

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As passed by both Houses

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

No. , 2023

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

Contents

1	Short title	1
2	Commencement	2
3	Schedules.....	3
4	Review of operation of amendments	4
4A	Review of operation of Part 16A of Schedule 1	4
Schedule 1—Main amendments		6
Part 2—Small business redundancy exemption		6
<i>Fair Work Act 2009</i>		6
Part 6—Closing the labour hire loophole		9
<i>Fair Work Act 2009</i>		9
Part 7—Workplace delegates’ rights		46
Division 1—Amendments commencing day after Royal Assent		46
<i>Fair Work Act 2009</i>		46
Part 8—Strengthening protections against discrimination		51
<i>Fair Work Act 2009</i>		51
Part 14—Wage theft		54
<i>Fair Work Act 2009</i>		54
<i>Federal Court of Australia Act 1976</i>		71
Part 14A—Amendments relating to mediation and conciliation conference orders made under section 448A of the Fair Work Act 2009		72
<i>Fair Work Act 2009</i>		72
Part 16A—Right of entry—assisting health and safety representatives		73
<i>Fair Work Act 2009</i>		73
Part 18—Application and transitional provisions		74
<i>Fair Work Act 2009</i>		74
Schedule 2—Amendment of the Asbestos Safety and Eradication Agency Act 2013		78

Part 1—Main amendments	78
<i>Asbestos Safety and Eradication Agency Act 2013</i>	78
Part 2—Application, saving and transitional provisions	91
Schedule 3—Amendment of the Safety, Rehabilitation and Compensation Act 1988	95
Part 1—Post-traumatic stress disorder	95
<i>Safety, Rehabilitation and Compensation Act 1988</i>	95
Part 2—Rehabilitation assessments and examinations	97
<i>Safety, Rehabilitation and Compensation Act 1988</i>	97
Schedule 4—Amendment of the Work Health and Safety Act 2011	101
Part 1—Industrial manslaughter	101
<i>Work Health and Safety Act 2011</i>	101
Part 2—Category 1 offence	104
<i>Work Health and Safety Act 2011</i>	104
Part 3—Corporate criminal liability	105
<i>Work Health and Safety Act 2011</i>	105
Part 4—Commonwealth criminal liability	110
<i>Work Health and Safety Act 2011</i>	110
Part 5—Criminal liability of public authorities	115
<i>Work Health and Safety Act 2011</i>	115
Part 6—Penalties	116
Division 1—Definitions	116
<i>Work Health and Safety Act 2011</i>	116
Division 2—Categorised monetary penalties for offences	117
<i>Work Health and Safety Act 2011</i>	117
Division 3—Tier A monetary penalties for offences	117
<i>Work Health and Safety Act 2011</i>	117
Division 4—Tier B monetary penalties for offences	118

<i>Work Health and Safety Act 2011</i>	118
Division 5—Tier C monetary penalties for offences	119
<i>Work Health and Safety Act 2011</i>	119
Division 6—Tier D monetary penalties for offences	119
<i>Work Health and Safety Act 2011</i>	119
Division 7—Tier F monetary penalties for offences	121
<i>Work Health and Safety Act 2011</i>	121
Division 8—Tier H monetary penalties for offences	122
<i>Work Health and Safety Act 2011</i>	122
Division 9—Penalties for WHS civil penalty provisions	122
<i>Work Health and Safety Act 2011</i>	122
Division 10—Penalties prescribed by the regulations	124
<i>Work Health and Safety Act 2011</i>	124
Division 11—Penalty amounts	125
<i>Work Health and Safety Act 2011</i>	125
Part 7—Tied amendments	129
<i>Work Health and Safety Act 2011</i>	129
Part 8—Family and Injured Workers Advisory Committee	130
<i>Work Health and Safety Act 2011</i>	130

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

7 The Parliament of Australia enacts:

8 **1 Short title**

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

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
3. Schedule 1, Part 2	The day after this Act receives the Royal Assent.	
7. Schedule 1, Part 6	The day after this Act receives the Royal Assent.	
8. Schedule 1, Part 7, Division 1	The day after this Act receives the Royal Assent.	
10. Schedule 1, Part 8	The day after this Act receives the Royal Assent.	
18. Schedule 1, items 213 to 222	The later of: (a) 1 January 2025; and (b) the day after the first time the Minister declares a Voluntary Small Business Wage Compliance Code under subsection 327B(1) of the <i>Fair Work Act 2009</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
19. Schedule 1, items 223 and 224	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
20. Schedule 1, items 225 to 236	At the same time as the provisions covered by table item 18.	
20A. Schedule 1,	The day after this Act receives the Royal	

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
Part 14A	Assent.	
22A. Schedule 1, Part 16A	The day after this Act receives the Royal Assent.	
24. Schedule 1, Part 18	The day after this Act receives the Royal Assent.	
25. Schedule 2	The day after this Act receives the Royal Assent.	
26. Schedule 3, Part 1	The day after this Act receives the Royal Assent.	
26A. Schedule 3, Part 2	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
27. Schedule 4, Part 1	1 July 2024.	1 July 2024
28. Schedule 4, Parts 2 to 6	The day after this Act receives the Royal Assent.	
29. Schedule 4, Part 7	The later of: (a) at the same time as the provisions covered by table item 28; and (b) immediately after the commencement of the <i>Work Health and Safety Amendment Act 2023</i> .	
30. Schedule 4, Part 8	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

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

7 **3 Schedules**

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule

1 concerned, and any other item in a Schedule to this Act has effect
2 according to its terms.

3 **4 Review of operation of amendments**

- 4 (1) The Minister must cause a review to be conducted of the operation
5 of the amendments made by this Act.
- 6 (2) Without limiting the matters that may be considered when
7 conducting the review, the review must:
- 8 (a) consider whether the operation of the amendments made by
9 this Act is appropriate and effective; and
- 10 (b) identify any unintended consequences of the amendments
11 made by this Act; and
- 12 (c) consider whether amendments of the *Fair Work Act 2009*, or
13 any other legislation, are necessary to:
- 14 (i) improve the operation of the amendments made by this
15 Act; or
- 16 (ii) rectify any unintended consequences identified under
17 paragraph (b).
- 18 (3) The review must start no later than 2 years after this section
19 commences.
- 20 (4) The persons who conduct the review must give the Minister a
21 written report of the review within 6 months of the commencement
22 of the review.
- 23 (5) The Minister must cause a copy of the report of the review to be
24 tabled in each House of the Parliament within 15 sitting days of
25 that House after the Minister receives the report.

26 **4A Review of operation of Part 16A of Schedule 1**

- 27 (1) The Minister must cause a review to be conducted of the operation
28 of the amendments made by Part 16A of Schedule 1 to this Act.
- 29 (2) Without limiting the matters that may be considered when
30 conducting the review, the review must:
- 31 (a) consider whether the operation of the amendments made by
32 that Part is appropriate and effective; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

-
- (b) identify any unintended consequences of the amendments made by that Part; and
 - (c) consider whether amendments of the *Fair Work Act 2009*, or any other legislation, are necessary to:
 - (i) improve the operation of the amendments made by that Part; or
 - (ii) rectify any unintended consequences identified under paragraph (b).
- (3) The review must start no later than 9 months after that Part 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.

1 **Schedule 1—Main amendments**

2 **Part 2—Small business redundancy exemption**

3 *Fair Work Act 2009*

4 **26 Section 12 (definition of *appointment*)**

5 Repeal the definition, substitute:

6 ***appointment:***

- 7 (a) of a bargaining representative means an appointment of a
8 bargaining representative under paragraph 176(1)(c) or (d) or
9 177(c); and
10 (b) of an insolvency practitioner includes a person becoming an
11 insolvency practitioner:
12 (i) by taking possession or control of property; or
13 (ii) by operation of law.

14 **27 Section 12**

15 Insert:

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

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

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

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

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

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

- 30 (a) a liquidator of the employer; or

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

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

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

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

22 *Certain small businesses to pay redundancy pay*

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

Schedule 1 Main amendments
Part 2 Small business redundancy exemption

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

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

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

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

27 *Application to partnerships*

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

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

2 *Fair Work Act 2009*

3 **71 After paragraph 5(8)(a)**

4 Insert:

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

7 **72 Section 12**

8 Insert:

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

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

11 *covered employment instrument* means:

- 12 (a) an enterprise agreement; or
13 (b) a workplace determination; or
14 (c) a determination under section 24 of the *Public Service Act*
15 *1999* that applies to a class of APS employees in an Agency
16 (within the meaning of that Act); or
17 (d) an instrument made under any other law of the
18 Commonwealth (other than this Act), or of a State or a
19 Territory, that provides for the terms and conditions of
20 employment for a class of national system employees of:
21 (i) the Commonwealth or a State or Territory; or
22 (ii) an authority of the Commonwealth or of a State or
23 Territory; or
24 (e) any other instrument relating to the employment of a class of
25 national system employees that:
26 (i) is made under a law of the Commonwealth (other than
27 this Act) or a State or Territory; and
28 (ii) is prescribed by the regulations.

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

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

- 1 *recurring extended exemption period*: see subsection 306K(2).
2 *regulated employee*: see subsection 306E(5).
3 *regulated host*: see section 306C.
4 *regulated labour hire arrangement order*: see subsection 306E(1).

5 **72A At the end of section 201**

6 Add:

7 *Approval decision to note that enterprise agreement to be new host*
8 *employment instrument for regulated labour hire arrangement*
9 *order*

10 (5) If:

- 11 (a) the FWC approves an enterprise agreement; and
12 (b) the enterprise agreement will become the host employment
13 instrument covered by a regulated labour hire arrangement
14 order because of section 306EB;

15 the FWC must note in its decision to approve the agreement that
16 the agreement will be the host employment instrument covered by
17 the order.

18 Note: Certain notification requirements also apply if the enterprise
19 agreement will be the host employment instrument covered by a
20 regulated labour hire arrangement order (see section 306EC).

21 **73 After Part 2-7**

22 Insert:

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

25 **Division 1—Introduction**

26 **306A Guide to this Part**

27

This Part is about regulated labour hire arrangement orders.
--

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

4 Division 2 also deals with the making of alternative protected rate
5 of pay orders by the FWC, the continued application of regulated
6 labour hire arrangement orders in particular circumstances, and
7 certain payments relating to termination of employment.

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

9 Division 4 is about anti-avoidance.

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

12 **306B Meanings of *employee* and *employer***

13 In this Part, *employee* means a national system employee, and
14 *employer* means a national system employer.

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

17 **306C Meaning of *regulated host***

18 A *regulated host* is:

- 19 (a) a constitutional corporation; or
20 (b) the Commonwealth; or
21 (c) a Commonwealth authority; or
22 (d) a person, so far as work is performed for the person in
23 connection with constitutional trade or commerce, and the
24 work is of a kind that would ordinarily be performed by:
25 (i) a flight crew officer; or
26 (ii) a maritime employee; or
27 (iii) a waterside worker; or
28 (e) a body corporate incorporated in a Territory; or
29 (f) a person who carries on an activity (whether of a commercial,
30 governmental or other nature) in a Territory in Australia, so

1 far as work is performed for the person in connection with
2 the activity carried on in the Territory; or

3 (g) a person, so far as work is performed for the person in a
4 Territory in Australia; or

5 (h) any person in a State that is a referring State because of
6 Division 2A or 2B of Part 1-3.

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

10 **306D References to kinds of work and work performed for a person**
11 **etc.**

12 (1) A reference in this Part to work of a kind includes a reference to
13 work that is substantially of that kind.

14 (2) A reference in this Part to work performed for a person includes a
15 reference to work performed wholly or principally for the benefit
16 of:

17 (a) the person; or

18 (b) an enterprise carried on by the person; or

19 (c) a joint venture or common enterprise engaged in by the
20 person and one or more other persons.

21 (3) To avoid doubt, in determining for the purposes of this Part
22 whether work is or is to be performed for a person by an employee
23 of an employer, it does not matter whether there is or will be any
24 agreement between the person and the employer relating to the
25 performance of the work.

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

2 **Subdivision A—Making regulated labour hire arrangement**
3 **orders**

4 **306E FWC may make a regulated labour hire arrangement order**

5 *Regulated labour hire arrangement order*

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

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

- 21 (1A) Despite subsection (1), the FWC must not make the order unless it
22 is satisfied that the performance of the work is not or will not be
23 for the provision of a service, rather than the supply of labour,
24 having regard to the matters in subsection (7A).
- 25 (2) Despite subsection (1), the FWC must not make the order if the
26 FWC is satisfied that it is not fair and reasonable in all the
27 circumstances to do so, having regard to any matters in
28 subsection (8) in relation to which submissions have been made.
- 29 (3) For the purposes of paragraph (1)(a), it does not matter:
- 30 (a) whether the supply is the result of an agreement, or one or
31 more agreements; or
 - 32 (b) if there are one or more agreements relating to the supply—
33 whether an agreement is between:
 - 34 (i) the regulated host and the employer; or

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

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

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

17 *Regulated employee and host employment instrument*

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

22 *Who may apply for an order*

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

30 *Matters that must be considered in relation to whether work is for*
31 *the provision of a service*

- 32 (7A) For the purposes of subsection (1A), the matters are as follows:

- 1 (a) the involvement of the employer in matters relating to the
2 performance of the work;
- 3 (b) the extent to which, in practice, the employer or a person
4 acting on behalf of the employer directs, supervises or
5 controls (or will direct, supervise or control) the regulated
6 employees when they perform the work, including by
7 managing rosters, assigning tasks or reviewing the quality of
8 the work;
- 9 (c) the extent to which the regulated employees use or will use
10 systems, plant or structures of the employer to perform the
11 work;
- 12 (d) the extent to which either the employer or another person is
13 or will be subject to industry or professional standards or
14 responsibilities in relation to the regulated employees;
- 15 (e) the extent to which the work is of a specialist or expert
16 nature.

17 *Matters to be considered if submissions are made*

- 18 (8) For the purposes of subsection (2), the matters are as follows:
 - 19 (a) the pay arrangements that apply to employees of the
20 regulated host (or related bodies corporate of the regulated
21 host) and the regulated employees, including in relation to:
 - 22 (i) whether the host employment instrument applies only to
23 a particular class or group of employees; and
 - 24 (ii) whether, in practice, the host employment instrument
25 has ever applied to an employee at a classification, job
26 level or grade that would be applicable to the regulated
27 employees; and
 - 28 (iii) the rate of pay that would be payable to the regulated
29 employees if the order were made;
 - 30 (c) the history of industrial arrangements applying to the
31 regulated host and the employer;
 - 32 (d) the relationship between the regulated host and the employer,
33 including whether they are related bodies corporate or
34 engaged in a joint venture or common enterprise;
 - 35 (da) if the performance of the work is or will be wholly or
36 principally for the benefit of a joint venture or common

- 1 enterprise engaged in by the regulated host and one or more
2 other persons:
- 3 (i) the nature of the regulated host’s interests in the joint
4 venture or common enterprise; and
- 5 (ii) the pay arrangements that apply to employees of any of
6 the other persons engaged in the joint venture or
7 common enterprise (or related bodies corporate of those
8 other persons);
- 9 (e) the terms and nature of the arrangement under which the
10 work will be performed, including:
- 11 (i) the period for which the arrangement operates or will
12 operate; and
- 13 (ii) the location of the work being performed or to be
14 performed under the arrangement; and
- 15 (iii) the industry in which the regulated host and the
16 employer operate; and
- 17 (iv) the number of employees of the employer performing
18 work, or who are to perform work, for the regulated host
19 under the arrangement;
- 20 (f) any other matter the FWC considers relevant.

