by this Part, that section and that item continue to apply, in relation to an expense incurred before the transition time, as if:

- (c) that section and that item had not been repealed; and
 - (d) a reference in section 63 of the *Building and Construction Industry (Improving Productivity) Act 2016* to the ABC Commissioner were read as a reference to the Fair Work Ombudsman.
- (2) The Fair Work Ombudsman must, on behalf of the Commonwealth, make a payment that:
- (a) is required by section 63 of the *Building and Construction Industry (Improving Productivity) Act 2016* to be paid; and
 - (b) was incurred before the transition time.

329 Use of information or evidence obtained by the Australian Building and Construction Commissioner or an Australian Building and Construction Inspector

- (1) Any information or evidence obtained by:
- (a) the Australian Building and Construction Commissioner; or
 - (b) a person appointed as an Australian Building and Construction Inspector under subsection 66(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*;
- in the performance of functions, or the exercise of powers, under the *Building and Construction Industry (Improving Productivity) Act 2016* may be:
- (c) used by the Fair Work Ombudsman in connection with the performance of the Fair Work Ombudsman's functions or the exercise of the Fair Work Ombudsman's powers; or
 - (d) used by a Fair Work Inspector in connection with the performance of the Fair Work Inspector's functions or the exercise of the Fair Work Inspector's powers.
- (2) Subitem (1) has effect subject to items 330 and 337.

330 Confidentiality of information obtained under an examination notice etc.

- (1) Despite the repeal of section 106 of the *Building and Construction Industry (Improving Productivity) Act 2016* by this Part, that section continues to apply, in relation to protected information that was disclosed or obtained:
- (a) under an examination notice issued before the transition time; or
 - (b) at an examination conducted before the transition time;
- as if:
- (c) that section had not been repealed; and
 - (d) each reference in that section to a designated official were read as a reference to any of the following:
 - (i) the Fair Work Ombudsman;
 - (ii) a member of the staff of the Office of the Fair Work Ombudsman;
 - (iii) a person assisting the Fair Work Ombudsman under section 698 of the *Fair Work Act 2009*;
 - (iv) a person engaged as a consultant under section 699 of the *Fair Work Act 2009*;
 - (v) a Fair Work Inspector; and
 - (e) each reference in that section to the ABC Commissioner's functions were read as a reference to the Fair Work Ombudsman's functions; and
 - (f) each reference in that section to the ABC Commissioner's powers were read as a reference to the Fair Work Ombudsman's powers; and
 - (g) each reference in that section to official employment were read as including a reference to appointment as a Fair Work Inspector; and
 - (h) the reference in paragraph (6)(a) of that section to a report referred to in section 18 or 20 of the *Building and Construction Industry (Improving Productivity) Act 2016* were read as a reference to a report referred to in section 685 or 686 of the *Fair Work Act 2009*; and
 - (i) the reference in paragraph (6)(b) of that section to section 107 of the *Building and Construction Industry*

(Improving Productivity) Act 2016 were read as a reference to section 714A of the *Fair Work Act 2009*.

- (2) Despite the repeal of:
- (a) the definition of **protected information** in section 5 of the *Building and Construction Industry (Improving Productivity) Act 2016*; and
 - (b) item 18 of Schedule 2 to the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016*;

by this Part, that definition and that item continue to apply, in relation to section 106 of the *Building and Construction Industry (Improving Productivity) Act 2016* (as that section continues to apply in accordance with subitem (1) of this item), as if that definition and that item had not been repealed.

331 Annual reports

- (1) This item applies if the Australian Building and Construction Commissioner has not, before the ABCC abolition time, prepared and given to the Minister a report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a reporting period that began before the ABCC abolition time.
- (2) The report prepared by the Fair Work Ombudsman under section 46 of the *Public Governance, Performance and Accountability Act 2013* for the reporting period must include a report on the Australian Building and Construction Commission's activities during the reporting period.
- (3) The report on the Australian Building and Construction Commission's activities during the reporting period must include the details that, under subsection 20(2) or (3) of the *Building and Construction Industry (Improving Productivity) Act 2016*, would have been required to be included in the report prepared by the Australian Building and Construction Commissioner and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for the reporting period if section 20 of the *Building and Construction Industry (Improving Productivity) Act 2016* had not been repealed by this Part.

332 Report to Parliament by Commonwealth Ombudsman

Despite the repeal of subsection 65(6) of the *Building and Construction Industry (Improving Productivity) Act 2016* by this Part, that subsection continues to apply, in relation to a quarter that began before the transition time, as if that subsection had not been repealed.

333 Designated officials not liable for conduct in good faith

Despite the amendments of section 118 of the *Building and Construction Industry (Improving Productivity) Act 2016* by this Part, that section continues to apply, in relation to anything done, or omitted to be done, by a designated official before the ABCC abolition time, as if those amendments had not been made.

334 Transfer of records before the ABCC abolition time

- (1) This item applies to a record or document that is in the possession of the Australian Building and Construction Commissioner on a day before the ABCC abolition time.
- (2) The Australian Building and Construction Commissioner may transfer the record or document to the Office of the Fair Work Ombudsman before the ABCC abolition time.

335 Transfer of records after the ABCC abolition time

- (1) This item applies to any records or documents that were in the possession of the Australian Building and Construction Commissioner immediately before the ABCC abolition time.
- (2) The records and documents are to be transferred to the Office of the Fair Work Ombudsman after the ABCC abolition time.

336 Information provided to the Fair Work Ombudsman before the transition time

If:

- (a) before the transition time, the Australian Building and Construction Commissioner provided information to the Fair Work Ombudsman in accordance with the *Building and Construction Industry (Improving Productivity) Act 2016*; and

- (b) the information was lawfully obtained by the Australian Building and Construction Commissioner;

the information is taken to have been lawfully obtained by the Fair Work Ombudsman.

337 Disclosure of information by the Office of the Fair Work Ombudsman

- (1) In addition to the information described in subsection 718(1) of the *Fair Work Act 2009*, section 718 of that Act also applies to information that satisfies the following conditions:
 - (a) the information was acquired by:
 - (i) the Fair Work Ombudsman; or
 - (ii) a Fair Work Inspector; or
 - (iii) a member of the staff of the Office of the Fair Work Ombudsman;as a result of the operation of this Division;
 - (b) section 105 of the *Building and Construction Industry (Improving Productivity) Act 2016* applied to the information immediately before the transition time because of any of paragraphs 105(1)(a) to (g) of that Act.
- (2) The Fair Work Ombudsman must not disclose, or authorise the disclosure of, information under section 718 of the *Fair Work Act 2009* if the information is protected information (within the meaning of the *Building and Construction Industry (Improving Productivity) Act 2016* as in force immediately before the transition time).

338 Transfer of assets and liabilities before the ABCC abolition time

- (1) Before the ABCC abolition time, the Minister may, by writing, determine either or both of the following:
 - (a) that some of the assets of the Australian Building and Construction Commission (as specified in the determination) are to be transferred to the Department on a day specified in the determination;
 - (b) that some of the liabilities of the Australian Building and Construction Commission (as specified in the determination)

are to be transferred to the Department on a day specified in the determination.

- (2) A day specified in a determination under subitem (1) must end before the ABCC abolition time.
- (3) The Secretary must make the arrangements necessary to give effect to a transfer covered by a determination under subitem (1).
- (4) A determination under subitem (1) is not a legislative instrument.

339 Transfer of assets and liabilities at the ABCC abolition time

- (1) At the ABCC abolition time, the assets and liabilities of the Australian Building and Construction Commission are transferred to the Office of the Fair Work Ombudsman.
- (2) The Fair Work Ombudsman must make the arrangements necessary to give effect to the transfer.

Note: For example, the Fair Work Ombudsman must arrange for money in an account in the name of the Australian Building and Construction Commission to be transferred into an account in the name of the Office of the Fair Work Ombudsman.

340 Compensation for loss of office

The Fair Work Ombudsman must, on behalf of the Commonwealth, make any payment that is required by the *Remuneration Tribunal (Compensation for Loss of Office for Holders of Certain Public Offices) Determination 2018* to be paid as a consequence of:

- (a) the abolition of the office of Australian Building and Construction Commissioner; or
- (b) the abolition of an office of Deputy Australian Building and Construction Commissioner.

341 Protected disclosures

Despite the amendment of section 337A of the *Fair Work (Registered Organisations) Act 2009* made by this Part, that section continues to apply, in relation to a disclosure made before the transition time, as if that amendment had not been made.

342 Transfer of appropriation

- (1) For the purposes of the operation of an Appropriation Act after the ABCC abolition time, references to the Australian Building and Construction Commission are to be read as references to the Fair Work Ombudsman.
- (2) In this item:
Appropriation Act means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

343 Compensation for acquisition of property

- (1) If the operation of this Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

344 This Division does not limit subsection 7(2) of the Acts Interpretation Act 1901

- (1) This Division does not limit subsection 7(2) of the *Acts Interpretation Act 1901*.
- (2) Subitem (1) has effect subject to item 322 and subitem 345(2).

345 Rules about transitional matters

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) the repeals or amendments made by this Part; or
 - (b) the enactment of this Part.
 - (2) The rules may provide that they apply despite subsection 7(2) of the *Acts Interpretation Act 1901*.
-

- (3) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (4) Despite subsection 12(2) of the *Legislation Act 2003* and subject to subitem (5), the rules may be expressed to take effect from a date before the rules are registered under that Act.
- (5) If:
- (a) the rules are expressed to take effect from a date before the date (the **registration date**) the rules are registered under the *Legislation Act 2003*; and
 - (b) a person engaged in conduct before the registration date; and
 - (c) but for the retrospective effect of the rules, the conduct would not have contravened a provision of an Act;
- then a court must not convict the person of an offence, or order the person to pay a pecuniary penalty, in relation to the conduct on the grounds that it contravened a provision of that Act.

Part 4—Objects of the Fair Work Act

Fair Work Act 2009

346 Paragraph 3(a)

After “working Australians,”, insert “promote job security and gender equality,”.

347 After paragraph 134(1)(a)

Insert:

- (aa) the need to improve access to secure work across the economy; and
- (ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women’s full economic participation; and

348 Paragraph 134(1)(e)

Repeal the paragraph.

349 After paragraph 284(1)(a)

Insert:

- (aa) the need to achieve gender equality, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps; and

350 Paragraph 284(1)(d)

Repeal the paragraph.

Part 5—Equal remuneration

Fair Work Act 2009

351 Section 12 (at the end of the definition of *equal remuneration for work of equal or comparable value*)

Add:

Note: See also subsections 302(3A) to (3C) and (4) and (4A) for matters relevant to the meaning of *equal remuneration for work of equal or comparable value*.

352 After subsection 157(2A)

Insert:

- (2B) The FWC's consideration of work value reasons must:
- (a) be free of assumptions based on gender; and
 - (b) include consideration of whether historically the work has been undervalued because of assumptions based on gender.

353 Subsection 302(3)

Repeal the subsection, substitute:

When the FWC may make an equal remuneration order

- (3) The FWC may make the equal remuneration order:
- (a) on its own initiative; or
 - (b) on application by any of the following:
 - (i) an employee to whom the order will apply;
 - (ii) an employee organisation that is entitled to represent the industrial interests of an employee to whom the order will apply;
 - (iii) the Sex Discrimination Commissioner.

354 After subsection 302(3)

Insert:

Gender equity considerations

- (3A) For the purposes of this Act, in deciding whether there is equal remuneration for work of equal or comparable value, the FWC may take into account:
- (a) comparisons within and between occupations and industries to establish whether the work has been undervalued on the basis of gender; or
 - (b) whether historically the work has been undervalued on the basis of gender; or
 - (c) any fair work instrument or State industrial instrument.
- (3B) If the FWC takes into account a comparison for the purposes of paragraph (3A)(a), the comparison:
- (a) is not limited to similar work; and
 - (b) does not need to be a comparison with an historically male-dominated occupation or industry.
- (3C) If the FWC takes into account a matter referred to in paragraph (3A)(a) or (b), the FWC is not required to find discrimination on the basis of gender to establish the work has been undervalued as referred to in that paragraph.

355 Subsection 302(4)

Omit “In deciding whether to make an equal remuneration order”, substitute “For the purposes of this Act, in deciding whether there is equal remuneration for work of equal or comparable value”.

356 After subsection 302(4)

Insert:

- (4A) Nothing in this section limits the considerations the FWC may take into account in deciding whether there is equal remuneration for work of equal or comparable value.

357 Subsection 302(5)

Repeal the subsection, substitute:

Requirement to make an equal remuneration order

- (5) If an application for an equal remuneration order is made as mentioned in paragraph (3)(b), the FWC must make the equal remuneration order if it is satisfied that, for the employees to whom the order will apply, there is not equal remuneration for work of equal or comparable value.

358 After subclause 26(3) of Part 5 of Schedule 1

Insert:

- (3A) If, after the commencement of Part 5 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*, the FWC is considering, under repealed Division 4 of Part 2-3 (as continued in force under subclause (2)), whether an amendment to a modern award is justified by work value reasons, the FWC's consideration of those work value reasons must:
- (a) be free of assumptions based on gender; and
 - (b) include consideration of whether historically the work has been undervalued because of assumptions based on gender.

Part 6—Expert panels

Fair Work Act 2009

359 At the end of subsection 302(1)

Add:

Note: The FWC must be constituted by an Expert Panel for the purposes of making an equal remuneration order (see subsections 617(7) and (10)).

360 Paragraph 575(2)(d)

Repeal the paragraph, substitute:

(d) such number of Expert Panel Members as, from time to time, hold office under this Act.

361 Subsection 616(1)

Omit “A modern award”, substitute “Subject to subsection 617(8), a modern award”.

362 After subsection 616(1)

Insert:

Note: Subsection 617(8) relates to modern awards that must be made by an Expert Panel.

363 Subsection 616(3B)

Omit “A determination”, substitute “Subject to subsection 617(8), a determination”.

364 After subsection 616(3B)

Insert:

Note: Subsection 617(8) relates to determinations that must be made by an Expert Panel.

365 Subsection 616(3C)

Omit “Subject to subsection (3D)”, substitute “Subject to subsection (3D) of this section and subsections 617(6), (8), (9) and (11)”.

366 After subsection 616(3C)

Insert:

Note: Subsections 617(6), (8), (9) and (11) relate to determinations that must be made by an Expert Panel.

367 Subsection 616(3D)

Omit “The President”, substitute “Subject to subsections 617(6), (8), (9) and (11), the President”.

368 Subsection 616(3D) (note)

Omit “Note”, substitute “Note 1”.

369 After subsection 616(3D)

Insert:

Note 2: Subsections 617(6), (8), (9) and (11) relate to determinations and modern awards that must be made by an Expert Panel.

370 Subsection 617(1) (note)

Omit “see section 620”, substitute “see subsection 620(1)”.

371 At the end of section 617

Add:

Expert Panel for pay equity

- (6) If the President considers that substantive gender pay equity matters might require the making of a determination under subsection 157(2) (other than a determination that the President considers might relate to the Care and Community Sector), the determination must be made by an Expert Panel constituted for the purpose of deciding whether to make the determination.

Note: For the constitution of an Expert Panel for that purpose, see subsection 620(1B).

- (7) An equal remuneration order made under section 302 (other than an equal remuneration order that the President considers might relate to the Care and Community Sector) must be made by an Expert Panel constituted for the purpose of deciding whether to make the equal remuneration order.

Note: For the constitution of an Expert Panel for that purpose, see subsection 620(1B).

Expert Panel for the Care and Community Sector

- (8) A determination or modern award made under subsection 157(1) that the President considers might relate to the Care and Community Sector must be made by an Expert Panel constituted for the purpose of deciding whether to make the determination or modern award.

Note: For the constitution of an Expert Panel for that purpose, see subsection 620(1C).

Expert Panel for pay equity in the Care and Community Sector

- (9) A determination made under subsection 157(2) that the President considers might relate to the Care and Community Sector must be made by an Expert Panel constituted for the purpose of deciding whether to make the determination.

Note: For the constitution of an Expert Panel for that purpose, see subsection 620(1D).

- (10) An equal remuneration order made under section 302 that the President considers might relate to the Care and Community Sector must be made by an Expert Panel constituted for the purpose of deciding whether to make the equal remuneration order.

Note: For the constitution of an Expert Panel for that purpose, see subsection 620(1D).

President's considerations

- (10A) For the purposes of subsections (6), (7), (8), (9) and (10), if the President considers that an equal remuneration order, determination or modern award might relate to the Care and Community Sector, it does not matter if the President considers that the equal remuneration order, determination or modern award might also relate to another sector.

Other variations of modern awards

- (11) The President may direct an Expert Panel constituted for the purpose of performing a function or exercising a power under

section 159, 160 or 161 (about variations of modern awards) to perform the function or exercise the power.

Note: For the constitution of an Expert Panel for that purpose, see subsection 620(1B), (1C) or (1D).

372 At the end of Subdivision A of Division 4 of Part 5-1 of Chapter 5

Add:

617AA Full Bench and Expert Panel with identical membership

- (1) This section applies if a Full Bench and an Expert Panel consist of the same FWC Members.
- (2) In performing its functions or exercising its powers, the Full Bench is not limited by:
 - (a) the functions or powers of the Expert Panel; or
 - (b) the purposes for which the Expert Panel was constituted.
- (3) In performing its functions or exercising its powers, the Expert Panel is not limited by the functions or powers of the Full Bench.
- (4) Without limiting subsection (2) or (3), a reference in this section to performing a function or exercising a power includes a reference to the following:
 - (a) making a determination or modern award under subsection 157(1);
 - (b) making a determination under subsection 157(2);
 - (c) making an equal remuneration order under section 302;
 - (d) performing a function or exercising a power under section 159, 160 or 161 (about variations of modern awards).
- (5) This section is enacted for the avoidance of doubt.

617A President may direct investigations and reports

- (1) The President may give a direction under section 582 requiring that a matter that is relevant to the function of an Expert Panel constituted under subsection 620(1B), (1C) or (1D) be investigated, and that a report about the matter be prepared.

Note: Matters that may be relevant include gender pay equity, equal remuneration, and the Care and Community Sector, in Australia.

- (2) The direction may be given to:
- (a) an Expert Panel; or
 - (b) an Expert Panel Member; or
 - (c) a Commissioner; or
 - (d) a Full Bench that includes one or more Expert Panel Members.

617B Research must be published

- (1) If the President gives a direction under section 617A requiring a matter to be investigated, and a report about the matter to be prepared, the FWC must publish the report so that submissions can be made addressing issues covered by the report.
- (2) The publication may be on the FWC's website or by any other means that the FWC considers appropriate.

373 Subsections 620(1) and (1A)

Omit "constituted under this section", substitute "constituted under this subsection".

374 After subsection 620(1A)

Insert:

Constitution of Expert Panel for pay equity

- (1B) An Expert Panel constituted under this subsection for a purpose referred to in subsection 617(6), (7) or (11) or section 617A must include (except as provided by section 622):
- (a) the President, or a Vice President or Deputy President appointed by the President to be the Chair of the Panel; and
 - (b) at least 2 Expert Panel Members or other FWC Members who have knowledge of, or experience in, one or both of the following fields:
 - (i) gender pay equity;
 - (ii) anti-discrimination; and

- (c) subject to subsection (2A), such number (if any) of other FWC Members as the President considers appropriate.

Constitution of Expert Panel for the Care and Community Sector

- (1C) An Expert Panel constituted under this subsection for a purpose referred to in subsection 617(8) or (11) or section 617A must include (except as provided by section 622):
 - (a) the President, or a Vice President or Deputy President appointed by the President to be the Chair of the Panel; and
 - (b) at least 2 Expert Panel Members or other FWC Members who have knowledge of, or experience in, the Care and Community Sector; and
 - (c) subject to subsection (2A), such number (if any) of other FWC Members as the President considers appropriate.

Constitution of Expert Panel for pay equity in the Care and Community Sector

- (1D) An Expert Panel constituted under this subsection for a purpose referred to in subsection 617(9), (10) or (11) or section 617A must include (except as provided by section 622):
 - (a) the President, or a Vice President or Deputy President appointed by the President to be the Chair of the Panel; and
 - (b) at least one Expert Panel Member or other FWC Member who has knowledge of, or experience in, one or both of the following fields:
 - (i) gender pay equity;
 - (ii) anti-discrimination; and
 - (c) at least one Expert Panel Member or other FWC Member who has knowledge of, or experience in, the Care and Community Sector; and
 - (d) subject to subsection (2A), such number (if any) of other FWC Members as the President considers appropriate.

375 Before subsection 620(2)

Insert:

President to choose FWC Members

376 After subsection 620(2)

Insert:

Expert Panels to consist of majority of qualified FWC Members

- (2A) The President must ensure that an Expert Panel constituted under subsection (1B), (1C) or (1D) consists of a majority of FWC Members who have the knowledge or experience required under paragraph 620(1B)(b), paragraph (1C)(b) or paragraphs (1D)(b) and (c) (as the case may be).

Managing Expert Panels

377 Paragraphs 620(3)(b) and (5)(b)

After “paragraph 620(1A)(a)”, insert “, (1B)(a), (1C)(a) or (1D)(a)”.

378 Paragraph 622(2)(a)

Omit “for the Expert Panel”, substitute “for an Expert Panel other than an Expert Panel referred to in paragraph (aa)”.

379 After paragraph 622(2)(a)

Insert:

- (aa) for an Expert Panel constituted under subsection 620(1B), (1C) or (1D)—at least 3 FWC Members, of whom:
- (i) at least one FWC Member is the President, a Vice President or a Deputy President; and
 - (ii) a majority of the FWC Members have the knowledge or experience required under paragraph 620(1B)(b), paragraph (1C)(b) or paragraphs (1D)(b) and (c) (as the case may be);

380 At the end of section 622

Add:

- (4) For the purposes of subsection (3), if the President is directing an FWC member to form part of an Expert Panel constituted under subsection 620(1B), (1C) or (1D), the President must give preference to directing an FWC member that has the knowledge or

experience required under paragraph 620(1B)(b),
paragraph (1C)(b) or paragraphs (1D)(b) and (c) (as the case may
be).

381 At the end of subsection 627(4)

Add:

- ; (h) gender pay equity;
- (i) anti-discrimination;
- (j) the Care and Community Sector.

Part 7—Prohibiting pay secrecy

Fair Work Act 2009

382 Section 321 (after the paragraph beginning “Division 3”)

Insert:

Division 4 is about the disclosure of remuneration and other matters relevant to remuneration outcomes. Terms of contracts of employment, and other instruments, that purport to prohibit such disclosures are prohibited.

383 In the appropriate position in Part 2-9 of Chapter 2

Insert:

Division 4—Prohibiting pay secrecy

333B Employees not subject to pay secrecy

- (1) An employee may disclose, or not disclose, any of the following information to any other person:
 - (a) the employee’s remuneration;
 - (b) any terms and conditions of the employee’s employment that are reasonably necessary to determine remuneration outcomes.

Example: A condition of an employee’s employment that may be reasonably necessary to determine remuneration outcomes includes the number of hours that the employee works.

- (2) An employee may ask any other employee (whether employed by the same employer or a different employer) about any of the following information:
 - (a) the other employee’s remuneration;
 - (b) any terms and conditions of the other employee’s employment that are reasonably necessary to determine remuneration outcomes.

(3) For the avoidance of doubt:

- (a) each of the rights in subsections (1) and (2) is a workplace right within the meaning of Part 3-1; and
- (b) a person is not prevented from exercising any of those workplace rights because the person, or another person, is no longer an employee of an employer.

Note 1: The general protections provisions in Part 3-1 also prohibit the taking of adverse action by an employer against an employee because of a workplace right of the employee under this Division.

Note 2: See subsection 341(3) for the extension of workplace rights to prospective employees.

333C Pay secrecy terms to have no effect

A term of a fair work instrument or a contract of employment has no effect to the extent that the term would be inconsistent with subsection 333B(1) or (2) (about employee rights relating to pay secrecy).

333D Prohibition on pay secrecy terms

An employer contravenes this section if:

- (a) the employer enters into a contract of employment or other written agreement with an employee; and
- (b) the contract or agreement includes a term that is inconsistent with subsection 333B(1) or (2) (about employee rights relating to pay secrecy).

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

384 Subsection 539(2) (after table item 10A)

Insert:

Schedule 1 Amendments

Part 7 Prohibiting pay secrecy

10B	333D	(a) a prospective employee; (b) an employee; (c) an employee organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units
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Part 8—Prohibiting sexual harassment in connection with work

Division 1—Main amendments

Fair Work Act 2009

385 After subsection 6(6)

Insert:

- (6A) Part 3-5A prohibits sexual harassment of workers, persons seeking to become workers and persons conducting businesses or undertakings, and provides for the granting of remedies when that happens.

386 Subsection 9(5B)

Omit “or sexually harassed”.

387 Subsection 9(5B)

Omit “or sexual harassment”.

388 Section 12

Insert:

aggrieved person in relation to an alleged contravention of Division 2 of Part 3-5A (prohibiting sexual harassment in connection with work): see subsection 527F(1).

respondent in relation to an alleged contravention of Division 2 of Part 3-5A (prohibiting sexual harassment in connection with work): see subsection 527F(1).

sexual harassment court application: see subsection 527T(2).

sexual harassment FWC application: see subsection 734A(3).

389 Section 12 (definition of *sexually harassed at work*)

Repeal the definition.

390 Section 12

Insert:

stop sexual harassment order: see paragraph 527F(1)(a).

391 Section 12 (before paragraph (a) of the definition of worker)

Insert:

(aa) in Part 3-5A—see subsection 527D(2); and

392 Section 12

Insert:

worker in a business or undertaking: see subsection 527D(3).

393 After Part 3-5

Insert:

Part 3-5A—Prohibiting sexual harassment in connection with work

Division 1—Introduction

527A Guide to this Part

This Part makes it unlawful for a person to sexually harass another person, where:

- (a) the other person is a worker in a business or undertaking, seeking to become a worker in a particular business or undertaking, or conducting a business or undertaking; and
- (b) the harassment occurs in connection with the other person being a person of the relevant kind.

Persons may be liable for acts contravening this Part that are performed by their employees or agents.

Applications may be made to the FWC to deal with a dispute about an alleged contravention of this Part, including by making a stop sexual harassment order.

In most cases, a dispute about an alleged contravention of this Part will be dealt with by a court only if the dispute has not been resolved by the FWC.

527B Meaning of employee and employer

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

527C Object of this Part

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

- (a) the Convention on the Elimination of All Forms of Discrimination Against Women, done at New York on 18 December 1979 ([1983] ATS 9); and
- (b) Articles 2 and 7 of the International Covenant on Economic, Social and Cultural Rights, done at New York on 16 December 1966 ([1976] ATS 5); and
- (c) the ILO Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation, done at Geneva on 25 June 1958 ([1974] ATS 12);

by prohibiting sexual harassment of workers, persons seeking to become workers and persons conducting businesses or undertakings, and providing remedies when that happens.

Note: The Conventions and the Covenant could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

527CA Concurrent operation of State and Territory laws

- (1) This Part does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.
- (2) Without limiting subsection (1), this Part does not exclude or limit the concurrent operation of a law of a State or Territory to the extent that:
 - (a) the law makes an act or omission:

- (i) an offence; or
 - (ii) subject to a civil penalty; and
- (b) that (or any similar) act or omission constitutes a contravention of a civil remedy provision of this Part.
- (3) Without limiting subsection (1), this Part does not exclude or limit the concurrent operation of a law of a State or Territory to the extent that the law allows an application to be made to a person, court or body:
 - (a) for an order or other direction (however described) to prevent a person from being sexually harassed; or
 - (b) to deal with a dispute relating to an allegation that a person has been sexually harassed (whether or not by arbitration).For this purpose, it is irrelevant whether:
 - (c) sexual harassment has a different meaning for the purposes of the law to the meaning it has for the purposes of this Act; or
 - (d) the law describes the conduct prevented, or to which the dispute relates, as sexual harassment.
- Note 1: An order made under this Part, or under Division 2 of Part 4-1 in relation to a contravention of this Part, will prevail over any order or other direction made by a person, court or body under a law of a State or Territory, to the extent of any inconsistency.
- Note 2: Generally, section 734B prevents multiple applications or complaints under both this Act and State and Territory anti-discrimination laws in relation to the same conduct.
- (4) Section 26 has effect subject to this section.

Division 2—Prohibiting sexual harassment in connection with work

527D Prohibiting sexual harassment in connection with work

Prohibition

- (1) A person (the **first person**) must not sexually harass another person (the **second person**) who is:
 - (a) a worker in a business or undertaking; or

(b) seeking to become a worker in a particular business or undertaking; or

(c) a person conducting a business or undertaking;
if the harassment occurs in connection with the second person being a person of the kind mentioned in paragraph (a), (b) or (c).

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

*Meaning of **worker***

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

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

When a person is a worker in a business or undertaking

- (3) For the purposes of this Act, if a person (the **first person**) is a worker because the first person carries out work for a person conducting a business or undertaking, the first person is a worker in the business or undertaking.

Other expressions

- (4) Subject to subsections (2) and (3), an expression used in this section that is defined for the purposes of the *Work Health and Safety Act 2011* has the same meaning in this section as it has in that Act.

527E Vicarious liability etc.