21 *What an order must specify*

- 22 (9) A regulated labour hire arrangement order must specify:
- 23 (a) the regulated host covered by the order; and
- 24 (b) the employer covered by the order under this section; and
- 25 (c) the regulated employees covered by the order under this
26 section; and
- 27 (d) the host employment instrument covered by the order; and
- 28 (e) the day the order comes into force, which must be:
- 29 (i) if the order is made before 1 November 2024—that day
30 or a later day; or
- 31 (ii) otherwise—the day the order is made or a later day.

32 Note: For paragraphs (b) and (c), additional employers and regulated
33 employees of those employers may be covered by the order under
34 section 306EA.

1 *What an order may specify*

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

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

6 **306EA Regulated labour hire arrangement order may cover**
7 **additional arrangements**

8 *Determination that application covers additional employers and*
9 *employees*

- 10 (1) If an application for a regulated labour hire arrangement order is
11 made in relation to a regulated host, an employer and one or more
12 employees of the employer, the FWC may determine that the
13 application is taken to also relate to:

- 14 (a) one or more other employers (each of which is an **additional**
15 **employer**) that the FWC is satisfied supply or will supply, in
16 the manner referred to in paragraph 306E(1)(a), one or more
17 employees to perform work, for the regulated host, of the
18 kind in relation to which the application was made; and
19 (b) the employees referred to in paragraph (a) of this
20 subsection (each of whom is an **additional regulated**
21 **employee**).

22 Note: The employees referred to in paragraph (a) of this subsection are
23 **regulated employees** (see subsection 306E(5)).

- 24 (2) The FWC may make the determination:
25 (a) on its own initiative; or
26 (b) on application by any of the following:
27 (i) the applicant for the order or any other person who
28 could have applied for the order (see
29 subsection 306E(7));
30 (ii) the employer mentioned in paragraph 306E(1)(a);
31 (iii) an employer that supplies or will supply employees as
32 referred to in paragraph (1)(a) of this section;
33 (iv) a person who is such an employee;
34 (v) an employee organisation that is entitled to represent the
35 industrial interests of such an employee.

- 1 (3) If the FWC makes such a determination, the FWC must seek the
2 views of the following before deciding whether to make the
3 regulated labour hire arrangement order:
4 (a) the additional regulated employees;
5 (b) employee organisations that are entitled to represent the
6 industrial interests of the additional regulated employees;
7 (c) the additional employers.

8 *Additional employers and employees in regulated labour hire*
9 *arrangement order*

- 10 (4) Subject to subsections (5) and (6), if the FWC makes a
11 determination under subsection (1) in relation to an application for
12 a regulated labour hire arrangement order, the FWC may specify in
13 the regulated labour hire arrangement order (if made) that, in
14 addition to the persons referred to in paragraphs 306E(9)(b) and
15 (c), the order also covers:
16 (a) any or all of the additional employers; and
17 (b) additional regulated employees of those employers.
- 18 (5) The FWC must not specify an additional employer or additional
19 regulated employees of the employer under subsection (4) unless:
20 (a) the FWC is satisfied of the matters mentioned in
21 subsection 306E(1) in relation to the additional employer and
22 the additional regulated employees; and
23 (b) the FWC is satisfied that the covered employment instrument
24 that would apply to the additional regulated employees, as
25 referred to in paragraph 306E(1)(b), is the host employment
26 instrument covered by the order; and
27 (c) the FWC is satisfied that the performance of the work by the
28 additional regulated employees is not or will not be for the
29 provision of a service, rather than the supply of labour,
30 having regard to the matters in subsection 306E(7A) in
31 relation to the additional employer and the additional
32 regulated employees.
- 33 (6) The FWC must not specify an additional employer or additional
34 regulated employees of the employer under subsection (4) if the
35 FWC is satisfied that it is not fair and reasonable in all the
36 circumstances to do so, having regard to:

- 1 (a) the views (if any) of persons referred to in subsection (3);
2 and
3 (b) any matters mentioned in subsection 306E(8) in relation to
4 which submissions are made, to the extent the submissions
5 relate to the additional employer and the additional regulated
6 employees.

7 **306EB Application of regulated labour hire arrangement order to**
8 **new covered employment instrument**

- 9 (1) This section applies if:
10 (a) a regulated labour hire arrangement order is in force; and
11 (b) the host employment instrument covered by the order ceases
12 to apply to the regulated host covered by the order, or to a
13 class of employees of the regulated host covered by the
14 order, in connection with another covered employment
15 instrument (the *new instrument*) starting to apply to the
16 regulated host or those employees; and
17 (c) the new instrument would apply to the regulated employees
18 covered by the order if the regulated host were to employ the
19 employees to perform work of a kind to which the order
20 relates.
- 21 (2) From the time the new instrument starts to apply to the regulated
22 host or the class of employees mentioned in paragraph (1)(b), the
23 order has effect (and may be dealt with) as if the new instrument
24 were the host employment instrument covered by the order.
- 25 (3) For the purposes of paragraph (1)(c), in determining whether a
26 covered employment instrument would apply to the employees, it
27 does not matter on what basis the employees are or would be
28 employed.

29 **306EC Notification requirements in relation to new covered**
30 **employment instrument**

31 *Notification by regulated host*

- 32 (1) If a regulated labour hire arrangement order in force covers a
33 regulated host and an event mentioned in subsection (2) occurs, the

- 1 regulated host must, as soon as practicable after the event occurs,
2 give written notice to any employers covered by the order of:
3 (a) the event; and
4 (b) the effect that the event will have or would have in relation to
5 the order.

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

- 7 (2) The events are the following:
8 (a) approval, by employees, of a covered employment
9 instrument that will, if it comes into operation, become the
10 host employment instrument covered by the order because of
11 section 306EB;
12 (b) any other approval or making of a covered employment
13 instrument that will, if it comes into operation, become the
14 host employment instrument covered by the order because of
15 section 306EB, other than an approval by the FWC of an
16 enterprise agreement (see subsection (3) of this section).

17 *Notification by FWC*

- 18 (3) If the FWC approves an enterprise agreement that, because of
19 section 306EB, will become the host employment instrument
20 covered by a regulated labour hire arrangement order, the FWC
21 must, as soon as practicable after the approval, give written notice
22 to any employers covered by the order of:
23 (a) the approval of the enterprise agreement; and
24 (b) the effect of the approval in relation to the order.

25 **306ED Varying regulated labour hire arrangement order to cover**
26 **new employers**

- 27 (1) This section applies if:
28 (a) a regulated labour hire arrangement order that covers a
29 regulated host and one or more employers, and relates to a
30 kind of work, is in force or has been made but is not yet in
31 force; and
32 (b) one or more other employers (each of which is a *new*
33 *employer*) start or will start to supply employees (each of
34 whom is a *relevant regulated employee*) to perform work of

- 1 (i) any or all of the new employers; and
2 (ii) relevant regulated employees of those employers; and
3 (b) take all reasonable steps to make the decision before the time
4 any of those employees start to perform the work referred to
5 in paragraph (1)(b).
- 6 (6) The FWC must vary the regulated labour hire arrangement order to
7 cover a new employer and the relevant regulated employees of the
8 employer if the regulated host and the new employer notify the
9 FWC that the regulated host and the new employer agree to the
10 making of the variation.
- 11 (7) Subject to subsections (8) and (9), the FWC must also vary the
12 regulated labour hire arrangement order to cover a new employer
13 and the relevant regulated employees of the employer if the FWC
14 is satisfied of the matters referred to in subsection 306E(1) in
15 relation to the regulated host, the new employer and the relevant
16 regulated employees.
- 17 (8) The FWC must not vary the regulated labour hire arrangement
18 order in accordance with subsection (7) unless the FWC is satisfied
19 that the performance of the work by the relevant regulated
20 employees is not or will not be for the provision of a service, rather
21 than the supply of labour, having regard to the matters referred to
22 in subsection 306E(7A) in relation to the new employer and the
23 relevant regulated employees.
- 24 (9) The FWC must not vary the regulated labour hire arrangement
25 order in accordance with subsection (7) if the FWC is satisfied that
26 it is not fair and reasonable in all the circumstances to make the
27 variation, having regard to any matters referred to in
28 subsection 306E(8) in relation to which submissions have been
29 made in respect of the variation.
- 30 *When variation order comes into force*
- 31 (10) An order under this section comes into force on a day specified in
32 the order.

Interim arrangements before FWC decides application

- 1
- 2 (11) If the FWC does not decide whether to make an order under this
- 3 section by the time referred to in paragraph (5)(b), the regulated
- 4 labour hire arrangement order is taken (so long as it is in force) to
- 5 cover the new employers and the relevant regulated employees
- 6 from the time the application for the order under this section is
- 7 made until:
- 8 (a) if the FWC decides not to make an order under this section—
- 9 the time the FWC makes that decision; or
- 10 (b) if the FWC decides to make an order under this section—the
- 11 time that order comes into force.

12 **306EE Notifying tenderers etc. of regulated labour hire**

13 **arrangement order**

- 14 (1) This section applies if:
- 15 (a) a regulated host is covered by a regulated labour hire
- 16 arrangement order that is in force or has been made but is not
- 17 yet in force; and
- 18 (b) a tender process is conducted:
- 19 (i) by or on behalf of the regulated host; or
- 20 (ii) for the purposes of a joint venture or common enterprise
- 21 engaged in by the regulated host and one or more other
- 22 persons.
- 23 (2) If it could reasonably be expected that one or more employers
- 24 would, as a result of the tender process, become covered by the
- 25 regulated labour hire arrangement order because of section 306ED,
- 26 the regulated host must ensure that, from the start of the tender
- 27 process, all prospective tenderers are advised, in writing, that if one
- 28 or more tenderers are successful in the process:
- 29 (a) one or more employers could become covered by the
- 30 regulated labour hire arrangement order; and
- 31 (b) the employers could be required to pay employees of the
- 32 employers who perform work for the regulated host, in
- 33 accordance with this Part, in connection with the work.

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

- 1 (3) If the regulated host is required to apply to the FWC in relation to
2 one or more employers under subsection 306ED(2) as a result of
3 the tender process, the regulated host must, as soon as practicable
4 after the end of the tender process, advise the successful tenderer or
5 tenderers in that process (whether or not they are the employers), in
6 writing, of the following:
- 7 (a) that the regulated host is required to make the application;
 - 8 (b) the effect of subsection 306ED(11) in relation to the
9 application;
 - 10 (c) that if the FWC decides to vary the order under
11 section 306ED to cover those employers, and the order is in
12 force or comes into force, the employers will be required to
13 pay employees of the employers who perform work for the
14 regulated host, in accordance with this Part, in connection
15 with the work.

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

17 **Subdivision B—Obligations of employers and regulated hosts**
18 **etc. when a regulated labour hire arrangement order**
19 **is in force**

20 **306F Protected rate of pay payable to employees if a regulated**
21 **labour hire arrangement order is in force**

22 *Application of section*

- 23 (1) This section applies if a regulated labour hire arrangement order is
24 in force that covers a regulated host, an employer and a regulated
25 employee of the employer.

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

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

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

1 *Exceptions*

- 2 (3) The employer does not contravene subsection (2) if the employer
3 pays the regulated employee at less than the protected rate of pay
4 because:
- 5 (a) the regulated host provides information to the employer
6 under section 306H (which deals with information about the
7 protected rate of pay); and
 - 8 (b) the employer reasonably relies on the information for the
9 purposes of working out the protected rate of pay for the
10 regulated employee; and
 - 11 (c) the information is incorrect in a material particular.
- 12 (3A) The employer does not contravene subsection (2) if:
- 13 (a) the regulated labour hire arrangement order covers the
14 employer because of the operation of subsection 306ED(11);
15 and
 - 16 (b) the employer pays the regulated employee at less than the
17 protected rate of pay because the employer has not been
18 either:
 - 19 (i) notified that the regulated host has made an application
20 under subsection 306ED(2) (which deals with certain
21 variation orders); or
 - 22 (ii) for an employer who was a successful tenderer in a
23 tender process—advised under subsection 306EE(2) or
24 (3) (which deal with notifying tenderers) in relation to
25 the regulated labour hire arrangement order.

26 *Meaning of protected rate of pay*

- 27 (4) Unless subsection (5) applies, the ***protected rate of pay*** for the
28 regulated employee is the full rate of pay that would be payable to
29 the employee if the host employment instrument covered by the
30 regulated labour hire arrangement order were to apply to the
31 employee.
- 32 (5) If the regulated employee is a casual employee, and there is no
33 covered employment instrument that applies to the regulated host
34 that provides for work of that kind to be performed by casual
35 employees, the ***protected rate of pay*** for the regulated employee is
36 the full rate of pay that would be payable to the employee if:

- 1 (a) the employee were an employee other than a casual employee
2 and the host employment instrument covered by the regulated
3 labour hire arrangement order were to apply to the employee;
4 and
5 (b) the base rate of pay that would be payable to the employee,
6 in the circumstances referred to in paragraph (a), were
7 increased by 25%.

- 8 (6) Despite subsections (4) and (5), if the employer is a national
9 system employer only because of section 30D or 30N, the
10 ***protected rate of pay*** for the regulated employee does not include
11 any amount that relates to an excluded subject matter within the
12 meaning of subsection 30A(1) or 30K(1).

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

- 15 (7) If the regulated employee is a pieceworker and paragraph 16(2)(b)
16 would apply to the employee were the host employment instrument
17 to apply to the employee, the base rate of pay that would be
18 payable to the employee for the purposes of subsection (5) of this
19 section is taken to be the base rate of pay that would be referred to
20 in that paragraph.

- 21 (8) If the regulated employee is a pieceworker and paragraph 18(2)(b)
22 would apply to the employee were the host employment instrument
23 to apply to the employee, the full rate of pay that would be payable
24 to the employee for the purposes of subsections (4) and (5) of this
25 section is taken to be the full rate of pay that would be referred to
26 in that paragraph.

- 27 (9) To avoid doubt, this section does not require that a regulated
28 employee referred to in subsection (5) be taken to be an employee
29 other than a casual employee for the purposes of determining
30 entitlements to kinds of leave, or any other purpose, except
31 determining the protected rate of pay for the regulated employee.

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

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

- 1 (a) a fair work instrument (other than an instrument made by the
2 FWC under this Part) that applies to the regulated employee;
3 or
4 (b) a covered employment instrument (other than a fair work
5 instrument) that applies to the regulated employee; or
6 (c) the regulated employee’s contract of employment;
7 that provides for a rate of pay for the regulated employee that is
8 less than the protected rate of pay for the regulated employee.
- 9 Note: See also section 306N (effect of alternative protected rate of pay
10 order) and subsection 306Q(6) (effect of arbitrated protected rate of
11 pay order).

12 **306G Exceptions from requirement to pay protected rate of pay**

13 *Training arrangements*

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

17 *Certain short-term arrangements*

- 18 (2) Section 306F does not apply to a regulated employee if:
19 (a) no determination for the purposes of paragraph 306J(2)(a)
20 (no exemption period) that applies to the employee in respect
21 of the work performed for the regulated host is in force; and
22 (b) the employee performs, or is to perform, the work for the
23 regulated host during:
24 (i) if neither subparagraph (ii) nor (iii) applies—a period of
25 no longer than 3 months; or
26 (ii) if a determination in force under section 306J specifies a
27 period as the exemption period for the regulated host,
28 the employer and the work—a period of no longer than
29 the period specified; or
30 (iii) if subparagraph (ii) does not apply and the work
31 commences during a recurring extended exemption
32 period for work of the kind performed by the employee
33 for the regulated host—a period of no longer than the
34 remainder of the extended exemption period, or a period
35 of no longer than 3 months, whichever ends later.

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

6 **306H Obligations of regulated hosts covered by a regulated labour**
7 **hire arrangement order**

8 *Application of this section*

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

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

- 13 (2) If the employer reasonably considers that the employer does not
14 have all of the information needed regarding what is the protected
15 rate of pay for one or more regulated employees of the employer
16 covered by the order, the employer may request, in writing, that the
17 regulated host provide the employer with specified information
18 needed.

- 19 (3) The regulated host must comply with the request:
20 (a) as soon as reasonably practicable; and
21 (b) in any event, within such a period as would reasonably
22 enable the employer to comply with its obligations under
23 section 306F (protected rate of pay payable to employees if a
24 regulated labour hire arrangement order is in force) in
25 relation to the employees.

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

27 *Manner of complying with request*

- 28 (4) The regulated host may comply with the request by:
29 (a) providing the employer with the information requested; or
30 (b) providing information, for each relevant pay period of the
31 employees, setting out the protected rate of pay for each
32 employee for the period.

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

2 **306J Determination altering exemption period for short-term**
3 **arrangements**

- 4 (1) This section applies if:
- 5 (a) a regulated labour hire arrangement order is in force that
6 covers a regulated host, an employer and one or more
7 regulated employees of the employer performing work for
8 the regulated host; or
 - 9 (b) a regulated labour hire arrangement order has been made but
10 is not yet in force that covers a regulated host, an employer
11 and one or more regulated employees of the employer
12 performing work for the regulated host; or
 - 13 (c) an application for a regulated labour hire arrangement order
14 that would cover a regulated host, an employer and one or
15 more regulated employees of the employer performing work
16 for the regulated host has been made to the FWC under
17 section 306E but has not been finally determined.

- 18 (2) The FWC may determine that, in relation to the regulated host, the
19 employer and work to be performed by one or more regulated
20 employees of the employer:
- 21 (a) there is no exemption period for the purposes of
22 section 306G; or
 - 23 (b) a specified period of less than 3 months is the exemption
24 period for the purposes of that section; or
 - 25 (c) a specified period of more than 3 months is the exemption
26 period for the purposes of that section.

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

30 **306K Determination of recurring extended exemption period**

- 31 (1) This section applies if:
- 32 (a) a regulated labour hire arrangement order is in force that
33 covers a regulated host, one or more employers and one or
34 more regulated employees performing work for the regulated
35 host; or

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

15 **306L Making and effect of determinations under this Subdivision**

16 *Who may apply for determination*

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

25 *Time for making determination*

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

28 *Requirements for making determination*

- 29 (3) Before deciding whether or not to make the determination, the
30 FWC must seek the views of any person or organisation that, apart
31 from the applicant, could have applied for the determination under
32 subsection (1).

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

26 *When determination comes into force*

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

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

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

5 **306M Making an alternative protected rate of pay order**

6 *Application of this section*

- 7 (1) This section applies if:
8 (a) a regulated labour hire arrangement order is in force that
9 covers a regulated host, an employer and a regulated
10 employee of the employer performing work for the regulated
11 host; or
12 (b) a regulated labour hire arrangement order has been made but
13 is not yet in force that covers a regulated host, an employer
14 and a regulated employee of the employer performing work
15 for the regulated host; or
16 (c) an application for a regulated labour hire arrangement order
17 that would cover a regulated host, an employer and a
18 regulated employee of the employer performing work for the
19 regulated host has been made to the FWC under section 306E
20 but has not been finally determined.

21 *Alternative protected rate of pay order*

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

29 *Rate of pay*

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

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

3 (a) applies to a related body corporate of the regulated host and
4 would apply to a person employed by the related body
5 corporate to perform work of that kind; or

6 (b) applies to the regulated host and would apply to a person
7 employed by the regulated host to perform work of that kind
8 in circumstances that do not apply in relation to the
9 employee.

10 *Who may apply*

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

15 *Time for making*

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

18 *Criteria for making etc.*

- 19 (6) The FWC must not make the order unless satisfied that:
20 (a) it would be unreasonable for the requirement in section 306F,
21 that the employer pay the regulated employee at no less than
22 the protected rate of pay, to apply in connection with that
23 work (including, for example, because the rate would be
24 insufficient or would be excessive); and
25 (b) there is a covered employment instrument of the kind
26 referred to in paragraph (3)(a) or (b).

- 27 (7) Before deciding whether to make the order, the FWC must seek the
28 views of the following:

- 29 (a) the employer;
30 (b) the regulated host;
31 (c) the employer to which a covered employment instrument to
32 be specified in the order for the purposes of subsection (3)
33 applies (if not the regulated host);
34 (d) the employee;

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

21 *Exception for short-term arrangements*

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

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

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

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

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

7 *Effect of alternative protected rate of pay order*

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

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

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

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

1 **Subdivision E—Termination payments**

2 **306NA Determining amounts of payments relating to termination of**
3 **employment**

4 *Application of this section*

- 5 (1) This section applies if:
6 (a) a regulated employee’s employment is or is to be terminated;
7 and
8 (b) the employee is or has been covered by a regulated labour
9 hire arrangement order.

10 *Determining amounts of payments relating to termination of*
11 *employment*

- 12 (2) Subject to subsection (5), if an amount that the employee’s
13 employer is required to pay to the employee (or to a person on the
14 employee’s behalf) in relation to the termination of the
15 employment is to be determined wholly or partly on the basis of a
16 rate of pay in relation to the employee, the rate of pay for the
17 purposes of determining the amount is:
18 (a) if the employee is covered by subsection (3) in relation to the
19 amount—the applicable rate of pay that results from the
20 operation of this Part; or
21 (b) in any other case—the applicable rate of pay to which the
22 employee is entitled apart from the operation of this Part.
- 23 (3) This subsection covers the employee in relation to the amount if:
24 (a) immediately before the termination of the employment
25 occurs or is to occur, the employee is or will be covered by a
26 regulated labour hire arrangement order in force in relation to
27 work performed by the employee for a regulated host; and
28 (b) the termination of the employment occurs or is to occur
29 during a period in which the employee is performing work
30 for the regulated host, including a period when the employee
31 is taking paid or unpaid leave, or is absent, in connection
32 with that work and the leave or absence is authorised:
33 (i) by the employee’s employer; or

- 1 (ii) by or under a term or condition of the employee’s
2 employment; or
3 (iii) by or under a law of the Commonwealth, a State or a
4 Territory, or an instrument in force under such a law;
5 and
6 (c) the rate of pay mentioned in paragraph (2)(a) is higher than
7 the rate mentioned in paragraph (2)(b); and
8 (d) unless the amount is a payment in lieu of notice of
9 termination—the employee has not performed work for any
10 other regulated host in relation to the employee’s
11 employment with the employer.
- 12 (4) If the performance of the work for the regulated host relates to a
13 joint venture or common enterprise engaged in by the regulated
14 host and one or more other persons, then for the purposes of
15 paragraph (3)(d), disregard any work that is taken to be performed
16 for those other persons because of the operation of
17 paragraph 306D(2)(c).

18 *Excluded subject matters*

- 19 (5) If the employer is a national system employer only because of
20 section 30D or 30N, nothing in this Part, including the
21 determination of any rate of pay under or in accordance with this
22 Part, affects any amount:
23 (a) that the employer is required to pay to the employee (or to a
24 person on the employee’s behalf) in relation to the
25 termination of the employment; and
26 (b) which relates to an excluded subject matter within the
27 meaning of subsection 30A(1) or 30K(1).

28 *Interaction with fair work instruments etc.*

- 29 (6) This section applies despite:
30 (a) a fair work instrument that applies to the employee; or
31 (b) a covered employment instrument (other than a fair work
32 instrument) that applies to the employee; or
33 (c) the employee’s contract of employment.

1 **Division 3—Dealing with disputes**

2 **306P Disputes about the operation of this Part**

3 *When this Division applies to a dispute*

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

19 *Parties must attempt to resolve dispute at workplace level*

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

25 *How the FWC deals with dispute*

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

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

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

3 *Representatives*

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

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

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

14 *Joinder of other employees to disputes*

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

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

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

Schedule 1 Main amendments
Part 6 Closing the labour hire loophole

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

3 (3) The FWC must not make an arbitrated protected rate of pay order
4 unless the FWC considers that it would be fair and reasonable to
5 make the order.

6 (4) If the parties have notified the FWC, in writing, that they agree to
7 the FWC arbitrating the dispute, an arbitrated protected rate of pay
8 order made in relation to the dispute may apply in relation to work
9 performed at any time on or after the day the regulated labour hire
10 arrangement order comes into force.

11 (5) If the parties have not notified the FWC that they agree to the FWC
12 arbitrating the dispute, an arbitrated protected rate of pay order
13 made in relation to the dispute may apply only in relation to work
14 performed on or after:

15 (a) if the arbitrated protected rate of pay order is made before the
16 regulated labour hire arrangement order to which the order
17 relates comes into force—the day the regulated labour hire
18 arrangement order comes into force; or

19 (b) otherwise—the day the arbitrated protected rate of pay order
20 is made.

21 *Effect of arbitrated protected rate of pay order*

22 (6) If the FWC makes an arbitrated protected rate of pay order in
23 relation to the dispute, the order has effect, in relation to so much
24 of the work as is performed during the period to which the order
25 applies, despite the following:

26 (a) section 306F (protected rate of pay payable to employees if a
27 regulated labour hire arrangement order is in force);

28 (b) any provision of the following that provides for a lower rate
29 of pay than that worked out in accordance with the order:

30 (i) a fair work instrument that applies to the employee;

31 (ii) a covered employment instrument (other than a fair
32 work instrument) that applies to the employee;

33 (iii) the employee's contract of employment.

34 (7) A person must not contravene a term of an arbitrated protected rate
35 of pay order.

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

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

8 **306R Application fees**

9 (1) An application under subsection 306P(4) must be accompanied by
10 any fee prescribed by the regulations.

11 (2) The regulations may prescribe:

12 (a) a fee for making an application to the FWC under that
13 subsection; and

14 (b) a method for indexing the fee; and

15 (c) the circumstances in which all or part of the fee may be
16 waived or refunded.

17 **Division 4—Anti-avoidance**

18 **306S Preventing making of regulated labour hire arrangement**
19 **orders**

20 (1) A person contravenes this section if:

21 (a) the person is an employer or a regulated host; and

22 (b) the person, either alone or with one or more other persons:

23 (i) enters into a scheme; or

24 (ii) begins to carry out a scheme; or

25 (iii) carries out a scheme; and

26 (c) the person does so for the sole or dominant purpose of
27 preventing the FWC from making a regulated labour hire
28 arrangement order in relation to any person or persons
29 (whether or not those persons are the same persons
30 mentioned in paragraph (b)); and

31 (d) as a result of that scheme or part of that scheme, the FWC is
32 prevented from making the order.

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

2 (2) In this section:

3 *scheme* means:

4 (a) any agreement, arrangement, understanding, promise or
5 undertaking, whether express or implied and whether or not
6 enforceable, or intended to be enforceable, by legal
7 proceedings; or

8 (b) any scheme, plan, proposal, action, course of action or course
9 of conduct, whether unilateral or otherwise.

10 **306SA Avoidance of application of regulated labour hire**
11 **arrangement orders**

12 (1) A person contravenes this section if:

13 (a) the person is an employer or a regulated host; and

14 (b) the person, either alone or with one or more other persons:

15 (i) enters into a scheme; or

16 (ii) begins to carry out a scheme; or

17 (iii) carries out a scheme; and

18 (c) the person does so for the sole or dominant purpose of
19 avoiding the application of a regulated labour hire
20 arrangement order that has been made (whether or not the
21 order is yet in force), in relation to any person or persons
22 (whether or not those persons are the same persons
23 mentioned in paragraph (b)); and

24 (d) as a result of that scheme or part of that scheme, a person
25 avoids the application of the regulated labour hire
26 arrangement order.

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

28 (2) In this section:

29 *scheme* means:

30 (a) any agreement, arrangement, understanding, promise or
31 undertaking, whether express or implied and whether or not
32 enforceable, or intended to be enforceable, by legal
33 proceedings; or

- 1 (b) any scheme, plan, proposal, action, course of action or course
2 of conduct, whether unilateral or otherwise.

3 **306T Short-term arrangements—engaging other employees**

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

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

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

19 **306U Short-term arrangements—entering into other labour hire**
20 **agreements**

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

- 23 (a) an employer covered by the regulated labour hire
24 arrangement order is not required to pay a regulated
25 employee at a rate determined under or in accordance with
26 this Part because of the operation of subsection 306G(2)
27 (including as it applies because of subsection 306M(9) or
28 306Q(8)); and
29 (b) the regulated host enters into an agreement that has the result
30 that another person is to perform the same, or substantially
31 the same, work as that performed by the regulated employee
32 for the regulated host; and
33 (c) it could reasonably be concluded that the purpose, or one of
34 the purposes, of engaging the other person is to achieve the
35 result that the employer is not required to pay a regulated

1 employee at a rate determined under or in accordance with
2 this Part.

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

4 **306V Engaging independent contractors**

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

- 7 (a) the employer dismisses an employee who performs, or is to
8 perform, work for a regulated host covered by the order; and
9 (b) the employer engages another person as an independent
10 contractor, under a contract for services, to perform that
11 work, or work of that kind, for the regulated host; and
12 (c) a result of the employer dismissing the employee and
13 engaging the independent contractor is that the employer is
14 not required to pay a person at a rate determined under or in
15 accordance with this Part; and
16 (d) it could reasonably be concluded that the employer dismissed
17 the employee and engaged the independent contractor for the
18 purpose, or purposes including the purpose, of achieving that
19 result.

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

21 **Division 5—Other matters**

22 **306W Guidelines**

- 23 (1) The FWC may make written guidelines in relation to the operation
24 of this Part.
- 25 (2) Guidelines made under subsection (1) are not a legislative
26 instrument.
- 27 (3) The FWC must ensure that guidelines under subsection (1) are in
28 force:
29 (a) by 1 November 2024; and
30 (b) at all times on and after that day.

1 **74 Subsection 539(2) (after table item 9)**

2 Insert:

3

Part 2-7A—Regulated labour hire arrangement orders

9A	306EC(1)	(a) an employee;	(a) the Federal	for a serious
	306ED(2)	(b) an employee	Court;	contravention
	306ED(4)	organisation;	(b) the Federal	—600 penalty
	306EE(2)	(c) an inspector	Circuit and	units; or
	306EE(3)		Family Court	otherwise—60
	306F(2)		of Australia	penalty units
	306H(3)		(Division 2);	
	306N(3)		(c) an eligible	
	306Q(7)		State or	
	306S(1)		Territory court	
	306SA(1)			
	306T			
	306U			
	306V			

4 **75 After paragraph 557(2)(f)**

5 Insert:

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

16 **76 After paragraph 576(1)(f)**

17 Insert:

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

1 **Part 7—Workplace delegates' rights**

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

4 *Fair Work Act 2009*

5 **77 Section 12**

6 Insert:

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

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

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

13 **78 At the end of Subdivision C of Division 3 of Part 2-3**

14 Add:

15 **149E Workplace delegates' rights**

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

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

19 **79 Section 169 (paragraph about Division 5)**

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

22 **80 After subsection 201(1)**

23 Insert:

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

26 (1A) If:

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

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

8 Add:

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

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

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

13 *When modern award term prevails*

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

17 (a) the term in the enterprise agreement has no effect; and

18 (b) the most favourable term of those in the modern awards, as
19 determined by the FWC, is taken to be a term of the
20 enterprise agreement.