Employees and agents

- (1) If an employee or agent of a person (the **principal**) does, in connection with the employment of the employee or with the duties of the agent as an agent, an act that contravenes subsection 527D(1), this Act applies in relation to the principal (subject to subsection (2)) as if the principal had also done the act.

- (2) Subsection (1) does not apply if the principal proves that the principal took all reasonable steps to prevent the employee or agent from doing acts that would contravene subsection 527D(1).

Defence members

- (2A) If a person does an act that contravenes subsection 527D(1) in connection with the person's service as a defence member (within the meaning of the *Defence Force Discipline Act 1982*), this Act applies in relation to the Commonwealth (subject to subsection (2B)) as if the Commonwealth had also done the act.
- (2B) Subsection (2A) does not apply if the Commonwealth proves that the Commonwealth took all reasonable steps to prevent the person from doing acts that would contravene subsection 527D(1).

Other provisions not limited

- (3) Subsections (1) and (2A) do not limit section 550 or 793.

Division 3—Dealing with sexual harassment disputes

Subdivision A—Applying for the FWC to deal with sexual harassment disputes

527F Application for the FWC to deal with a sexual harassment dispute

- (1) If a person (the ***aggrieved person***) alleges they have been sexually harassed in contravention of Division 2 by one or more other persons (a ***respondent***), a person referred to in subsection (2) may apply for the FWC to do either or both of the following to deal with the dispute:
- (a) make an order (a ***stop sexual harassment order***) under section 527J;
 - (b) otherwise deal with the dispute.

Note 1: A person has limited ability to make a sexual harassment court application unless the FWC has dealt with the dispute as mentioned in paragraph (b) and is satisfied that all reasonable attempts to resolve the dispute (other than by arbitration) have been, or are likely to be, unsuccessful (see section 527T).

Note 2: The FWC may allow an application to be amended if, for example, the applicant wishes the FWC to deal with the dispute in a way not initially applied for (see section 586).

- (2) The persons are as follows:
 - (a) the aggrieved person;
 - (b) an industrial association that is entitled to represent the industrial interests of the aggrieved person.
- (3) Despite paragraph (1)(a), a person referred to in subsection (2) cannot, except as provided by the regulations, apply for the FWC to make a stop sexual harassment order in relation to the dispute if the aggrieved person was a defence member (within the meaning of the *Defence Force Discipline Act 1982*) at the time the sexual harassment allegedly occurred.
- (4) Without limiting section 609, the procedural rules may provide for the following:
 - (a) the making of applications under subsection (1) by:
 - (i) 2 or more persons of the kind referred to in subsection (2) acting jointly; or
 - (ii) a single industrial association that is entitled to represent the industrial interests of 2 or more aggrieved persons; being applications made in relation to the same alleged contravention, or related alleged contraventions, of Division 2;
 - (b) the joinder of the following as parties to the dispute:
 - (i) one or more aggrieved persons in relation to alleged contraventions of Division 2;
 - (ii) one or more industrial associations each of which is entitled to represent the industrial interests of one or more aggrieved persons in relation to alleged contraventions of Division 2;
 - (iii) if an aggrieved person in relation to the dispute alleges the aggrieved person has been sexually harassed in contravention of Division 2, other than because of the operation of subsection 527E(1), by a person who is an employee or agent of another person (the *principal*)—the principal;

- (iv) if a party to the dispute alleges another party (the *principal*) has contravened Division 2 because of the operation of subsection 527E(1)—an employee or agent mentioned in that subsection in relation to the principal;
- (c) the withdrawal of persons as parties to the dispute;
- (d) the treatment of the dispute under this Act as if there were 2 or more different disputes (instead of a single dispute), with different parties to each of the disputes.

527G Time for application

The FWC may dismiss an application that is made under section 527F more than 24 months after the contravention, or the last of the contraventions, of Division 2 is alleged to have occurred.

Note: For another power of the FWC to dismiss an application under section 527F, see section 587.

527H Application fees

- (1) An application to the FWC under section 527F must be accompanied by any fee prescribed by the regulations.
- (2) The regulations may prescribe:
 - (a) a fee for making an application to the FWC under section 527F; and
 - (b) a method for indexing the fee; and
 - (c) the circumstances in which all or part of the fee may be waived or refunded.

Subdivision B—Stop sexual harassment orders

527J Stop sexual harassment orders

- (1) If:
 - (a) an application made under section 527F includes an application for a stop sexual harassment order; and
 - (b) the FWC is satisfied that:
 - (i) the aggrieved person has been sexually harassed in contravention of Division 2 by one or more persons; and

- (ii) there is a risk that the aggrieved person will continue to be sexually harassed in contravention of Division 2 by the person or persons;

then the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the aggrieved person from being sexually harassed in contravention of Division 2 by the person or persons.

- (2) The FWC must start to deal with the application, to the extent that it consists of an application for a stop sexual harassment order, within 14 days after the application is made.

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

- (3) In considering the terms of a stop sexual harassment order, the FWC must take into account:
 - (a) if the FWC is aware of any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another person or body—those outcomes; and
 - (b) if the FWC is aware of any procedure available to the aggrieved person—that procedure; and
 - (c) if the FWC is aware of any final or interim outcomes arising out of any procedure available to the aggrieved person to resolve grievances or disputes—those outcomes; and
 - (d) any matters that the FWC considers relevant.
- (4) Despite subsection (2), the FWC may dismiss an application made under section 527F, to the extent that it consists of an application for a stop sexual harassment order, if the FWC considers that the application might involve matters that relate to:
 - (a) Australia's defence; or
 - (b) Australia's national security; or
 - (c) an existing or future covert operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police; or
 - (d) an existing or future international operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police.

Note: For another power of the FWC to dismiss an application under section 527F, see section 587.

527K Contravening a stop sexual harassment order

A person to whom a stop sexual harassment order applies must not contravene a term of the order.

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

527L Actions under work health and safety laws permitted

Section 115 of the *Work Health and Safety Act 2011* and corresponding provisions of corresponding WHS laws (within the meaning of that Act) do not apply in relation to an application made under section 527F that includes an application for a stop sexual harassment order.

Note: Ordinarily, if a person makes an application under section 527F for a stop sexual harassment order in relation to particular conduct, then section 115 of the *Work Health and Safety Act 2011* and corresponding provisions of corresponding WHS laws would prohibit a proceeding from being commenced, or an application from being made or continued, under those laws in relation to the same conduct. This section removes that prohibition.

527M This Subdivision is not to prejudice Australia's defence, national security etc.

Nothing in this Subdivision requires or permits a person to take, or to refrain from taking, any action if the taking of the action, or the refraining from taking the action, would be, or could reasonably be expected to be, prejudicial to:

- (a) Australia's defence; or
- (b) Australia's national security; or
- (c) an existing or future covert operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police; or
- (d) an existing or future international operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police.

527N Declarations by the Chief of the Defence Force

- (1) Without limiting section 527M, the Chief of the Defence Force may, by legislative instrument, declare that all or specified provisions of this Subdivision do not apply in relation to a specified activity.
- (2) A declaration under subsection (1) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

527P Declarations by the Director-General of Security

- (1) Without limiting section 527M, the Director-General of Security may, by legislative instrument, declare that all or specified provisions of this Subdivision do not apply in relation to a person carrying out work for the Director-General.
- (2) A declaration under subsection (1) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

527Q Declarations by the Director-General of ASIS

- (1) Without limiting section 527M, the Director-General of the Australian Secret Intelligence Service may, by legislative instrument, declare that all or specified provisions of this Subdivision do not apply in relation to a person carrying out work for the Director-General.
- (2) A declaration under subsection (1) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

Subdivision C—Dealing with sexual harassment disputes in other ways

527R Dealing with a sexual harassment dispute (other than by arbitration)

- (1) If:

- (a) an application is made under section 527F for the FWC to deal with a dispute; and
 - (b) the application does not consist solely of an application for a stop sexual harassment order;
- then the FWC must deal with the dispute (other than by arbitration).

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

- (2) Any conference conducted for the purposes of dealing with the dispute (other than by arbitration) must be conducted in private, despite subsection 592(3).

Note: For conferences, see section 592.

- (3) If the FWC is satisfied that all reasonable attempts to resolve the dispute (other than by arbitration) have been, or are likely to be, unsuccessful, then:
 - (a) the FWC must issue a certificate to that effect; and
 - (b) if the FWC considers, taking into account all the materials before it, that arbitration under section 527S, or a sexual harassment court application, in relation to the dispute would not have a reasonable prospect of success, the FWC must advise the parties accordingly.

527S Dealing with a sexual harassment dispute by arbitration

- (1) This section applies if:
 - (a) the FWC issues a certificate under paragraph 527R(3)(a) in relation to a dispute; and
 - (b) 2 or more of the parties (the **notifying parties**) jointly notify the FWC that they agree to the FWC arbitrating the dispute; and
 - (c) the notifying parties include at least one party that is:
 - (i) an aggrieved person in relation to the dispute; or
 - (ii) an industrial association that is entitled to represent the industrial interests of a person who is an aggrieved person in relation to the dispute; and
 - (d) the notifying parties include at least one party that is a respondent in relation to the dispute; and

- (e) the notification:
 - (i) is given to the FWC within 60 days after the day the certificate is issued, or within such period as the FWC allows on an application made during or after those 60 days; and
 - (ii) complies with any requirements prescribed by the procedural rules.
- (2) The FWC must:
 - (a) remove as a party to the dispute a party that is not one of the notifying parties; and
 - (b) notify a person who is removed under paragraph (a) of the removal.
- (3) After doing so, the FWC may deal with the dispute by arbitration, including by:
 - (a) making one or more of the following orders:
 - (i) an order for the payment of compensation to an aggrieved person in relation to the dispute;
 - (ii) an order for payment of an amount to an aggrieved person in relation to the dispute for remuneration lost;
 - (iii) an order requiring a person to perform any reasonable act, or carry out any reasonable course of conduct, to redress loss or damage suffered by an aggrieved person in relation to the dispute; and
 - (b) expressing one or more of the following opinions:
 - (i) an opinion that a respondent in relation to the dispute has sexually harassed one or more aggrieved persons in contravention of Division 2;
 - (ii) an opinion that a respondent in relation to the dispute has contravened Division 2 because of the operation of subsection 527E(1);
 - (iii) an opinion that it would be inappropriate for any further action to be taken in the matter.
- (4) A person to whom an order under paragraph (3)(a) applies must not contravene a term of the order.

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

527T Limitation on taking a sexual harassment dispute to court

- (1) A person who is entitled to apply under section 527F for the FWC to deal with a dispute (whether by making a stop sexual harassment order or otherwise) must not make a sexual harassment court application in relation to the dispute unless:
- (a) both of the following apply:
 - (i) the FWC has issued a certificate under paragraph 527R(3)(a) in relation to the dispute;
 - (ii) the sexual harassment court application is made within a period specified in subsection (3); or
 - (b) the sexual harassment court application includes an application for an interim injunction.

Note: Generally, if parties to the dispute notify the FWC that they agree to the FWC arbitrating the dispute (see subsection 527S(1)), a sexual harassment court application cannot be made by a notifying party in relation to a contravention of Division 2 by another notifying party where the contravention is the subject of the dispute (see section 734A).

- (2) A **sexual harassment court application** is an application to a court under Division 2 of Part 4-1 for orders in relation to a contravention of Division 2 of this Part.
- (3) For the purposes of subparagraph (1)(a)(ii), the following periods are specified:
- (a) 60 days after the day the certificate is issued;
 - (b) if the person is removed under paragraph 527S(2)(a) as a party to the dispute—14 days after the person is given notice under paragraph 527S(2)(b) of the removal;
 - (c) such period as the court allows on an application made during or after a period mentioned in paragraph (a) or (b) of this subsection.

Note: For the purposes of paragraph (c), in *Brodie-Hanns v MTV Publishing Ltd* (1995) 67 IR 298, the Industrial Relations Court of Australia set down principles relating to the exercise of its discretion under a similarly worded provision of the *Industrial Relations Act 1988*.

394 Subsection 539(2) (after table item 27)

Insert:

Part 3-5A—Prohibiting sexual harassment in connection with work

27A	527D(1)	(a) a person affected by the contravention; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2);	60 penalty units
27B	527K	(a) a person affected by the contravention; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	60 penalty units
27C	527S(4)	a person affected by the contravention;	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2);	60 penalty units

395 Subsection 539(2) (table, subheading relating to Part 6-4B)

Omit “or sexually harassed”.

396 Section 544 (note 1)

Repeal the note, substitute:

Note 1: This section does not apply in relation to general protections court applications, sexual harassment court applications or unlawful termination court applications (see subparagraphs 370(a)(ii), 527T(1)(a)(ii) and 778(a)(ii)).

397 After paragraph 557(2)(l)

Insert:

(la) subsection 527D(1) (which deals with sexual harassment in connection with work);

398 After paragraph 576(1)(l)

Insert:

(la) prohibiting sexual harassment in connection with work (Part 3-5A);

399 Paragraph 576(1)(q)

Omit “or sexually harassed”.

400 Subsection 587(2)

After “773”, insert “, or an application under section 527F that does not consist solely of an application for a stop sexual harassment order,”.

401 Subsection 592(3) (note)

Omit “unfair dismissal or general protection matters (see sections 368, 374, 398 and 776)”, substitute “unfair dismissal, general protection or sexual harassment matters (see sections 368, 374, 398, 527R and 776)”.

402 Paragraph 601(5)(a)

After “368(3)(a)”, insert “or 527R(3)(a)”.

403 Paragraph 609(2)(g)

Omit “Part 3-1, 3-2 or Part 6-4 (which deal with general protections, unfair dismissal and unlawful termination)”, substitute “Part 3-1, 3-2, 3-5A or Part 6-4 (which deal with general protections, unfair dismissal, prohibiting sexual harassment in connection with work and unlawful termination)”.

404 After paragraph 675(2)(i)

Insert:

(ia) an order under Part 3-5A (which deals with sexual harassment in connection with work);

405 Paragraph 675(2)(j)

Omit “or sexually harassed”.

406 Subparagraph 712AA(1)(a)(v)

Omit “or sexual harassment”.

407 After subparagraph 712AA(1)(a)(v)

Insert:

- (va) the sexual harassment of a person who is a worker in a business or undertaking, seeking to become a worker in a particular business or undertaking, or conducting a business or undertaking; or

408 Paragraph 734(1)(a)

After “anti-discrimination law”, insert “or the *Australian Human Rights Commission Act 1986*”.

409 Subsection 734(2)

After “anti-discrimination law”, insert “or the *Australian Human Rights Commission Act 1986*”.

410 At the end of Division 3 of Part 6-1

Add:

Subdivision D—Sexual harassment applications

734A Sexual harassment court applications—interaction with sexual harassment FWC applications

- (1) A person (the *first person*) who alleges they have been sexually harassed in contravention of Division 2 of Part 3-5A by another person (the *second person*) must not (subject to subsection (2)) make a sexual harassment court application in relation to particular conduct if:
 - (a) a sexual harassment FWC application has been made by, or on behalf of, the first person in relation to the conduct; and
 - (b) a certificate in relation to the dispute has been issued by the FWC under paragraph 527R(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful); and

- (c) 2 or more of the parties (the **notifying parties**) have jointly notified the FWC as mentioned in paragraph 527S(1)(b) that they agree to the FWC arbitrating the dispute; and
 - (d) paragraphs 527S(1)(c), (d) and (e) apply in relation to the notification; and
 - (e) the notifying parties include both the first person and the second person.
- (2) Subsection (1) does not apply in relation to a sexual harassment court application that includes an application for an interim injunction.
- (3) A **sexual harassment FWC application** is an application under section 527F for the FWC to deal with a dispute that relates to a contravention of Division 2 of Part 3-5A.

734B Sexual harassment FWC applications and sexual harassment court applications—interaction with anti-discrimination laws

- (1) A person who alleges they have been sexually harassed in contravention of Division 2 of Part 3-5A must not make either of the following applications:
 - (a) a sexual harassment FWC application (other than an application that consists solely of an application for a stop sexual harassment order);
 - (b) a sexual harassment court application;in relation to particular conduct if:
 - (c) an application or complaint under an anti-discrimination law or the *Australian Human Rights Commission Act 1986* has been made by, or on behalf of, the person in relation to the conduct; and
 - (d) the application or complaint has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.
- (2) A person who alleges they have been sexually harassed in contravention of Division 2 of Part 3-5A must not make an application or complaint under an anti-discrimination law or the

Australian Human Rights Commission Act 1986 in relation to particular conduct if:

- (a) either of the following applications has been made by, or on behalf of, the person in relation to the conduct:
 - (i) a sexual harassment FWC application (other than an application that consists solely of an application for a stop sexual harassment order);
 - (ii) a sexual harassment court application; and
- (b) the application referred to in paragraph (a) has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.

411 Part 6-4B (heading)

Omit “or sexually harassed”.

412 Section 789FA

Omit “or sexually harassed”.

413 Section 789FA

Omit “or sexual harassment”.

414 Division 2 of Part 6-4B (heading)

Omit “or sexually harassed”.

415 Section 789FC (heading)

Omit “or sexual harassment”.

416 Subsection 789FC(1)

Omit “or sexually harassed”.

417 Section 789FD (heading)

Omit “or *sexually harassed at work*”.

418 Subsection 789FD(2A)

Repeal the subsection.

419 Section 789FF (heading)

Omit “or sexual harassment”.

420 Subsection 789FF(1)

Repeal the subsection, substitute:

(1) If:

(a) a worker has made an application under section 789FC; and

(b) the FWC is satisfied that:

(i) the worker has been bullied at work by an individual or a group of individuals; and

(ii) there is a risk that the worker will continue to be bullied at work by the individual or group;

then the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the worker from being bullied at work by the individual or group.

421 Section 789FG (heading)

Omit “or sexual harassment”.

422 Section 789FH (note)

Omit “or sexually harassed”.

423 Section 789FH (note)

Omit “or sexual harassment”.

Division 2—Amendments relating to ILO Convention (No. 190)

Fair Work Act 2009

424 After paragraph 527C(c)

Insert:

and (d) Article 7, and paragraphs (b) and (e) of Article 10, of the ILO Convention (No. 190) concerning Violence and Harassment, done at Geneva on 21 June 2019; and

- (e) the Violence and Harassment Recommendation, 2019 (Recommendation No. 206), which the General Conference of the ILO adopted on 21 June 2019;

425 Section 527C (note)

Repeal the note, substitute:

- Note 1: The Conventions mentioned in paragraphs (a) and (c) and the Covenant could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
- Note 2: The Convention mentioned in paragraph (d) and the Recommendation could in 2022 be viewed on the ILO website (<http://www.ilo.org>).

Part 9—Anti-discrimination and special measures

Fair Work Act 2009

426 Section 12

Insert:

breastfeeding:

- (a) includes the act of expressing milk; and
- (b) includes:
 - (i) an act of breastfeeding; and
 - (ii) breastfeeding over a period of time.

gender identity has the meaning given by the *Sex Discrimination Act 1984*.

intersex status has the meaning given by the *Sex Discrimination Act 1984*.

special measure to achieve equality: see subsections 195(4) to (6).

427 Subsection 153(1)

After “sexual orientation,”, insert “breastfeeding, gender identity, intersex status,”.

428 At the end of Division 2 of Part 2-4

Add:

172A Special measures to achieve equality

Without limiting subsection 172(1), the matters mentioned in paragraph 172(1)(a) include special measures to achieve equality.

Note: A special measure to achieve equality may be a discriminatory term under section 195 (and thus be an unlawful term under section 194) to the extent that action that may be taken because of the term is unlawful under an anti-discrimination law.

429 Subsection 195(1)

After “sexual orientation,” insert “breastfeeding, gender identity, intersex status,”.

430 At the end of subsection 195(2)

Add:

- ; or (c) if the term is a special measure to achieve equality—to the extent that action that may be taken because of the term is not unlawful under any anti-discrimination law in force in a place where the action may occur.

431 At the end of section 195

Add:

Special measures to achieve equality

- (4) A term of an enterprise agreement is a ***special measure to achieve equality*** if:
 - (a) the term has the purpose of achieving substantive equality for employees or prospective employees who have a particular attribute or a particular kind of attribute (as the case may be) mentioned in subsection (1), or a particular combination of these; and
 - Note: For example, a term that has the purpose of achieving substantive equality for employees who are female and have a physical or mental disability.
 - (b) a reasonable person would consider that the term is necessary in order to achieve substantive equality.
- (5) A term of an enterprise agreement is to be treated as having the purpose referred to in paragraph (4)(a) if it is:
 - (a) solely for that purpose; or
 - (b) for that purpose as well as other purposes, whether or not that purpose is the dominant or substantial one.
- (6) However, a term of an enterprise agreement ceases to be a ***special measure to achieve equality*** after substantive equality for the employees referred to in paragraph (4)(a) has been achieved.

432 Subsection 351(1)

After “sexual orientation,”, insert “breastfeeding, gender identity, intersex status,”.

433 Paragraph 578(c)

After “sexual orientation,”, insert “breastfeeding, gender identity, intersex status,”.

434 Paragraph 771(d)

Omit “22 June 1982”, substitute “22 June 1982; and”.

435 After paragraph 771(d)

Insert:

- (e) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9); and
- (f) article 26 of the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23); and
- (g) paragraph 2 of article 2, and articles 6 and 7, of the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5).

436 Paragraph 772(1)(f)

After “sexual orientation,”, insert “breastfeeding, gender identity, intersex status,”.

437 Before Part 6-5

Insert:

Part 6-4E—Extension of anti-discrimination rules

789HA Constitutional basis of this Part

This Part relies on the Commonwealth's legislative powers under paragraph 51(xxix) (external affairs) of the Constitution as it relates to giving effect to Australia's obligations under:

- (a) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9); and
- (b) article 26 of the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23); and
- (c) paragraph 2 of article 2, and articles 6 and 7, of the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5).

Note: The Conventions and the Covenant could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

789HB Extension of anti-discrimination rules

- (1) Subsection (3) applies for the purposes of the operation of the provisions identified in subsection (2) in relation to breastfeeding, gender identity or intersex status.
- (2) The provisions are as follows:
 - (a) section 153;
 - (b) section 172A;
 - (c) section 195;
 - (d) section 351.
- (3) In applying sections 30H and 30S in relation to that operation of the provisions identified in subsection (2), assume that:
 - (a) the matter to which that operation of those provisions relates is not an excluded subject matter for the purposes of:
 - (i) the State's referral law mentioned in sections 30H and 30S; and

Schedule 1 Amendments

Part 9 Anti-discrimination and special measures

- (ii) Divisions 2A and 2B of Part 1-3; and
- (b) the referral of that matter by that referral law results in the Parliament of the Commonwealth having sufficient legislative power for those provisions (to the extent of that operation) to have effect.

Part 10—Fixed term contracts

Fair Work Act 2009

438 Section 12

Insert:

Fixed Term Contract Information Statement: see
subsection 333J(1).

439 After section 141

Insert:

141A Terms permitting fixed term contracts

- (1) A modern award may include terms that permit an employee to be employed under a contract of employment that includes a term that provides the contract will terminate at the end of an identifiable period (whether or not the contract also includes other terms that provide for circumstances in which it may be terminated before the end of that period).
- (2) Without limiting subsection (1), a modern award may include terms that permit any of the circumstances mentioned in subsections 333E(2) to (4) (about certain fixed term contracts) to occur.

440 Before section 322

Insert:

Division 5 is about fixed term contracts.

A contract of employment must not include a term that provides the contract will terminate at the end of an identifiable period if:

- (a) the period is greater than 2 years; or
- (b) the contract can be renewed so that the employee is employed for more than 2 years; or

- (c) in certain circumstances, the employee is employed under consecutive contracts.

However, such a term may be included in some circumstances, including where a modern award permits the term.

The Fair Work Ombudsman must prepare a Fixed Term Contract Information Statement, which must be given to certain current and prospective employees.

441 In the appropriate position in Part 2-9

Insert:

Division 5—Fixed term contracts

Subdivision A—Limitations on fixed term contracts

333E Limitations

- (1) A person contravenes this subsection if:
- (a) the person enters into a contract of employment with an employee; and
 - (b) the contract includes a term that provides the contract will terminate at the end of an identifiable period (whether or not the contract also includes other terms that provide for circumstances in which it may be terminated before the end of that period); and
 - (c) the employee is not a casual employee of the employer; and
 - (d) subsection (2), (3) or (4) applies.

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

Note 2: A contract referred to in this subsection includes (and is not limited to) a contract of employment for a specified period of time, for a specified task or for the duration of a specified season.

Employment for more than 2 years

- (2) This subsection applies if the identifiable period is greater than 2 years.

Renewable contracts

- (3) This subsection applies if:
- (a) the sum of the identifiable period and any other period for which the contract may be extended or renewed is greater than 2 years; or
 - (b) the contract provides for an option or right to extend or renew the contract more than once.

Consecutive contracts

- (4) This subsection applies if the contract comes into effect after another contract (the **previous contract**) of employment between the person and the employee in circumstances referred to in subsection (5).
- (5) The circumstances for the purposes of subsection (4) are:
- (a) the previous contract included a term that provided that the contract would terminate at the end of an identifiable period (whether or not the contract also includes other terms that provide for circumstances in which it may be terminated before the end of that period); and
 - (b) the previous contract was for the employee to perform the same, or substantially similar, work for the person as the employee is required to perform under the contract referred to in paragraph (1)(a) (the **current contract**); and
 - (c) there is substantial continuity of the employment relationship between the person and employee during the period between the previous contract terminating and the current contract coming into effect; and
 - (d) any of the following apply:
 - (i) the sum of the period for which the previous contract was in effect and the identifiable period referred to in paragraph (1)(b) for the current contract is greater than 2 years;
 - (ii) the current contract contains an option for renewal or extension;
 - (ia) the previous contract contained an option for extension that has been exercised;

- (iii) the previous contract came into effect after another contract (the ***initial contract***) that satisfies the requirements of paragraphs (a) and (b) of this subsection and there was substantial continuity of the employment relationship between the person and the employee during the period between the initial contract terminating and the previous contract coming into effect.

333F Exceptions to limitations

- (1) Subsection 333E(1) does not apply in relation to a contract of employment entered into by a person and an employee if:
 - (a) the employee is engaged under the contract to perform only a distinct and identifiable task involving specialised skills; or
 - (b) the employee is engaged under the contract in relation to a training arrangement; or
 - (c) the employee is engaged under the contract to undertake essential work during a peak demand period; or
 - (d) the employee is engaged under the contract to undertake work during emergency circumstances or during a temporary absence of another employee; or
 - (e) in the year the contract is entered into the amount of the employee's earnings under the contract is above the high income threshold for that year; or
 - (f) the contract relates to a position for the performance of work that:
 - (i) is funded in whole or in part by government funding or funding of a kind prescribed by the regulations for the purposes of this subparagraph; and
 - (ii) the funding is payable for a period of more than 2 years; and
 - (iii) there are no reasonable prospects that the funding will be renewed after the end of that period; or
 - (g) the contract relates to a governance position that has a time limit under the governing rules of a corporation or association of persons; or

- (h) a modern award that covers the employee includes terms that permit any of the circumstances mentioned in subsections 333E(2) to (4) to occur; or
 - (i) the contract is of a kind prescribed by the regulations for the purposes of this paragraph.
- (2) For the purposes of paragraph (1)(e), if under the terms of the contract either of the following apply:
 - (a) the employee is required to work fewer hours than a full-time employee for a year;
 - (b) the employee is required to work for only part of a year; the high income threshold for that year is taken, for the purposes of that paragraph, to be the amount, or the amount worked out using a method, prescribed by the regulations for the purposes of this subsection.
- (3) For the purposes of subsection (2), in determining whether an award/agreement free employee has worked fewer hours than a full-time employee, regard may be had to the following:
 - (a) the hours of work of any other full-time employees or part-time employees of the employer employed in the same position as (or in a position that is comparable to) the position of the employee;
 - (b) the definition of *ordinary hours of work* in subsection 20(2).

Evidential burden

- (4) If, in proceedings for a civil penalty order against a person for a contravention of subsection 333E(1), the person wishes to rely on an exception in this section, then the person bears an evidential burden in relation to that matter.

333G Effect of entering prohibited fixed term contract

- (1) If a person enters into a contract of employment with an employee in contravention of subsection 333E(1):
 - (a) the term of the contract that provides that the contract will terminate at the end of an identifiable period is taken to have no effect; and

- (b) the contravention is taken not to affect the validity of any other term of the contract.
- (2) Subsection (1) of this section has effect for the purposes of all of the following:
 - (a) this Act and any other law of the Commonwealth;
 - (b) a law of a State or Territory;
 - (c) any fair work instrument that applies to the employee;
 - (d) a copied State instrument;
 - (e) the employee's contract of employment.

Note 1: One effect of subsection (1) of this section is that Division 11 of Part 2-2 (notice of termination and redundancy pay) may apply to the employee because the employee is not covered by paragraph 123(1)(a) (which deals with the application of that Division).

Note 2: Another effect of subsection (1) of this section is that Part 3-2 (unfair dismissal) may apply to the employee because the employee is not covered by paragraph 386(2)(a) (which affects the meaning of *dismissed*).

333H Anti-avoidance

- (1) A person must not do any of the following in order to avoid any right or prohibition under this Division:
 - (a) terminate an employee's employment for a period;
 - (b) delay re-engaging an employee for a period;
 - (ba) not re-engage an employee and instead engage another person to perform the same, or substantially similar, work for the person as the employee had performed for the person;
 - (c) change the nature of the work or tasks the employee is required to perform for the person;
 - (d) otherwise alter an employment relationship.

Note: The general protections provisions in Part 3-1 also prohibit the taking of adverse action by an employer against an employee (which includes an employee on a fixed term contract) because of a workplace right of the employee under this Division.

- (2) For the purposes of subsection (1), a person takes action for a particular reason if the reasons for the action include that reason.

Subdivision B—Other matters

333J Fixed Term Contract Information Statement

- (1) The Fair Work Ombudsman must prepare a ***Fixed Term Contract Information Statement*** and publish the Statement in the Gazette.
- (2) The Statement must include information about:
 - (a) Subdivision A of this Division (limitations on fixed term contracts); and
 - (b) section 333L (disputes about the operation of this Division).

333K Giving new employees the Fixed Term Contract Information Statement

If a person enters into a contract of employment that includes a term that provides the contract will terminate at the end of an identifiable period (whether or not the contract also includes other terms that provide for circumstances in which it may be terminated before the end of that period), the person must, before, or as soon as practicable after, the contract is entered into, give the employee the Fixed Term Contract Information Statement.

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

333L Disputes about the operation of this Division

Application of this section

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

Resolving disputes

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

FWC may deal with disputes

- (3) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.

- (4) If a dispute is referred under subsection (3):
- (a) the FWC must deal with the dispute; and
 - (b) if the parties notify the FWC that they agree to the FWC arbitrating the dispute—the FWC may deal with the dispute by arbitration.

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

Representatives

- (5) The employer or employee to the dispute may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of:
- (a) resolving the dispute; or
 - (b) referring the dispute to the FWC; or
 - (c) the FWC dealing with the dispute.

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

442 Subsection 539(2) (before the table items headed “Part 3-1—General protections”)

Insert:

10C	333E	(a) a prospective employee;	(a) the Federal Court;	for a serious contravention—600 penalty units; or otherwise—60 penalty units
		(b) an employee;	(b) the Federal Circuit and Family Court of Australia (Division 2);	
		(c) an employee organisation;	(c) an eligible State or Territory court	
10D	333K	(a) a prospective employee;	(a) the Federal Court;	for a serious contravention—600 penalty units; or
		(b) an employee;	(b) the Federal Circuit and	
		(c) an employee		

organisation; (d) an inspector	Family Court of Australia (Division 2); (c) an eligible State or Territory court	otherwise—60 penalty units
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443 Subparagraph 548(1B)(a)(iv)

Omit “section 66F; and”, substitute “section 66F;”.

444 At the end of subparagraph 548(1B)(a)

Add:

- (v) whether a person has contravened subsection 333E(1) (limitations on fixed term contracts);
- (vi) whether subsection 333G(1) (effect of entering prohibited fixed term contract) applies in relation to a contract; and

445 After paragraph 576(1)(g)

Insert:

- (ga) other terms and conditions of employment (Part 2-9);

Part 11—Flexible work

Division 1—Family and domestic violence (main amendments)

Fair Work Act 2009

446 Paragraph 65(1A)(e)

Omit “violence from a member of the employee’s family”, substitute “family and domestic violence”.

447 Paragraph 65(1A)(f)

Omit “violence from the member’s family”, substitute “family and domestic violence”.

Division 2—Family and domestic violence (consequential amendments)

Fair Work Act 2009

448 Section 12 (definition of *de facto partner*)

Repeal the definition, substitute:

de facto partner of a person means:

- (a) another person who, although not legally married to the first person, lives with the first person in a relationship as a couple on a genuine domestic basis (whether the first person and the other person are of the same sex or different sexes); or
- (b) a former *de facto partner* (within the meaning of paragraph (a)) of the first person.

449 Section 12 (definition of *immediate family*)

Omit “national system employee”, substitute “person”.

450 Section 12 (paragraphs (a) and (b) of the definition of *immediate family*)

Omit “employee”, substitute “person”.

451 Subsection 106B(2)

Omit “an employee” (first occurring), substitute “a person”.

452 Subsection 106B(2)

Omit “an employee’s”, substitute “a person’s”.

453 Subsection 106B(2)

Omit “an employee” (second occurring), substitute “a person”.

454 Paragraphs 106B(2)(a) and (b)

Omit “employee”, substitute “person”.

455 Subsection 106B(3)

Omit “the employee is a”, substitute “a person is another”.

456 Paragraph 106B(3)(a)

Omit “employee’s”, substitute “first person’s”.

457 Paragraph 106B(3)(b)

Omit “employee”, substitute “first person”.

Division 3—Grounds for refusing requests

Fair Work Act 2009

458 Subsections 65(4) to (6)

Repeal the subsections.

459 After section 65

Insert:

65A Responding to requests for flexible working arrangements

Responding to the request

- (1) If, under subsection 65(1), an employee requests an employer for a change in working arrangements relating to circumstances that apply to the employee, the employer must give the employee a written response to the request within 21 days.
- (2) The response must:
 - (a) state that the employer grants the request; or
 - (b) if, following discussion between the employer and the employee, the employer and the employee agree to a change to the employee's working arrangements that differs from that set out in the request—set out the agreed change; or
 - (c) subject to subsection (3)—state that the employer refuses the request and include the matters required by subsection (6).
- (3) The employer may refuse the request only if:
 - (a) the employer has:
 - (i) discussed the request with the employee; and
 - (ii) genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the circumstances mentioned in subsection (1); and
 - (b) the employer and the employee have not reached such an agreement; and
 - (c) the employer has had regard to the consequences of the refusal for the employee; and
 - (d) the refusal is on reasonable business grounds.

Note: An employer's grounds for refusing a request may be taken to be reasonable business grounds, or not to be reasonable business grounds, in certain circumstances: see subsection 65C(5).
- (4) To avoid doubt, subparagraph (3)(a)(ii) does not require the employer to agree to a change to the employee's working arrangements if the employer would have reasonable business grounds for refusing a request for the change.

Reasonable business grounds for refusing requests

- (5) Without limiting what are reasonable business grounds for the purposes of paragraph (3)(d) and subsection (4), reasonable business grounds for refusing a request include the following:
- (a) that the new working arrangements requested would be too costly for the employer;
 - (b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
 - (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested;
 - (d) that the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;
 - (e) that the new working arrangements requested would be likely to have a significant negative impact on customer service.

Note: The specific circumstances of the employer, including the nature and size of the enterprise carried on by the employer, are relevant to whether the employer has reasonable business grounds for refusing a request for the purposes of paragraph (3)(d) and subsection (4). For example, if the employer has only a small number of employees, there may be no capacity to change the working arrangements of other employees to accommodate the request (see paragraph (5)(b)).

Employer must explain grounds for refusal

- (6) If the employer refuses the request, the written response under subsection (1) must:
- (a) include details of the reasons for the refusal; and
 - (b) without limiting paragraph (a) of this subsection:
 - (i) set out the employer's particular business grounds for refusing the request; and
 - (ii) explain how those grounds apply to the request; and
 - (c) either:
 - (i) set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the circumstances mentioned in subsection (1) and that the employer would be willing to make; or

- (ii) state that there are no such changes; and
- (d) set out the effect of sections 65B and 65C.

Genuinely trying to reach an agreement

- (7) This section does not affect, and is not affected by, the meaning of the expression “genuinely trying to reach an agreement”, or any variant of the expression, as used elsewhere in this Act.

Division 4—Civil remedies and dispute resolution

Fair Work Act 2009

460 Subsection 44(2)

Omit “65(5) or”.

461 Subsection 44(2) (note 1)

Repeal the note, substitute:

Note 1: Subsection 76(4) states that an employer may refuse an application to extend unpaid parental leave only on reasonable business grounds.

462 Subsection 44(2) (note 2)

Omit “65(5) or”.

463 Before section 66

Insert:

65B Disputes about the operation of this Division

Application of this section

- (1) This section applies to a dispute between an employer and an employee about the operation of this Division if:
 - (a) the dispute relates to a request by the employee to the employer under subsection 65(1) for a change in working arrangements relating to circumstances that apply to the employee; and
 - (b) either:
 - (i) the employer has refused the request; or

- (ii) 21 days have passed since the employee made the request, and the employer has not given the employee a written response to the request under section 65A.

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

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

Resolving disputes

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

FWC may deal with disputes

- (3) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.
- (4) If a dispute is referred under subsection (3):
- (a) the FWC must first deal with the dispute by means other than arbitration, unless there are exceptional circumstances; and
 - (b) the FWC may deal with the dispute by arbitration in accordance with section 65C.

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

Representatives

- (5) The employer or employee may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of:
- (a) resolving the dispute; or
 - (b) the FWC dealing with the dispute.

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

65C Arbitration

- (1) For the purposes of paragraph 65B(4)(b), the FWC may deal with the dispute by arbitration by making any of the following orders:
 - (a) if the employer has not given the employee a written response to the request under section 65A—an order that the employer be taken to have refused the request;
 - (b) if the employer refused the request:
 - (i) an order that it would be appropriate for the grounds on which the employer refused the request to be taken to have been reasonable business grounds; or
 - (ii) an order that it would be appropriate for the grounds on which the employer refused the request to be taken not to have been reasonable business grounds;
 - (c) if the FWC is satisfied that the employer has not responded, or has not responded adequately, to the employee's request under section 65A—an order that the employer take such further steps as the FWC considers appropriate, having regard to the matters in section 65A;
 - (d) subject to subsection (3) of this section:
 - (i) an order that the employer grant the request; or
 - (ii) an order that the employer make specified changes (other than the requested changes) in the employee's working arrangements to accommodate, to any extent, the circumstances mentioned in paragraph 65B(1)(a).

Note: An order by the FWC under paragraph (c) could, for example, require the employer to give a response, or further response, to the employee's request, and could set out matters that must be included in the response or further response.

- (2) In making an order under subsection (1), the FWC must take into account fairness between the employer and the employee.
- (2A) The FWC must not make an order under paragraph (1)(c) or (d) that would be inconsistent with:
 - (a) a provision of this Act; or

- (b) a term of a fair work instrument (other than an order made under that paragraph) that, immediately before the order is made, applies to the employer and employee.
- (3) The FWC may make an order under paragraph (1)(f) only if the FWC is satisfied that there is no reasonable prospect of the dispute being resolved without the making of such an order.
- (4) If the FWC makes an order under paragraph (1)(a), the employer is taken to have refused the request.
- (5) If the FWC makes an order under paragraph (1)(b), the grounds on which the employer refuses the request are taken:
 - (a) for an order made under subparagraph (1)(b)(i)—to be reasonable business grounds; or
 - (b) for an order made under subparagraph (1)(b)(ii)—not to be reasonable business grounds.

Contravening an order under subsection (1)

- (6) A person must not contravene a term of an order made under subsection (1).

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

464 Section 146 (note)

Omit “65(5) or”.

465 Subsection 186(6) (notes 1 and 2)

Omit “65(5) or”.

466 Subsection 539(2) (after table item 5)

Insert:

Part 2-2—The National Employment Standards

5AA	65C(6)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	60 penalty units
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467 Subsection 545(1) (note 4)

Omit “65(5),”.

468 Before paragraph 675(2)(a)

Insert:

- (aa) an order under subsection 65C(1) (which deals with arbitration of disputes relating to requests for flexible working arrangements);

469 Subsections 739(2) and 740(2)

Omit “65(5) or” (wherever occurring).

Division 5—Pregnancy

Fair Work Act 2009

469A Before paragraph 65(1A)(a)

Insert:

- (aa) the employee is pregnant;

Part 12—Termination of enterprise agreements after nominal expiry date

Fair Work Act 2009

470 Section 12

Insert:

guarantee of termination entitlements: see subsection 226A(1).

protected employee for a termination of an enterprise agreement under section 226: see subsection 226A(2).

471 Section 226

Repeal the section, substitute:

226 Terminating an enterprise agreement after its nominal expiry date

- (1) If an application for the termination of an enterprise agreement is made under section 225, the FWC must terminate the agreement if:
- (a) the FWC is satisfied that the continued operation of the agreement would be unfair for the employees covered by the agreement; or
 - (b) the FWC is satisfied that the agreement does not, and is not likely to, cover any employees; or
 - (c) all of the following apply:
 - (i) the FWC is satisfied that the continued operation of the enterprise agreement would pose a significant threat to the viability of a business carried on by the employer, or employers, covered by the agreement;
 - (ii) the FWC is satisfied that the termination of the enterprise agreement would be likely to reduce the potential of terminations of employment covered by subsection (2) for the employees covered by the agreement;
 - (iii) if the agreement contains terms providing entitlements relating to the termination of employees' employment—

each employer covered by the agreement has given the FWC a guarantee of termination entitlements in relation to the termination of the agreement.

(1A) However, the FWC must terminate the enterprise agreement under subsection (1) only if the FWC is satisfied that it is appropriate in all the circumstances to do so.

(2) This subsection covers a termination of the employment of an employee:

- (a) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
- (b) because of the insolvency or bankruptcy of the employer.

(3) In deciding whether to terminate the agreement, the FWC must consider the views of the following covered by the agreement:

- (a) the employees (unless there are no employees covered by the agreement);
- (b) each employer;
- (c) each employee organisation (if any).

Note: The President may be required to direct a Full Bench to perform a function or exercise a power in relation to the matter if any of the employers, employees, or employee organisations, covered by the agreement oppose the termination (see subsection 615A(3)).

(4) In deciding whether to terminate the agreement (the *existing agreement*), the FWC must have regard to:

- (a) whether the application was made at or after the notification time for a proposed enterprise agreement that will cover the same, or substantially the same, group of employees as the existing agreement; and
- (b) whether bargaining for the proposed enterprise agreement is occurring; and
- (c) whether the termination of the existing agreement would adversely affect the bargaining position of the employees that will be covered by the proposed enterprise agreement.

(5) In deciding whether to terminate the agreement, the FWC may also have regard to any other relevant matter.

226A Guarantee of termination entitlements

Guarantee of termination entitlements

- (1) A ***guarantee of termination entitlements*** is an undertaking given by an employer covered by an enterprise agreement that:
 - (a) is an undertaking that the employer will comply with subsection (3) if the agreement is terminated under section 226 and the employer terminates the employment of a protected employee for the termination of the agreement:
 - (i) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
 - (ii) because of the insolvency or bankruptcy of the employer; and
 - (b) is in writing; and
 - (c) meets any requirements relating to the signing of undertakings that are prescribed by the regulations.
- (2) A ***protected employee*** for a termination of an enterprise agreement under section 226 is an employee who would, but for the termination of the agreement, be covered by the agreement.
- (3) For the purposes of paragraph (1)(a), the employer complies with this subsection, in relation to the termination of the protected employee's employment, if the employer complies with the terms of the enterprise agreement that, if the agreement were still in operation, would have provided the employee with entitlements that:
 - (a) relate to a termination of the employee's employment:
 - (i) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
 - (ii) because of the insolvency or bankruptcy of the employer; and
 - (b) except if the employee was an award/agreement free employee immediately before the termination of the employee's employment—are more beneficial than the

entitlements under a modern award that covered the employee in relation to the employment at that time.

When guarantee is in force

- (4) A guarantee of termination entitlements given in relation to the termination of an enterprise agreement:
- (a) comes into force on the day on which the termination of the agreement comes into operation under section 227; and
 - (b) ceases to be in force at the earliest of the following times:
 - (i) if the guarantee specifies a period during which the guarantee is to remain in force and the FWC approves that period under subsection (5)—the end of that period;
 - (ii) immediately before another enterprise agreement that covers the same, or substantially the same, group of employees as the terminated agreement comes into force;
 - (iii) the end of the period of 4 years beginning on the day the guarantee is given to the FWC.
- (5) The FWC may, in its decision terminating an enterprise agreement, approve a period for the purposes of subparagraph (4)(b)(i) if it considers the period to be appropriate.

Employer must comply with guarantee

- (6) An employer must comply with a guarantee of termination entitlements given by the employer to the FWC in relation to the termination of an enterprise agreement if:
- (a) the agreement is terminated under section 226; and
 - (b) the employer terminates the employment of a protected employee for the termination of the agreement while the guarantee is in force:
 - (i) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
 - (ii) because of the insolvency or bankruptcy of the employer.

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

Guarantee is a governing instrument for employment

- (7) To avoid doubt, a guarantee of termination entitlements is a governing instrument for employment for the purposes of the *Fair Entitlements Guarantee Act 2012*.

472 Subsection 539(2) (after table item 5B)

Insert:

5C	226A(6)	(a) an employee; (b) an employee organisation to which the enterprise agreement applied immediately before the termination of the agreement; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units
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473 Before subsection 615A(1)

Insert:

Full Benches—directions on application

474 Subsection 615A(2)

Omit “The following persons”, substitute “For the purposes of paragraph (1)(a), the following persons”.

475 At the end of section 615A

Add:

Full Benches—directions for certain terminations of enterprise agreements

- (3) The President must direct a Full Bench to perform a function or exercise a power in relation to a matter arising under section 226 in relation to an application for the termination of an enterprise agreement if:

- (a) the President has given a direction to an FWC Member to perform the function or exercise the power; and
 - (b) the FWC Member is satisfied that any of the following persons covered by the agreement oppose the termination:
 - (i) an employee;
 - (ii) an employer;
 - (iii) an employee organisation.
 - (4) Subsection (3) does not apply if the FWC Member is satisfied that the enterprise agreement does not, and is not likely to, cover any employees.
 - (5) Subsection (3) does not prevent a power that may be delegated under subsection 625(1) from being exercised by a single FWC Member or a person to whom the power has been delegated.
- Note: The powers that may be delegated under subsection 625(1) include:
- (a) the FWC's power to inform itself as it considers appropriate under section 590 (other than the FWC's power to hold a hearing); and
 - (b) the FWC's power to conduct a conference in accordance with section 592.

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009

476 At the end of item 16 of Schedule 3

Add:

- (3) To avoid doubt, subsection 615A(3) of the FW Act does not apply in relation to a collective agreement-based transitional instrument.

477 Item 23 of Schedule 3A

Before "Subdivision D", insert "(1)".

478 At the end of item 23 of Schedule 3A

Add:

- (2) To avoid doubt, subsection 615A(3) of the FW Act does not apply in relation to a collective Division 2B State employment agreement.

479 At the end of Schedule 7

Add:

**Part 8—Transitional provisions relating to
termination and sunseting of enterprise
agreements made during the bridging
period**

**29 Terminating under the FW Act enterprise agreements
made during the bridging period**

Subsection 615A(3) of the FW Act does not apply in relation to an enterprise agreement made during the bridging period.

Part 13—Sunsetting of “zombie” agreements etc.

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009

480 Item 20 of Schedule 3 (heading)

Repeal the heading, substitute:

20 Initial sunsetting rules for particular transitional instruments

481 After item 20 of Schedule 3

Insert:

20A Automatic sunsetting of all remaining agreement-based transitional instruments

Automatic sunsetting

- (1) An agreement-based transitional instrument terminates at the end of the grace period for the instrument if the instrument has not already terminated before that time.
- (2) The *grace period* for an agreement-based transitional instrument is:
 - (a) subject to paragraph (b), the period of 12 months (the *default period*) beginning on the day Part 13 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* commences; or
 - (b) if the default period is extended for the instrument on one or more occasions under subitem (6) or paragraph (11)(e)—the default period as so extended.

Employer to give notice to employees

- (3) An employer covered by an agreement-based transitional instrument must, before the end of 6 months beginning on the day Part 13 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* commences, give each employee who is covered

by the instrument and employed by the employer at the end of that period written notice advising the employee:

- (a) that the employee is covered by an agreement-based transitional instrument; and
- (b) that the instrument will terminate unless an application is made to the FWC under subitem (4), before the end of the period of 12 months beginning on the day that Part commences, for the FWC to extend the default period for the instrument; and
- (c) of the day on which that Part commences.

Note: For compliance with this obligation, see item 4C of Schedule 16.

Application to FWC for extension of default period

- (4) Any of the following may apply to the FWC, before the end of the grace period for an agreement-based transitional instrument, for the FWC to extend the default period for the instrument for a period of no more than 4 years:
 - (a) an employer covered by the instrument;
 - (b) an employee covered by the instrument;
 - (c) an industrial association that is entitled to represent the industrial interests of one or more of the employees covered by the instrument.
- (5) An application under subitem (4) must be accompanied by:
 - (a) a copy of the instrument; and
 - (b) any declarations that are required by the procedural rules of the FWC to accompany the application.

Extension of default period

- (6) If an application is made under subitem (4), the FWC must extend the default period for the agreement-based transitional instrument for a period of no more than 4 years if the FWC is satisfied that:
 - (a) subitem (7), (8) or (9) applies and it is otherwise appropriate in the circumstances to do so; or
 - (b) it is reasonable in the circumstances to do so.
- (7) This subitem applies if:

- (a) the application is made at or after the notification time for a proposed enterprise agreement; and
 - (b) the proposed enterprise agreement will cover:
 - (i) if the application relates to an individual agreement-based transitional instrument—the employee covered by the individual agreement-based transitional instrument; or
 - (ii) if the application relates to a collective agreement-based transitional instrument—the same, or substantially the same, group of employees as the collective agreement-based transitional instrument; and
 - (c) bargaining for the proposed enterprise agreement is occurring.
 - (8) This subitem applies if:
 - (a) the application relates to an individual agreement-based transitional instrument; and
 - (b) the employee covered by the instrument would be an award covered employee for the instrument under subitem (10) if the instrument were a collective agreement-based transitional instrument; and
 - (c) it is likely that, as at the time the application is made, the employee would be better off overall if the instrument applied to the employee than if the relevant modern award referred to in that subitem applied to the employee.
 - (9) This subitem applies if:
 - (a) the application relates to a collective agreement-based transitional instrument; and
 - (b) it is likely that, as at the time the application is made, the award covered employees for the instrument under subitem (10), viewed as a group, would be better off overall if the instrument applied to the employees than if the relevant modern award or awards referred to in that subitem applied to the employees.
 - (10) For the purposes of subitems (8) and (9), the ***award covered employees*** for a collective agreement-based transitional instrument are the employees who:
 - (a) are covered by the instrument; and
-

- (b) at the time an application is made under subitem (4) in relation to the instrument, are covered by one or more modern awards (the **relevant modern awards**) that:
 - (i) are in operation; and
 - (ii) cover the employees in relation to the work that the employees are to perform under the instrument; and
- (c) are employed at that time by an employer who is covered by the instrument and by one or more of the relevant modern awards.

Publication of decisions etc.

- (10A) The FWC must publish the following, on its website or by any other means that the FWC considers appropriate:
 - (a) a decision under subitem (6);
 - (b) any written reasons that the FWC gives in relation to such a decision;
 - (c) if the decision is to extend the default period for a collective agreement-based transitional instrument—the instrument.

The FWC must do so as soon as practicable after making the decision.

- (10B) Paragraph (10A)(b) applies subject to any order made under section 594 of the FW Act.
- (10C) The FWC must not publish an individual agreement-based transitional instrument in relation to which an application under subitem (4) is made.

Pending applications

- (11) If:
 - (a) an application is made under subitem (4) in relation to an agreement-based transitional instrument; and
 - (b) the FWC has not made a decision on the application at a time (the **critical time**) that is immediately before what would (apart from this subitem) be the end of the grace period for the instrument;then:
 - (c) the FWC must make the decision on the application after the critical time; and

- (d) the decision on the application is taken to have been made at the critical time; and
- (e) if the FWC’s decision on the application is to refuse to extend the default period for the instrument under subitem (6)—the FWC must extend the default period until the end of:
 - (i) subject to subparagraph (ii), the day the refusal decision is made; or
 - (ii) if the refusal decision specifies a later day that is not more than 14 days after the day the refusal decision is made—that later day.

482 After item 26 of Schedule 3A

Insert:

26A Automatic sunsetting of all remaining Division 2B State employment agreements

Automatic sunsetting

- (1) A Division 2B State employment agreement terminates at the end of the grace period for the agreement if the agreement has not already terminated before that time.
- (2) The ***grace period*** for a Division 2B State employment agreement is:
 - (a) subject to paragraph (b), the period of 12 months (the ***default period***) beginning on the day Part 13 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* commences; or
 - (b) if the default period is extended for the agreement on one or more occasions under subitem (6) or paragraph (11)(e)—the default period as so extended.

Employer to give notice to employees

- (3) An employer covered by a Division 2B State employment agreement must, before the end of 6 months beginning on the day Part 13 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* commences, give each employee who is covered by the agreement and employed by the employer at the end of that period written notice advising the employee:

- (a) that the employee is covered by a Division 2B State employment agreement; and
- (b) that the agreement will terminate unless an application is made to the FWC under subitem (4), before the end of the period of 12 months beginning on the day that Part commences, for the FWC to extend the default period for the agreement; and
- (c) of the day on which that Part commences.

Note: For compliance with this obligation, see item 4C of Schedule 16.

Application to FWC for extension of default period

- (4) Any of the following may apply to the FWC, before the end of the grace period for a Division 2B State employment agreement, for the FWC to extend the default period for the agreement for a period of no more than 4 years:
 - (a) an employer covered by the agreement;
 - (b) an employee covered by the agreement;
 - (c) an industrial association that is entitled to represent the industrial interests of one or more of the employees covered by the agreement.
- (5) An application under subitem (4) must be accompanied by:
 - (a) a copy of the agreement; and
 - (b) any declarations that are required by the procedural rules of the FWC to accompany the application.

Extension of default period

- (6) If an application is made under subitem (4), the FWC must extend the default period for the Division 2B State employment agreement for a period of no more than 4 years if the FWC is satisfied that:
 - (a) subitem (7), (8) or (9) applies and it is otherwise appropriate in the circumstances to do so; or
 - (b) it is reasonable in the circumstances to do so.
- (7) This subitem applies if:
 - (a) the application is made at or after the notification time for a proposed enterprise agreement; and
 - (b) the proposed enterprise agreement will cover:

- (i) if the application relates to an individual Division 2B State employment agreement—the employee covered by the individual Division 2B State employment agreement; or
 - (ii) if the application relates to a collective Division 2B State employment agreement—the same, or substantially the same, group of employees as the Division 2B State employment agreement; and
 - (c) bargaining for the proposed enterprise agreement is occurring.
- (8) This subitem applies if:
- (a) the application relates to an individual Division 2B State employment agreement; and
 - (b) the employee covered by the agreement would be an award covered employee for the agreement under subitem (10) if the agreement were a collective Division 2B State employment agreement; and
 - (c) it is likely that, as at the time the application is made, the employee would be better off overall if the agreement applied to the employee than if the relevant modern award referred to in that subitem applied to the employee.
- (9) This subitem applies if:
- (a) the application relates to a collective Division 2B State employment agreement; and
 - (b) it is likely that, as at the time the application is made, the award covered employees for the agreement under subitem (10), viewed as a group, would be better off overall if the agreement applied to the employees than if the relevant modern award or awards referred to in that subitem applied to the employees.
- (10) For the purposes of subitems (8) and (9), the ***award covered employees*** for a collective Division 2B State employment agreement are the employees who:
- (a) are covered by the agreement; and
 - (b) at the time an application is made under subitem (4) in relation to the agreement, are covered by one or more modern awards (the ***relevant modern awards***) that:
-

- (i) are in operation; and
- (ii) cover the employees in relation to the work that the employees are to perform under the agreement; and
- (c) are employed at that time by an employer who is covered by the agreement and by one or more of the relevant modern awards.

Publication of decisions etc.

- (10A) The FWC must publish the following, on its website or by any other means that the FWC considers appropriate:
- (a) a decision under subitem (6);
 - (b) any written reasons that the FWC gives in relation to such a decision;
 - (c) if the decision is to extend the default period for a collective Division 2B State employment agreement—the agreement.
- The FWC must do so as soon as practicable after making the decision.
- (10B) Paragraph (10A)(b) applies subject to any order made under section 594 of the FW Act.
- (10C) The FWC must not publish an individual Division 2B State employment agreement in relation to which an application under subitem (4) is made.

Pending applications

- (11) If:
- (a) an application is made under subitem (4) in relation to a Division 2B State employment agreement; and
 - (b) the FWC has not made a decision on the application at a time (the ***critical time***) that is immediately before what would (apart from this subitem) be the end of the grace period for the agreement;
- then:
- (c) the FWC must make the decision on the application after the critical time; and
 - (d) the decision on the application is taken to have been made at the critical time; and

- (e) if the FWC’s decision on the application is to refuse to extend the default period for the agreement under subitem (6)—the FWC must extend the default period until the end of:
 - (i) subject to subparagraph (ii), the day the refusal decision is made; or
 - (ii) if the refusal decision specifies a later day that is not more than 14 days after the day the refusal decision is made—that later day.

483 At the end of Part 8 of Schedule 7

Add:

30 Automatic sunsetting of all remaining enterprise agreements made during the bridging period

Automatic sunsetting

- (1) An enterprise agreement made during the bridging period ceases to operate at the end of the grace period for the agreement if the agreement has not already ceased to operate before that time.
- (2) The ***grace period*** for an enterprise agreement made during the bridging period is:
 - (a) subject to paragraph (b), the period of 12 months (the ***default period***) beginning on the day Part 13 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* commences; or
 - (b) if the default period is extended for the agreement on one or more occasions under subitem (6) or paragraph (10)(e)—the default period as so extended.