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

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

25 Add:

26 *Delegates' rights term*

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

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

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

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

5 Repeal the paragraph, substitute:

6

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

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

10 Add:

11 **350A Protection for workplace delegates**

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

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

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

25 *Exception—conduct required by law*

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

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

2 *Meaning of workplace delegate*

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

7 *Rights of workplace delegates*

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

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

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

- 1 **85 Subsection 539(2) (table item 11, column 1)**
2 After "350(2)", insert "350A(1)".

1 **Part 8—Strengthening protections against**
2 **discrimination**

3 ***Fair Work Act 2009***

4 **94 Subsection 153(1)**

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

7 **95 Subsection 195(1)**

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

10 **96 Subsection 351(1)**

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

13 **97 Section 578**

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

16 **98 Paragraph 772(1)(f)**

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

19 **99 Before section 789HA**

20 Insert:

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

23 **100 Section 789HA (heading)**

24 Omit “Part”, substitute “Division”.

25 **101 Section 789HA**

26 Omit “Part”, substitute “Division”.

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

2 Add:

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

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

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

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

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

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

- 17 (1) Subsection (3) applies for the purposes of the operation of the
18 provisions identified in subsection (2) in relation to family and
19 domestic violence.
- 20 (2) The provisions are as follows:
- 21 (a) section 153;
22 (b) section 172A;
23 (c) section 195;
24 (d) section 351.
- 25 (3) In applying sections 30H and 30S in relation to that operation of
26 the provisions identified in subsection (2), assume that:
- 27 (a) the matter to which that operation of those provisions relates
28 is not an excluded subject matter for the purposes of:
- 29 (i) the State’s referral law mentioned in sections 30H and
30 30S; and
31 (ii) Divisions 2A and 2B of Part 1-3; and

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

1 **Part 14—Wage theft**

2 ***Fair Work Act 2009***

3 **213 Section 12**

4 Insert:

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

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

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

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

12 ***engage in conduct*** means:

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

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

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

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

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

23 ***related offence provision*** means:

- 24 (a) section 6 of the *Crimes Act 1914*; or
25 (b) a provision of Part 2.4 of the *Criminal Code*;

26 to the extent that the offence created by the provision relates to an
27 offence against this Act other than an offence mentioned in
28 paragraph (a) or (b).

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

4 **underpayment amount:**

5 (a) in relation to a contravention of a civil remedy provision—
6 see subsection 546A(2); and

7 (b) in relation to the commission of an offence against
8 subsection 327A(1)—see subsection 327A(7).

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

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

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

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

15 Add:

16 (3) The Crown in right of the Commonwealth is liable to be
17 prosecuted for an offence against any of the following provisions:

18 (a) subsection 327A(1);

19 (b) a related offence provision, to the extent that the related
20 offence provision relates to an offence against
21 subsection 327A(1).

22 (4) The Crown, in each of its capacities and to the extent the
23 Commonwealth’s legislative power permits, is liable to be the
24 subject of proceedings for a contravention of a civil remedy
25 provision.

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

27 Insert:

28

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

1 **217 Before section 323**

2 Insert:

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

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

6 Omit “Division”, substitute “Subdivision”.

7 **219 Section 327 (heading)**

8 Omit “Division”, substitute “Subdivision”.

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

10 Add:

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

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

14 (1) An employer commits an offence if:

15 (a) the employer is required to pay an amount (a *required*
16 *amount*) to, on behalf of, or for the benefit of, an employee
17 under:

18 (i) this Act; or

19 (ii) a fair work instrument; or

20 (iii) a transitional instrument (as continued in existence by
21 Schedule 3 to the Transitional Act); and

22 (b) the required amount is not an amount covered by
23 subsection (2); and

24 (c) the employer engages in conduct; and

25 (d) the conduct results in a failure to pay the required amount to,
26 on behalf of, or for the benefit of, the employee in full on or
27 before the day when the required amount is due for payment.

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

1 Note 2: A single payment to, on behalf of, or for the benefit of, an employee
2 in relation to a particular period may comprise more than one required
3 amount. For example, a single payment consisting of:
4 (a) a required amount referable to wages earned during the period;
5 and
6 (b) a required amount referable to paid leave taken during the period.

7 (2) For the purposes of paragraph (1)(b), an amount is covered by this
8 subsection if:

9 (a) either of the following apply:

10 (i) the employee is a national system employee only
11 because of section 30C or 30M (which extend the
12 meaning of *national system employee*);

13 (ii) the employer is a national system employer only
14 because of section 30D or 30N (which extend the
15 meaning of *national system employer*); and

16 (b) the amount is:

17 (i) a contribution payable to a superannuation fund for the
18 benefit of the employee; or

19 (ii) referable to the employee taking a period of long service
20 leave; or

21 (iii) referable to the employee taking a period of paid leave
22 that the employee was entitled to take by reason of
23 being a victim of crime; or

24 (iv) referable to the employee taking a period of paid leave
25 that the employee was entitled to take because the
26 employee attended for service on a jury, or for
27 emergency services duties.

28 *Fault elements*

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

30 (a) absolute liability applies to paragraphs (1)(a) and (b); and

31 (b) the fault element for paragraphs (1)(c) and (d) is intention.

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

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

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

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

8 *Penalty—general*

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

16 *Determining maximum fine*

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

26 *Underpayment amount*

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

Penalty for courses of conduct

- 1
- 2 (8) If:
- 3 (a) a person is found guilty of committing 2 or more offences
- 4 (the **aggregated offences**) against subsection (1); and
- 5 (b) the aggregated offences arose out of a course of conduct by
- 6 the person;
- 7 then, subject to subsections (9) and (10), the person is taken for the
- 8 purposes of subsections (5) to (7) to have been found guilty of only
- 9 a single offence.
- 10 (9) Paragraph (6)(a) applies in relation to the single offence if, and
- 11 only if, the court can determine the underpayment amount for any
- 12 of the aggregated offences.
- 13 (10) The underpayment amount for the single offence is taken to be the
- 14 sum of each of the underpayment amounts for the aggregated
- 15 offences that the court can determine.

16 **327B The Voluntary Small Business Wage Compliance Code**

- 17 (1) The Minister may, by legislative instrument, declare a Voluntary
- 18 Small Business Wage Compliance Code.
- 19 (2) If the Fair Work Ombudsman is satisfied that a small business
- 20 employer complied with the Voluntary Small Business Wage
- 21 Compliance Code in relation to a failure by the employer to pay an
- 22 amount to, on behalf of, or for the benefit of, an employee, the Fair
- 23 Work Ombudsman must not:
- 24 (a) refer any conduct that resulted in the failure to the Director of
- 25 Public Prosecutions or the Australian Federal Police for
- 26 action in relation to a possible offence against
- 27 subsection 327A(1); or
- 28 (b) enter into a cooperation agreement with the employer that
- 29 covers any conduct that resulted in the failure.
- 30 (3) The Fair Work Ombudsman must give the employer written notice
- 31 of a decision under subsection (2).
- 32 (4) Subsection (2) does not affect:
- 33 (a) the power of an inspector to institute or continue civil
- 34 proceedings in relation to the conduct; or

- 1 (b) the power of the Fair Work Ombudsman to accept an
2 enforceable undertaking under section 715 in relation to the
3 conduct; or
4 (c) the power of an inspector to give a notice under section 716
5 in relation to the conduct; or
6 (d) any other power or function of the Fair Work Ombudsman or
7 an inspector that is not mentioned in paragraph (2)(a) or (b)
8 of this section.

9 **327C Commencing proceedings for certain offences against this Act**

- 10 (1) Proceedings for an offence against:
11 (a) subsection 327A(1) (offence for failing to pay amounts as
12 required); or
13 (b) a related offence provision, to the extent that the related
14 offence provision relates to an offence against
15 subsection 327A(1);
16 may be commenced only by the Director of Public Prosecutions or
17 the Australian Federal Police.
18 (2) Despite anything in any other law, proceedings for an offence
19 against a provision referred to in paragraph (1)(a) or (b) may be
20 commenced at any time within 6 years after the commission of the
21 offence.

22 **221 Paragraph 682(1)(c)**

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

24 **222 Paragraph 682(1)(c)**

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

26 **223 After paragraph 682(1)(d)**

27 Insert:

- 28 (da) to publish a compliance and enforcement policy, including
29 guidelines relating to the circumstances in which the Fair
30 Work Ombudsman will, or will not:
31 (i) accept or consider accepting undertakings under
32 section 715; or

- 1 (ii) enter or consider entering into cooperation agreements
2 under section 717B;

3 **224 At the end of section 682**

4 Add:

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

9 **225 Paragraph 706(1)(a)**

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

11 **226 Subsection 711(1)**

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

13 **227 Paragraph 712AA(1)(a)**

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

15 **228 At the end of section 713**

16 Add:

17 *Employee records and pay slips*

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

22 **229 Section 713A**

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

24 **230 At the end of section 713A**

25 Add:

- 26 (2) Subsection (1) does not apply to:
27 (a) an employee record in relation to an employee that is made
28 under section 535; or

1 (b) a copy of a pay slip created in relation to an employee.

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

3 Insert:

4 **Subdivision DE—Cooperation agreements**

5 **717A Effect of cooperation agreement**

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

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

12 (2) Subsection (1) does not prevent:

- 13 (a) an inspector instituting or continuing civil proceedings in
14 relation to the conduct; or
15 (b) conduct engaged in by any other person from being referred
16 to the Director of Public Prosecutions or the Australian
17 Federal Police for action in relation to a possible offence.

18 **717B Entry into cooperation agreement**

19 (1) The Fair Work Ombudsman may enter into a written agreement (a
20 *cooperation agreement*) with a person covering specified conduct
21 engaged in by the person that the person has reported to the Fair
22 Work Ombudsman as amounting to the possible commission by
23 the person of an offence, or at least the physical elements of an
24 offence, against either or both of the following:

- 25 (a) subsection 327A(1) (failing to pay amounts as required);
26 (b) a related offence provision, to the extent that the offence
27 created by the provision relates to an offence against
28 subsection 327A(1).

29 (2) The Fair Work Ombudsman must have regard to the following
30 matters in deciding whether to enter into a cooperation agreement
31 with a person in relation to conduct:

- 1 (a) whether in the Fair Work Ombudsman’s view the person has
2 made a voluntary, frank and complete disclosure of the
3 conduct, and the nature and level of detail of the disclosure;
4 (b) whether in the Fair Work Ombudsman’s view the person has
5 cooperated with the Fair Work Ombudsman in relation to the
6 conduct;
7 (c) the Fair Work Ombudsman’s assessment of the person’s
8 commitment to continued cooperation in relation to the
9 conduct, including by way of providing the Fair Work
10 Ombudsman with comprehensive information to enable the
11 effectiveness of the person’s actions and approach to
12 remedying the effects of the conduct to be assessed;
13 (d) the nature and gravity of the conduct;
14 (e) the circumstances in which the conduct occurred;
15 (f) the person’s history of compliance with this Act;
16 (g) any other matters prescribed by the regulations.
- 17 (3) The regulations may prescribe matters in relation to the content of
18 cooperation agreements.

19 **717C When a cooperation agreement is in force**

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

29 **717D Termination of cooperation agreement by Fair Work**
30 **Ombudsman**

- 31 (1) The Fair Work Ombudsman may terminate a cooperation
32 agreement with a person at any time, by written notice to the
33 person, if the Fair Work Ombudsman is satisfied that any of the
34 following grounds exist:

- 1 (a) the person has contravened a term of the agreement;
2 (b) the person has, in relation to the agreement, given
3 information or produced a document to the Fair Work
4 Ombudsman, an inspector, or a person referred to in
5 subsection 712AA(2) that:
6 (i) is false or misleading; or
7 (ii) for information—omits any matter or thing without
8 which the information is misleading;
9 whether the person gave the information or produced the
10 document before the agreement was entered into or since;
11 (c) any other ground prescribed by the regulations.
- 12 (2) If the Fair Work Ombudsman is satisfied that a ground exists for
13 terminating a cooperation agreement with a person, the Fair Work
14 Ombudsman may, instead of terminating the agreement, apply to
15 the Federal Court, the Federal Circuit and Family Court of
16 Australia (Division 2) or an eligible State or Territory Court for an
17 order under subsection (3).
- 18 (3) If the court is satisfied that the ground exists, the court may make
19 one or more of the following orders:
20 (a) an order directing the person to comply with a term of the
21 cooperation agreement, or to give or produce correct and
22 complete information or documents;
23 (b) an order awarding compensation for loss that a person has
24 suffered because of matters constituting the ground for
25 terminating the agreement;
26 (c) any other order that the court considers appropriate.

27 **717E Withdrawal from cooperation agreement**

28 A person that is party to a cooperation agreement with the Fair
29 Work Ombudsman may withdraw from the agreement, but only
30 with the consent of the Fair Work Ombudsman.

31 **717F Variation of cooperation agreement**

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

1 **717G Relationship with other powers**

- 2 (1) Whether a cooperation agreement is in force in relation to
3 particular conduct does not affect:
4 (a) the power of the Fair Work Ombudsman to accept an
5 enforceable undertaking under section 715 in relation to the
6 conduct; or
7 (b) the power of an inspector to give a notice under section 716
8 in relation to the conduct; or
9 (c) any other power or function of the Fair Work Ombudsman or
10 an inspector that is not mentioned in subsection 717A(1).

11 (2) However:

- 12 (a) an enforceable undertaking has no effect to the extent that it
13 is inconsistent with a cooperation agreement; and
14 (b) a compliance notice has no effect to the extent that an action
15 specified in the notice is inconsistent with a cooperation
16 agreement.

17 This subsection has effect regardless of whether the undertaking or
18 notice was given before or after the cooperation agreement comes
19 into force.

20 **232 Subsections 793(1) and (2)**

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

23 **233 After subsection 793(3)**

24 Insert:

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

- 26 (3A) Subsections (1) and (2) do not apply for the purposes of:
27 (a) subsection 327A(1) (offence for failing to pay amounts as
28 required); or
29 (b) a related offence provision, to the extent that the related
30 offence provision relates to an offence against
31 subsection 327A(1).

1 **234 At the end of subsection 793(4)**

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

4 **235 After section 794**

5 Insert:

6 **794A Liability of Australian governments under civil remedy**
7 **provisions**

8 *Scope*

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

17 *Conduct of Australian governments*

- 18 (3) Any conduct engaged in on behalf of an Australian government by
19 an officer, employee or agent (an *official*) of the government
20 within the scope of the official’s actual or apparent authority is
21 taken, for the purposes of this Act and the procedural rules, to have
22 been engaged in also by the government.

23 *State of mind of Australian governments*

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

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

1 *Determining penalty amounts for Australian governments*

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

6 *Modifications*

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

9 *Meaning of **employee***

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

11 **794B Liability of the Commonwealth for certain offences**

- 12 (1) Part 2.5 of the *Criminal Code* applies in relation to the
13 Commonwealth, for the purposes of an offence against:
14 (a) subsection 327A(1) (offence for failing to pay amounts as
15 required) of this Act; or
16 (b) a related offence provision, to the extent that the related
17 offence provision relates to an offence against
18 subsection 327A(1) of this Act;
19 in the same way as that Part applies in relation to a body corporate.

- 20 (2) It so applies:
21 (a) as if sections 12.4 and 12.5 of the *Criminal Code* were
22 omitted; and
23 (b) with the following modifications:
24 (i) the modifications set out in the following table (subject
25 to subparagraph (iii));
26 (ii) such other modifications as are made necessary by the
27 fact that criminal liability is being imposed on a body
28 politic rather than a body corporate (subject to
29 subparagraph (iii));
30 (iii) any modifications prescribed by the regulations.
31

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

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

1

2

Determining penalty amounts for the Commonwealth

3

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

4

5

6

*Meaning of **employee***

7

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

8

*Meaning of **governing body***

9

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

10

11

12

794C Responsible agencies for Australian governments

13

- (1) If proceedings are brought against:

14

- (a) an Australian government in relation to a contravention of a civil remedy provision of this Act; or

15

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

- 1 Commonwealth (as the case requires) that is the successor of
2 that agency; or
3 (d) if there is no responsible agency under whichever of
4 paragraph (a) or (b) applies, or paragraph (c)—the agency of
5 the Australian government or the Commonwealth (as the case
6 requires) that the court declares to be the responsible agency.
- 7 (5) This section applies in relation to:
8 (a) an Australian government in relation to a contravention of a
9 civil remedy provision; and
10 (b) the Commonwealth in relation to the commission of an
11 offence;
12 subject to any modifications that are prescribed by the regulations.

13 **794D Liability of the Commonwealth to pay civil and criminal**
14 **penalties**

- 15 (1) This section applies if:
16 (a) the Commonwealth contravenes a civil remedy provision and
17 a court makes a pecuniary penalty order that the
18 Commonwealth pay all or part of a pecuniary penalty to
19 itself; or
20 (b) the Commonwealth is given an infringement notice under the
21 regulations in relation to an alleged contravention of a civil
22 remedy provision; or
23 (c) the Commonwealth is convicted of an offence against either
24 of the following provisions and the court imposes a
25 pecuniary penalty on the Commonwealth in respect of the
26 offence:
27 (i) subsection 327A(1) (offence for failing to pay amounts
28 as required);
29 (ii) a related offence provision, to the extent that the related
30 offence provision relates to an offence against
31 subsection 327A(1).
- 32 (2) While the Commonwealth is not liable to pay a pecuniary penalty
33 to itself, it is the Parliament's intention that the Commonwealth
34 should be notionally liable to pay such a penalty.

- 1 (3) The Finance Minister may give such written directions as are
2 necessary or convenient for carrying out or giving effect to
3 subsection (2) and, in particular, may give directions in relation to
4 the transfer of money from an account operated by the responsible
5 agency under section 794C for the contravention or for the
6 commission of the offence to another account operated by the
7 Commonwealth.
- 8 (4) Directions under subsection (3) have effect, and must be complied
9 with, despite any other Commonwealth law.

10 ***Federal Court of Australia Act 1976***

11 **236 After paragraph 23AB(4)(a)**

12 Insert:

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

Schedule 1 Main amendments

Part 14A Amendments relating to mediation and conciliation conference orders made under section 448A of the Fair Work Act 2009

1 **Part 14A—Amendments relating to mediation and**
2 **conciliation conference orders made under**
3 **section 448A of the Fair Work Act 2009**

4 *Fair Work Act 2009*

5 **236A Subsection 409(6A)**

6 Repeal the subsection, substitute:

7 (6A) Each bargaining representative who applied for a protected action
8 ballot order for the protected action ballot for the industrial action
9 must not have contravened any order made under section 448A
10 (which is about mediation and conciliation conferences) that
11 related to the protected action ballot order.

12 **236B Subsection 411(3)**

13 After “The employer”, insert “mentioned in subsection (2)”.

1 **Part 16A—Right of entry—assisting health and**
2 **safety representatives**

3 ***Fair Work Act 2009***

4 **306A At the end of section 494**

5 Add:

6 *Assisting health and safety representatives*

- 7 (4) Subsection (1), and sections 495 to 498, do not apply to an official
8 of an organisation assisting a health and safety representative on
9 request under a provision of a State or Territory OHS law
10 equivalent to paragraph 68(2)(g) of the *Work Health and Safety Act*
11 *2011*.
- 12 (5) However, sections 499 to 504 do apply in relation to the official:
13 (a) whether or not the official is a permit holder; and
14 (b) for the purposes of sections 499 to 502—if the official is not
15 a permit holder, as if the official were a permit holder; and
16 (c) as if giving the assistance to the health and safety
17 representative were authorised by this Part, or were the
18 exercise of rights under this Part (as the case requires); and
19 (d) for the purposes of section 504—as if that section prohibited
20 the use of information or a document obtained in giving the
21 assistance other than for a purpose related to the exercise or
22 performance of the powers or functions of the health and
23 safety representative (subject to the exceptions set out in that
24 section).

1 **Part 18—Application and transitional provisions**

2 *Fair Work Act 2009*

3 **308 In the appropriate position in Schedule 1**

4 Insert:

5 **Part 15—Amendments made by the Fair Work**
6 **Legislation Amendment (Closing**
7 **Loopholes) Act 2023**

8 **Division 1—Definitions**

9 **91 Definitions**

10 In this Part:

11 *amended Act* means this Act as amended by the *Fair Work*
12 *Legislation Amendment (Closing Loopholes) Act 2023*.

13 *amending Act* means the *Fair Work Legislation Amendment*
14 *(Closing Loopholes) Act 2023*.

15 **Division 2—Amendments made by Part 2 of Schedule 1 to**
16 **the amending Act**

17 **92 Application—section 121**

18 Despite the amendment made by item 28 of Part 2 of Schedule 1 to
19 the amending Act, section 121, as in force immediately before the
20 commencement of that item, continues to apply in relation to the
21 termination of an employee’s employment if any of the following
22 occurred before that commencement:

- 23 (a) the termination of the employee;
- 24 (b) any other termination covered by that section as amended
25 that caused the employer to become a small business
26 employer.

1 **Division 3—Amendments made by Part 6 of Schedule 1 to**
2 **the amending Act**

3 **93 Application of amendments—regulated labour hire arrangement**
4 **orders**

5 *Application of requirement to pay protected rate of pay*

- 6 (1) Section 306F of the amended Act (protected rate of pay payable to
7 employees if a regulated labour hire arrangement order is in force)
8 applies on and after 1 November 2024 regardless of whether any
9 agreement resulting in the performance of work by a regulated
10 employee is entered into before, on or after that day.

11 *Anti-avoidance provisions apply retrospectively in relation to*
12 *certain conduct and schemes*

- 13 (2) Division 4 of Part 2-7A of the amended Act (anti-avoidance)
14 applies, on and after the introduction day, in relation to:
15 (a) conduct engaged in; or
16 (b) a scheme that is entered into, begun to be carried out or
17 carried out;
18 on or after the introduction day.

- 19 (3) In this section:

20 *introduction day* means the day on which the *Fair Work*
21 *Legislation Amendment (Closing Loopholes) Bill 2023* was
22 introduced into the Parliament.

23 **Division 4—Amendments made by Part 7 of Schedule 1 to**
24 **the amending Act**

25 **94 Application of section 149E of amended Act**

- 26 (1) Section 149E (delegates' rights terms) of the amended Act applies
27 in relation to a modern award that is in operation on or after 1 July
28 2024, whether or not the award was made before that day.
29 (2) However, a modern award is not invalid on or after 1 July 2024
30 only because it does not include a delegates' rights term.

1 **95 FWC to vary certain modern awards**

- 2 (1) This clause applies in relation to a modern award if the award:
3 (a) is made before 1 July 2024; and
4 (b) is to be in operation on that day.
- 5 (2) The FWC must, by 30 June 2024, make a determination varying
6 the modern award to include a delegates' rights term.
- 7 (3) A determination made under subclause (2) comes into operation on
8 (and takes effect from) 1 July 2024.
- 9 (4) Section 168 applies to a determination made under subclause (2) as
10 if it were a determination made under Part 2-3.

11 **96 Application of section 205A of amended Act**

- 12 (1) Section 205A (enterprise agreements to include delegates' rights
13 terms etc.) of the amended Act does not apply in relation to an
14 enterprise agreement if:
15 (a) before 1 July 2024, the employer concerned asks the
16 employees to approve the agreement by voting for it; and
17 (b) by that vote, the employees approve the agreement; and
18 (c) the FWC approves the agreement.
- 19 (2) In deciding, after 1 July 2024, whether to approve the agreement
20 mentioned in subclause (1) (in that form), the FWC must disregard
21 section 205A.

22 **97 Application of subsections 273(6) and (7) of amended Act**

- 23 (1) Subsections 273(6) and (7) (delegates' rights terms) of the
24 amended Act apply in relation to a workplace determination made
25 on or after 1 July 2024.
- 26 (2) However, a workplace determination is not invalid on or after
27 1 July 2024 only because it does not include a delegates' rights
28 term.

1 **Division 5—Amendments made by Part 14 of Schedule 1 to**
2 **the amending Act**

3 **98 Offence relating to failure to pay certain amounts as required**

4 Subsection 327A(1) of the amended Act applies in relation to
5 conduct that occurs after the commencement of Part 14 of
6 Schedule 1 to the amending Act, including conduct that occurs
7 after that commencement that is part of a course of conduct that
8 began before that commencement.

9 **Division 6—Amendments made by Part 14A of Schedule 1**
10 **to the amending Act**

11 **99 Application of amendments**

- 12 (1) The amendment of subsection 409(6A) of this Act made by
13 Part 14A of Schedule 1 to the amending Act applies in relation to
14 industrial action to the extent that the industrial action occurs, or is
15 to occur, on or after the commencement of that Part.
- 16 (2) However, the amendment does not apply in relation to doing any of
17 the following before that commencement in relation to industrial
18 action, even if the industrial action occurs, or was to occur, on or
19 after that commencement:
- 20 (a) organising the industrial action;
 - 21 (b) threatening to engage in the industrial action;
 - 22 (c) threatening to organise the industrial action;
 - 23 (d) engaging in any other conduct in relation to the industrial
24 action.
- 25 (3) For the purposes of subsection 409(6A) of this Act, as amended by
26 Part 14A of Schedule 1 to the amending Act, it does not matter
27 whether a contravention of an order made under section 448A of
28 this Act occurred before, on or after the commencement of that
29 Part.

1 **Schedule 2—Amendment of the Asbestos**
2 **Safety and Eradication Agency Act**
3 **2013**

4 **Part 1—Main amendments**

5 *Asbestos Safety and Eradication Agency Act 2013*

6 **1 Title**

7 Omit “Asbestos”, substitute “Asbestos and Silica”.

8 **2 Section 1**

9 Omit “*Asbestos Safety and Eradication Agency Act 2013*”, substitute
10 “*Asbestos and Silica Safety and Eradication Agency Act 2013*”.

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

15 **3 Section 2A**

16 Repeal the section, substitute:

17 **2A Object of this Act**

18 The object of this Act is to establish the Asbestos and Silica Safety
19 and Eradication Agency to lead coordinated and national action to
20 eliminate asbestos-related diseases and silica-related diseases in
21 Australia by:

- 22 (a) fostering collaboration between:
- 23 (i) persons and bodies involved in the regulation,
24 management and control of asbestos safety and silica
25 safety; and
 - 26 (ii) persons and bodies involved in dealing with issues
27 related to asbestos-related diseases and silica-related
28 diseases; and
- 29 (b) supporting and monitoring the implementation of the
30 National Strategic Plans by the Commonwealth and State,
31 Territory and local governments; and

- 1 (c) promoting national consistency in relation to asbestos safety,
2 asbestos-related diseases, silica safety and silica-related
3 diseases; and
4 (d) improving the state of knowledge and awareness of issues
5 relating to asbestos safety, asbestos-related diseases, silica
6 safety and silica-related diseases.

7 **4 Section 3 (definition of Agency)**

8 Repeal the definition, substitute:

9 *Agency* means the Asbestos and Silica Safety and Eradication
10 Agency referred to in section 6.

11 **5 Section 3**

12 Insert:

13 *Asbestos and Silica Safety and Eradication Agency* means the
14 Agency referred to in section 6.

15 *Asbestos and Silica Safety and Eradication Council* means the
16 Council referred to in section 28.

17 *Asbestos National Strategic Plan* has the meaning given by
18 section 5A.

19 **6 Section 3 (definition of Asbestos Safety and Eradication
20 Council)**

21 Repeal the definition.

22 **7 Section 3 (definition of Chair)**

23 Omit “Asbestos Safety and Eradication”.

24 **8 Section 3**

25 Insert:

26 *Council* means the Asbestos and Silica Safety and Eradication
27 Council.

28 **9 Section 3 (definition of Council member)**

29 Omit “Asbestos Safety and Eradication”.

1 **10 Section 3 (definition of *National Strategic Plan*)**

2 Repeal the definition.

3 **11 Section 3**

4 Insert:

5 *National Strategic Plans* means the Asbestos National Strategic
6 Plan and the Silica National Strategic Plan.

7 *Silica National Strategic Plan* has the meaning given by
8 section 5B.

9 *silica safety* includes, but is not limited to, matters relating to
10 awareness, education and information sharing in relation to
11 respirable crystalline silica and products that contain silica.

12 **12 Part 1A**

13 Repeal the Part, substitute:

14 **Part 1A—National Strategic Plans**

15

16 **5A Asbestos National Strategic Plan**

17 (1) The *Asbestos National Strategic Plan* is the plan with that name
18 that:

19 (a) aims:

20 (i) to eliminate asbestos-related diseases in Australia by
21 preventing exposure to asbestos fibres; and

22 (ii) to support workers and others who are affected by
23 asbestos-related diseases; and

24 (b) represents a commitment to implement an agreed set of
25 strategic actions and national targets focussing on:

26 (i) identifying asbestos and preventing exposure risks,
27 including through prioritised safe removal and effective
28 waste management; and

29 (ii) improving awareness of asbestos safety and
30 asbestos-related diseases; and

- 1 (iii) improving research and national data in relation to
2 asbestos safety and asbestos-related diseases; and
3 (iv) facilitating international collaboration in relation to
4 asbestos safety and asbestos-related diseases; and
5 (v) any other relevant priorities.

6 Note: The *Asbestos National Strategic Plan* is available on the Agency's
7 website.

- 8 (2) The plan referred to in subsection (1) represents a commitment to
9 implement an agreed set of strategic actions and national targets
10 focussing on the priorities referred to in subparagraphs (1)(b)(i) to
11 (v) only if the plan has been agreed to by at least 6 of the
12 governments of the Commonwealth and each State and Territory.

13 **5B Silica National Strategic Plan**

- 14 (1) The *Silica National Strategic Plan* is the plan with that name that:

15 (a) aims:

- 16 (i) to eliminate silica-related diseases in Australia by
17 preventing exposure to respirable crystalline silica; and
18 (ii) to support workers and others who are affected by
19 silica-related diseases; and

20 (b) represents a commitment to implement an agreed set of
21 strategic actions and national targets focussing on:

- 22 (i) eliminating or minimising exposure to respirable
23 crystalline silica in workplaces; and
24 (ii) improving awareness of silica safety and silica-related
25 diseases; and
26 (iii) improving research and national data in relation to silica
27 safety and silica-related diseases; and
28 (iv) facilitating international collaboration in relation to
29 silica safety and silica-related diseases; and
30 (v) any other relevant priorities.