Employer to give notice to employees

- (3) An employer covered by an enterprise agreement made during the bridging period must, before the end of 6 months beginning on the day Part 13 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* commences, give each employee who is covered by the agreement and employed by the employer at the end of that period written notice advising the employee:

- (a) that the employee is covered by an enterprise agreement made during the bridging period; and
- (b) that the agreement will terminate unless an application is made to the FWC under subitem (4), before the end of the period of 12 months beginning on the day that Part commences, for the FWC to extend the default period for the agreement; and
- (c) of the day on which that Part commences.

Note: For compliance with this obligation, see item 4C of Schedule 16.

Application to FWC for extension of default period

- (4) Any of the following may apply to the FWC, before the end of the grace period for an enterprise agreement made during the bridging period, for the FWC to extend the default period for the agreement for a period of no more than 4 years:
 - (a) an employer covered by the agreement;
 - (b) an employee covered by the agreement;
 - (c) an industrial association that is entitled to represent the industrial interests of one or more of the employees covered by the agreement.
- (5) An application under subitem (4) must be accompanied by:
 - (a) a copy of the agreement; and
 - (b) any declarations that are required by the procedural rules of the FWC to accompany the application.

Extension of default period

- (6) If an application is made under subitem (4), the FWC must extend the default period for the enterprise agreement made during the bridging period for a period of no more than 4 years if the FWC is satisfied that:
 - (a) subitem (7) or (8) applies and it is otherwise appropriate in the circumstances to do so; or
 - (b) it is reasonable in the circumstances to do so.
- (7) This subitem applies if:
 - (a) the application is made at or after the notification time for a proposed enterprise agreement that will cover the same, or

substantially the same, group of employees as the enterprise agreement made during the bridging period; and

- (b) bargaining for the proposed enterprise agreement is occurring.
- (8) This subitem applies if it is likely that, as at the time the application is made, the award covered employees for the agreement under subitem (9), viewed as a group, would be better off overall if the agreement applied to the employees than if the relevant modern award or awards referred to in that subitem applied to the employees.
- (9) For the purposes of subitem (8), the **award covered employees** for an enterprise agreement made during the bridging period are the employees who:
- (a) are covered by the agreement; and
 - (b) at the time an application is made under subitem (4) in relation to the agreement, are covered by one or more modern awards (the **relevant modern awards**) that:
 - (i) are in operation; and
 - (ii) cover the employees in relation to the work that the employees are to perform under the agreement; and
 - (c) are employed at that time by an employer who is covered by the agreement and by one or more of the relevant modern awards.

Publication of decisions etc.

- (9A) The FWC must publish the following, on its website or by any other means that the FWC considers appropriate:
- (a) a decision under subitem (6);
 - (b) any written reasons that the FWC gives in relation to such a decision;
 - (c) if the decision is to extend the default period for the relevant enterprise agreement—the agreement.

The FWC must do so as soon as practicable after making the decision.

- (9B) Paragraph (9A)(b) applies subject to any order made under section 594 of the FW Act.

Pending applications

- (10) If:
- (a) an application is made under subitem (4) in relation to an enterprise agreement made during the bridging period; and
 - (b) the FWC has not made a decision on the application at a time (the *critical time*) that is immediately before what would (apart from this subitem) be the end of the grace period for the agreement;
- then:
- (c) the FWC must make the decision on the application after the critical time; and
 - (d) the decision on the application is taken to have been made at the critical time; and
 - (e) if the FWC’s decision on the application is to refuse to extend the default period for the agreement under subitem (6)—the FWC must extend the default period until the end of:
 - (i) subject to subparagraph (ii), the day the refusal decision is made; or
 - (ii) if the refusal decision specifies a later day that is not more than 14 days after the day the refusal decision is made—that later day.

Effect of sunseting

- (11) If an enterprise agreement made during the bridging period ceases to operate in accordance with subitem (1), that does not affect:
- (a) any right or liability that a person acquired, accrued or incurred before the agreement ceased to operate; or
 - (b) any investigation, legal proceeding or remedy in respect of any such right or liability.
- (12) Any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the agreement had not ceased to operate.
- (13) Subitems (11) and (12) have effect subject to a contrary intention in this Act or in the FW Act.

484 After item 4B of Schedule 16

Insert:

4C Compliance with obligation to notify employees about automatic sunsetting

(1) An employer must not contravene subitem 20A(3) of Schedule 3.

Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

(2) An employer must not contravene subitem 26A(3) of Schedule 3A.

Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

(3) An employer must not contravene subitem 30(3) of Schedule 7.

Note: This subitem is a civil remedy provision (see item 16, and Part 4-1 of the FW Act).

485 Paragraph 16(1)(d) of Schedule 16

Omit “and 44C”, substitute “, 44C, 44H, 44J and 44K”.

486 Subitem 16(1) of Schedule 16 (after table item 44G)

Insert:

44H	4C(1)	(a) an employee;	(a) the Federal Court;	60 penalty units
		(b) an industrial association that is entitled to represent the industrial interests of one or more of the employees covered by the agreement-based transitional instrument;	(b) the Federal Circuit and Family Court of Australia (Division 2);	
		(c) an inspector	(c) an eligible State or Territory court	
44J	4C(2)	(a) an employee;	(a) the Federal Court;	60 penalty units
		(b) an industrial association that is entitled to represent the	(b) the Federal Circuit and Family Court of Australia	

		industrial interests of one or more of the employees covered by the Division 2B State employment agreement;	(Division 2); (c) an eligible State or Territory court	
		(c) an inspector		
44K	4C(3)	(a) an employee; (b) an industrial association that is entitled to represent the industrial interests of one or more of the employees covered by the enterprise agreement; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	60 penalty units

Part 14—Enterprise agreement approval

Fair Work Act 2009

487 Section 12 (definition of *access period*)

Repeal the definition.

488 Section 12 (definition of *genuinely agreed*)

Repeal the definition.

488A Section 12

Insert:

voting request order: see subsections 240A(1) and (2).

489 Subsection 173(1) (heading)

Omit “*Employer*”, substitute “*Employers for single-enterprise agreements*”.

490 Subsection 173(1)

Omit “proposed enterprise agreement that is not a greenfields agreement”, substitute “proposed single-enterprise agreement (other than a greenfields agreement)”.

491 Subsection 173(2) (note)

Omit “The employer”, substitute “An employer that is required to give a notice under subsection (1)”.

492 Subsection 174(3)

Omit “If subsection (4) does not apply, the”, substitute “The”.

493 Subsection 174(4)

Repeal the subsection.

494 Subsection 179(3)

Omit “no later than the end of the fourth day of the access period referred to in subsection 180(4) for the agreement”, substitute “a reasonable time before the voting process referred to in subsection 181(1) starts for the agreement”.

495 Section 180 (heading)

Repeal the heading, substitute:

180 Certain pre-approval requirements

497 Subsections 180(2) to (4)

Repeal the subsections.

499 Subsection 180(4A)

Omit “by the end of the fourth day of the access period for the agreement”, substitute “before the voting process referred to in subsection 181(1) starts for the agreement”.

500 Subsection 180(4A)

Omit “relevant employees”, substitute “employees employed at the time who will be covered by the agreement”.

501 Paragraph 180(4A)(b)

Omit “throughout the remainder of the access period for the agreement”, substitute “until the voting process starts”.

502 Subsection 180(4B)

Omit “relevant employees”, substitute “employees employed at the time who will be covered by the agreement”.

503 Paragraph 180(4B)(a)

Omit “by the end of the fourth day of the access period for the agreement”, substitute “a reasonable time before the voting process referred to in subsection 181(1) starts for the agreement”.

504 Paragraph 180(4B)(b)

Repeal the paragraph, substitute:

- (b) are given access to a copy of the document a reasonable time before the voting process starts and have access to that copy until the voting process starts.

505 Subsection 180(4C)

Omit “the relevant”.

506 Paragraph 180(5)(a)

Omit “relevant employees”, substitute “employees employed at the time who will be covered by the agreement”.

506A Paragraph 180(5)(b)

Omit “the relevant employees”, substitute “those employees”.

506B After section 180

Insert:

180A Agreement of bargaining representatives that are employee organisations

- (1) This section applies to a proposed enterprise agreement that is a multi-enterprise agreement.
- (2) An employer must not request under subsection 181(1) that employees approve the enterprise agreement by voting for it unless:
 - (a) each bargaining representative for the enterprise agreement that is an employee organisation has provided the employer with written agreement to the making of the request; or
 - (b) a voting request order permits the employer to make the request.

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

507 Subsection 181(2)

Repeal the subsection, substitute:

- (2) If the employer is required by subsection 173(1) (which deals with giving notice of employee representational rights) to take all

reasonable steps to give notice in relation to the agreement, the request must not be made until at least 21 days after the day on which the last notice under subsection 173(1) in relation to the agreement is given.

508 Subsection 186(2) (note 1)

Omit “when”, substitute “provisions dealing with determining whether”.

509 Section 188

Repeal the section, substitute:

188 Determining whether an enterprise agreement has been genuinely agreed to by employees

Statement of principles

- (1) The FWC must take into account the statement of principles made under section 188B in determining whether it is satisfied that an enterprise agreement has been genuinely agreed to by the employees covered by the agreement.

Sufficient interest and sufficiently representative

- (2) The FWC cannot be satisfied that an enterprise agreement has been genuinely agreed to by the employees covered by the agreement unless the FWC is satisfied that the employees requested to approve the agreement by voting for it:
 - (a) have a sufficient interest in the terms of the agreement; and
 - (b) are sufficiently representative, having regard to the employees the agreement is expressed to cover.

Note: In *One Key Workforce Pty Ltd v Construction, Forestry, Mining and Energy Union* [2018] FCAFC 77 (2018) 262 FCR 527, a Full Court of the Federal Court observed that whether an agreement has been genuinely agreed involves consideration of the authenticity of the agreement of the employees, including whether the employees who voted for the agreement had an informed and genuine understanding of what was being approved.

Agreement of bargaining representatives that are employee organisations

- (2A) The FWC cannot be satisfied that an enterprise agreement to which section 180A applies has been genuinely agreed to by the employees covered by the agreement unless the FWC is satisfied that the employer complied with section 180A in relation to the agreement.

Where notice of employee representational rights was required

- (3) Subsection (4) applies in relation to an enterprise agreement if an employer was required by subsection 173(1) (which deals with giving notice of employee representational rights) to take all reasonable steps to give notice in relation to the agreement.
- (4) The FWC cannot be satisfied that the agreement has been genuinely agreed to by the employees covered by the agreement unless the FWC is satisfied that the employer complied with the following provisions in relation to the agreement:
- (a) sections 173 and 174 (which deal with giving notice of employee representational rights);
 - (b) subsection 181(2) (which requires that employees not be requested to approve certain enterprise agreements until 21 days after the last notice of employee representational rights is given).

Explanation of terms of the agreement

- (4A) The FWC cannot be satisfied that the agreement has been genuinely agreed to by the employees covered by the agreement unless the FWC is satisfied that the employer complied with subsection 180(5) in relation to the agreement.

Minor errors may be disregarded

- (5) In determining whether it is satisfied that an enterprise agreement has been genuinely agreed to by the employees covered by the agreement (including determining whether it is satisfied that an employer complied with the provisions mentioned in subsection (2A) or (4) or (4A)), the FWC may disregard minor procedural or technical errors made in relation to the following

requirements if it is satisfied that the employees were not likely to have been disadvantaged by the errors:

- (a) section 173 or 174 (which deal with notices of employee representational rights for certain agreements);
- (aa) subsection 180(5) (which requires employers to explain the terms of agreements);
- (ab) section 180A (which deals with agreement of certain bargaining representatives);
- (b) subsection 181(2) (which requires that employees not be requested to approve certain enterprise agreements until 21 days after the last notice of employee representational rights is given);
- (c) subsection 182(1) or (2) (which deal with the making of different kinds of enterprise agreements by employee vote).

Regulations

- (6) The FWC cannot be satisfied that an enterprise agreement has been genuinely agreed to by the employees covered by the agreement unless the FWC is satisfied that the requirements (if any) prescribed by the regulations for the purposes of this subsection are met.

510 Paragraph 188A(a)

Omit “amount to reasonable grounds for believing”, substitute “mean”.

511 After section 188A

Insert:

188B Statement of principles on genuine agreement

- (1) The FWC must, by legislative instrument, make a statement of principles for employers on ensuring that employees have genuinely agreed to an enterprise agreement.
- (2) The FWC must publish the statement on the FWC’s website and by any other means that the FWC considers appropriate.
- (3) The statement must deal with the following matters:

- (a) informing employees of bargaining for a proposed enterprise agreement;
 - (b) informing employees of their right to be represented by a bargaining representative;
 - (c) providing employees with a reasonable opportunity to consider a proposed enterprise agreement;
 - (d) explaining to employees the terms of a proposed enterprise agreement and their effect;
 - (e) providing employees with a reasonable opportunity to vote on a proposed agreement in a free and informed manner, including by informing employees of the time, place and method for the vote;
 - (f) any matter prescribed by the regulations for the purposes of this paragraph;
 - (g) any other matters the FWC considers relevant.
- (4) The statement is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the statement.

511A After section 207

Insert:

207A Agreement of employee organisations covered by the agreement

- (1) This section applies to a proposed variation of a multi-enterprise agreement.
- (2) An employer must not request under subsection 208(1) that employees approve the variation by voting for it unless:
 - (a) each employee organisation covered by the enterprise agreement has provided the employer with written agreement to the making of the request; or
 - (b) a voting request order permits the employer to make the request.

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

513 Paragraph 211(3)(d)

After “188”, insert “(other than paragraph 188(2)(b))”.

513A Paragraph 211(3)(e)

Omit “those provisions”, substitute “section 180, subsection 186(2) and section 188”.

513B After paragraph 211(3)(f)

Insert:

- (fa) subsections 180(4A) to (4C) were omitted; and
- (fb) the word “bargaining” in paragraph 180(6)(c) were omitted; and

514 After paragraph 211(3)(g)

Insert:

- (ga) references in paragraph 186(2)(a) to the agreement were references to the variation of the agreement; and

515 Paragraph 211(3)(ha)

After “and (d)”, insert “and 188(2)(b)”.

516 Paragraph 211(3)(hb)

Repeal the paragraph, substitute:

- (hb) references in section 188 to section 180A were references to section 207A; and

517 Paragraph 211(3)(j)

Omit “paragraph 188(b)”, substitute “paragraph 188(5)(c)”.

518 Subsection 211(6)

After “this Part”, insert “, or regulations made for the purposes of this Part,”.

519 Subsection 229(3) (note)

Repeal the note, substitute:

Note: An employer that is required to give a notice of employee representational rights under subsection 173(1) cannot request

employees to approve the agreement under subsection 181(1) until 21 days after the last notice is given.

519A At the end of Division 8 of Part 2-4

Add:

Subdivision E—Voting request orders

240A Application to FWC for voting request order

Proposed multi-enterprise agreement

- (1) After the notification time for a proposed multi-enterprise agreement, a bargaining representative for the enterprise agreement may apply to the FWC for an order (a ***voting request order***) permitting an employer to make a request under subsection 181(1) that employees approve the enterprise agreement by voting for it if:
 - (a) each bargaining representative for the enterprise agreement that is an employee organisation has been asked to provide the employer with written agreement to the making of the request; and
 - (b) one or more of the employee organisations has failed to provide the written agreement.

Variation of multi-enterprise agreement

- (2) A person referred to in subsection (3) may apply to the FWC for an order (also a ***voting request order***) permitting an employer to make a request under subsection 208(1) that employees approve a variation of a multi-enterprise agreement by voting for it if:
 - (a) each employee organisation covered by the enterprise agreement has been asked to provide the employer with written agreement to the making of the request; and
 - (b) one or more of the employee organisations has failed to provide the written agreement.
- (3) The persons are the following:
 - (a) an employer covered by the enterprise agreement;
 - (b) an employee organisation covered by the enterprise agreement;

- (c) an affected employee for the variation.

240B FWC must make voting request order

The FWC must, on application under subsection 240A(1) or (2), make a voting request order permitting an employer to make a request if the FWC is satisfied that:

- (a) for each employee organisation that has failed to provide written agreement to the making of the request, the failure was unreasonable in the circumstances; and
- (b) if the request relates to approval of a proposed enterprise agreement—the making of the request by the employer would not be inconsistent with or undermine good faith bargaining for the enterprise agreement.

520 After paragraph 576(2)(aa)

Insert:

- (ab) promoting good faith bargaining and the making of enterprise agreements;

521 Subsection 598(1)

After “does not include”, insert “a statement under section 188B (which deals with principles on genuine agreement to enterprise agreements) or”.

Part 15—Initiating bargaining

Fair Work Act 2009

522 After paragraph 173(2)(a)

Insert:

- (aa) the employer receives a request to bargain under subsection (2A) in relation to the agreement; or

523 After subsection 173(2)

Insert:

- (2A) A bargaining representative of an employee who will be covered by a proposed single-enterprise agreement (other than a greenfields agreement) may give the employer who will be covered by the proposed agreement a request in writing to bargain for the proposed agreement if:
 - (a) the proposed agreement will replace an earlier single-enterprise agreement (the *earlier agreement*) that has passed its nominal expiry date; and
 - (b) a single interest employer authorisation did not cease to be in operation because of the making of the earlier agreement; and
 - (c) no more than 5 years have passed since the nominal expiry date; and
 - (d) the proposed agreement will cover the same, or substantially the same, group of employees as the earlier agreement.

524 After paragraph 230(2)(a)

Insert:

- (aa) the employer or employers have received a request to bargain under subsection 173(2A) in relation to the agreement;

Part 16—Better off overall test

Fair Work Act 2009

524A Section 12 (definition of *prospective award covered employee*)

Repeal the definition.

524B Section 12

Insert:

reasonably foreseeable employee for an enterprise agreement: see subsection 193(5).

525 After section 191

Insert:

191A FWC may approve an enterprise agreement with amendments

- (1) This section applies if:
 - (a) an application for the approval of an enterprise agreement has been made under subsection 182(4) or section 185; and
 - (b) the FWC has a concern that the agreement does not meet the requirement set out in paragraph 186(2)(d) (better off overall test).
- (2) The FWC may approve the agreement under section 186 if the FWC is satisfied that an amendment specified by the FWC is necessary to address the concern.
- (3) If the FWC intends to specify an amendment under subsection (2), the FWC must seek the views of the following:
 - (a) the employer or employers that are covered by the agreement;
 - (b) the award covered employees for the agreement;
 - (c) a bargaining representative for the agreement.

191B Effect of amendment specified by FWC

- (1) If:
- (a) the FWC specifies an amendment in approving an enterprise agreement under subsection 191A(2); and
 - (b) the agreement covers a single employer;
- the agreement is taken to be amended by the amendment, as the agreement applies to the employer.
- (2) If:
- (a) the FWC specifies an amendment in approving an enterprise agreement under subsection 191A(2); and
 - (b) the agreement covers 2 or more employers;
- the agreement is taken to be amended by the amendment, as the agreement applies to each employer.

526 Subsection 193(1)

Omit “prospective award covered”, substitute “reasonably foreseeable”.

526A At the end of subsection 193(1)

Add:

- Note 1: *Reasonably foreseeable employee* is defined in subsection (5).
- Note 2: Section 193A sets out rules for applying the better off overall test, including requiring the FWC to only have regard to patterns or kinds of work, or types of employment, that are reasonably foreseeable at the test time (see subsection 193A(6)).

526B Subsection 193(3)

Omit “prospective award covered”, substitute “reasonably foreseeable”.

526C Subsection 193(5) (heading)

Repeal the heading, substitute:

Reasonably foreseeable employee

526D Subsection 193(5)

Omit “*prospective award covered*”, substitute “*reasonably foreseeable*”.

527 Subsection 193(7)

Repeal the subsection.

528 At the end of Subdivision C of Division 4 of Part 2-4

Add:

193A Applying the better off overall test

- (1) This section applies for the purposes of determining whether an enterprise agreement passes the better off overall test under section 193.
- (2) To avoid doubt, the FWC must undertake a global assessment of whether each employee concerned would be better off having regard to:
 - (a) the terms of the agreement which would be more beneficial to the employee if the agreement applied to the employee than if the relevant modern award applied to the employee; and
 - (b) the terms of the agreement which would be less beneficial to the employee if the agreement applied to the employee than if the relevant modern award applied to the employee.
- (3) The FWC must give consideration to any views relating to whether the agreement passes the better off overall test that have been expressed by any of the following:
 - (a) the employer or employers that are covered by the agreement;
 - (b) if the agreement is not a greenfields agreement—the award covered employees for the agreement;
 - (c) in any case—a bargaining representative for the agreement.
- (4) The FWC must give primary consideration to a common view (if any) relating to whether the agreement passes the better off overall test expressed by all of the following:
 - (a) the bargaining representative or bargaining representatives of the employer or employers that are covered by the agreement;
 - (b) the bargaining representative or bargaining representatives of award covered employees for the agreement (other than a

bargaining representative that is not an employee organisation).

- (5) Subsection (4) does not apply if the agreement is a greenfields agreement.
- (6) The FWC may only have regard to patterns or kinds of work, or types of employment, if they are reasonably foreseeable at the test time. In considering what is reasonably foreseeable, the FWC must have regard to the nature of the enterprise or enterprises to which the agreement relates.
- (6A) The FWC must determine whether a particular pattern or kind of work, or type of employment, is reasonably foreseeable for the purposes of subsection (6) if a view is expressed by any of the following that it is, or is not, reasonably foreseeable:
 - (a) the employer or employers that are covered by the agreement;
 - (b) if the agreement is not a greenfields agreement—the award covered employees for the agreement;
 - (c) in any case—a bargaining representative for the agreement.
- (7) 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, the FWC 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.

529 At the end of section 201

Add:

Approval decision to note amendments

- (4) If the FWC specifies an amendment in approving an enterprise agreement under subsection 191A(2), the FWC must note the amendment in its decision to approve the agreement.

530 At the end of subsection 211(2)

Add:

; and (d) disregard sections 191A and 191B (which deal with FWC amendment of enterprise agreements).

531 After subsection 211(4)

Insert:

- (4A) Section 193A (which also deals with passing the better off overall test) has effect as if:
- (a) the words “if the agreement is not a greenfields agreement—” in paragraph (3)(b) were omitted; and
 - (aa) the words “in any case—a bargaining representative for the agreement” in paragraph (3)(c) were omitted and the words “the employee organisation or employee organisations that are covered by the agreement” were substituted; and
 - (ab) the words “the bargaining representative or bargaining representatives of” in paragraph (4)(a) were omitted; and
 - (ac) the words “the bargaining representative or bargaining representatives of award covered employees for the agreement (other than a bargaining representative that is not an employee organisation)” in paragraph (4)(b) were omitted and the words “the employee organisation or employee organisations that are covered by the agreement” were substituted; and
 - (b) subsection (5) were omitted; and
 - (c) the words “if the agreement is not a greenfields agreement—” in paragraph (6A)(b) were omitted; and
 - (d) the words “in any case—a bargaining representative for the agreement” in paragraph (6A)(c) were omitted and the words “the employee organisation or employee organisations that are covered by the agreement” were substituted.

532 After section 213

Insert:

213A FWC may approve variation with amendments

- (1) This section applies if:

- (a) an application for the approval of a variation of an enterprise agreement has been made under section 210; and
 - (b) the FWC has a concern that the variation does not meet the requirements set out in section 211 because the requirement set out in paragraph 186(2)(d) (better off overall test), as it has effect because of subsection 211(4), is not met.
- (2) The FWC may approve the variation under section 211 if the FWC is satisfied that an amendment to the variation specified by the FWC is necessary to address the concern.
- (3) If the FWC intends to specify an amendment under subsection (2), the FWC must seek the views of the following:
 - (a) one or more of the employers covered by the agreement;
 - (b) an employee organisation covered by the agreement.

213B Effect of amendment specified by FWC

- (1) If:
 - (a) the FWC specifies an amendment in approving a variation of an enterprise agreement under subsection 213A(2); and
 - (b) the agreement covers a single employer;the variation is taken to be amended by the amendment, as the agreement applies to the employer.
- (2) If:
 - (a) the FWC specifies an amendment in approving an enterprise agreement under subsection 191A(2); and
 - (b) the agreement covers 2 or more employers;the variation is taken to be amended by the amendment, as the agreement applies to each employer.

533 After section 215

Insert:

215A Approval decision to note amendments

If the FWC specifies an amendment in approving a variation of an enterprise agreement under subsection 213A(2), the FWC must note the amendment in its decision to approve the variation.

534 After Division 7 of Part 2-4

Insert:

Division 7A—Reconsideration of whether an enterprise agreement passes the better off overall test

227A Application for FWC to reconsider whether an enterprise agreement passes the better off overall test

- (1) If the condition in subsection (2) is satisfied, any of the following may apply to the FWC for a reconsideration of whether an enterprise agreement passes the better off overall test:
 - (a) one or more of the employers covered by the agreement;
 - (b) an employee covered by the agreement;
 - (c) an employee organisation covered by the agreement.
 - (2) The condition in this subsection is satisfied if:
 - (a) before approving the agreement the FWC had regard, under subsection 193A(6), to patterns or kinds of work, or types of employment engaged in, or to be engaged in, by award covered employees for the agreement; and
 - (b) at the test time or a later time, one or more employees covered by subsection (4) engaged in other patterns or kinds of work, or other types of employment, to which the FWC did not have regard under subsection 193A(6).
- Example: Before approving the agreement the FWC had regard, under subsection 193A(6), to work on Saturdays and Sundays as a pattern of work for a class of employees. At the test time some employees covered by subsection (4) worked only on Sundays, and the FWC did not have regard, under subsection 193A(6), to this pattern of work. In these circumstances, the condition in this subsection is satisfied.
- (4) An employee is covered by this subsection if, on the assumption that the test time mentioned in paragraph 193(4)(b) were the time the application is made under subsection (1) of this section, the employee would be an award covered employee for the agreement.

227B Reconsideration of whether an enterprise agreement passes the better off overall test

- (1) If an application is made under subsection 227A(1), the FWC must reconsider whether the agreement passes the better off overall test under section 193.
- (2) For the purposes of the reconsideration, sections 193 and 193A have effect as if:
 - (a) the conditions in paragraphs 193(4)(a) and (b) were satisfied in relation to an employee covered by subsection 227A(4); and
 - (b) the words “the time the application for approval of the agreement by the FWC was made under subsection 182(4) or section 185” in subsection 193(6) were omitted and the words “the time mentioned in subsection 227B(2A)” were substituted; and
 - (c) the words “if the agreement is not a greenfields agreement—” in paragraph 193A(3)(b) were omitted; and
 - (d) the words “in any case—a bargaining representative for the agreement” in paragraph 193A(3)(c) were omitted and the words “the employee organisation or employee organisations that are covered by the agreement” were substituted; and
 - (e) the words “the bargaining representative or bargaining representatives of” in paragraph 193A(4)(a) were omitted; and
 - (f) the words “the bargaining representative or bargaining representatives of award covered employees for the agreement (other than a bargaining representative that is not an employee organisation)” in paragraph 193A(4)(b) were omitted and the words “the employee organisation or employee organisations that are covered by the agreement” were substituted; and
 - (g) the words “if the agreement is not a greenfields agreement—” in paragraph 193A(6A)(b) were omitted; and
 - (h) the words “in any case—a bargaining representative for the agreement” in paragraph 193A(6A)(c) were omitted and the words “the employee organisation or employee organisations that are covered by the agreement” were substituted.

- (2A) For the purposes of paragraph (2)(b), the time is:
- (a) unless paragraph (b) applies—the time the application for approval of the agreement by the FWC was made under section 185; or
 - (b) if the FWC has approved one or more variations of the agreement under section 211—the time the application for approval of the most recent of those variations by the FWC was made under section 210.
- (3) If the FWC has a concern that the enterprise agreement does not pass the better off overall test, the FWC may:
- (a) accept an undertaking from one or more employers covered by the agreement if the FWC is satisfied the undertaking addresses the concern; or
 - (b) amend the agreement if the FWC is satisfied the amendment is necessary to address the concern.
- (4) An amendment under paragraph (3)(b) operates from:
- (a) 7 days after the FWC makes the amendment; or
 - (b) if another day is specified in the amendment (which may be a day before the amendment is made)—that other day.
- (5) The FWC must specify a day before the amendment is made for the purposes of paragraph (4)(b) if the FWC considers that it is necessary for the amendment to operate from the earlier day to address the concern to which the amendment relates.

227C Effect of undertakings

- (1) If:
- (a) the FWC accepts an undertaking under paragraph 227B(3)(a) in relation to an enterprise agreement; and
 - (b) the agreement covers a single employer;
- the undertaking is taken to be a term of the agreement, as the agreement applies to the employer.
- (2) If:
- (a) the FWC accepts an undertaking under paragraph 227B(3)(a) in relation to an enterprise agreement; and
 - (b) the agreement covers 2 or more employers;

the undertaking is taken to be a term of the agreement, as the agreement applies to each employer that gave the undertaking.