- 31 (2) The plan referred to in subsection (1) represents a commitment to
32 implement an agreed set of strategic actions and national targets
33 focussing on the priorities referred to in subparagraphs (1)(b)(i) to
34 (v) only if the plan has been agreed to by at least 6 of the
35 governments of the Commonwealth and each State and Territory.

1 **13 Part 2 (heading)**

2 Repeal the heading, substitute:

3 **Part 2—Asbestos and Silica Safety and Eradication**
4 **Agency**

5 **14 Section 6**

6 Repeal the section, substitute:

7 **6 Asbestos and Silica Safety and Eradication Agency**

8 The body known immediately before the commencement of this
9 section as the Asbestos Safety and Eradication Agency is
10 continued in existence with the new name, Asbestos and Silica
11 Safety and Eradication Agency.

12 Note: See also section 25B of the *Acts Interpretation Act 1901*.

13 **15 Subsection 8(1)**

14 Repeal the subsection, substitute:

- 15 (1) The Agency has the following functions:
- 16 (a) to encourage, coordinate, monitor and report on the
17 implementation of the National Strategic Plans;
- 18 (b) to review, amend or replace, publish and promote the
19 National Strategic Plans;
- 20 (c) to provide advice to the Minister about asbestos safety,
21 asbestos-related diseases, silica safety and silica-related
22 diseases;
- 23 (d) to collaborate with Commonwealth, State, Territory, local
24 and other governments, agencies or bodies (including
25 international governments, agencies and bodies) about:
- 26 (i) the development, implementation, review and
27 amendment of the National Strategic Plans; and
- 28 (ii) asbestos safety, asbestos-related diseases, silica safety
29 and silica-related diseases;
- 30 (e) to conduct, commission, monitor and promote research about
31 asbestos safety, asbestos-related diseases, silica safety and
32 silica-related diseases;

- 1 (f) to raise awareness of asbestos safety, asbestos-related
2 diseases, silica safety and silica-related diseases, including by
3 developing and promoting materials on asbestos safety,
4 asbestos-related diseases, silica safety and silica-related
5 diseases;
6 (g) to collect and analyse data required for measuring progress
7 on preventing exposure to asbestos fibres, or respirable
8 crystalline silica, and for informing evidence-based policies
9 and strategies;
10 (h) to promote consistent messages, policies and practices in
11 relation to asbestos safety, asbestos-related diseases, silica
12 safety and silica-related diseases;
13 (i) such other functions as are conferred on the Agency by or
14 under this Act, the rules or any other law of the
15 Commonwealth;
16 (j) to do anything incidental or conducive to the performance of
17 any of the above functions.

18 **16 Subsection 8(3)**

19 Omit “performing it”, substitute “performing its”.

20 **17 Subsection 8(3)**

21 Omit “National Strategic Plan”, substitute “National Strategic Plans”.

22 **17A At the end of section 8**

23 Add:

24 *Relationship with Financial Framework (Supplementary Powers)*
25 *Act 1997*

- 26 (5) To avoid doubt, the power of the Commonwealth to spend amounts
27 for the purposes of this section must be disregarded for the purpose
28 of paragraph 32B(1)(a) of the *Financial Framework*
29 *(Supplementary Powers) Act 1997*.

30 Note: The effect of this subsection is to make clear that this section does not
31 effectively limit the operation of section 32B of the *Financial*
32 *Framework (Supplementary Powers) Act 1997*. The Commonwealth
33 has the power to make, vary or administer an arrangement or grant
34 under that section whether the Commonwealth also has the power to
35 spend amounts for the purposes of this section.

1 **18 After section 8**

2 Insert:

3 **8A Annual reports in relation to National Strategic Plans**

4 *Annual report in relation to Asbestos National Strategic Plan*

- 5 (1) The Agency must, before the end of 31 December in each financial
6 year, prepare a written report relating to the progress made by the
7 Commonwealth and State and Territory governments in
8 implementing the Asbestos National Strategic Plan during the
9 previous financial year. The report may also include information
10 relating to any other matter the Agency considers relevant.
- 11 (2) As soon as practicable after the Agency has prepared a report
12 under subsection (1), the Agency must give a copy of the report to
13 the following:
- 14 (a) the Minister who administers this Act;
 - 15 (b) the Minister who administers the *National Health Act 1953*;
 - 16 (c) the Minister who administers the *Environment Protection*
17 *and Biodiversity Conservation Act 1999*;
 - 18 (d) each State or Territory Minister who is responsible, or
19 principally responsible, for matters relating to work health
20 and safety in the State or Territory;
 - 21 (e) each State or Territory Minister who is responsible, or
22 principally responsible, for matters relating to health in the
23 State or Territory;
 - 24 (f) each State or Territory Minister who is responsible, or
25 principally responsible, for matters relating to the protection
26 of the environment in the State or Territory.

27 *Annual report in relation to Silica National Strategic Plan*

- 28 (3) The Agency must, before the end of 31 December in each financial
29 year, prepare a written report relating to the progress made by the
30 Commonwealth and State and Territory governments in
31 implementing the Silica National Strategic Plan during the
32 previous financial year. The report may also include information
33 relating to any other matter the Agency considers relevant.

- 1 (4) As soon as practicable after the Agency has prepared a report
2 under subsection (3), the Agency must give a copy of the report to
3 the following:
4 (a) the Minister who administers this Act;
5 (b) the Minister who administers the *National Health Act 1953*;
6 (c) each State or Territory Minister who is responsible, or
7 principally responsible, for matters relating to work health
8 and safety in the State or Territory;
9 (d) each State or Territory Minister who is responsible, or
10 principally responsible, for matters relating to health in the
11 State or Territory.

12 *Annual reports must be publicly available*

- 13 (5) The Agency must make each report prepared under subsection (1)
14 or (3) publicly available.

15 Example: A report may be published on the Agency’s website.

16 **19 Section 12 (heading)**

17 Omit “Asbestos Safety and Eradication”.

18 **20 Subsections 12(1), (1A) and (2)**

19 Omit “Asbestos Safety and Eradication”.

20 **21 At the end of Division 1 of Part 3**

21 Add:

22 **14A CEO may obtain information**

- 23 (1) This section applies to a person if:
24 (a) the CEO believes on reasonable grounds that the person has
25 information that is relevant to the performance of any of the
26 functions of the Agency referred to in paragraphs 8(1)(a), (b)
27 and (g); and
28 (b) the CEO is satisfied that the information:
29 (i) is necessary for the performance of that function; and
30 (ii) is not otherwise available to the CEO.

- 1 (2) The CEO may, by written notice given to the person, request the
2 person to give to the CEO, within the period and in the manner and
3 form specified in the notice, any such information.
- 4 (3) A period specified under subsection (2) must not be shorter than 14
5 days after the notice is given.
- 6 (4) A manner specified in a notice under subsection (2) must involve
7 the use of a service to which paragraph 51(v) of the Constitution
8 applies.
- 9 (5) A person may comply with a request under subsection (2).
- 10 (6) Subsection (5) has effect despite anything in:
11 (a) a law of the Commonwealth (other than this Act); or
12 (b) a law of a State or Territory.

13 **22 Subsection 23A(1)**

14 After “functions or powers”, insert “under this Act (other than
15 section 14A which confers power on the CEO to obtain information in
16 certain circumstances)”.

17 **23 Paragraph 24(1)(b)**

18 Omit “Asbestos Safety and Eradication”.

19 **24 Part 5 (heading)**

20 Repeal the heading, substitute:

21 **Part 5—Asbestos and Silica Safety and Eradication**
22 **Council**

23 **25 Division 1 of Part 5 (heading)**

24 Omit “Asbestos Safety and Eradication”.

25 **26 Section 28**

26 Repeal the section, substitute:

1 **28 Asbestos and Silica Safety and Eradication Council**

2 The body known immediately before the commencement of this
3 section as the Asbestos Safety and Eradication Council is
4 continued in existence with the new name, Asbestos and Silica
5 Safety and Eradication Council.

6 Note: See also section 25B of the *Acts Interpretation Act 1901*.

7 **27 Section 29 (heading)**

8 Omit “Asbestos Safety and Eradication”.

9 **28 Subsection 29(1)**

10 Omit “Asbestos Safety and Eradication”.

11 **29 Paragraph 29(1)(b)**

12 After “safety”, insert “, asbestos-related diseases, silica safety and
13 silica-related diseases”.

14 **30 Paragraphs 29(1)(c) and (d)**

15 Omit “National Strategic Plan”, substitute “National Strategic Plans”.

16 **31 Subsections 29(2), (2A) and (3)**

17 Omit “Asbestos Safety and Eradication”.

18 **32 Section 30 (heading)**

19 Omit “Asbestos Safety and Eradication”.

20 **33 Subsections 30(1) and (2)**

21 Omit “Asbestos Safety and Eradication”.

22 **34 Subsections 30A(1), (2) and (3)**

23 Omit “Asbestos Safety and Eradication”.

24 **35 Division 2 of Part 5 (heading)**

25 Omit “Asbestos Safety and Eradication”.

26 **36 Section 31**

27 Omit “Asbestos Safety and Eradication”.

1 **37 Paragraph 31(d)**

2 Omit “1 member”, substitute “2 members”.

3 **38 Paragraph 31(e)**

4 Omit “1 member”, substitute “2 members”.

5 **39 After paragraph 31(e)**

6 Insert:

7 (ea) 1 member who has expertise relevant to asbestos safety,
8 asbestos-related diseases, silica safety or silica-related
9 diseases; and

10 **40 Subsection 32(3)**

11 Repeal the subsection, substitute:

- 12 (3) A person is eligible for appointment as a Council member under
13 paragraph 31(a), (d), (e) or (f) only if the Minister is satisfied that:
- 14 (a) the person has knowledge or experience in one or more of the
15 following:
- 16 (i) asbestos safety;
 - 17 (ii) public health issues relating to asbestos;
 - 18 (iii) asbestos-related diseases;
 - 19 (iv) the representation of, or the provision of support to,
20 persons with asbestos-related diseases and their
21 families;
 - 22 (v) silica safety;
 - 23 (vi) silica-related diseases;
 - 24 (vii) the representation of, or the provision of support to,
25 persons with silica-related diseases and their families;
 - 26 (viii) financial management;
 - 27 (ix) corporate governance; or
- 28 (b) the person:
- 29 (i) has, or has had, an asbestos-related disease; or
 - 30 (ii) has lived experience as a family member, carer or
31 advocate in providing support to a person who has, or
32 has had, an asbestos-related disease; or
 - 33 (iii) has, or has had, a silica-related disease; or

1 (iv) has lived experience as a family member, carer or
2 advocate in providing support to a person who has, or
3 has had, a silica-related disease.

4 **41 Paragraph 40(d)**

5 Omit “Asbestos Safety and Eradication”.

6 **42 Division 4 of Part 5 (heading)**

7 Omit “Asbestos Safety and Eradication”.

8 **43 Section 41 (heading)**

9 Omit “Asbestos Safety and Eradication”.

10 **44 Subsection 41(1)**

11 Omit “Asbestos Safety and Eradication”.

12 **45 Subsection 41A(1)**

13 Omit “Asbestos Safety and Eradication”.

14 **46 Paragraph 41A(1)(b)**

15 Omit “4”, substitute “6”.

16 **47 Paragraph 41A(2)(a)**

17 Omit “Asbestos Safety and Eradication”.

18 **48 Sections 41B, 41C, 41D and 41E**

19 Omit “Asbestos Safety and Eradication” (wherever occurring).

20 **49 Subparagraph 41F(a)(ii)**

21 Omit “Asbestos Safety and Eradication”.

22 **50 Paragraph 41F(b)**

23 Omit “Asbestos”, substitute “Asbestos and Silica”.

24 **51 Subparagraph 41F(e)(iii)**

25 Omit “Asbestos Safety and Eradication”.

1 **52 Subsection 42(3)**

2 Omit “the National Strategic Plan”, substitute “either of the National
3 Strategic Plans”.

4 **53 At the end of section 42**

5 Add:

6 (4) The annual operational plan is taken to be a corporate plan for the
7 purposes of the *Public Governance, Performance and*
8 *Accountability Act 2013*.

9 **54 Section 47**

10 Repeal the section, substitute:

11 **47 Review of the Agency’s role and functions**

12 (1) The Minister must cause a review of the Asbestos and Silica Safety
13 and Eradication Agency’s ongoing role and functions to be
14 conducted.

15 (2) The review must:

- 16 (a) start 5 years after the commencement of this section; and
17 (b) be completed within 6 months.

18 (3) The Minister must cause a written report about the review to be
19 prepared.

20 (4) The Minister must cause a copy of the report to be laid before each
21 House of Parliament within 15 sitting days after the completion of
22 the report.

1 **Part 2—Application, saving and transitional**
2 **provisions**

3 **55 Definitions**

4 In this Part:

5 *amended Act* means the *Asbestos Safety and Eradication Agency Act*
6 *2013*, as in force after the commencement day.

7 *commencement day* means the day this Part commences.

8 *Silica Plan agreement day* means the day after the day the Silica
9 National Strategic Plan has been agreed to by at least 6 of the
10 governments of the Commonwealth and each State and Territory.

11 **56 Functions of the Agency—Silica National Strategic Plan**

12 Paragraphs 8(1)(a) and (b) and subsection 8(3) of the amended Act
13 apply to the Asbestos and Silica Safety and Eradication Agency in
14 relation to the Silica National Strategic Plan on and after the Silica Plan
15 agreement day.

16 **57 Functions of the Agency—annual report relating to**
17 **implementation of Asbestos National Strategic Plan**

18 *General*

- 19 (1) Subsection 8A(1) of the amended Act applies in relation to the Asbestos
20 and Silica Safety and Eradication Agency subject to subitems (2) and
21 (3) of this item.

22 *First annual report after commencement day*

- 23 (2) If the commencement day is before 1 September 2024, the first report
24 prepared by the Asbestos and Silica Safety and Eradication Agency
25 under subsection 8A(1) of the amended Act must:
26 (a) relate to progress made by the Commonwealth and State and
27 Territory governments in implementing the Asbestos
28 National Strategic Plan during the period beginning on
29 1 January 2024 and ending at the end of 30 June 2024; and
30 (b) be prepared before the end of 31 December 2024.

- 1 (3) If the commencement day is on or after 1 September 2024, the first
2 report prepared by the Asbestos and Silica Safety and Eradication
3 Agency under subsection 8A(1) of the amended Act must:
- 4 (a) relate to progress made by the Commonwealth and State and
5 Territory governments in implementing the Asbestos
6 National Strategic Plan during the period (the *first reporting*
7 *period*) beginning on 1 January 2024 and ending at the end of
8 the financial year that includes the commencement day; and
9 (b) be prepared before the end of 31 December in the financial
10 year beginning after the end of the first reporting period.
- 11 (4) Subsections 8A(2) and (5) of the amended Act apply in relation to a
12 report prepared under subitem (2) or (3) of this item as if the report
13 were a report prepared under subsection 8A(1) of the amended Act.

14 **58 Functions of the Agency—annual report relating to**
15 **implementation of Silica National Strategic Plan**

16 *General*

- 17 (1) Subject to subitems (2), (3) and (4) of this item, subsections 8A(3) and
18 (4) of the amended Act apply in relation to the Asbestos and Silica
19 Safety and Eradication Agency on and after the Silica Plan agreement
20 day.

21 *First annual report after Silica Plan agreement day*

- 22 (2) If the Silica Plan agreement day is between 1 July and 31 December in a
23 financial year (the *first financial year*), the first report prepared by the
24 Asbestos and Silica Safety and Eradication Agency under
25 subsection 8A(3) of the amended Act must:
- 26 (a) instead of relating to the matters referred to in that
27 subsection, include information relating to:
- 28 (i) the matters covered by the Silica National Strategic
29 Plan; and
30 (ii) the activities undertaken by the Commonwealth and
31 State and Territory governments in relation to the
32 implementation of the Silica National Strategic Plan
33 during the period (the *first reporting period*) beginning
34 on the Silica Plan agreement day and ending at the end
35 of the first financial year; and

- 1 (iii) any other matter the Agency considers relevant; and
2 (b) be prepared before the end of 31 December in the financial
3 year beginning after the end of the first reporting period.
- 4 (3) If the Silica Plan agreement day is between 1 January and 30 June in a
5 financial year (the *first financial year*), the first report prepared by the
6 Asbestos and Silica Safety and Eradication Agency under
7 subsection 8A(3) of the amended Act must:
- 8 (a) relate to progress made by the Commonwealth and State and
9 Territory governments in implementing the Silica National
10 Strategic Plan during the period (the *first reporting period*)
11 beginning on the Silica Plan agreement day and ending at the
12 end of the next financial year after the first financial year;
13 and
14 (b) be prepared before the end of 31 December in the financial
15 year beginning after the end of the first reporting period.
- 16 (4) Subsections 8A(4) and (5) of the amended Act apply in relation to a
17 report prepared under subitem (2) or (3) of this item as if the report
18 were a report prepared under subsection 8A(3) of the amended Act.

19 **59 CEO of the Agency**

20 The person holding office as the CEO of the Asbestos Safety and
21 Eradication Agency under section 15 of the *Asbestos Safety and*
22 *Eradication Agency Act 2013* immediately before the commencement
23 day continues, on and after the commencement day, to hold office as the
24 CEO of the Asbestos and Silica Safety and Eradication Agency:

- 25 (a) on the terms and conditions that applied to the person
26 immediately before the commencement day; and
27 (b) for the balance of the person's term of appointment that
28 remained immediately before the commencement day.

29 **60 Functions of the CEO of the Agency—annual operational** 30 **plan**

31 Subsection 42(3) of the amended Act applies to the CEO of the
32 Asbestos and Silica Safety and Eradication Agency in relation to the
33 Silica National Strategic Plan on and after the Silica Plan agreement
34 day.

1 **61 Functions of the Council—Silica National Strategic Plan**

2 Paragraphs 29(1)(c) and (d) of the amended Act apply to the Asbestos
3 and Silica Safety and Eradication Council in relation to the Silica
4 National Strategic Plan on and after the Silica Plan agreement day.

5 **62 Members of the Council**

6 A person holding office as a member of the Asbestos Safety and
7 Eradication Council under section 32 of the *Asbestos Safety and*
8 *Eradication Agency Act 2013* immediately before the commencement
9 day continues, on and after the commencement day, to hold office as a
10 member of the Asbestos and Silica Safety and Eradication Council:

- 11 (a) on the terms and conditions that applied to the person
12 immediately before the commencement day; and
13 (b) for the balance of the person’s term of appointment that
14 remained immediately before the commencement day.

1 **Schedule 3—Amendment of the Safety,**
2 **Rehabilitation and Compensation Act**
3 **1988**

4 **Part 1—Post-traumatic stress disorder**

5 *Safety, Rehabilitation and Compensation Act 1988*

6 **1 Before subsection 7(8)**

7 Insert:

8 *Diseases suffered by firefighters*

9 **2 At the end of section 7**

10 Add:

11 *Post-traumatic stress disorder suffered by certain employees*

12 (11) If:

- 13 (a) an employee has been diagnosed by a legally qualified
14 medical practitioner or psychologist as suffering, or having
15 suffered, from post-traumatic stress disorder in accordance
16 with the diagnostic criteria in:
17 (i) the *Diagnostic and Statistical Manual of Mental*
18 *Disorders*, fifth edition text revision (DSM-5-TR),
19 published by the American Psychiatric Association in
20 2022; or
21 (ii) if a later edition of the *Diagnostic and Statistical*
22 *Manual of Mental Disorders* is specified by the Minister
23 by legislative instrument—that later edition of the
24 Manual; and
25 (b) at any time before symptoms of post-traumatic stress disorder
26 became apparent, the employee:
27 (i) was employed as a first responder in accordance with
28 subsection (13); or
29 (ii) was a member of a class of employees declared by the
30 Minister, by legislative instrument made under

1 subsection (13A), to be a class to which this
2 subparagraph applies;
3 the employee's employment as a first responder or as a member of
4 the class of employees declared under subsection (13A) is, for the
5 purposes of this Act, taken to have contributed, to a significant
6 degree, to the contraction of the post-traumatic stress disorder,
7 unless the contrary is established.

- 8 (13) For the purposes of subparagraph (11)(b)(i), an employee was
9 employed as a first responder at a time if, at that time, the
10 employee:
- 11 (a) was the Commissioner of the Australian Federal Police, a
12 Deputy Commissioner of the Australian Federal Police or an
13 AFP employee (all within the meaning of the *Australian*
14 *Federal Police Act 1979*); or
 - 15 (b) was employed as a firefighter; or
 - 16 (c) was employed as an ambulance officer (including as a
17 paramedic); or
 - 18 (d) was employed as an emergency services communications
19 operator; or
 - 20 (e) was a member of an emergency service (within the meaning
21 of the *Emergencies Act 2004* (ACT)); or
 - 22 (f) was the Australian Border Force Commissioner; or
 - 23 (g) was an APS employee in the Australian Border Force.

24 (13A) If the Minister is satisfied that the incidence of post-traumatic
25 stress disorder among a class of employees is significantly greater
26 than the incidence of post-traumatic stress disorder among the
27 general public, the Minister may, by legislative instrument, declare
28 that class of employees to be a class of employees to which
29 subparagraph (11)(b)(ii) applies.

30 (14) Subsection (11) does not limit, and is not limited by,
31 subsections (1) and (2).

32 **3 Application of amendments**

33 The amendments made by this Part apply in relation to an injury, being
34 a disease or an aggravation of a disease, that is sustained by an
35 employee after the commencement of this Part.

1 **Part 2—Rehabilitation assessments and**
2 **examinations**

3 ***Safety, Rehabilitation and Compensation Act 1988***

4 **4 Subsection 4(1)**

5 Insert:

6 ***approved Rehabilitation Assessments and Examinations Guide***
7 means:

- 8 (a) the document prepared by Comcare in accordance with
9 section 57A, titled “Guide for Arranging Rehabilitation
10 Assessments and Requiring Examinations”, that has been
11 approved by the Minister and is for the time being in force;
12 or
13 (b) if an instrument varying that document has been approved by
14 the Minister—that document as so varied.

15 **5 After subsection 36(3)**

16 Insert:

- 17 (3A) In deciding whether to arrange for an assessment under
18 subsection (1) or to require an examination under subsection (3),
19 the rehabilitation authority must comply with the approved
20 Rehabilitation Assessments and Examinations Guide.

21 Note: The Guide is prepared by Comcare under section 57A.

22 **6 After subsection 57(1)**

23 Insert:

- 24 (1A) In deciding whether to require an examination under
25 subsection (1), the relevant authority must comply with the
26 approved Rehabilitation Assessments and Examinations Guide.

27 Note: The Guide is prepared by Comcare under section 57A.

28 **7 Subsection 57(6)**

29 Repeal the subsection.

1 **8 After section 57**

2 Insert:

3 **57A Guide for Arranging Rehabilitation Assessments and Requiring**
4 **Examinations**

- 5 (1) Comcare must, in consultation with the Commission, prepare a
6 written document to be called the “Guide for Arranging
7 Rehabilitation Assessments and Requiring Examinations” (the
8 *Guide*).
- 9 (2) The object of the Guide is to support ethical, transparent and
10 accountable decision-making in relation to arranging a
11 rehabilitation assessment of an employee under subsection 36(1),
12 or requiring an employee to undergo an examination under
13 subsection 36(3) or 57(1), including appropriate consideration of
14 the employee’s personal circumstances.
- 15 (3) The Guide must:
- 16 (a) provide that, for the purposes of a rehabilitation assessment
17 or examination of an employee:
- 18 (i) information in relation to the employee should be
19 sought from the employee’s treating practitioner; and
- 20 (ii) the employee’s treating practitioner and the information
21 (if any) provided by the treating practitioner should be
22 relied on as much as possible before a referral is made
23 to an independent medical practitioner, or other
24 qualified person, in relation to the employee; and
- 25 (b) specify the circumstances in which it is appropriate to require
26 an employee to undergo a rehabilitation assessment or
27 examination; and
- 28 (c) specify limitations on the frequency and number of
29 rehabilitation assessments or examinations that an employee
30 may be required to undergo; and
- 31 (d) specify the qualifications of the person or, if required under
32 section 36, the panel of persons who may conduct a
33 rehabilitation assessment or an examination of an employee;
34 and
- 35 (e) require the rehabilitation authority or the relevant authority
36 (as the case requires) to seek, and take into account, the

- 1 views of an employee, who is required to undergo a
2 rehabilitation assessment or examination, about the selection
3 of the person or, if required under section 36, the panel of
4 persons who are to conduct the rehabilitation assessment or
5 examination; and
6 (f) require that an employee who is required to undergo a
7 rehabilitation assessment or examination be given a notice of
8 the employee's rights relating to the rehabilitation assessment
9 or examination.
- 10 Note 1: For the purposes of paragraph (a), an employee's treating medical
11 practitioner may be nominated to conduct a rehabilitation assessment
12 or examination of the employee.
- 13 Note 2: For the purposes of paragraphs (d) and (e), if a relevant authority
14 requires an employee to undergo an examination under
15 subsection 57(1), the examination must be conducted by one legally
16 qualified medical practitioner nominated by the relevant authority.
- 17 (4) The Guide may provide for any other relevant matter.
- 18 (5) Comcare may, in consultation with the Commission, prepare a
19 written document varying or revoking the approved Guide.
- 20 (6) A Guide prepared under subsection (1), and a document prepared
21 under subsection (5), must be approved by the Minister.
- 22 (7) A Guide prepared under subsection (1) is a legislative instrument
23 made by the Minister on the day on which the Guide is approved
24 by the Minister.
- 25 (8) A document prepared under subsection (5) is a legislative
26 instrument made by the Minister on the day on which the
27 document is approved by the Minister.

28 **9 Subsection 60(1) (definition of *determination*)**

29 Omit "37 or 39", substitute "37, 39 or 57".

30 **10 Application of amendments**

31 The amendments made by this Part apply in relation to:

- 32 (a) a rehabilitation assessment of an employee that is arranged
33 under subsection 36(1) of the *Safety, Rehabilitation and*
34 *Compensation Act 1988*, if the assessment is conducted after
35 the commencement of this Part (regardless of when the

Schedule 3 Amendment of the Safety, Rehabilitation and Compensation Act 1988
Part 2 Rehabilitation assessments and examinations

- 1 employee sustained the relevant injury, or when the
2 assessment was arranged); and
3 (b) an examination that an employee is required to undergo
4 under subsection 36(3) or 57(1) of the *Safety, Rehabilitation*
5 *and Compensation Act 1988*, if the examination is conducted
6 after the commencement of this Part (regardless of when the
7 employee sustained the relevant injury, or when the
8 requirement to undergo the examination was made).

1 **Schedule 4—Amendment of the Work Health**
2 **and Safety Act 2011**

3 **Part 1—Industrial manslaughter**

4 *Work Health and Safety Act 2011*

5 **1 After section 30**

6 Insert:

7 **30A Industrial manslaughter**

8 (1) A person commits an offence if:

9 (a) the person is:

10 (i) a person conducting a business or undertaking; or

11 (ii) an officer of a person conducting a business or
12 undertaking; and

13 (b) the person has a health and safety duty; and

14 (c) the person intentionally engages in conduct; and

15 (d) the conduct breaches the health and safety duty; and

16 (e) the conduct causes the death of an individual; and

17 (f) the person was reckless, or negligent, as to whether the
18 conduct would cause the death of an individual.

19 Note: There is no limitation period for bringing proceedings for an offence
20 against this subsection (see subsection 232(2A)).

21 Penalty:

22 (a) In the case of an offence committed by an individual—25
23 years imprisonment.

24 (b) In the case of an offence committed by a body corporate—
25 \$18,000,000.

26 *When conduct causes death*

27 (2) For the purposes of subsection (1), a person's conduct **causes** a
28 death if the conduct substantially contributes to the death.

1

No substitution of pecuniary penalty for imprisonment

2

- (3) Subsection 4B(2) of the *Crimes Act 1914* does not apply in relation to an offence against subsection (1) of this section.

3

4

Alternative verdicts

5

- (4) If, in proceedings for an offence (the *prosecuted offence*) against subsection (1), the trier of fact:

6

7

- (a) is not satisfied that the person is guilty of the prosecuted offence; and

8

9

- (b) is satisfied that the person is guilty of an offence (the *alternative offence*) that is a Category 1 offence or a Category 2 offence;

10

11

12

the trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence, so long as the person has been accorded procedural fairness in relation to that finding of guilt.

13

14

15

16

No limitation period in relation to alternative verdicts

17

- (5) For the purposes of subsection (4), it does not matter whether the proceedings mentioned in that subsection were brought at a time when, or in circumstances in which, bringing proceedings for the alternative offence would have been permitted under section 232 (limitation period for prosecutions).

18

19

20

21

22

2 Subsection 216(2)

23

Omit “for a contravention”, substitute “in relation to a contravention”.

24

3 At the end of subsection 216(2)

25

Add “or an offence against subsection 30A(1) (industrial manslaughter)”.

26

27

4 Subparagraphs 231(1)(a)(i) and (ii)

28

Omit “or a Category 2 offence”, substitute “, a Category 2 offence or an offence against subsection 30A(1) (industrial manslaughter)”.

29

1 **5 Subsection 231(3)**

2 Omit “a Category 1 or Category 2 offence”, substitute “a Category 1
3 offence, a Category 2 offence or an offence against subsection 30A(1)
4 (industrial manslaughter)”.

5 **6 Before subsection 232(2)**

6 Insert:

7 *Exceptions*

8 **7 After subsection 232(2)**

9 Insert:

10 (2A) Despite subsection (1), proceedings for an offence against
11 subsection 30A(1) (industrial manslaughter) may be brought at any
12 time.

13 **8 Before subsection 232(3)**

14 Insert:

15 *Definitions*

16 **9 Application provision**

17 Section 30A of the *Work Health and Safety Act 2011*, as inserted by this
18 Part, applies in relation to conduct engaged in on or after the
19 commencement of this Part.

1 **Part 2—Category 1 offence**

2 *Work Health and Safety Act 2011*

3 **10 Paragraph 31(1)(b)**

4 Repeal the paragraph, substitute:

- 5 (b) the person, without reasonable excuse, engages in conduct
6 that:
- 7 (i) exposes an individual to whom the duty is owed to a
8 risk of death or serious injury or illness; or
 - 9 (ii) if the person is an officer of a person conducting a
10 business or undertaking—exposes an individual, to
11 whom the person conducting a business or undertaking
12 owes a health and safety duty, to a risk of death or
13 serious injury or illness; and

1 **Part 3—Corporate criminal liability**

2 ***Work Health and Safety Act 2011***

3 **11 Section 4**

4 Insert:

5 ***authorised person***, for a body corporate, in Division 4 of Part 13—
6 see section 244.