227D Effect of amendment

- (1) If:
- (a) the FWC makes an amendment under paragraph 227B(3)(b) in relation to an enterprise agreement; and
 - (b) the agreement covers a single employer;
- the agreement is taken to be amended by the amendment, as the agreement applies to the employer.
- (2) If:
- (a) the FWC makes an amendment under paragraph 227B(3)(b) in relation to an enterprise agreement; and
 - (b) the agreement covers 2 or more employers;
- the agreement is taken to be amended by the amendment, as the agreement applies to each employer.

227E No creation of liability to pay pecuniary penalty for past conduct

Application of this section

- (1) This section applies if an amendment of an enterprise agreement made under paragraph 227B(3)(b) has a retrospective effect because it comes into operation on a day before the day on which the amendment is made.

No creation of liability to pay pecuniary penalty for past conduct

- (2) If:
- (a) a person engaged in conduct before the amendment was made; and
 - (b) but for the retrospective effect of the amendment, the conduct would not have contravened a term of the enterprise agreement;
- a court must not order a person to pay a pecuniary penalty under Division 2 of Part 4-1 in relation to the conduct, on the grounds that the conduct contravened a term of an enterprise agreement.

Note: This section does not affect the powers of a court to make other kinds of orders under Division 2 of Part 4-1.

534A Subsection 546(1) (note)

Omit “Note”, substitute “Note 1”.

534B At the end of subsection 546(1)

Add:

Note 2: Pecuniary penalty orders cannot be made in relation to conduct that contravenes a term of an enterprise agreement only because of the retrospective effect of an amendment made under paragraph 227B(3)(b) (see subsection 227E(2)).

Part 17—Dealing with errors in enterprise agreements

Fair Work Act 2009

535 After Subdivision B of Division 7 of Part 2-4

Insert:

Subdivision BA—Variation of enterprise agreements to correct or amend errors, defects or irregularities

218A Variation of enterprise agreements to correct or amend errors, defects or irregularities

- (1) The FWC may vary an enterprise agreement to correct or amend an obvious error, defect or irregularity (whether in substance or form).
- (2) The FWC may vary an enterprise agreement under subsection (1):
 - (a) on its own initiative; or
 - (b) on application by any of the following:
 - (i) one or more of the employers covered by the agreement;
 - (ii) an employee covered by the agreement;
 - (iii) an employee organisation covered by the agreement.
- (3) If the FWC varies an enterprise agreement under subsection (1), the variation operates from the day specified in the decision to vary the agreement.

536 After section 602

Insert:

602A Validation of approval of enterprise agreement

- (1) If:
 - (a) after an enterprise agreement was made:

- (i) an application for the approval of a draft of the enterprise agreement was erroneously made to the FWC; and
 - (ii) the FWC approved the draft of the agreement; and
 - (b) the FWC is satisfied that, assuming that the application had been an application for the approval of the enterprise agreement that was made, the FWC would have approved the enterprise agreement that was made;
- the FWC may determine in writing that the approval is as valid and effective, and is taken to have been as valid and effective, as it would have been if:
- (c) the application had been an application for the approval of the enterprise agreement that was made instead of an application for the approval of the draft of the agreement; and
 - (d) the requirements set out in subsection 185(2) or section 185A (whichever is applicable) had been met in relation to the application; and
 - (e) the approval had been an approval of the enterprise agreement that was made instead of an approval of the draft of the agreement.
- (2) The FWC may make a determination under subsection (1):
 - (a) on its own initiative; or
 - (b) on application.
 - (3) If the FWC makes a determination under subsection (1) in relation to an enterprise agreement that was made, the FWC must:
 - (a) publish the agreement on the FWC's website or by any other means that the FWC considers appropriate; and
 - (b) do so as soon as practicable after making the determination.

602B Validation of approval of variation of enterprise agreement

- (1) If:
 - (a) after a variation of an enterprise agreement was made:
 - (i) an application for the approval of a draft of the variation was erroneously made to the FWC; and
 - (ii) the FWC approved the draft of the variation; and

- (b) the FWC is satisfied that, assuming that the application had been an application for the approval of the variation that was made, the FWC would have approved the variation that was made;

the FWC may determine in writing that the approval is as valid and effective, and is taken to have been as valid and effective, as it would have been if:

- (c) the application had been an application for the approval of the variation that was made instead of an application for the approval of the draft of the variation; and
 - (d) the requirements set out in subsection 210(2) had been met in relation to the application; and
 - (e) the approval had been an approval of the variation that was made instead of an approval of the draft of the variation.
- (2) The FWC may make a determination under subsection (1):
- (a) on its own initiative; or
 - (b) on application.

Part 18—Bargaining disputes

Fair Work Act 2009

537 Section 12 (definition of *bargaining related workplace determination*)

Repeal the definition.

537A Section 12

Insert:

end of the minimum bargaining period: see subsection 235(5).

538 Section 12

Insert:

intractable bargaining declaration: see section 234.

intractable bargaining workplace determination: see section 269.

539 Section 12 (definition of *post-declaration negotiating period*)

Omit “269(2)”, substitute “235A(1)”.

540 Section 12 (definition of *serious breach declaration*)

Repeal the definition.

541 Section 12 (paragraph (c) of the definition of *workplace determination*)

Repeal the paragraph, substitute:

(c) an intractable bargaining workplace determination.

542 Section 169 (paragraph beginning “Division 8 provides”)

Omit “serious breach declarations”, substitute “intractable bargaining declarations”.

543 Subdivision B of Division 8 of Part 2-4

Repeal the Subdivision, substitute:

Subdivision B—Intractable bargaining declarations

234 Applications for intractable bargaining declarations

- (1) A bargaining representative for a proposed enterprise agreement, other than a greenfields agreement, may apply to the FWC for a declaration (an *intractable bargaining declaration*) under section 235 in relation to the agreement.

Note: The consequence of an intractable bargaining declaration being made in relation to the agreement is that the FWC may, in certain circumstances, make an intractable bargaining workplace determination under section 269 in relation to the agreement.

- (2) An application for an intractable bargaining declaration must not be made in relation to a proposed multi-enterprise agreement unless a supported bargaining authorisation or single interest employer authorisation is in operation in relation to the agreement.

235 When the FWC may make an intractable bargaining declaration

Intractable bargaining declaration

- (1) The FWC may make an intractable bargaining declaration in relation to a proposed enterprise agreement if:
- (a) an application for the declaration has been made; and
 - (b) the FWC is satisfied of the matters set out in subsection (2); and
 - (c) it is after the end of the minimum bargaining period (see subsection (5)).

Matters of which the FWC must be satisfied before making an intractable bargaining declaration

- (2) The FWC must be satisfied that:
- (a) the FWC has dealt with the dispute about the agreement under section 240 and the applicant participated in the FWC's processes to deal with the dispute; and

- (b) there is no reasonable prospect of agreement being reached if the FWC does not make the declaration; and
- (c) it is reasonable in all the circumstances to make the declaration, taking into account the views of all the bargaining representatives for the agreement.

What declaration must specify

- (3) The declaration must specify:
 - (a) the date it is made; and
 - (b) the proposed enterprise agreement to which it relates; and
 - (c) any other matter prescribed by the procedural rules.

Operation of declaration

- (4) The declaration:
 - (a) comes into operation on the day it is made; and
 - (b) ceases to be in operation when each employer specified in the declaration is covered by an enterprise agreement or a workplace determination.

End of the minimum bargaining period

- (5) The **end of the minimum bargaining period** in relation to a proposed enterprise agreement is:
 - (a) if one or more enterprise agreements (the **existing agreements**) apply to any of the employees that will be covered by the proposed agreement—the later of the following:
 - (i) the day that is 9 months after the nominal expiry date for that existing agreement, or the latest nominal expiry date for those existing agreements;
 - (ii) the day that is 9 months after the day bargaining starts, as worked out under subsection (6); or
 - (b) the day that is 9 months after the day bargaining starts, as worked out under subsection (6).
- (6) For the purposes of subparagraph (5)(a)(ii) and paragraph (5)(b), the day bargaining starts for a proposed agreement is:

- (a) if a supported bargaining authorisation or single interest employer authorisation is in operation in relation to the proposed agreement—the day that the authorisation first comes into operation; or
- (b) otherwise—the notification time for the proposed agreement.

235A Post-declaration negotiating period

- (1) The FWC may, if it considers it appropriate to do so, specify in the declaration a period (the *post-declaration negotiating period*) that:
 - (a) starts on the day the declaration is made; and
 - (b) ends on:
 - (i) the day specified by the FWC in the declaration; or
 - (ii) any later day determined under subsection (2).

Note: The FWC cannot make an intractable bargaining workplace determination during any post-declaration negotiating period (see section 269) but may still provide other assistance during the period, such as conciliation.

- (2) The FWC may, if it considers it appropriate to do so and taking into account any views of the bargaining representatives, extend the period referred to in subsection (1) by determining a later day for the purposes of subparagraph (1)(b)(ii).

544 Section 258

Omit:

Division 4 deals with bargaining related workplace determinations. The FWC must make such a determination if:

- (a) a serious breach declaration is made in relation to a proposed enterprise agreement; and
- (b) after the end of the post-declaration negotiating period, the bargaining representatives for the agreement have not settled the matters that were at issue during bargaining for the agreement.

substitute:

Division 4 deals with intractable bargaining workplace determinations. The FWC must make such a determination if:

- (a) an intractable bargaining declaration is made in relation to a proposed enterprise agreement; and
- (b) the bargaining representatives for the agreement have not settled the matters that were at issue during bargaining for the agreement.

545 Division 4 of Part 2-5 (heading)

Repeal the heading, substitute:

Division 4—Intractable bargaining workplace determinations

546 Section 269

Repeal the section, substitute:

269 When the FWC must make an intractable bargaining workplace determination

If an intractable bargaining declaration has been made in relation to a proposed enterprise agreement, the FWC must make a determination (an *intractable bargaining workplace determination*) as quickly as possible:

- (a) if there is a post-declaration negotiating period for the declaration under section 235A—after the end of that period; or
- (b) otherwise—after making the declaration.

Note: The FWC must be constituted by a Full Bench to make an intractable bargaining workplace determination (see subsection 616(4)).

547 Section 270 (heading)

Omit “a bargaining related”, substitute “an intractable bargaining”.

548 Subsection 270(1)

Repeal the subsection, substitute:

Basic rule

- (1) An intractable bargaining workplace determination must comply with subsection (4) and include:
 - (a) the terms set out in this section; and
 - (b) the core terms set out in section 272; and
 - (c) the mandatory terms set out in section 273.

Note: For the factors that the FWC must take into account in deciding the terms of the determination, see section 275.

548A Subsection 270(3)

Repeal the subsection, substitute:

Terms dealing with the matters at issue

- (3) The determination must include the terms that the FWC considers deal with the matters that were still at issue:
 - (a) if there is a post-declaration negotiating period under section 235A for the declaration concerned—after the end of that period; or
 - (b) otherwise—after making the declaration.

549 Subsections 270(4), (5) and (6)

Repeal the subsections, substitute:

Coverage

- (4) The determination must be expressed to cover:
 - (a) each employer that would have been covered by the agreement; and
 - (b) the employees who would have been covered by that agreement; and
 - (c) each employee organisation (if any) that was a bargaining representative of those employees.

550 Section 271

Omit “A bargaining related workplace determination”, substitute “An intractable bargaining workplace determination”.

551 Section 271A

Repeal the section.

552 Subsection 274(3)

Repeal the subsection, substitute:

Agreed term for an intractable bargaining workplace determination

- (3) An ***agreed term*** for an intractable bargaining workplace determination is a term that the bargaining representatives for the proposed enterprise agreement concerned had, at whichever of the following times applies, agreed should be included in the agreement:
- (a) if there is a post-declaration negotiating period for the intractable bargaining declaration to which the determination relates—at the end of the post-declaration negotiating period;
 - (b) otherwise—at the time the intractable bargaining declaration was made.

Note: The determination must include an agreed term (see subsection 270(2)).

552A After paragraph 275(c)

Insert:

- (ca) the significance, to those employers and employees, of any arrangements or benefits in an enterprise agreement that, immediately before the determination is made, applies to any of the employers in respect of any of the employees;

553 Paragraph 413(7)(c)

Repeal the paragraph, substitute:

- (c) an intractable bargaining declaration in relation to the agreement.

Part 19—Industrial action

Division 2—Protected action ballot agents

Fair Work Act 2009

561 Section 12

Insert:

eligible protected action ballot agent: see subsection 468A(1).

562 Section 12 (definition of *protected action ballot agent*)

After “person”, insert “or entity”.

563 At the end of subsection 437(3)

Add:

; and (c) the name of the person or entity that the applicant wishes to be the protected action ballot agent for the protected action ballot.

Note: The protected action ballot agent for the ballot must be an eligible protected action ballot agent unless there are exceptional circumstances: see section 444.

564 Subsection 437(4)

Repeal the subsection.

565 Section 440

Repeal the section, substitute:

440 Notice of application

Within 24 hours after making an application for a protected action ballot order, the applicant must give a copy of the application to:

- (a) the employer of the employees who are to be balloted; and
- (b) the person or entity that the application specifies as being the person or entity that the applicant wishes to be the protected action ballot agent for the protected action ballot.

566 At the end of subsection 443(3)

Add:

- ; (e) the person or entity that the FWC decides, under subsection 444(1A), is to be the protected action ballot agent for the protected action ballot;
- (f) the person (if any) that the FWC decides, under subsection 444(3), is to be the independent advisor for the ballot.

567 Subsection 443(4)

Repeal the subsection.

568 Section 444 (heading)

Repeal the heading, substitute:

444 Ballot agent and independent advisor

569 Subsection 444(1)

Repeal the subsection, substitute:

- (1) This section applies if the FWC must make a protected action ballot order under subsection 443(1).

Protected action ballot agent

- (1A) The FWC must, in accordance with subsections (1B) to (1D) of this section, decide the person or entity that is to be the protected action ballot agent for the protected action ballot.
- (1B) The person or entity must be the person or entity specified in the application for the protected action ballot order as the person or entity the applicant wishes to be the protected action ballot agent, unless:
 - (a) the person or entity specified in the application does not meet the requirements of subsection (1C) (unless subsection (1D) applies); or
 - (b) the FWC is satisfied that there are exceptional circumstances that justify another person or entity being the protected action ballot agent.

(1C) The person or entity must be an eligible protected action ballot agent.

(1D) Subsection (1C) does not apply in relation to a person if the FWC is satisfied that:

- (a) there are exceptional circumstances that justify the ballot not being conducted by an eligible protected action ballot agent; and
- (b) the person is a fit and proper person to conduct the ballot; and
- (c) any other requirements prescribed by the regulations are met.

Note: Other than the Australian Electoral Commission, an entity that is not a person cannot be the protected action ballot agent for a protected action ballot.

570 Paragraph 444(2)(a)

After “the FWC”, insert “, for the purposes of paragraph (1D)(b),”.

571 Paragraph 444(2)(b)

After “determining”, insert “, for the purposes of paragraph (1D)(b),”.

572 Section 449 (heading)

Repeal the heading, substitute:

449 Conduct of protected action ballot

573 Subsection 449(1)

Repeal the subsection, substitute:

- (1) A protected action ballot must be conducted by the person or entity specified in the protected action ballot order as the protected action ballot agent for the ballot.

574 After section 468

Insert:

468A Eligible protected action ballot agents

- (1) Each of the following is an *eligible protected action ballot agent*:

- (a) the Australian Electoral Commission;
 - (b) a person approved by the FWC under subsection (2).
- (2) For the purposes of paragraph (1)(b), the FWC may, in writing, approve a person as an eligible protected action ballot agent if the FWC is satisfied that:
 - (a) the person is a fit and proper person to be an eligible protected action ballot agent; and
 - (b) any other requirements prescribed by the regulations are met.
- (3) The regulations may prescribe:
 - (a) conditions that a person must meet in order to satisfy the FWC that the person is a fit and proper person to be an eligible protected action ballot agent; and
 - (b) factors that the FWC must take into account in determining whether a person is a fit and proper person to be an eligible protected action ballot agent.
- (4) The FWC must, at least every 3 years after it approves a person as an eligible protected action ballot agent, consider whether the FWC remains satisfied that the person meets the requirements mentioned in subsection (2).
- (5) If, after considering the matter under subsection (4), the FWC is no longer satisfied that an eligible protected action ballot agent meets the requirements mentioned in subsection (2), the FWC must take:
 - (a) any action prescribed by the regulations; and
 - (b) any other action the FWC considers appropriate.

575 Paragraph 469(a)

Repeal the paragraph.

576 Subsection 539(2) (table item 18, column 2, paragraph (d))

Repeal the paragraph, substitute:

- (d) the protected action ballot agent (unless the protected action ballot agent is the Australian Electoral Commission);
- (da) if the protected action ballot agent is the Australian Electoral Commission—the Electoral Commissioner;

576A Subsection 539(2) (table item 19, column 2, paragraph (d))

Repeal the paragraph, substitute:

- (d) the protected action ballot agent (unless the protected action ballot agent is the Australian Electoral Commission);
- (da) if the protected action ballot agent is the Australian Electoral Commission—the Electoral Commissioner;

576B Subsection 539(2) (table item 20, column 2, paragraph (d))

Repeal the paragraph, substitute:

- (d) the protected action ballot agent (unless the protected action ballot agent is the Australian Electoral Commission);
- (da) if the protected action ballot agent is the Australian Electoral Commission—the Electoral Commissioner;

Division 3—Protected action ballots and multi-enterprise agreements

Fair Work Act 2009

577 After section 437

Insert:

437A Application for a protected action ballot order—multi-enterprise agreements

- (1) This section applies if:
 - (a) an application is made under section 437 for a protected action ballot order in relation to a multi-enterprise agreement; and
 - (b) the group or groups of employees specified in the application under paragraph 437(3)(a) include employees of different employers.

Note: An application cannot be made under section 437 in relation to a cooperative workplace agreement: see paragraph 437(2)(b).

- (2) This Subdivision (other than paragraph 440(b)) has effect as if the application were multiple applications, one in relation to each

employer, with each application being identical apart from only specifying under paragraph 437(3)(a) the group or groups of employees mentioned in paragraph (1)(b) of this section to the extent that the group or groups consist of employees of the relevant employer.

Example: A proposed multi-enterprise agreement will cover 3 employers: A, B and C. An application for a protected action ballot order is made under section 437 and specifies the employees of A and B as the groups of employees who are to be balloted. Under subsection (2) of this section:

- (a) an application is taken to have been made specifying the employees of A; and
- (b) a separate application is taken to have been made specifying the employees of B.

Subject to section 442, the FWC must deal with each of these 2 applications separately under section 443 and must make separate protected action ballot orders in relation to the employees of each employer (if the requirements of section 443 are satisfied in relation to the employer).

Division 4—Notice requirements for industrial action

Fair Work Act 2009

579 Paragraph 414(2)(a)

Repeal the paragraph, substitute:

- (a) subject to paragraph (b):
 - (i) if subparagraph (ii) of this paragraph does not apply—3 working days; or
 - (ii) if the proposed enterprise agreement is a multi-enterprise agreement—120 hours; or

579A At the end of subsection 414(2)

Add:

Note: For a proposed cooperative workplace agreement, see subsection 413(2).

580 Subsection 443(5)

After “3 working days”, insert “or 120 hours (whichever is applicable)”.

Division 5—Mediation and conciliation

Fair Work Act 2009

581 After subsection 409(6)

Insert:

Conference orders

- (6A) Each bargaining representative of an employee who will be covered by the agreement must not have contravened any order made under section 448A (which is about mediation and conciliation conferences) that related to the protected action ballot order for the protected action ballot.

582 Section 411 (after the heading)

Insert:

Employer response action

582A Section 411

Before “*Employer response action*”, insert “(1)”.

583 At the end of section 411

Add:

; and (d) meets the additional requirements set out in this section.

Protected action ballots

- (2) Subsection (3) applies if the industrial action is organised or engaged in by an employer in response to industrial action that is authorised by a protected action ballot.
- (3) The employer, and any bargaining representative of the employer for the proposed enterprise agreement, must not have contravened any order made under section 448A (which is about mediation and conciliation conferences) that related to the protected action ballot order for the protected action ballot.

585 After Subdivision B of Division 8 of Part 3-3

Insert:

Subdivision BA—FWC must conduct conferences

448A FWC must conduct conferences

- (1) If the FWC has made a protected action ballot order in relation to a proposed enterprise agreement, the FWC must make an order directing the bargaining representatives for the agreement to attend a conference:
 - (a) at a specified time or times during a specified period; and
 - (b) at a specified place, or by specified means;for the purposes of mediation or conciliation in relation to the agreement.
- (2) The specified period must end on or before the date specified in the protected action ballot order under paragraph 443(3)(c) as the day by which voting in the protected action ballot closes.
- (3) An FWC Member (other than an Expert Panel Member), or a delegate of the FWC, is responsible for conducting the conference.
- (4) The conference must be conducted in private.
- (5) At a conference, the FWC may:
 - (a) mediate or conciliate; or
 - (b) make a recommendation or express an opinion.
- (6) This section does not limit section 592 (which deals with conferences) or 595 (which deals with FWC's power to deal with disputes).

Part 20—Supported bargaining

Fair Work Act 2009

586 Section 12

Repeal the following definitions:

- (a) definition of *consent low-paid workplace determination*;
- (b) definition of *low-paid authorisation*;
- (c) definition of *low-paid workplace determination*;
- (d) definition of *special low-paid workplace determination*.

587 Section 12

Insert:

supported bargaining agreement: a multi-enterprise agreement is a *supported bargaining agreement* if a supported bargaining authorisation was in operation in relation to the agreement immediately before the agreement was made.

supported bargaining authorisation: see subsection 242(1).

588 Section 12 (paragraph (a) of the definition of *workplace determination*)

Repeal the paragraph.

589 Paragraph 58(2)(c)

Repeal the paragraph, substitute:

- (c) subsection (3) (which deals with a supported bargaining agreement replacing a single enterprise agreement) does not apply;

590 Subsection 58(3)

Repeal the subsection, substitute:

Special rule—supported bargaining agreement replaces single-enterprise agreement

- (3) If:

- (a) a single-enterprise agreement applies to an employee in relation to particular employment; and
- (b) a supported bargaining agreement that covers the employee in relation to the same employment comes into operation; the single-enterprise agreement ceases to apply to the employee when the supported bargaining agreement comes into operation, and can never so apply again.

591 Section 169 (paragraph beginning “Division 9”)

Omit “low-paid”, substitute “supported bargaining”.

592 At the end of section 172

Add:

Requirement for employer specified in supported bargaining authorisation

- (7) Despite any other provision of this Part, if an employer is specified in a supported bargaining authorisation that is in operation:
 - (a) the only kind of enterprise agreement the employer may make with their employees who are specified in the authorisation is a supported bargaining agreement; and
 - (b) the employer must not initiate bargaining, agree to bargain, or be required to bargain with those employees for any other kind of enterprise agreement.

593 Paragraph 173(2)(d)

Omit “low-paid”, substitute “supported bargaining”.

594 Subparagraph 176(1)(b)(ii)

Omit “low-paid”, substitute “supported bargaining”.

595 Subsection 176(2) (heading)

Omit “*low-paid*”, substitute “*supported bargaining*”.

596 Paragraph 176(2)(a)

Omit “low-paid”, substitute “supported bargaining”.

596A After subsection 211(1)

Insert:

- (1A) Despite subsection (1), the FWC must not approve the variation if:
- (a) as a result of the variation, employees who were not covered by the agreement will be covered by it; and
 - (b) the employees' employer is specified in a supported bargaining authorisation, or a single interest employer authorisation, in relation to those employees.

597 In the appropriate position in Division 7 of Part 2-4

Insert:

Subdivision AA—Variation of supported bargaining agreement to add employer and employees (with consent)

216A Variation of supported bargaining agreement to add employer and employees

- (1) A variation of a supported bargaining agreement, that has the effect that an employer that was not covered by the agreement will be covered by it, may be made jointly by the employer and the affected employees.

Note: Once the employer is covered by the agreement, any of their employees who the agreement is expressed to cover will also be covered by it. See also the definition of *affected employees* in section 12.

- (2) The employer may request the affected employees to approve the proposed variation by voting for it.
- (3) Without limiting subsection (2), the employer may request that the affected employees vote by ballot or by an electronic method.
- (4) The variation is *made* when a majority of the affected employees who cast a valid vote approve the variation.
- (5) The variation has no effect unless it is approved by the FWC under section 216AB.

216AAA Terms of variation must be explained to employees

- (1) Before an employer requests under subsection 216A(2) that affected employees approve a proposed variation, the employer must take all reasonable steps to ensure that:
 - (a) the terms of the agreement as proposed to be varied, and the effect of those terms, are explained to the affected employees; and
 - (b) the explanation is provided in an appropriate manner taking into account the particular circumstances and needs of those employees.
- (2) Without limiting paragraph (1)(b), the following are examples of the kinds of employees whose circumstances and needs are to be taken into account for the purposes of complying with that paragraph:
 - (a) employees from culturally and linguistically diverse backgrounds;
 - (b) young employees;
 - (c) employees who did not have a representative for the variation.

216AA Application for the FWC's approval of a variation of a supported bargaining agreement to add employer and employees

Application for approval

- (1) If a variation of a supported bargaining agreement is made as mentioned in section 216A, the employer to be covered by the agreement must apply to the FWC for approval of the variation.

Material to accompany the application

- (2) The application must be accompanied by:
 - (a) a signed copy of the variation; and
 - (b) a copy of the agreement as proposed to be varied; and
 - (c) any declarations that are required by the procedural rules to accompany the application.

When the application must be made

- (3) The application must be made:
 - (a) within 14 days after the variation is made; or
 - (b) if in all the circumstances the FWC considers it fair to extend that period—within such further period as the FWC allows.

Signature requirements

- (4) The regulations may, for the purposes of this Subdivision, prescribe requirements relating to the signing of variations.

216AB When the FWC must approve a variation of a supported bargaining agreement to add employer and employees

- (1) If an application for the approval of a variation of a supported bargaining agreement is made under section 216AA, the FWC must approve the variation if the FWC is satisfied that:
 - (a) if the application that was made under section 242 for the supported bargaining authorisation in relation to the agreement had specified the affected employees and their employer, the FWC would have been required to make the authorisation in accordance with section 216AC; and
 - (b) the affected employees have voted on whether to approve the variation and, of those who cast a valid vote, a majority approved the variation; and
 - (c) the variation has been genuinely agreed to by the affected employees in accordance with section 216AD;unless the FWC is satisfied that there are serious public interest grounds for not approving the variation.
- (2) Despite subsection (1), the FWC must not approve the variation if, as a result of the variation, the agreement would cover employees in relation to general building and construction work.
- (3) Despite subsection (1), the FWC must not approve the variation if the employer that will be covered by the agreement is specified in a single interest employer authorisation in relation to any of the affected employees.

216AC Determining whether the FWC would have been required to make a supported bargaining authorisation

For the purposes of paragraph 216AB(1)(a), the FWC is to determine whether it is satisfied that it would have been required to make the supported bargaining authorisation in accordance with sections 243 and 243A, modified as follows:

- (a) as if paragraph 243(1)(a), subparagraph 243(1)(b)(iii) and paragraphs 243(1)(c) and (2A)(a) were omitted;
- (b) as if references to the employers included the employer who made the application under section 216AA for approval of the variation;
- (c) as if references to employees who will be covered by the agreement, or an employee, were references to the affected employees or an affected employee;
- (d) as if all of the words in paragraph 243(2A)(b) were replaced with the words “the affected employees are, at the time the application for approval of the variation is being considered, employees in an industry, occupation or sector declared by the Minister under subsection (2B)”.

216AD Determining whether a variation of a supported bargaining agreement to add employer and employees has been genuinely agreed to by affected employees

- (1) For the purposes of paragraph 216AB(1)(c), the FWC is to determine whether it is satisfied that the variation has been genuinely agreed to by the affected employees in accordance with section 188, modified as follows:
 - (a) as if references (other than in a note) to an enterprise agreement being genuinely agreed to were references to the variation being genuinely agreed to;
 - (b) as if references to employees covered by or expressed to be covered by the agreement, employees requested to approve the agreement by voting for it, or employees, were references to the affected employees;
 - (c) as if, in paragraph 188(2)(a), the reference to the agreement were a reference to the agreement as proposed to be varied;
 - (d) as if subsections 188(2A), (3) and (4) were omitted;

- (e) as if, in subsections 188(4A) and (5), references to subsection 180(5) were references to section 216AAA;
 - (f) as if, in paragraph 188(5)(c), the reference to subsection 182(1) or (2) were a reference to subsection 216A(4).
- (2) In taking into account the statement of principles made under section 188B:
 - (a) the FWC may disregard the matters mentioned in paragraphs 188B(3)(a) and (b); and
 - (b) the matters mentioned in paragraphs 188B(3)(c) and (d) are taken to be matters relating to the agreement as proposed to be varied; and
 - (c) the matters mentioned in paragraphs 188B(3)(e) are taken to be matters relating to the variation.
- (3) The regulations may provide that, for the purposes of the FWC deciding whether it is satisfied that the variation has been genuinely agreed to, specified provisions of this Part, or regulations made for the purposes of this Part, have effect with such modifications as are prescribed by the regulations.

216AE When the FWC may refuse to approve a variation of a supported bargaining agreement to add employer and employees

- (1) If an application for the approval of a variation of a supported bargaining agreement is made under section 216AA, the FWC may refuse to approve the variation if the FWC considers that compliance with the terms of the agreement as proposed to be varied may result in:
 - (a) a person committing an offence against a law of the Commonwealth; or
 - (b) a person being liable to pay a pecuniary penalty in relation to a contravention of a law of the Commonwealth.
- (2) Subsection (1) has effect despite section 216AB (which deals with the approval of variations of supported bargaining agreements).
- (3) If the FWC refuses to approve a variation of a supported bargaining agreement under this section, the FWC may refer the

agreement as proposed to be varied to any person or body the FWC considers appropriate.

216AF When variation comes into operation

If a variation of a supported bargaining agreement is approved under section 216AB, the variation operates from the day specified in the decision to approve the variation.

Subdivision AB—Variation of supported bargaining agreement to add employer and employees (without consent)

216B Application for the FWC to vary a supported bargaining agreement to add employer and employees

Application for variation

- (1) An employee organisation that is covered by a supported bargaining agreement may apply to the FWC for a variation of the agreement that has the effect that an employer that was not covered by the agreement will be covered by it.

Note: Once the employer is covered by the agreement, any of their employees who the agreement is expressed to cover will also be covered by it. See also the definition of *affected employees* in section 12.

Material to accompany the application

- (2) The application must be accompanied by:
 - (a) a signed copy of the variation proposed by the employee organisation; and
 - (b) a copy of the agreement as proposed to be varied; and
 - (c) any declarations that are required by the procedural rules to accompany the application.

Signature requirements

- (3) The regulations may, for the purposes of this Subdivision, prescribe requirements relating to the signing of variations.

216BA When the FWC must make a variation of a supported bargaining agreement to add employer and employees

- (1) If an application for the FWC to vary a supported bargaining agreement is made under section 216B, the FWC must make the variation if the FWC is satisfied that:
 - (a) a majority of the employees:
 - (i) who are employed by the employer at a time determined by the FWC; and
 - (ii) who will be covered by the agreement as proposed to be varied;
want to be covered by the agreement; and
 - (b) it is appropriate for the employees to be covered by the agreement.
- (2) In determining whether it is satisfied that it is appropriate for the employees to be covered by the agreement:
 - (a) the FWC must take into account the views of:
 - (i) each employee organisation covered by the agreement; and
 - (ii) the employer that will be covered by the agreement if the variation is made; and
 - (b) the FWC may have regard to the matters referred to in section 243 (when the FWC must make a supported bargaining authorisation).
- (3) Despite subsection (1), the FWC must not make the variation if:
 - (a) as a result of the variation, the agreement would cover employees in relation to general building and construction work; or
 - (b) the affected employees are covered by an enterprise agreement that has not passed its nominal expiry date.
- (4) Despite subsection (1), the FWC must not make the variation if the employer that will be covered by the agreement is specified in a single interest employer authorisation in relation to any of the affected employees.

216BB When the FWC may refuse to make a variation of a supported bargaining agreement to add employer and employees

- (1) If an application for the variation of a supported bargaining agreement is made under section 216B, the FWC may refuse to make the variation if the FWC considers that compliance with the terms of the agreement as proposed to be varied may result in:
 - (a) a person committing an offence against a law of the Commonwealth; or
 - (b) a person being liable to pay a pecuniary penalty in relation to a contravention of a law of the Commonwealth.
- (2) Subsection (1) has effect despite section 216BA (which deals with making variations of supported bargaining agreements without consent).
- (3) If the FWC refuses to make a variation of a supported bargaining agreement under this section, the FWC may refer the agreement as proposed to be varied to any person or body the FWC considers appropriate.

216BC When variation comes into operation

If a variation of a supported bargaining agreement is made under section 216BA, the variation operates from the day specified in the decision to make the variation.

598 Subsection 229(2)

Omit “low-paid”, substitute “supported bargaining”.

599 Paragraph 230(2)(d)

Omit “low-paid”, substitute “supported bargaining”.

600 After subsection 236(1)

Insert:

- (1A) Despite subsection (1), a bargaining representative may not apply to the FWC for a determination if a supported bargaining authorisation that specifies the employee is in operation.

Note: While a supported bargaining authorisation that specifies an employee is in operation, an employer cannot bargain with that employee for any kind of agreement other than a supported bargaining agreement (see subsection 172(7)).

601 Paragraph 240(2)(b)

Repeal the paragraph, substitute:
(b) a supported bargaining agreement;

602 Division 9 of Part 2-4 (heading)

Omit “Low-paid”, substitute “Supported”.

603 Paragraph 241(a)

Omit “low-paid employees and their employers, who have not historically had the benefits of collective bargaining.”, substitute “employees and their employers who require support to bargain, and”.

604 Paragraph 241(b)

Repeal the paragraph.

605 Paragraphs 241(c) and (d)

Omit “low-paid”, substitute “those”.

606 Section 241 (note)

Repeal the note.

607 Section 242 (heading)

Omit “Low-paid”, substitute “Supported bargaining”.

608 Subsection 242(1)

Omit “*low-paid*”, substitute “*supported bargaining*”.

609 Subsection 242(1) (note)

Omit “low-paid”, substitute “supported bargaining”.

611 Section 243

Repeal the section, substitute:

243 When the FWC must make a supported bargaining authorisation

Supported bargaining authorisation—main case

- (1) The FWC must make a supported bargaining authorisation in relation to a proposed multi-enterprise agreement if:
- (a) an application for the authorisation has been made; and
 - (b) the FWC is satisfied that it is appropriate for the employers and employees (which may be some or all of the employers or employees specified in the application) that will be covered by the agreement to bargain together, having regard to:
 - (i) the prevailing pay and conditions within the relevant industry or sector (including whether low rates of pay prevail in the industry or sector); and
 - (ii) whether the employers have clearly identifiable common interests; and
 - (iii) whether the likely number of bargaining representatives for the agreement would be consistent with a manageable collective bargaining process; and
 - (iv) any other matters the FWC considers appropriate; and
 - (c) the FWC is satisfied that at least some of the employees who will be covered by the agreement are represented by an employee organisation.

Note: This subsection is subject to section 243A (restrictions on making supported bargaining authorisations).

Common interests

- (2) For the purposes of subparagraph (1)(b)(ii), examples of common interests that employers may have include the following:
- (a) a geographical location;
 - (b) the nature of the enterprises to which the agreement will relate, and the terms and conditions of employment in those enterprises;
 - (c) being substantially funded, directly or indirectly, by the Commonwealth, a State or a Territory.

Supported bargaining authorisation—declared industry etc.

- (2A) The FWC must also make a supported bargaining authorisation in relation to a proposed multi-enterprise agreement if:
- (a) an application for the authorisation has been made; and
 - (b) the employees specified in the application are employees in an industry, occupation or sector declared by the Minister under subsection (2B).

Note: This subsection is subject to section 243A (restrictions on making supported bargaining authorisations).

- (2B) The Minister may, by legislative instrument, declare an industry, occupation or sector, if the Minister is satisfied that doing so is consistent with the objects of this Division set out in section 241.

What authorisation must specify etc.

- (3) The authorisation must specify:
- (a) the employers that will be covered by the agreement; and
 - (b) the employees who will be covered by the agreement; and
 - (c) any other matter prescribed by the procedural rules.

Operation of authorisation

- (4) The authorisation comes into operation on the day on which it is made.

243A Restrictions on making supported bargaining authorisations

Relationship between this section and section 243

- (1A) Section 243 has effect subject to this section.

Employees covered by single-enterprise agreement that has not passed nominal expiry date

- (1) The FWC must not make a supported bargaining authorisation specifying an employee who is covered by a single-enterprise agreement that has not passed its nominal expiry date.

- (2) A supported bargaining authorisation has no effect to the extent that it specifies an employee who is covered by a single-enterprise agreement that has not passed its nominal expiry date.
- (3) However, subsections (1) and (2) do not apply if the FWC is satisfied that the employer's main intention in making the agreement with the employees covered by it was to avoid being specified in a supported bargaining authorisation.

General building and construction work

- (4) The FWC must not make a supported bargaining authorisation in relation to a proposed enterprise agreement if the agreement would cover employees in relation to general building and construction work.

612 Section 244 (heading)

Omit “low-paid”, substitute “supported bargaining”.

613 Subsections 244(1) and (3)

Omit “low-paid”, substitute “supported bargaining”.

614 Subsection 244(4)

Repeal the subsection, substitute:

- (4) If an application is made under subsection (3), the FWC must vary the authorisation to add the employer's name if the FWC is satisfied that it is in the public interest to do so, taking into account:
 - (a) if the employer's employees are in an industry, occupation or sector declared by the Minister under subsection 243(2B)—the declaration; and
 - (b) if paragraph (a) of this subsection does not apply—the matters set out in paragraph 243(1)(b); and
 - (c) any other matters the FWC considers appropriate.
- (4A) Despite subsection (4), the FWC must not vary the authorisation if subsection 243A(1) (employees covered by single-enterprise agreement that has not passed nominal expiry date) would prevent the FWC from making a supported bargaining authorisation specifying the employees.

- (5) Despite subsection (4), the FWC must not vary the authorisation if, as a result of the variation, the proposed multi-enterprise agreement to which the authorisation relates would cover employees in relation to general building and construction work.

615 Section 245

Repeal the section, substitute:

245 Variation of supported bargaining authorisations—enterprise agreement etc. comes into operation

The FWC is taken to have varied a supported bargaining authorisation to remove an employer’s name when the employer and all of their employees who are specified in the authorisation are covered by an enterprise agreement, or a workplace determination, that is in operation.

618 Section 246 (heading)

Repeal the heading, substitute:

246 FWC’s assistance

619 Subsection 246(1)

Omit “low-paid”, substitute “supported bargaining”.

620 Section 258 (paragraph beginning “Division 2”)

Repeal the paragraph.

621 Division 2 of Part 2-5

Repeal the Division.

622 Subsection 274(1)

Repeal the subsection (including the note).

623 Paragraph 275(b)

Repeal the paragraph.

624 Paragraph 275(c)

Omit “for a workplace determination other than a low-paid workplace determination—”.

625 Subsection 413(2)

Omit “multi-enterprise agreement”, substitute “a cooperative workplace agreement”.

626 Paragraph 437(2)(b)

Repeal the paragraph, substitute:

(b) a cooperative workplace agreement.

Part 21—Single interest employer authorisations

Fair Work Act 2009

627 Section 12

Insert:

single interest employer agreement: a multi-enterprise agreement is a single interest employer agreement if a single interest employer authorisation was in operation in relation to the agreement immediately before the agreement was made.

627A Section 169 (paragraph beginning “Division 10”)

Omit the second sentence.

627B Subsections 172(2) and (3)

Omit “single interest employers”, substitute “related employers”.

627C Subsection 172(5)

Repeal the subsection, substitute:

Requirement for employer specified in single interest employer authorisation

- (5) Despite any other provision of this Part, if an employer is specified in a single interest employer authorisation that is in operation:
- (a) the only kind of enterprise agreement the employer may make with their employees who are specified in the authorisation is a single interest employer agreement; and
 - (b) the employer must not initiate bargaining, agree to bargain, or be required to bargain with those employees for any other kind of enterprise agreement.

Related employers

- (5A) Two or more employers are ***related employers*** if:
- (a) the employers are engaged in a joint venture or common enterprise; or

- (b) the employers are related bodies corporate.

628 At the end of subsection 173(2)

Add:

- ; (e) a single interest employer authorisation in relation to the agreement that specifies the employer comes into operation.

629 In the appropriate position in Division 7 of Part 2-4

Insert:

Subdivision AD—Variation of single interest employer agreement to add employer and employees

216D Variation of single interest employer agreement to add employer and employees—joint variation

Variation by employers and employees

- (1) The following may jointly make a variation of a single interest employer agreement that will have the effect that they will be covered by the agreement:
- (a) an employer that is not covered by the agreement;
 - (b) the employees employed by the employer at the time who will be covered by the agreement if the variation is approved by the FWC (the *affected employees*).

Variation has no effect unless approved by the FWC

- (2) The variation has no effect unless it is approved by the FWC under section 216DC.

Approval by employee vote

- (3) The employer may request the affected employees to approve the proposed variation by voting for it.
- (4) Without limiting subsection (3), the employer may request that the affected employees vote by ballot or by an electronic method.

When a variation is made

- (5) A variation under this section is ***made*** when a majority of the affected employees who cast a valid vote approve the variation.

216DAA Terms of variation must be explained to employees

- (1) Before an employer requests under subsection 216D(3) that affected employees approve a proposed variation, the employer must take all reasonable steps to ensure that:
- (a) the terms of the agreement as proposed to be varied, and the effect of those terms, are explained to the affected employees; and
 - (b) the explanation is provided in an appropriate manner taking into account the particular circumstances and needs of those employees.
- (2) Without limiting paragraph (1)(b), the following are examples of the kinds of employees whose circumstances and needs are to be taken into account for the purposes of complying with that paragraph:
- (a) employees from culturally and linguistically diverse backgrounds;
 - (b) young employees;
 - (c) employees who did not have a representative for the variation.

216DA Application for the FWC's approval of a variation of a single interest employer agreement to add employer and employees—joint variation

Application for approval

- (1) If a variation of a single interest employer agreement is made under section 216D, the employer to be covered by the agreement must apply to the FWC for approval of the variation.

Material to accompany the application

- (2) The application must be accompanied by:
- (a) a signed copy of the variation; and

- (b) a copy of the agreement as proposed to be varied; and
- (c) any declarations that are required by the procedural rules to accompany the application.

When the application must be made

- (3) The application must be made:
 - (a) within 14 days after the variation is made; or
 - (b) if in all the circumstances the FWC considers it fair to extend that period—within such further period as the FWC allows.

Signature requirements

- (4) The regulations may prescribe requirements relating to the signing of variations of single interest employer agreements made under section 216D.

216DB Application for the FWC’s approval of a variation of a single interest employer agreement to add employer and employees—application by employee organisation

Application for approval

- (1) An employee organisation that is covered by a single interest employer agreement may apply to the FWC for the approval of a variation of the agreement that will have the effect that the following will be covered by the agreement:
 - (a) an employer that is not covered by the agreement;
 - (b) the employees employed by the employer at the time who will be covered by the agreement if the variation is approved by the FWC (the *affected employees*).

Material to accompany the application

- (2) The application must be accompanied by:
 - (a) a signed copy of the variation for which approval is sought; and
 - (b) a copy of the agreement as proposed to be varied; and
 - (c) any declarations that are required by the procedural rules to accompany the application.

Signature requirements

- (3) The regulations may prescribe requirements relating to the signing of variations of single interest employer agreements for which approval is sought under this section.

216DC When the FWC must approve a variation of a single interest employer agreement to add employer and employees

Approval of variation by the FWC

- (1) The FWC must approve a variation of a single interest employer agreement if:
 - (a) an application for approval of the variation has been made under section 216DA or 216DB; and
 - (b) the FWC is satisfied that:
 - (i) the employers and any employee organisations covered by the agreement have had an opportunity to express to the FWC their views (if any) on the application; and
 - (ii) if the application was made by an employer under section 216DA—the variation has been genuinely agreed to by the affected employees in accordance with section 216DD; and
 - (iii) if the application was made by an employee organisation under section 216DB—the requirements of subsection (1A) are met; and
 - (iv) the requirements of either subsection (2) or (3) (which deal with franchisees and common interest employers) are met; and
 - (v) if the requirements of subsection (3) are met—the operations and business activities of the employer are reasonably comparable with those of the other employers who are covered by the agreement.

(1AA) If:

- (a) the application for approval of the variation was made by an employee organisation under section 216DB; and
- (b) the employer that will be covered by the agreement employed 50 employees or more at the time that the application was made;

it is presumed for the purposes of subparagraph (1)(b)(v) that the operations and business activities of the employer are reasonably comparable with those of the other employers that are covered by the agreement, unless the contrary is proved.

Additional requirements for application by employee organisation

- (1A) The requirements of this subsection are met if:
- (a) the employer that will be covered by the agreement employed at least 20 employees at the time that the application for approval of the variation was made; and
 - (b) a majority of the affected employees want to be covered by the agreement; and
 - (c) subsection (1C) does not apply to the employer.
- (1B) For the purposes of paragraph (1A)(b), the FWC may work out whether a majority of the affected employees want to be covered by the agreement using any method the FWC considers appropriate.
- (1C) This subsection applies to an employer if:
- (a) the employer and the affected employees are covered by another enterprise agreement that has not passed its nominal expiry date at the time that the FWC will approve the variation; or
 - (b) the employer and an employee organisation that is entitled to represent the industrial interests of one or more of the affected employees have agreed in writing to bargain for a proposed single-enterprise agreement that would cover the employer and the affected employees or substantially the same group of the affected employees.

Franchisees

- (2) The requirements of this subsection are met if the employers covered by the agreement and the employer that will be covered by the agreement carry on similar business activities under the same franchise and are:
- (a) franchisees of the same franchisor; or
 - (b) related bodies corporate of the same franchisor; or
 - (c) any combination of the above.

Common interest employers

- (3) The requirements of this subsection are met if it is appropriate to approve the variation, having regard to:
- (a) whether the employers covered by the agreement and the employer that will be covered by the agreement have clearly identifiable common interests; and
 - (b) whether it would be contrary to the public interest to approve the variation.
- (3A) For the purposes of paragraph (3)(a), matters that may be relevant to determining whether the employers have a common interest include the following:
- (a) geographical location;
 - (b) regulatory regime;
 - (c) the nature of the enterprises to which the agreement relates, and the terms and conditions of employment in those enterprises.
- (3AB) If:
- (a) the application for approval of the variation was made by an employee organisation under section 216DB; and
 - (b) the employer that will be covered by the agreement employed 50 employees or more at the time that the application was made;
- it is presumed that the requirements of subsection (3) are met, unless the contrary is proved.

Calculating number of employees

- (3AC) For the purposes of calculating the number of employees referred to in paragraph (1AA)(b), (1A)(a) or (3AB)(b):
- (a) **employee** has its ordinary meaning; and
 - (b) subject to paragraph (c), all employees employed by the employer at the time that the application was made are to be counted; and
 - (c) a casual employee is not to be counted unless, at that time, the employee is a regular casual employee of the employer; and
 - (d) associated entities of the employer are taken to be one entity.

Employers and employees that are already bargaining

- (3B) Despite subsection (1), the FWC may refuse to approve the variation if the FWC is satisfied that:
- (a) the employer is bargaining in good faith for a proposed enterprise agreement that will cover the employer and the affected employees, or substantially the same group of the affected employees; and
 - (b) the employer and the affected employees have a history of effectively bargaining in relation to one or more enterprise agreements that have covered the employer and the affected employees, or substantially the same group of the affected employees; and
 - (c) on the day that the FWC will approve the variation, less than 9 months have passed since the most recent nominal expiry date of an agreement referred to in paragraph (b).

General building and construction work

- (4) Despite subsection (1), the FWC must not approve the variation if:
- (a) the agreement is a greenfields agreement that covers employees in relation to general building and construction work; or
 - (b) as a result of the variation, the agreement would cover employees in relation to general building and construction work.

Supported bargaining authorisation

- (5) Despite subsection (1), the FWC must not approve the variation if the employer that will be covered by the agreement is specified in a supported bargaining authorisation in relation to any of the affected employees.

216DD Determining whether a variation of a single interest employer agreement to add employer and employees has been genuinely agreed to by affected employees

- (1) For the purposes of subparagraph 216DC(1)(b)(ii), the FWC is to determine whether it is satisfied that the variation has been

genuinely agreed to by the affected employees in accordance with section 188, modified as follows:

- (a) as if references (other than in a note) to an enterprise agreement being genuinely agreed to were references to the variation being genuinely agreed to;
 - (b) as if references to employees covered by or expressed to be covered by the agreement, employees requested to approve the agreement by voting for it, or employees, were references to the affected employees;
 - (c) as if, in paragraph 188(2)(a), the reference to the agreement were a reference to the agreement as proposed to be varied;
 - (d) as if subsections 188(2A), (3) and (4) were omitted;
 - (e) as if, in subsections 188(4A) and (5), references to subsection 180(5) were references to section 216DAA;
 - (f) as if, in paragraph 188(5)(c), the reference to subsection 182(1) or (2) were a reference to subsection 216D(5).
- (2) In taking into account the statement of principles made under section 188B:
- (a) the FWC may disregard the matters mentioned in paragraphs 188B(3)(a) and (b); and
 - (b) the matters mentioned in paragraphs 188B(3)(c) and (d) are taken to be matters relating to the agreement as proposed to be varied; and
 - (c) the matters mentioned in paragraphs 188B(3)(e) are taken to be matters relating to the variation.
- (3) The regulations may provide that, for the purposes of the FWC determining whether it is satisfied that the variation has been genuinely agreed to by the affected employees for the purposes of subparagraph 216DC(1)(b)(ii), specified provisions of this Part, or regulations made for the purposes of this Part, have effect with such modifications as are prescribed by the regulations.

216DE When the FWC may refuse to approve a variation of a single interest employer agreement

- (1) If an application for the approval of a variation of a single interest employer agreement is made under section 216DA or 216DB, the
-

FWC may refuse to approve the variation if the FWC considers that compliance with the terms of the agreement as proposed to be varied may result in:

- (a) a person committing an offence against a law of the Commonwealth; or
 - (b) a person being liable to pay a pecuniary penalty in relation to a contravention of a law of the Commonwealth.
- (2) Subsection (1) has effect despite section 216DC (which deals with the approval of variations of single interest employer agreements).
- (3) If the FWC refuses to approve a variation of a single interest employer agreement under this section, the FWC may refer the agreement as proposed to be varied to any person or body the FWC considers appropriate.

216DF When variation comes into operation

If a variation of a single interest employer agreement is approved under section 216DC, the variation operates from the day specified in the decision to approve the variation.

629A Subsection 229(2)

After “authorisation”, insert “or single interest employer authorisation”.

630 At the end of subsection 230(2)

Add:

- ; (e) all of the employers are specified in a single interest employer authorisation that is in operation in relation to the agreement.

630A Subsection 238(2)

Repeal the subsection.

630B After paragraph 240(2)(b)

Insert:

- or (c) a multi-enterprise agreement in relation to which a single interest employer authorisation is in operation;

631 Subdivision A of Division 10 of Part 2-4

Repeal the Subdivision.

632 Subdivision B of Division 10 of Part 2-4 (heading)

Repeal the heading.

633 Subsection 248(1)

Repeal the subsection, substitute:

- (1) The following may apply to the FWC for an authorisation (a *single interest employer authorisation*) under section 249 in relation to a proposed enterprise agreement that will cover two or more employers:
 - (a) those employers;
 - (b) a bargaining representative of an employee who will be covered by the agreement.

633A Subsection 249(1)

Repeal the subsection, substitute:

Single interest employer authorisation

- (1) The FWC must make a single interest employer authorisation in relation to a proposed enterprise agreement if:
 - (a) an application for the authorisation has been made; and
 - (b) the FWC is satisfied that:
 - (i) at least some of the employees that will be covered by the agreement are represented by an employee organisation; and
 - (ii) the employers and the bargaining representatives of the employees of those employers have had the opportunity to express to the FWC their views (if any) on the authorisation; and
 - (iii) if the application was made by 2 or more employers under paragraph 248(1)(a)—the requirements of subsection (1A) are met; and
 - (iv) if the application was made by a bargaining representative under paragraph 248(1)(b)—each

employer either has consented to the application or is covered by subsection (1B); and

- (v) the requirements of either subsection (2) or (3) (which deal with franchisees and common interest employers) are met; and
- (vi) if the requirements of subsection (3) are met—the operations and business activities of each of those employers are reasonably comparable with those of the other employers that will be covered by the agreement.

(1AA) If:

- (a) the application for the authorisation was made by a bargaining representative under paragraph 248(1)(b); and
- (b) an employer that will be covered by the agreement employed 50 employees or more at the time that the application was made;

it is presumed that the operations and business activities of the employer are reasonably comparable with those of the other employers that will be covered by the agreement, unless the contrary is proved.

Additional requirements for application by employers

(1A) The requirements of this subsection are met if:

- (a) the employers that will be covered by the agreement have agreed to bargain together; and
- (b) no person coerced, or threatened to coerce, any of the employers to agree to bargain together.

Additional requirements for application by bargaining representative

(1B) An employer is covered by this subsection if:

- (a) the employer employed at least 20 employees at the time that the application for the authorisation was made; and
- (b) the employer has not made an application for a single interest employer authorisation that has not yet been decided in relation to the employees that will be covered by the agreement; and

- (c) the employer is not named in a single interest employer authorisation or supported bargaining authorisation in relation to the employees that will be covered by the agreement; and
 - (d) a majority of the employees who are employed by the employer at a time determined by the FWC and who will be covered by the agreement want to bargain for the agreement; and
 - (e) subsection (1D) does not apply to the employer.
- (1C) For the purposes of paragraph (1B)(d), the FWC may work out whether a majority of employees want to bargain using any method the FWC considers appropriate.
- (1D) This subsection applies to an employer if:
- (a) the employer and the employees of the employer that will be covered by the agreement are covered by an enterprise agreement that has not passed its nominal expiry date at the time that the FWC will make the authorisation; or
 - (b) the employer and an employee organisation that is entitled to represent the industrial interests of one or more of the employees of the employer that will be covered by the agreement have agreed in writing to bargain for a proposed single-enterprise agreement that would cover the employer and those employees or substantially the same group of those employees.

634 Subsection 249(2)

Omit “the FWC is satisfied that”.

634A Subsection 249(3)

Repeal the subsection, substitute:

Common interest employers

- (3) The requirements of this subsection are met if:
- (a) the employers have clearly identifiable common interests; and
 - (b) it is not contrary to the public interest to make the authorisation.

(3A) For the purposes of paragraph (3)(a), matters that may be relevant to determining whether the employers have a common interest include the following:

- (a) geographical location;
- (b) regulatory regime;
- (c) the nature of the enterprises to which the agreement will relate, and the terms and conditions of employment in those enterprises.

(3AB) If:

- (a) the application for the authorisation was made by a bargaining representative under paragraph 248(1)(b); and
- (b) an employer that will be covered by the agreement employed 50 employees or more at the time that the application was made;

it is presumed that the requirements of subsection (3) are met in relation to that employer, unless the contrary is proved.

Calculating number of employees

(3AC) For the purposes of calculating the number of employees referred to in paragraph (1AA)(b), (1B)(a) or (3AB)(b):

- (a) **employee** has its ordinary meaning; and
- (b) subject to paragraph (c), all employees employed by the employer at the time that the application for the authorisation was made are to be counted; and
- (c) a casual employee is not to be counted unless, at that time, the employee is a regular casual employee of the employer; and
- (d) associated entities of the employer are taken to be one entity.

635 Subparagraph 249(4)(b)(i)

Omit “the day on which”, substitute “at the same time as”.

635A After section 249

Insert:

249A Restriction on making single interest employer authorisations

The FWC must not make a single interest employer authorisation in relation to a proposed enterprise agreement if the agreement would cover employees in relation to general building and construction work.

636 Subsection 250(2)

Omit “employers that may bargain together for a proposed enterprise agreement”, substitute “common interest employers”.

636A At the end of section 250

Add:

- (3) The FWC may make a single interest employer authorisation that does not specify one or more employers specified in an application for the authorisation, and the employees (the *relevant employees*) of those employers specified in that application, if the FWC is satisfied that:
 - (a) the employers are bargaining in good faith for a proposed enterprise agreement that will cover the employers and the relevant employees, or substantially the same group of the relevant employees; and
 - (b) the employers and the relevant employees have a history of effectively bargaining in relation to one or more enterprise agreements that have covered the employers and the relevant employees, or substantially the same group of the relevant employees; and
 - (c) on the day that the FWC will make the authorisation, less than 9 months have passed since the most recent nominal expiry date of an agreement referred to in paragraph (b).
- (4) If the effect of subsection (3) is that no employers would be specified in the authorisation, the FWC may refuse the application for the authorisation.

637 Subsections 251(1) and (2)

Repeal the subsection, substitute:

Variation to remove employer

- (1) The following may apply to the FWC for a variation of a single interest employer authorisation to remove an employer's name from the authorisation:
 - (a) the employer;
 - (b) a bargaining representative of an employee who will be covered by the proposed enterprise agreement to which the authorisation relates.
- (2) The FWC must vary the authorisation to remove the employer's name if:
 - (a) an application has been made under subsection (1); and
 - (b) the requirements of either subsection (2A) or (2B) are met.
- (2A) The requirements of this subsection are met if the FWC is satisfied that:
 - (a) the employers specified in the authorisation and the bargaining representatives of the employees of those employers have had an opportunity to express to the FWC their views (if any) on the application; and
 - (b) because of a change in the employer's circumstances, it is no longer appropriate for the employer to be specified in the authorisation.
- (2B) The requirements of this subsection are met if:
 - (a) the application was made by a bargaining representative of an employee who will be covered by the proposed enterprise agreement to which the authorisation relates; and
 - (b) the FWC is satisfied that:
 - (i) the employer (the **relevant employer**) whose name is proposed to be removed employed fewer than 50 employees at the time that the application was made; and
 - (ii) the employers specified in the authorisation and the bargaining representatives of the employees of those employers have had the opportunity to express to the FWC their views (if any) on the application; and
 - (iii) the employees (the **relevant employees**) who are employed by the relevant employer and that would be

covered by the proposed enterprise agreement to which the authorisation relates have, on request by the bargaining representative, approved the removal of the relevant employer's name by voting for the removal; and

- (iv) there are no reasonable grounds for believing that the removal of the relevant employer's name has not been genuinely approved by the relevant employees.

Note: A person must not coerce another person to exercise a workplace right in a particular way (see section 343).

- (2C) Without limiting subparagraph (2B)(b)(iii), the bargaining representative may request that the relevant employees vote by ballot or by an electronic method.

- (2D) For the purposes of subparagraph (2B)(b)(iii), the relevant employees are taken to have approved the removal of the employer's name if:

- (a) at least 50% of the relevant employees cast a vote; and
(b) more than 50% of the valid votes were votes approving the removal.

638 Subsections 251(3) and (4)

Repeal the subsections, substitute:

Variation to add employer

- (3) The following may apply to the FWC for a variation of a single interest employer authorisation to add the name of an employer (the **new employer**) that is not specified in the authorisation to the authorisation:
- (a) the new employer;
- (b) a person who is a bargaining representative:
- (i) for the proposed enterprise agreement to which the authorisation relates; and
- (ii) of an employee of the new employer.
- (4) The FWC must vary the authorisation to add the new employer's name if:
- (a) an application for the variation has been made; and

(b) the FWC is satisfied that:

- (i) the employers specified in the authorisation and the bargaining representatives of the employees of those employers have had an opportunity to express to the FWC their views (if any) on the application; and
- (ii) if the application was made by the new employer under paragraph (3)(a)—no person coerced, or threatened to coerce, the new employer to make the application; and
- (iii) if the application was made by a bargaining representative under paragraph (3)(b)—the requirements of subsection (5) are met; and
- (iv) the requirements of subsection 249(2) or (3) (which deal with franchisees and common interest employers) would continue to be met if the new employer's name were added; and
- (v) if the requirements of subsection 249(3) would continue to be met if the new employer's name were added—the operations and business activities of the new employer are reasonably comparable with those of the employers specified in the authorisation.

(4A) If:

- (a) the application for approval of the variation was made by a bargaining representative under paragraph (3)(b) of this section; and
- (b) the new employer employed 50 employees or more at the time that the application was made; and
- (c) the requirements of subsection 249(2) do not apply to the new employer;

then the following matters are presumed, unless the contrary is proved:

- (d) that the requirements of subsection 249(3) would continue to be met if the new employer's name were added;
- (e) that, for the purposes of subparagraph (4)(b)(v) of this section, the operations and business activities of the new employer are reasonably comparable with those of the other employers that are specified in the authorisation.

Additional requirements for application by bargaining representative

- (5) The requirements of this subsection are met if:
 - (a) the new employer employed at least 20 employees at the time that the application for the variation was made; and
 - (b) the new employer has not made an application for a single interest employer authorisation that has not yet been decided in relation to the employees that will be covered by the agreement; and
 - (c) the new employer is not named in a single interest employer authorisation or supported bargaining authorisation in relation to the employees that will be covered by the agreement; and
 - (d) a majority of the employees who are employed by the new employer at a time determined by the FWC and who will be covered by the proposed enterprise agreement want to bargain for the agreement; and
 - (e) subsection (7) does not apply to the employer.
- (5A) For the purposes of calculating the number of employees referred to in subparagraph (2B)(b)(i) or paragraph (4A)(b) or (5)(a):
 - (a) **employee** has its ordinary meaning; and
 - (b) subject to paragraph (c), all employees employed by the new employer at the time that the application for the variation was made are to be counted; and
 - (c) a casual employee is not to be counted unless, at that time, the employee is a regular casual employee of the new employer; and
 - (d) associated entities of the new employer are taken to be one entity.
- (6) For the purposes of paragraph (5)(d), the FWC may work out whether a majority of employees want to bargain using any method the FWC considers appropriate.
- (7) This subsection applies to an employer if:
 - (a) the new employer and the employees of the new employer that will be covered by the agreement are covered by an

enterprise agreement that has not passed its nominal expiry date at the time that the FWC will make the variation; or

- (b) the new employer and an employee organisation that is entitled to represent the industrial interests of one or more of the employees of the new employer that will be covered by the agreement have agreed in writing to bargain for a proposed single-enterprise agreement that would cover the new employer and those employees or substantially the same group of those employees.

Employers and employees that are already bargaining

- (8) Despite subsection (4), the FWC may refuse to vary the authorisation if the FWC is satisfied that:
 - (a) the new employer is bargaining in good faith for a proposed enterprise agreement that will cover the new employer and the employees of the new employer that will be covered by the agreement, or substantially the same group of those employees; and
 - (b) the new employer and those employees have a history of effectively bargaining in relation to one or more enterprise agreements that have covered the new employer and those employees, or substantially the same group of those employees; and
 - (c) on the day that the FWC will vary the authorisation, less than 9 months have passed since the most recent nominal expiry date of an agreement referred to in paragraph (b).

639A After section 251

Insert:

251A Restriction on variation of single interest employer authorisation

Despite subsection 251(4), the FWC must not vary a single interest employer authorisation if, as a result of the variation, the proposed enterprise agreement to which the authorisation relates would cover employees in relation to general building and construction work.

640A Subsection 477(2)

Repeal the subsection, substitute:

Persons who may make applications

- (2) If the agreement will cover more than one employer, the application may be made by a bargaining representative of an employer that will be covered by the agreement, on behalf of one or more other such bargaining representatives, if those other bargaining representatives have agreed to the application being made on their behalf.

Part 22—Varying enterprise agreements to remove employers and their employees

Fair Work Act 2009

641 In the appropriate position in Division 7 of Part 2-4

Insert:

Subdivision AE—Variation of multi-enterprise agreement to remove employer and employees

216E Variation of multi-enterprise agreement to remove employer and employees with consent

Variation by employers and employees

- (1) The following may jointly make a variation of a multi-enterprise agreement covered by subsection (2), that will have the effect that they will cease to be covered by the agreement:
 - (a) an employer that is covered by the agreement;
 - (b) the employees employed at the time who will cease to be covered by the agreement if the variation is approved by the FWC (the ***affected employees***).
- (2) This subsection covers a multi-enterprise agreement made after the commencement of this subsection if the agreement is not a greenfields agreement and there are 2 or more employers covered by the agreement.

Variation has no effect unless approved by the FWC

- (3) The variation has no effect unless it is approved by the FWC under section 216EB.

Approval by employee vote

- (4) The employer may request the affected employees to approve the proposed variation by voting for it.

- (5) Before making the request, the employer must:
 - (a) take all reasonable steps to notify the employees of the following:
 - (i) the time and place at which the vote will occur;
 - (ii) the voting method that will be used; and
 - (b) give the employees a reasonable opportunity to decide whether they want to approve the proposed variation.
- (6) Without limiting subsection (4), the employer may request that the affected employees vote by ballot or by an electronic method.

When a variation is made

- (7) The variation is **made** when a majority of the affected employees who cast a valid vote approve the variation.

216EA Application for the FWC's approval of variation

Application for approval

- (1) If a variation of a multi-enterprise agreement is made as mentioned in section 216E, one of the following must apply to the FWC for approval of the variation:
 - (a) the employer mentioned in paragraph 216E(1)(a);
 - (b) an affected employee;
 - (c) an employee organisation covered by the agreement that is entitled to represent the industrial interests of an affected employee.

Material to accompany the application

- (2) The application must be accompanied by any declarations that are required by the procedural rules to accompany the application.

When the application must be made

- (3) The application must be made:
 - (a) within 14 days after the variation is made; or
 - (b) if in all the circumstances the FWC considers it fair to extend that period—within such further period as the FWC allows.

Signature requirements

- (4) The regulations may prescribe requirements relating to the signing of variations of enterprise agreements.

216EB When the FWC must approve variation of multi-enterprise agreement to remove employer and employees

If an application for the approval of a variation of a multi-enterprise agreement is made under section 216EA, the FWC must approve the variation if the FWC is satisfied that:

- (a) the employer mentioned in paragraph 216E(1)(a) complied with subsection 216E(5) (which deals with giving employees a reasonable opportunity to decide etc.) in relation to the variation; and
- (b) the affected employees have voted, by ballot or by an electronic method, on whether to approve the variation and, of those who cast a valid vote, a majority approved the variation; and
- (c) there are no other reasonable grounds for believing that a majority of the affected employees who cast a valid vote did not approve the variation; and
- (d) each employee organisation covered by the agreement, that is entitled to represent the industrial interests of one or more affected employees, agrees to the variation.

216EC When variation comes into operation

If a variation of a multi-enterprise agreement is approved under section 216EB, the variation operates from the day specified in the decision to approve the variation.

216ED Effect of variation

A multi-enterprise agreement that is varied under this Subdivision remains a multi-enterprise agreement, despite the variation.

Part 23—Cooperative workplaces

Fair Work Act 2009

642 Section 12

Insert:

cooperative workplace agreement: a multi-enterprise agreement is a *cooperative workplace agreement* if there was no supported bargaining authorisation or single interest employer authorisation in operation in relation to the agreement immediately before the agreement was made.

647 After subsection 186(2)

Insert:

- (2AA) In applying paragraph 186(2)(b), the FWC must disregard anything done, and the effect of anything done, by a person other than one of the employers who bargained for the agreement, that is authorised by or under this Act (including protected industrial action).

Requirement relating to representation for cooperative workplace agreement (not greenfields)

- (2A) If the agreement is a cooperative workplace agreement that is not a greenfields agreement, the FWC must be satisfied that at least some of the employees covered by the agreement were represented by an employee organisation in relation to bargaining for the agreement.

649 In the appropriate position in Division 7 of Part 2-4

Insert:

Subdivision AC—Variation of cooperative workplace agreement to add employer and employees

216C Variation of cooperative workplace agreement to add employer and employees

- (1) A variation of a cooperative workplace agreement, that has the effect that an employer that was not covered by the agreement will be covered by it, may be made jointly by the employer and the affected employees.

Note: Once the employer is covered by the agreement, any of their employees who the agreement is expressed to cover will also be covered by it. See also the definition of *affected employees* in section 12.

- (2) The employer may request the affected employees to approve the proposed variation by voting for it.
- (3) Without limiting subsection (3), the employer may request that the affected employees vote by ballot or by an electronic method.
- (4) The variation is *made* when a majority of the affected employees who cast a valid vote approve the variation.
- (5) The variation has no effect unless it is approved by the FWC under section 216CB.

216CAA Terms of the variation must be explained to employees

- (1) Before an employer requests under subsection 216C(2) that affected employees approve a proposed variation, the employer must take all reasonable steps to ensure that:
 - (a) the terms of the agreement as proposed to be varied, and the effect of those terms, are explained to the affected employees; and
 - (b) the explanation is provided in an appropriate manner taking into account the particular circumstances and needs of those employees.
- (2) Without limiting paragraph (1)(b), the following are examples of the kinds of employees whose circumstances and needs are to be

taken into account for the purposes of complying with that paragraph:

- (a) employees from culturally and linguistically diverse backgrounds;
- (b) young employees;
- (c) employees who did not have a representative for the variation.

216CA Application for the FWC's approval of a variation of a cooperative workplace agreement to add employer and employees

Application for approval

- (1) If a variation of a cooperative workplace agreement is made as mentioned in section 216C, the employer must apply to the FWC for approval of the variation.

Material to accompany the application

- (2) The application must be accompanied by:
 - (a) a signed copy of the variation; and
 - (b) a copy of the agreement as proposed to be varied; and
 - (c) any declarations that are required by the procedural rules to accompany the application.

When the application must be made

- (3) The application must be made:
 - (a) within 14 days after the variation is made; or
 - (b) if in all the circumstances the FWC considers it fair to extend that period—within such further period as the FWC allows.

Signature requirements

- (4) The regulations may, for the purposes of this Subdivision, prescribe requirements relating to the signing of variations.

216CB When the FWC must approve a variation of a cooperative workplace agreement to add employer and employees

- (1) If an application for the approval of a variation of a cooperative workplace agreement is made under section 216CA, the FWC must approve the variation if the FWC is satisfied that:
 - (a) the employers, and any employee organisations, covered by the agreement before the variation was made have had an opportunity to express to the FWC their views (if any) on the variation; and
 - (b) the affected employees have voted on whether to approve the variation and, of those who cast a valid vote, a majority approved the variation; and
 - (c) the variation has been genuinely agreed to by the affected employees in accordance with section 216CC; and
 - (d) it is not contrary to the public interest for the employer and the affected employees to be covered by the agreement.
- (2) Despite subsection (1), the FWC must not approve the variation if:
 - (a) the agreement is a greenfields agreement that covers employees in relation to general building and construction work; or
 - (b) as a result of the variation, the agreement would cover employees in relation to general building and construction work.
- (3) Despite subsection (1), the FWC must not approve the variation if the employer that will be covered by the agreement is specified in a supported bargaining authorisation, or a single interest employer authorisation, in relation to any of the affected employees.

216CC Determining whether a variation of a cooperative workplace agreement to add employer and employees has been genuinely agreed to by affected employees

- (1) For the purposes of paragraph 216CB(1)(c), the FWC is to determine whether it is satisfied that the variation has been genuinely agreed to by the affected employees in accordance with section 188, modified as follows:

- (a) as if references (other than in a note) to an enterprise agreement being genuinely agreed to were references to the variation being genuinely agreed to;
 - (b) as if references to employees covered by or expressed to be covered by the agreement, employees requested to approve the agreement by voting for it, or employees, were references to the affected employees;
 - (c) as if, in paragraph 188(2)(a), the reference to the agreement were a reference to the agreement as proposed to be varied;
 - (d) as if subsections 188(2A), (3) and (4) were omitted;
 - (e) as if, in subsections 188(4A) and (5), references to subsection 180(5) were references to section 216CAA;
 - (f) as if, in paragraph 188(5)(c), the reference to subsection 182(1) or (2) were a reference to subsection 216C(4).
- (2) In taking into account the statement of principles made under section 188B:
 - (a) the FWC may disregard the matters mentioned in paragraphs 188B(3)(a) and (b); and
 - (b) the matters mentioned in paragraphs 188B(3)(c) and (d) are taken to be matters relating to the agreement as proposed to be varied; and
 - (c) the matters mentioned in paragraph 188B(3)(e) are taken to be matters relating to the variation.
- (3) The regulations may provide that, for the purposes of the FWC determining whether it is satisfied that the variation has been genuinely agreed to by the affected employees, specified provisions of this Part, or regulations made for the purposes of this Part, have effect with such modifications as are prescribed by the regulations.

216CD When the FWC may refuse to approve a variation of a cooperative workplace agreement

- (1) If an application for the approval of a variation of a cooperative workplace agreement is made under section 216CA, the FWC may refuse to approve the variation if the FWC considers that

compliance with the terms of the agreement as proposed to be varied may result in:

- (a) a person committing an offence against a law of the Commonwealth; or
 - (b) a person being liable to pay a pecuniary penalty in relation to a contravention of a law of the Commonwealth.
- (2) Subsection (1) has effect despite section 216CB (which deals with the approval of variations of cooperative workplace agreements).
- (3) If the FWC refuses to approve a variation of a cooperative workplace agreement under this section, the FWC may refer the agreement as proposed to be varied to any person or body the FWC considers appropriate.

216CE When variation comes into operation

If a variation of a cooperative workplace agreement is approved under section 216CB, the variation operates from the day specified in the decision to approve the variation.

650 After subsection 417(2)

Insert:

- (2A) If the person is an employer or employee covered by an enterprise agreement because of a variation approved or made by the FWC under section 216AB, 216BA, 216CB or 216DC, the reference in paragraph (1)(a) to the day the enterprise agreement is approved by the FWC is taken to be a reference to the day the variation starts to operate in accordance with section 216AF, 216BC, 216CE or 216DF (as the case may be).

Part 23A—Excluded work

Fair Work Act 2009

651A Section 12

Insert:

applicable time: see subsection 23B(2).

general building and construction work: see subsection 23B(1).

651B At the end of Division 4 of Part 1-2

Add:

23B Meaning of general building and construction work

- (1) Work is *general building and construction work* if:
- (a) the work is done, onsite, by an employee in the industry of:
 - (i) general building and construction within the meaning of paragraph 4.3(a) of the Building and Construction General On-site Award 2020 as in force at the applicable time; or
 - (ii) civil construction within the meaning of paragraph 4.3(b) of the Building and Construction General On-site Award 2020 as in force at the applicable time; and
 - (b) the work is not any of the following:
 - (i) work in the industry of metal and engineering construction within the meaning of paragraph 4.3(c) of the Building and Construction General On-site Award 2020 as in force at the applicable time;
 - (iii) work in manufacturing and associated industries and occupations within the meaning of clause 4.8 of the Manufacturing and Associated Industries and Occupations Award 2020 as in force at the applicable time;

- (iv) the work of an employee who is covered by the Joinery and Building Trades Award 2020, as in force at the applicable time, in relation to the work;
- (v) work in the industry of electrical services, within the meaning of clause 4.3 of the Electrical, Electronic and Communications Contracting Award 2022 as in force at the applicable time, provided by electrical, electronics and communications contractors and their employees;
- (vi) work that is plumbing, or fire sprinkler fitting, within the meaning of clause 4.2 of the Plumbing and Fire Sprinklers Award 2020 as in force at the applicable time;
- (vii) work in the black coal mining industry within the meaning of clause 4.2 of the Black Coal Mining Industry Award 2020 as in force at the applicable time;
- (viii) work in the mining industry within the meaning of clause 4.2 of the Mining Industry Award 2020 as in force at the applicable time;
- (ix) work in the quarrying industry within the meaning of clause 4.3 of the Cement, Lime and Quarrying Award 2020 as in force at the applicable time;
- (x) work in the concrete products industry within the meaning of clause 4.2 of the Concrete Products Award 2020 as in force at the applicable time;
- (xi) work in the premixed concrete industry within the meaning of clause 4.2 of the Premixed Concrete Award 2020 as in force at the applicable time;
- (xii) work in connection with the installation, major modernisation, servicing, repair or maintenance of lifts and escalators, or air-conditioning or ventilation;
- (xiii) work in the asphalt industry within the meaning of clause 4.2 of the Asphalt Industry Award 2020 as in force at the applicable time;
- (xiv) work, in that part of the industry of civil construction described in subparagraph 4.3(b)(i) of the Building and Construction General On-site Award 2020 as in force at the applicable time, that is the construction, repair, maintenance or demolition of power houses or other structures that use eligible renewable energy sources

(within the meaning of section 17 of the *Renewable Energy (Electricity) Act 2000*) to generate electricity.

- (2) The *applicable time* is the start of the day before this section commences.

651C Subsection 172(3) (note)

Omit “Note”, substitute “Note 1”.

651D At the end of subsection 172(3)

Add:

- Note 2: The FWC must not approve a multi-enterprise agreement that is not a greenfields agreement if the agreement would cover employees in relation to general building and construction work (see subsection 186(2B)).

651E Before subsection 186(3)

Insert:

Requirement that multi-enterprise agreements (other than greenfields agreements) not cover employees in relation to general building and construction work

- (2B) If the agreement is a multi-enterprise agreement that is not a greenfields agreement, the FWC must be satisfied that the agreement does not cover employees in relation to general building and construction work.

651F After paragraph 211(2)(a)

Insert:

- (aa) if the agreement is a multi-enterprise agreement—take into account subsection (3A); and

651G After subsection 211(3)

Insert:

- (3A) Subsection 186(2B) has effect as if the requirement in that subsection that the agreement must not cover employees in relation to general building and construction work were a requirement that

the agreement as proposed to be varied must not cover employees in relation to such work.

Part 24—Enhancing the small claims processes

Fair Work Act 2009

651 Paragraph 548(2)(a)

Omit “\$20,000”, substitute “\$100,000”.

652 After subsection 548(2)

Insert:

- (2A) Interest awarded under section 547 does not count towards the maximum amount that the court may award under subsection (2) of this section.

653 At the end of section 548

Add:

Costs for filing fees paid in relation to the proceedings

- (10) If the court makes an order (the ***small claims order***) mentioned in subsection (1) against a party to small claims proceedings, the court may make an order as to costs against the party for any filing fees paid to the court by the party that applied for the small claims order.
- (11) Subsection (10) applies despite section 570.

Part 25—Prohibiting employment advertisements with pay rate that would contravene the Act

Fair Work Act 2009

654 At the end of subsection 6(7)

Add:
; and (c) advertising rates of pay.

655 At the end of section 528

Add:

Division 4 is about the obligations of national system employers in relation to advertising rates of pay.

656 At the end of Part 3-6

Add:

Division 4—Employer obligations in relation to advertising rates of pay

536AA Employer obligations in relation to advertising rates of pay

*Employers must not advertise employment with rate of pay that
contravenes this Act or a fair work instrument*

- (1) An employer must not advertise, or cause to be advertised, that the employer is offering employment at a rate of pay that would contravene either of the following, if the advertised employment occurred:
- (a) this Act;
 - (b) a fair work instrument.

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

Schedule 1 Amendments

Part 25 Prohibiting employment advertisements with pay rate that would contravene the Act

Advertisement of piecework must include any periodic rate of pay to which pieceworker is entitled

(2) If:

- (a) an employer advertises, or causes to be advertised, that the employer is offering employment as a pieceworker; and
- (b) the employee would be entitled to a periodic rate of pay, if the advertised employment occurred;

the advertisement must:

- (c) specify that rate of pay (or a higher rate of pay); or
- (d) include a statement to the effect that a periodic rate of pay is payable in relation to the employment.

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

Reasonable excuse

- (3) Subsections (1) and (2) do not apply if the employer has a reasonable excuse.

657 Subsection 539(2) (after table item 29)

Insert:

29AA	536AA(1)	(a) an employee	(a) the Federal Court;	60 penalty
	536AA(2)	organisation;	(b) the Federal	units
		(b) an inspector	Circuit and	
			Family Court of	
			Australia	
			(Division 2)	

658 After paragraph 557(2)(o)

Insert:

- (oa) subsections 536AA(1) and (2) (which deal with employer obligations in relation to advertising rates of pay);

659 After paragraph 716(1)(f)

Insert:

- (fa) subsection 536AA(1) or (2) (which deal with employer obligations in relation to advertising rates of pay);

Part 25AA—Having regard to certain additional matters in performing functions

Fair Work Act 2009

659AA Section 577

Before “The FWC”, insert “(1)”.

659AB At the end of section 577

Add:

- (2) In performing its functions under paragraph 576(2)(b), the FWC must have regard to:
 - (a) the need for guidelines and other materials to be available in multiple languages; and
 - (b) the need for community outreach in multiple languages.

659AC After subsection 682(1)

Insert:

- (1A) In performing functions under paragraph (1)(a), the Fair Work Ombudsman must have regard to:
 - (a) the need for guidelines and other materials to be available in multiple languages; and
 - (b) the need for community outreach in multiple languages.

Part 25A—Establishment of the National Construction Industry Forum

Fair Work Act 2009

659A Section 12

Insert:

Industry Minister means the Minister administering the *Australian Jobs Act 2013*.

Infrastructure Minister means the Minister administering the *Infrastructure Australia Act 2008*.

659B After Part 6-4C of Chapter 6

Insert:

Part 6-4D—The National Construction Industry Forum

789GZC Establishment

The National Construction Industry Forum is established by this section.

789GZD Function of the Forum

- (1) The function of the National Construction Industry Forum is to provide advice to the Government in relation to work in the building and construction industry.
- (2) The matters in relation to which the Forum may provide advice include, but are not limited to, the following:
 - (a) workplace relations;
 - (b) skills and training;
 - (c) safety;
 - (d) productivity;

- (e) diversity and gender equity;
 - (f) industry culture.
- (3) Matters for advice may be:
- (a) raised by the Government; or
 - (b) agreed between the members of the Forum.

789GZE Membership

- (1) The members of the National Construction Industry Forum are:
- (a) the Minister; and
 - (b) the Infrastructure Minister; and
 - (c) the Industry Minister; and
 - (d) the members appointed by the Minister.
- (2) The Minister must appoint:
- (a) one or more members who have experience representing employees in the building and construction industry; and
 - (b) an equal number of members who have experience representing employers in the building and construction industry, including at least one member who has experience representing contractors in the building and construction industry, and one member with experience in small to medium sized enterprises in the residential building sector.
- (3) The Minister may appoint any other person.

789GZF Appointment by the Minister

A member of the National Construction Industry Forum appointed by the Minister:

- (a) is to be appointed by written instrument; and
- (b) holds office:
 - (i) on a part-time basis; and
 - (ii) for the period specified in the instrument, which must not exceed 3 years.

Note: A member is eligible for reappointment (see section 33AA of the *Acts Interpretation Act 1901*).

789GZG Chair of the Forum

- (1) The Minister is the Chair of the National Construction Industry Forum.
- (2) If the Minister is unable to preside at a meeting, or considers it appropriate for any other reason, the Minister may nominate another Minister to preside at the meeting.

789GZH Meetings

- (1) The Chair of the National Construction Industry Forum must convene at least 2 meetings of the Forum in each calendar year.
- (2) One meeting must be held in the first 6 months of the year and another must be held in the second 6 months of the year.
- (3) Otherwise, the timing of meetings is to be determined by the Chair in consultation with the members.
- (4) The procedure to be followed at a meeting is to be determined by the Chair in consultation with the members.

789GZJ Confidentiality

- (1) The views expressed at meetings of the National Construction Industry Forum are to be kept confidential.
- (2) However, this does not prevent members from:
 - (a) reporting to the persons, bodies or organisations they represent; or
 - (b) making announcements the members agree are in the public interest.
- (3) Within 14 working days of a meeting, the National Construction Industry Forum must publish on the Department's website a public communique.

789GZK Substitute members

- (1) If a member of the National Construction Industry Forum is unable to be present at a meeting, the member may nominate a person to attend the meeting in the member's place.

- (2) If the Chair agrees, the person may attend the meeting in the place of the member.
- (3) A person attending a meeting in the place of a member has all the rights and responsibilities of the member at, and in relation to, the meeting.

Note: For example, a substitute member must comply with the confidentiality requirement in section 789GZJ.

789GZL Invited participants

- (1) The Chair may, after consulting the members of the National Construction Industry Forum, invite a person, body or organisation to participate in a meeting.
- (2) The Chair may terminate the invitation at any time, including during a meeting.
- (3) The participation of a person in a meeting does not make the person a member.
- (4) A person invited to participate in a meeting:
 - (a) is entitled to payment of travel allowance as if the person were a member; and
 - (b) must comply with subsection 789GZJ(1) (confidentiality).

789GZM Remuneration

- (1) A member of the National Construction Industry Forum is not entitled to be paid remuneration or allowances, other than travel allowance in accordance with subsection (2).
- (2) A member who is not a Minister or a member of the Parliament is entitled to be paid travel allowance at the rate prescribed by the regulations.
- (3) To avoid doubt, this section does not affect any entitlements of a Minister or a member of the Parliament under the *Parliamentary Business Resources Act 2017*.

789GZN Resignation

- (1) A member of the National Construction Industry Forum appointed by the Minister may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

789GZP Disclosure of interests

- (1) A member of the National Construction Industry Forum who has a material personal interest that relates to a matter being considered by the Forum must disclose the interest to the Chair.
- (2) The member must not participate in any part of a meeting during which the matter is dealt with.

789GZQ Termination of appointment

The Minister may terminate the appointment of a member of the National Construction Industry Forum appointed by the Minister:

- (a) for misbehaviour; or
- (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity; or
- (c) if the member:
 - (i) becomes bankrupt; or
 - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with one or more of the member's creditors; or
 - (iv) makes an assignment of the member's remuneration for the benefit of one or more of the member's creditors; or
- (d) for a member appointed because the member held a particular position or qualification, or represented a particular group—if the member no longer holds the position or qualification, or represents that group; or

- (e) the member fails, without reasonable excuse, to comply with section 789GZJ (confidentiality) or section 789GZP (disclosure of interests); or
- (f) if the member is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Forum.

Part 25B—Unpaid parental leave

Division 1—Main amendments

Fair Work Act 2009

659C Paragraphs 72(3)(b) and (4)(b)

Omit “or 76”, substitute “or 76A”.

659D Subsection 72A(5)

Omit “section 76”, substitute “section 76A”.

659E Subsections 76(3) to (5A)

Repeal the subsections.

659F Subsection 76(6)

Omit “under this section”, substitute “requested under this section”.

659G After section 76

Insert:

76A Responding to requests for extension of unpaid parental leave

Responding to the request

- (1) If, under subsection 76(1), an employee requests an employer to agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months immediately following the end of the available parental leave period, the employer must give the employee a written response to the request within 21 days.
- (2) The response must:
 - (a) state that the employer grants the request; or
 - (b) if, following discussion between the employer and the employee, the employer and the employee agree to an extension of unpaid parental leave for the employee for a period that differs from the period requested—set out the agreed extended period; or

- (c) subject to subsection (3)—state that the employer refuses the request and include the matters required by subsection (6).
- (3) The employer may refuse the request only if:
 - (a) the employer has:
 - (i) discussed the request with the employee; and
 - (ii) genuinely tried to reach an agreement with the employee about an extension of the period of unpaid parental leave for the employee; and
 - (b) the employer and the employee have not reached such an agreement; and
 - (c) the employer has had regard to the consequences of the refusal for the employee; and
 - (d) the refusal is on reasonable business grounds.

Note: An employer's grounds for refusing a request may be taken to be reasonable business grounds, or not to be reasonable business grounds, in certain circumstances (see subsection 76C(6)).

- (4) To avoid doubt, subparagraph (3)(a)(ii) does not require the employer to agree to an extension of the period of unpaid parental leave for the employee if the employer would have reasonable business grounds for refusing a request for the extension.

Reasonable business grounds for refusing requests

- (5) Without limiting what are reasonable business grounds for the purposes of paragraph (3)(d) and subsection (4), reasonable business grounds for refusing a request include the following:
 - (a) that the extension of the period of unpaid parental leave requested by the employee would be too costly for the employer;
 - (b) that there is no capacity to change the working arrangements of other employees to accommodate the extension of the period of unpaid parental leave requested by the employee;
 - (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the extension of the period of unpaid parental leave requested by the employee;

- (d) that the extension of the period of unpaid parental leave requested by the employee would be likely to result in a significant loss in efficiency or productivity;
- (e) that the extension of the period of unpaid parental leave requested by the employee would be likely to have a significant negative impact on customer service.

Note: The specific circumstances of the employer, including the nature and size of the enterprise carried on by the employer, are relevant to whether the employer has reasonable business grounds for refusing a request for the purposes of paragraph (3)(d) and subsection (4). For example, if the employer has only a small number of employees, there may be no capacity to change the working arrangements of other employees to accommodate the request (see paragraph (5)(b)).

Employer must explain grounds for refusal

- (6) If the employer refuses the request, the written response under subsection (1) must:
 - (a) include details of the reasons for the refusal; and
 - (b) without limiting paragraph (a) of this subsection:
 - (i) set out the employer's particular business grounds for refusing the request; and
 - (ii) explain how those grounds apply to the request; and
 - (c) either:
 - (i) set out the extension of the period of unpaid parental leave for the employee (other than the period requested by the employee) that the employer would be willing to agree to; or
 - (ii) state that there is no extension of the period that the employer would be willing to agree to; and
 - (d) set out the effect of sections 76B and 76C.

Genuinely trying to reach an agreement

- (7) This section does not affect, and is not affected by, the meaning of the expression "genuinely trying to reach an agreement", or any variant of the expression, as used elsewhere in this Act.

Division 2—Civil remedies and dispute resolution

Fair Work Act 2009

659H Subsection 44(1)

Omit “(1)”.

659J Subsection 44(1) (note)

Omit “subsection”, substitute “section”.

659K Subsection 44(2)

Repeal the subsection (including the notes).

659L Before section 77

Insert:

76B Disputes about extension of period of unpaid parental leave

Application of this section

- (1) This section applies to a dispute between an employer and an employee that relates to a request by the employee to the employer under subsection 76(1) to agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months immediately following the end of the available parental leave period if:
- (a) the employer has refused the request; or
 - (b) 21 days have passed since the employee made the request, and the employer has not given the employee a written response to the request under section 76A.

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

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

Resolving disputes

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

FWC may deal with disputes

- (3) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.
- (4) If a dispute is referred under subsection (3):
- (a) the FWC must first deal with the dispute by means other than arbitration, unless there are exceptional circumstances; and
 - (b) the FWC may deal with the dispute by arbitration in accordance with section 76C.

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

Representatives

- (5) The employer or employee may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of:
- (a) resolving the dispute; or
 - (b) the FWC dealing with the dispute.

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

76C Arbitration

- (1) For the purposes of paragraph 76B(4)(b), the FWC may deal with the dispute by arbitration by making any of the following orders:
- (a) if the employer has not given the employee a written response to the request under section 76A—an order that the employer be taken to have refused the request;
 - (b) if the employer refused the request:

- (i) an order that it would be appropriate for the grounds on which the employer refused the request to be taken to have been reasonable business grounds; or
- (ii) an order that it would be appropriate for the grounds on which the employer refused the request to be taken not to have been reasonable business grounds;
- (c) if the FWC is satisfied that the employer has not responded, or has not responded adequately, to the employee's request under section 76A—an order that the employer take such further steps as the FWC considers appropriate, having regard to the matters in section 76A;
- (d) subject to subsection (4) of this section:
 - (i) an order that the employer grant the request; or
 - (ii) an order that the employer agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months (other than the period requested by the employee) immediately following the end of the available parental leave period.

Note: An order by the FWC under paragraph (c) could, for example, require the employer to give a response, or further response, to the employee's request, and could set out matters that must be included in the response or further response.

- (2) In making an order under subsection (1), the FWC must take into account fairness between the employer and the employee.
- (3) The FWC must not make an order under paragraph (1)(c) or (d) that would be inconsistent with:
 - (a) a provision of this Act; or
 - (b) a term of a fair work instrument (other than an order made under that paragraph) that, immediately before the order is made, applies to the employer and employee.
- (4) The FWC may make an order under paragraph (1)(d) only if the FWC is satisfied that there is no reasonable prospect of the dispute being resolved without the making of such an order.
- (5) If the FWC makes an order under paragraph (1)(a), the employer is taken to have refused the request.

- (6) If the FWC makes an order under paragraph (1)(b), the grounds on which the employer refuses the request are taken:
- (a) for an order made under subparagraph (1)(b)(i)—to be reasonable business grounds; or
 - (b) for an order made under subparagraph (1)(b)(ii)—not to be reasonable business grounds.

Contravening an order under subsection (1)

- (7) A person must not contravene a term of an order made under subsection (1).

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

659M Section 146 (note)

Repeal the note.

659N Subsection 186(6) (notes 1 and 2)

Repeal the notes.

659P Subsection 539(2) (table item 1, column 1)

Omit “44(1)”, substitute “44”.

659Q Subsection 539(2) (after table item 5AA)

Insert:

5AB	76C(7)	(a) an employee;	(a) the Federal	60 penalty units
		(b) an employee organisation;	Court;	
		(c) an inspector	(b) the Federal Circuit and Family Court of Australia (Division 2);	
			(c) an eligible State or Territory court	

659R Subsection 539(2) (table item 34, column 1)

Omit “745(1)”, substitute “745”.

659S Subsection 545(1) (note 4)

Repeal the note, substitute:

Note 4: There are limitations on orders that can be made in relation to contraventions of subsection 463(1) or (2) (which deals with protected action ballot orders) (see subsection 463(3)).

659T Paragraph 557(2)(a)

Omit “subsection 44(1)”, substitute “section 44”.

659U Paragraph 557(2)(p)

Omit “subsection 745(1)”, substitute “section 745”.

659V Paragraph 557C(3)(a)

Omit “subsection 44(1)”, substitute “section 44”.

659W Paragraph 558B(7)(a)

Omit “subsection 44(1)”, substitute “section 44”.

659X After paragraph 675(2)(aa)

Insert:

(ab) an order under subsection 76C(1) (which deals with the extension of periods of unpaid parental leave);

659Y Subsection 739(2)

Repeal the subsection.

659Z Subsection 740(2)

Repeal the subsection.

659ZA Subsection 745(1)

Omit “(1)”.

659ZB Subsection 745(1) (note 1)

Omit “subsection”, substitute “section”.

659ZC Subsection 745(2)

Repeal the subsection (including the note).

Part 26—Application, saving, transitional and miscellaneous consequential provisions

Division 1—Application, saving and transitional provisions

Fair Work Act 2009

660 In the appropriate position in Schedule 1

Insert:

Part 13—Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

Division 1—Definitions

55 Definitions

In this Part:

amended Act means this Act as amended by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.

amending Act means the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.

commencement means the commencement of this Part.

Division 2—Amendments made by Part 1 of Schedule 1 to the amending Act

56 Appeal of decisions of the Registered Organisations Commissioner

Divisions 3 and 4 of Part 5-1, as amended by Division 2 of Part 1 of Schedule 1 to the amending Act, have effect as if a reference to

a decision made under the Registered Organisations Act by the General Manager included a reference to a decision made under the Registered Organisations Act before the commencement of Division 2 of Part 1 of that Schedule by the Registered Organisations Commissioner (including a delegate of the Commissioner), other than a decision under subsection 293H(3) of the Registered Organisations Act.

Division 3—Amendments made by Part 4 of Schedule 1 to the amending Act

57 Objects of the Act

- (1) Sections 3 and 134 of the amended Act apply, after commencement, in relation to the FWC performing functions, or exercising powers, in relation to:
 - (a) a matter that arises after commencement; or
 - (b) a proceeding in the FWC that was on foot at commencement, or commences after commencement.
- (2) Section 284 of the amended Act applies, after commencement, in relation to an annual wage review conducted in:
 - (a) the financial year beginning on 1 July 2022; or
 - (b) a later financial year.

Division 4—Amendments made by Part 5 of Schedule 1 to the amending Act

58 Equal remuneration

- (1) Section 157 of the amended Act applies after commencement in relation to a determination or modern award made under that section after commencement.
- (2) Subsections 302(3A) to (4A) of the amended Act apply after commencement in relation to the FWC performing functions, or exercising powers, in relation to:
 - (a) a matter that arises after commencement; or
 - (b) a proceeding in the FWC that was on foot at commencement, or commences after commencement.

- (3) If an application under subsection 302(3) of this Act as in force immediately before commencement has not been finally determined at commencement, subsection 302(5) of the amended Act applies in relation to the application as if it were an application under paragraph 302(3)(b) of the amended Act.

Division 5—Amendments made by Part 7 of Schedule 1 to the amending Act

59 Pay secrecy

- (1) Section 333B of the amended Act applies after commencement in relation to an employee if:
- (a) the employee's contract of employment is entered into on or after commencement; or
 - (b) the employee's contract of employment is entered into before commencement and does not include a term that is inconsistent with subsection 333B(1) or (2) of the amended Act.
- (2) If:
- (a) an employee's contract of employment is entered into before commencement; and
 - (b) the contract includes a term that is inconsistent with subsection 333B(1) or (2) of the amended Act; and
 - (c) after commencement, the contract is varied at a particular time;
- section 333B of the amended Act applies in relation to the employee after that time.
- (3) Section 333C of the amended Act applies after commencement in relation to a fair work instrument made before, on or after commencement.
- (4) Section 333C of the amended Act applies after commencement in relation to a contract of employment if:
- (a) the contract is entered into on or after commencement; or
 - (b) the contract is entered into before commencement and does not include a term that is inconsistent with subsection 333B(1) or (2) of the amended Act.

- (5) If:
- (a) a contract of employment is entered into before commencement; and
 - (b) the contract includes a term that is inconsistent with subsection 333B(1) or (2) of the amended Act; and
 - (c) after commencement, the contract is varied at a particular time;
- section 333C of the amended Act applies in relation to the contract after that time.
- (6) Section 333D of the amended Act applies after the 6-month period beginning on commencement in relation to a contract of employment entered into on or after commencement.

Division 6—Amendments made by Part 8 of Schedule 1 to the amending Act

60 Prohibiting sexual harassment in connection with work

- (1) Despite the amendments of Part 6-4B made by Schedule 1 to the amending Act, that Part, as in force immediately before the commencement of Division 1 of Part 8 of that Schedule, continues to apply, on and after that commencement, in relation to:
- (a) the sexual harassment of a worker at work before that commencement; and
 - (b) the sexual harassment of a worker at work on or after that commencement, if the sexual harassment is part of a course of conduct that begins before that commencement.
- (2) Despite the repeal of subsection 789FF(1) by Schedule 1 to the amending Act, an order that was in force under that subsection immediately before the commencement of Division 1 of Part 8 of that Schedule continues in force (and may be dealt with) on and after that commencement as if that repeal had not happened.
- (3) Subsection 527D(1) does not apply in relation to sexual harassment of a worker if the sexual harassment is part of a course of conduct that begins before the commencement of Division 1 of Part 8 of Schedule 1 to the amending Act.

Division 7—Amendments made by Part 9 of Schedule 1 to the amending Act

61 Anti-discrimination and special measures

- (1) Subject to subclauses (2) and (3), the amendments made by Part 9 of Schedule 1 to the amending Act apply on and after commencement.
- (2) The amendments of sections 172A and 195 made by Part 9 of Schedule 1 to the amending Act apply in relation to enterprise agreements made on and after commencement.
- (3) The amendment of section 351 made by Part 9 of Schedule 1 to the amending Act applies in relation to adverse action taken on and after commencement.

Division 8—Amendments made by Part 10 of Schedule 1 to the amending Act

62 Fixed term contracts

Section 333E of the amended Act applies in relation to a contract of employment entered into on or after the commencement of Part 10 of Schedule 1 to the amending Act (whether or not a previous contract referred to in subsection 333E(4) of the amended Act was entered into before, on or after that commencement).

63 Resolving uncertainties and difficulties about interaction between enterprise agreements and the provisions of Division 5 of Part 2-9

- (1) On application by an employer or employee covered by an enterprise agreement that was made before the commencement of Part 10 of Schedule 1 to the amending Act, the FWC may make a determination varying the enterprise agreement to resolve an uncertainty or difficulty relating to the interaction between the enterprise agreement and the provisions of Division 5 of Part 2-9.

- (2) A variation of an enterprise agreement under this clause operates from the day specified in the determination, which may be a day before the enterprise agreement is made.

Division 9—Amendments made by Part 11 of Schedule 1 to the amending Act

64 Requests for flexible working arrangements

The amendments made by Divisions 1, 3, 4 and 5 of Part 11 of Schedule 1 to the amending Act apply in relation to a request made under subsection 65(1) of this Act on or after the commencement of that Part.

Division 10—Amendments made by Part 12 of Schedule 1 to the amending Act

65 Termination of enterprise agreements after nominal expiry date

The amendments made by Part 12 of Schedule 1 to the amending Act apply in relation to an application for the termination of an enterprise agreement made under section 225:

- (a) on or after the commencement of that Part; or
- (b) before the commencement of that Part if, at that commencement, the FWC has neither terminated nor refused to terminate the agreement.

Division 11—Amendments made by Part 14 of Schedule 1 to the amending Act

66 Genuine agreement in relation to enterprise agreements

Despite the amendments made by Part 14 of Schedule 1 to the amending Act, Part 2-4 continues to apply, as if the amendments had not been made, in relation to:

- (a) any proposed enterprise agreement for which the notification time occurs before the commencement of Part 14 of that Schedule; and

- (b) any variation of an enterprise agreement for which the employer's request that affected employees for the variation approve the variation by voting for it occurs before that commencement.

Division 12—Amendments made by Part 16 of Schedule 1 to the amending Act

67 The better off overall test

The amendments made by Part 16 of Schedule 1 to the amending Act apply in relation to enterprise agreements made on and after the commencement of that Part.

Division 13—Amendments made by Part 17 of Schedule 1 to the amending Act

68 Validation of approval of enterprise agreement

Section 602A of the amended Act applies in relation to an approval given by the FWC before, at or after the commencement of that section.

69 Validation of approval of variation of enterprise agreement

Section 602B of the amended Act applies in relation to an approval given by the FWC before, at or after the commencement of that section.

Division 14—Amendments made by Part 18 of Schedule 1 to the amending Act

70 Serious breach declarations

Despite the amendments made to the following provisions of this Act by Part 18 of Schedule 1 to the amending Act, those provisions continue to apply, in relation to an application made under section 234 of this Act before that Part commences, as if the amendments had not been made:

- (a) Subdivision B of Division 8 of Part 2-4;
- (b) Division 4 of Part 2-5;
- (c) section 274;
- (d) section 413.

71 Intractable bargaining declarations

In making a declaration under section 235 of the amended Act, the FWC may have regard to conduct engaged in before or after the commencement of Subdivision B of Division 8 of Part 2-4 of the amended Act.

Division 15—Amendments made by Part 19 of Schedule 1 to the amending Act

72 Industrial action

- (2) The amendments of sections 437 and 440 made by Division 2 of Part 19 of Schedule 1 to the amending Act apply in relation to an application made under subsection 437(1) of this Act on or after the commencement of that Division.
- (3) Subject to subclause (2) of this clause, the amendments of Part 3-3 made by Division 2 of Part 19 of Schedule 1 to the amending Act apply in relation to a protected action ballot order if the application for the order is made under subsection 437(1) of this Act on or after the commencement of that Division.
- (4) The amendments of section 539 made by Division 2 of Part 19 of Schedule 1 to the amending Act apply in relation to a contravention, or proposed contravention, of a civil remedy provision referred to in item 18, 19 or 20 of the table in subsection 539(2) that occurs on or after the commencement of that Division.
- (5) The amendment made by Division 3 of Part 19 of Schedule 1 to the amending Act applies in relation to an application made under subsection 437(1) of this Act on or after the commencement of that Division.

- (6) The amendments of Part 3-3 made by Division 4 of Part 19 of Schedule 1 to the amending Act apply in relation to employee claim action if the application for the relevant protected action ballot order is made under subsection 437(1) of this Act on or after the commencement of that Division.
- (7) The amendments of Part 3-3 made by Division 5 of Part 19 of Schedule 1 to the amending Act apply in relation to a protected action ballot order if the application for the order is made under subsection 437(1) of this Act on or after the commencement of that Division.

Division 16—Amendments made by Part 21 of Schedule 1 to the amending Act

73 Variation of single interest employer agreement to add employer and employees

Subdivision AD of Division 7 of Part 2-4 of the amended Act, as inserted by Part 21 of Schedule 1 to the amending Act, applies in relation to variations of single interest employer agreements on or after the commencement of that Part of the amending Act, if the agreements were made after that commencement.

74 Application to existing applications for declarations

- (1) This clause applies in relation to applications for declarations made under subsection 247(1) of the Act immediately before the commencement of Part 21 of Schedule 1 to the amending Act if, immediately before that commencement, the Minister had not made a decision on the application.
- (2) Despite the amendments of Division 10 of Part 2-4 made by Part 21 of Schedule 1 to the amending Act, that Division continues to apply as if those amendments had not been made.

75 Application to existing Ministerial declarations where application for authorisation not made

- (1) This clause applies in relation to declarations made under subsection 247(3) of the Act before the commencement of Part 21

of Schedule 1 to the amending Act if, immediately before that commencement, 2 or more of the employers to whom the declaration relates had not made an application for an authorisation.

- (2) If, after that commencement, those employers make an application for an authorisation, then, despite the amendments of Division 10 of Part 2-4 made by Part 21 of Schedule 1 to the amending Act, that Division continues to apply in relation to the application as if those amendments had not been made.

76 Application to existing applications for authorisations

- (1) This clause applies in relation to applications for authorisations made under subsection 248(1) of the Act immediately before the commencement of Part 21 of Schedule 1 to the amending Act if, immediately before that commencement, the FWC had not made a decision on the application.
- (2) Despite the amendments of Division 10 of Part 2-4 made by Part 21 of Schedule 1 to the amending Act, that Division continues to apply as if those amendments had not been made.

77 Effect of making a single interest employer authorisation

Paragraph 172(5)(b) of the amended Act, as inserted by Part 21 of Schedule 1 to the amending Act, applies in relation to single interest employer authorisations on or after the commencement of that Part if the authorisation was made on or after that commencement.

78 Application to existing applications to vary authorisations

The amendments to section 251 made by Part 21 of Schedule 1 to the amending Act do not apply in relation to applications for variations made before the commencement of that Part.

78A Application to authorisations in operation before commencement

- (1) This clause applies in relation to 2 or more employers that were, immediately before the commencement of Part 21 of Schedule 1 to

the amending Act, specified in a single interest employer authorisation made under subsection 249(1) that is in operation.

- (2) For the purposes of section 172 of the amended Act, the employers are taken to be related employers within the meaning of subsection 172(5A).

78B Application to certain authorisations made after commencement

If, because of the operation of clause 74, 75 or 76 of this Part, the FWC makes a single interest employer authorisation after the commencement of Part 21 of Schedule 1 to the amending Act:

- (a) Division 10 of Part 2-4 of this Act, as in force immediately before that commencement, continues to apply in relation to the authorisation; and
- (b) for the purposes of section 172 of the amended Act, the employers specified in the authorisation are taken to be related employers within the meaning of subsection 172(5A).

78C Availability of scope orders

Despite the repeal of subsection 238(2) of this Act by Part 21 of Schedule 1 to the amending Act, that subsection continues to apply after the commencement of that Part to proposed single-enterprise agreements in relation to which a single interest employer authorisation is in operation.

Division 17—Amendments made by Part 23 of Schedule 1 to the amending Act

80A Approval of enterprise agreement—requirement relating to genuine agreement of employers

Subsection 186(2AA) of the amended Act applies in relation to an enterprise agreement made after the commencement of that subsection.

81 Approval of cooperative workplace agreement—requirement relating to representation

Subsection 186(2A) of the amended Act applies in relation to a cooperative workplace agreement made after the commencement of that subsection.

82 Variation of cooperative workplace agreement to add employer and employees

Subdivision AC of Division 7 of Part 2-4 of the amended Act applies in relation to a variation of a cooperative workplace agreement, if the agreement was made after the commencement of that Subdivision.

Division 17A—Amendments made by Part 23A of Schedule 1 to the amending Act

82A Multi-enterprise agreements and general building and construction work

Subsection 186(2B) of the amended Act, as inserted by Part 23A to the amending Act, applies in relation to:

- (a) the approval of an enterprise agreement, if the agreement is made after the commencement of that Part; and
- (b) the approval of a variation of an enterprise agreement, if the variation is made after the commencement of that Part.

Division 18—Amendments made by Part 24 of Schedule 1 to the amending Act

83 Small claims procedure

- (1) The following provisions apply in relation to small claims proceedings commenced on or after the commencement of Part 24 of Schedule 1 to the amending Act:
 - (a) the amendment of paragraph 548(2)(a) of this Act made by that Part;
 - (b) subsection 548(2A) as inserted by that Part.

- (2) Subsections 548(10) and (11), as inserted by Part 24 of Schedule 1 to the amending Act, apply in relation to:
- (a) small claims proceedings commenced, but not finally determined, before the commencement of that Part; and
 - (b) small claims proceedings commenced after the commencement of that Part.

Division 19—Amendments made by Part 25 of Schedule 1 to the amending Act

84 Employment advertisements

Division 4 of Part 3-6 of this Act, as inserted by Part 25 of Schedule 1 to the amending Act, applies in relation to employment advertised on or after the day that is one month after the commencement of Part 25 of Schedule 1 to the amending Act (whether the employment was first advertised before, on or after that day).

Division 20—Amendments made by Part 25B of Schedule 1 to the amending Act

85 Requests for extension of period of unpaid parental leave

The amendments made by Part 25B of Schedule 1 to the amending Act apply in relation to a request made under subsection 76(1) of this Act on or after the commencement of that Part.

Division 2—Consequential amendments relating to multiple measures dealing with variation of enterprise agreements

Fair Work Act 2009

661 Section 12 (definition of *affected employees*)

Repeal the definition, substitute:

affected employees:

- (a) for a variation of an enterprise agreement under Subdivision A of Division 7 of Part 2-4: see subsection 207(2); and
- (b) for a variation of an enterprise agreement under Subdivision AA, AB or AC of Division 7 of Part 2-4 to add an employer to a supported bargaining agreement or a cooperative workplace agreement: means an employee employed by the employer at the time the variation is made who will be covered by the agreement if the variation is approved (or made) by the FWC; and
- (c) for a variation of an enterprise agreement under Subdivision AD of Division 7 of Part 2-4 (variation of single interest employer agreement to add employer and employees): see paragraphs 216D(1)(b) and 216DB(1)(b); and
- (d) for a variation of an enterprise agreement under Subdivision AE of Division 7 of Part 2-4 (variation of multi-enterprise agreement to remove employer and employees): see paragraph 216E(1)(b).

662 Section 12 (definition of *made*)

Repeal the definition, substitute:

made:

- (a) in relation to an enterprise agreement: see section 182; and
- (b) in relation to a variation of an enterprise agreement under Subdivision A of Division 7 of Part 2-4 (variation of enterprise agreements by employers and employees): see section 209; and
- (c) in relation to a variation of an enterprise agreement under Subdivision AA of Division 7 of Part 2-4 (variation of supported bargaining agreement to add employer and employees (with consent)): see subsection 216A(4); and
- (d) in relation to a variation of an enterprise agreement under Subdivision AC of Division 7 of Part 2-4 (variation of cooperative workplace agreement to add employer and employees): see subsection 216C(4); and
- (e) in relation to a variation of an enterprise agreement under Subdivision AD of Division 7 of Part 2-4 (variation of single interest employer agreement to add employer and employees): see subsection 216D(5); and

Schedule 1 Amendments

Part 26 Application, saving, transitional and miscellaneous consequential provisions

- (f) in relation to a variation of an enterprise agreement under Subdivision AE of Division 7 of Part 2-4 (variation of multi-enterprise agreement to remove employer and employees): see subsection 216E(7).

663 Subdivision A of Division 7 of Part 2-4 (at the end of the heading)

Add “: general circumstances”.

664 Paragraph 279(2)(f)

Omit “A and B”, substitute “A, AA, AB, AC, AD, AE and B”.

Part 27—Amendment of the Safety, Rehabilitation and Compensation Act 1988

Safety, Rehabilitation and Compensation Act 1988

665 After paragraph 5(11)(e)

Insert:

- (ea) a member of the ACT Fire and Rescue Service within the meaning of the *Emergencies Act 2004* of the Australian Capital Territory;

666 Subsection 7(8) (table item 12, column headed “Qualifying period”)

Omit “25”, substitute “15”.

667A Paragraph 7(9)(a)

Omit “firefighting duties made up a substantial portion”, substitute “the relevant authority is satisfied that firefighting or related duties made up a not insubstantial portion”.

667B After paragraph 7(9)(b)

Insert:

- (ba) for an employee of the Australian Capital Territory specified in a declaration under subsection 5(15)—the employee is taken to have been employed as a firefighter during any period for which the employee was a member of a firefighting service; and

668 Paragraph 7(9)(c)

Omit “(disregarding the effect of any declarations under subsection 5(15))”.

668A After subsection 7(9)

Insert:

- (9A) If a declaration under subsection (9B) is in force, then when determining for the purposes of paragraph 7(9)(a) whether

firefighting or related duties made up a not insubstantial portion of the duties of an employee of the Australian Capital Territory, being an employee:

- (a) covered by paragraph 5(11)(e) or (ea) as a result of being a volunteer member (however described) of a body referred to in either of those paragraphs; or
 - (b) specified in a declaration under subsection 5(15);
- the relevant authority must:
- (c) by writing, request the declared ACT firefighting advisory committee to give the relevant authority written advice in relation to the matter within a reasonable period specified in the request; and
 - (d) have regard to any such advice provided within that period.

(9B) If the Chief Minister for the Australian Capital Territory so requests in writing, the Minister may, by legislative instrument, declare that a committee or other body (however described) that is established:

- (a) by or under an ACT enactment; or
- (b) by a written instrument made by a Minister (including the Chief Minister) of the Australian Capital Territory;

is the declared ACT firefighting advisory committee for the purposes of subsection (9A).

(9C) A reference in subsection (9) or (9A) to the duties of an employee includes, in relation to an employee of the Australian Capital Territory specified in a declaration under subsection 5(15), a reference to the activities to which that subsection applies that were engaged in by the employee.

669 Application of amendments

Item 12 of the table in subsection 7(8) of the *Safety, Rehabilitation and Compensation Act 1988*, as amended by this Part, applies in relation to a decision made under that Act (including a decision on reconsideration or review under Part VI of that Act), after the commencement of this item, in relation to primary site oesophageal cancer sustained by an employee on or after 4 July 2011.

Part 28—Paid family and domestic violence leave

Division 1—Main amendments

Fair Work Act 2009

670 After paragraph 536(2)(c)

Insert:
; and (d) comply with any requirements prescribed by the regulations in relation to the reporting of paid family and domestic violence leave.

671 After subsection 536(3)

Insert:
(3A) A pay slip is not false or misleading merely because it complies with regulations made for the purposes of paragraph (2)(d).

Division 2—Other amendments

Fair Work Act 2009

672 Subsection 539(2) (after table item 34)

Insert:

34A	757BA	(a) an employee;	(a) the Federal Court;	for a serious contravention
AA		(b) an inspector	(b) the Federal Circuit and Family Court of Australia (Division 2);	—600 penalty units; or
			(c) an eligible State or Territory court	otherwise—60 penalty units

673 After paragraph 557(2)(p)

Insert:

(paa) section 757BA (which deals with employer obligations in relation to pay slips relating to paid leave to which the person is entitled because of section 757B);

674 Subsection 757B(4)

Repeal the subsection, substitute:

Extended paid family and domestic violence leave provisions

- (4) The ***extended paid family and domestic violence leave provisions*** are the provisions of Subdivision CA of Division 7 of Part 2-2, and the related provisions identified in subsection (3) of this section, as they apply because of this section.

675 Section 757BA

Repeal the section, substitute:

757BA Employer obligations in relation to pay slips

If an employer gives a person a pay slip relating to paid leave to which the person is entitled because of section 757B, the employer:

- (a) must not include on the pay slip any information prescribed by regulations made for the purposes of paragraph 536(2)(c); and
- (b) must comply with any requirements prescribed by regulations made for the purposes of paragraph 536(2)(d).

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

[Minister's second reading speech made in—
House of Representatives on 27 October 2022
Senate on 21 November 2022]

(120/22)