7 ***board of directors***, of a body corporate, in Division 4 of Part 13—
8 see section 244.

9 ***fault element***, in relation to an offence, has the same meaning as in
10 the *Criminal Code*.

11 ***physical element***, in relation to an offence, has the same meaning
12 as in the *Criminal Code*.

13 **12 Before subsection 12F(1)**

14 Insert:

15 *Application of the Crimes Act 1914*

16 **13 Before subsection 12F(2)**

17 Insert:

18 *Application of the Criminal Code*

19 **14 At the end of section 12F**

20 Add:

21 (4) Part 2.5 of the *Criminal Code* (which deals with corporate criminal
22 responsibility) does not apply to an offence against this Act.

23 Note: For the purposes of this Act, corporate criminal responsibility is dealt
24 with by Division 4 of Part 13 of this Act.

25 **15 Section 244**

26 Repeal the section, substitute:

1 **244 Definitions**

2 In this Division:

3 ***authorised person***, for a body corporate, means an officer,
4 employee or agent of the body corporate acting within the
5 officer's, employee's or agent's actual or apparent authority.

6 ***board of directors***, of a body corporate, means the body, whatever
7 it is called, exercising the executive authority of the body
8 corporate.

9 **244A Physical elements**

10 The conduct constituting the physical element of an offence is
11 taken to have been engaged in by a body corporate if the conduct is
12 engaged in by:

- 13 (a) the body corporate's board of directors; or
14 (b) one or more authorised persons for the body corporate; or
15 (c) one or more persons acting at the direction of or with the
16 express or implied agreement or consent of:
17 (i) an authorised person for the body corporate; or
18 (ii) the body corporate's board of directors.

19 **244B Fault elements other than negligence**

20 (1) If it is necessary to establish that a body corporate had a state of
21 mind in relation to a physical element of an offence, it is sufficient
22 to show that:

- 23 (a) the body corporate's board of directors:
24 (i) engaged in the conduct constituting the offence and had
25 that state of mind in relation to the physical element of
26 the offence; or
27 (ii) expressly, tacitly or impliedly authorised or permitted
28 the conduct constituting the offence; or
29 (b) an authorised person for the body corporate:
30 (i) engaged in the conduct constituting the offence and had
31 that state of mind in relation to the physical element of
32 the offence; or

- 1 (ii) expressly, tacitly or impliedly authorised or permitted
2 the conduct constituting the offence; or
3 (c) a corporate culture existed within the body corporate that
4 directed, encouraged, tolerated or led to the conduct
5 constituting the offence.
- 6 (1A) For the purposes of subsection (1), having a state of mind in
7 relation to a physical element of an offence does not include being
8 negligent with respect to that physical element.
- 9 Note: For how negligence applies in relation a body corporate, see
10 section 244BA.
- 11 (2) For the purposes of subsection (1):
12 (a) paragraphs (1)(b) and (c) do not apply if the body corporate
13 proves it took reasonable precautions to prevent the conduct
14 constituting the offence; and
15 (b) subparagraph (1)(b)(ii) does not apply if the body corporate
16 proves it took reasonable precautions to prevent the
17 authorised person authorising or permitting the conduct
18 constituting the offence.
- 19 (3) Factors relevant to the application of paragraph (1)(c) include:
20 (a) whether authority or permission to engage in the conduct
21 constituting an offence, of the same or a similar character,
22 had previously been given by a corporate officer of the body
23 corporate; and
24 (b) whether the person who engaged in the conduct constituting
25 the offence believed on reasonable grounds, or had a
26 reasonable expectation, that a corporate officer of the body
27 corporate would have authorised or permitted the conduct.
- 28 (4) In this section:
29 **corporate culture**, within a body corporate, means one or more
30 attitudes, policies, rules, courses of conduct or practices existing
31 within the body corporate generally or in the part of the body
32 corporate in which the relevant activity takes place.
33 **corporate officer**, of a body corporate, means an officer of the
34 body corporate within the meaning of section 9 of the
35 *Corporations Act 2001*.

1 **244BA Negligence**

- 2 (1) The test of negligence for a body corporate is that set out in
3 section 5.5 of the *Criminal Code*.
- 4 (2) If:
- 5 (a) negligence is a fault element in relation to a physical element
6 of an offence; and
- 7 (b) no individual employee, agent or officer of the body
8 corporate has that fault element;
- 9 that fault element may exist on the part of the body corporate if the
10 body corporate's conduct is negligent when viewed as a whole
11 (that is, by aggregating the conduct of any number of its
12 employees, agents or officers).
- 13 (3) Negligence may be evidenced by the fact that the prohibited
14 conduct was substantially attributable to:
- 15 (a) inadequate management, control or supervision of the
16 conduct of one or more of the body corporate's employees,
17 agents or officers; or
- 18 (b) failure to provide adequate systems for conveying relevant
19 information to relevant persons in the body corporate.

20 **244C Mistake of fact**

- 21 If mistake of fact is relevant to determining liability for an offence,
22 a body corporate may rely on mistake of fact only if:
- 23 (a) the employee, agent or officer of the body corporate who
24 engaged in the conduct constituting the offence was under a
25 mistaken but reasonable belief about facts that, had they
26 existed, would have meant the conduct would not have
27 constituted the offence; and
- 28 (b) the body corporate proves it took reasonable precautions to
29 prevent the conduct.

30 **244D Failure to take reasonable precautions**

31 For the purposes of subsection 244B(2) and paragraph 244C(b), a
32 failure to take reasonable precautions may be evidenced by the fact
33 that the conduct constituting the offence was substantially
34 attributable to:

- 1 (a) inadequate management, control or supervision of the
2 conduct of one or more of the body corporate's employees,
3 agents or officers; or
4 (b) failure to provide adequate systems for conveying relevant
5 information to relevant persons in the body corporate.

6 **244E How this Division applies to public authorities**

7 If a body corporate is a public authority, this Division applies in
8 relation to the body corporate in accordance with section 251.

1 **Part 4—Commonwealth criminal liability**

2 *Work Health and Safety Act 2011*

3 **16 Section 4**

4 Insert:

5 *authorised person*, for the Commonwealth, in Division 5 of
6 Part 13—see section 245.

7 *executive*, of an agency of the Commonwealth, in Division 5 of
8 Part 13—see section 245.

9 **17 Section 4 (definition of officer)**

10 Repeal the definition, substitute:

11 *officer*, of an entity, means:

- 12 (a) if the entity is the Commonwealth—an officer of the
13 Commonwealth within the meaning of section 247; or
14 (b) if the entity is a public authority—an officer of the public
15 authority within the meaning of section 252; or
16 (c) in Division 5 of Part 13, if the entity is an agency of the
17 Commonwealth—an officer of the agency within the
18 meaning of section 245; or
19 (d) if paragraphs (a), (b) and (c) of this definition do not apply—
20 an officer of the entity within the meaning of section 9 of the
21 *Corporations Act 2001* other than, if the entity is a
22 partnership, a partner in the partnership;

23 but does not include, if the entity is a local authority, an elected
24 member of the local authority acting in that capacity.

25 **18 Section 245**

26 Repeal the section, substitute:

27 **245 Definitions**

28 In this Division:

1 **authorised person**, for the Commonwealth, means an officer,
2 employee or agent of the Commonwealth acting within the
3 officer's, employee's or agent's actual or apparent authority.

4 **executive**, of an agency of the Commonwealth, means the person
5 or body, whatever the person or body is called, exercising the
6 executive authority of the agency.

7 **officer**, of an agency of the Commonwealth, means a person who
8 makes, or participates in making, decisions that affect the whole, or
9 a substantial part, of the business or undertaking of the agency.

10 **245A Offences and the Commonwealth—physical elements**

11 The conduct constituting the physical element of an offence is
12 taken to have been engaged in by the Commonwealth if the
13 conduct is engaged in by:

- 14 (a) the executive of an agency of the Commonwealth; or
15 (b) one or more authorised persons for the Commonwealth; or
16 (c) one or more persons acting at the direction of or with the
17 express or implied agreement or consent of:
18 (i) an authorised person for the Commonwealth; or
19 (ii) the executive of an agency of the Commonwealth.

20 **245B Offences and the Commonwealth—fault elements other than**
21 **negligence**

22 (1) If it is necessary to establish that the Commonwealth had a state of
23 mind in relation to a physical element of an offence, it is sufficient
24 to show that:

- 25 (a) the executive of an agency of the Commonwealth:
26 (i) engaged in the conduct constituting the offence and had
27 that state of mind in relation to the physical element of
28 the offence; or
29 (ii) expressly, tacitly or impliedly authorised or permitted
30 the conduct constituting the offence; or
31 (b) an authorised person for the Commonwealth:
32 (i) engaged in the conduct constituting the offence and had
33 that state of mind in relation to the physical element of
34 the offence; or

- 1 (ii) expressly, tacitly or impliedly authorised or permitted
2 the conduct constituting the offence; or
3 (c) a corporate culture existed within an agency of the
4 Commonwealth that directed, encouraged, tolerated or led to
5 the conduct constituting the offence.

6 (1A) For the purposes of subsection (1), having a state of mind in
7 relation to a physical element of an offence does not include being
8 negligent with respect to that physical element.

9 Note: For how negligence applies in relation to the Commonwealth, see
10 section 245BA.

- 11 (2) For the purposes of subsection (1):
12 (a) paragraphs (1)(b) and (c) do not apply if the Commonwealth
13 proves it took reasonable precautions to prevent the conduct
14 constituting the offence; and
15 (b) subparagraph (1)(b)(ii) does not apply if the Commonwealth
16 proves it took reasonable precautions to prevent the
17 authorised person authorising or permitting the conduct
18 constituting the offence.

- 19 (3) Factors relevant to the application of paragraph (1)(c) include:
20 (a) whether authority or permission to engage in the conduct
21 constituting an offence, of the same or a similar character,
22 had previously been given by an officer of the agency; and
23 (b) whether the person who engaged in the conduct constituting
24 the offence believed on reasonable grounds, or had a
25 reasonable expectation, that an officer of the agency would
26 have authorised or permitted the conduct.

27 *Definitions*

- 28 (4) In this section:
29 **corporate culture**, within an agency of the Commonwealth, means
30 one or more attitudes, policies, rules, courses of conduct or
31 practices existing within the agency generally or in the part of the
32 agency in which the relevant activity takes place.

1 **245BA Offences and the Commonwealth—negligence**

2 (1) The test of negligence for the Commonwealth is that set out in
3 section 5.5 of the *Criminal Code*.

4 (2) If:

5 (a) negligence is a fault element in relation to a physical element
6 of an offence; and

7 (b) no individual employee, agent or officer of the
8 Commonwealth has that fault element;

9 that fault element may exist on the part of the Commonwealth if
10 the conduct of the Commonwealth is negligent when viewed as a
11 whole (that is, by aggregating the conduct of any number of the
12 employees, agents or officers of the Commonwealth).

13 (3) Negligence may be evidenced by the fact that the prohibited
14 conduct was substantially attributable to:

15 (a) inadequate management, control or supervision of the
16 conduct of one or more employees, agents or officers of the
17 Commonwealth; or

18 (b) failure to provide adequate systems for conveying relevant
19 information to relevant persons in the Commonwealth.

20 **245C Offences and the Commonwealth—mistake of fact**

21 If mistake of fact is relevant to determining liability for an offence,
22 the Commonwealth may rely on mistake of fact only if:

23 (a) the employee, agent or officer of the Commonwealth who
24 engaged in the conduct constituting the offence was under a
25 mistaken but reasonable belief about facts that, had they
26 existed, would have meant the conduct would not have
27 constituted the offence; and

28 (b) the Commonwealth proves it took reasonable precautions to
29 prevent the conduct.

30 **245D Offences and the Commonwealth—failure to take reasonable
31 precautions**

32 For the purposes of subsection 245B(2) and paragraph 245C(b), a
33 failure to take reasonable precautions may be evidenced by the fact

- 1 that the conduct constituting the offence was substantially
2 attributable to:
- 3 (a) inadequate management, control or supervision of the
4 conduct of one or more employees, agents or officers of the
5 Commonwealth; or
 - 6 (b) failure to provide adequate systems for conveying relevant
7 information to relevant persons in the Commonwealth.

8 **245E Offences and the Commonwealth—penalties**

9 If the Commonwealth is guilty of an offence against this Act, the
10 penalty to be imposed on the Commonwealth is the penalty
11 applicable to a body corporate.

1 **Part 5—Criminal liability of public authorities**

2 *Work Health and Safety Act 2011*

3 **19 Section 251**

4 Repeal the section, substitute:

5 **251 Offences and public authorities**

6 (1) Division 4 of this Part (which deals with offences by bodies
7 corporate) applies in relation to a public authority that is a body
8 corporate in the same way that the Division applies in relation to
9 any other body corporate, subject to subsection (2) of this section.

10 (2) For the purposes of the application of Division 4 of this Part in
11 relation to a public authority that is a body corporate:

12 (a) each reference in that Division to an officer of a body
13 corporate is taken to be a reference to an officer of the public
14 authority (within the meaning of section 252); and

15 (b) the references in paragraphs 244B(3)(a) and (b) to a
16 corporate officer of the body corporate are taken to be
17 references to an officer of the public authority (within the
18 meaning of section 252).

1 **Part 6—Penalties**

2 **Division 1—Definitions**

3 ***Work Health and Safety Act 2011***

4 **20 Section 4**

5 Insert:

6 *category 1 monetary penalty*—see clause 1 of Schedule 4.

7 *category 2 monetary penalty*—see clause 1 of Schedule 4.

8 *category 3 monetary penalty*—see clause 1 of Schedule 4.

9 *tier A monetary penalty*—see clause 2 of Schedule 4.

10 *tier B monetary penalty*—see clause 2 of Schedule 4.

11 *tier C monetary penalty*—see clause 2 of Schedule 4.

12 *tier D monetary penalty*—see clause 2 of Schedule 4.

13 *tier E monetary penalty*—see clause 2 of Schedule 4.

14 *tier F monetary penalty*—see clause 2 of Schedule 4.

15 *tier G monetary penalty*—see clause 2 of Schedule 4.

16 *tier H monetary penalty*—see clause 2 of Schedule 4.

17 *tier I monetary penalty*—see clause 2 of Schedule 4.

18 *WHS civil penalty provision tier 1*—see clause 3 of Schedule 4.

19 *WHS civil penalty provision tier 2*—see clause 3 of Schedule 4.

20 *WHS civil penalty provision tier 3*—see clause 3 of Schedule 4.

21 *WHS civil penalty provision tier 4*—see clause 3 of Schedule 4.

1 **Division 2—Categorised monetary penalties for offences**

2 *Work Health and Safety Act 2011*

3 **21 Subsection 31(1) (penalty)**

4 Repeal the penalty, substitute:

5 Penalty:

6 (a) In the case of an individual—the category 1 monetary
7 penalty or 15 years imprisonment or both.

8 (b) In the case of a body corporate—the category 1 monetary
9 penalty.

10 **22 Section 32 (penalty)**

11 Repeal the penalty, substitute:

12 Penalty: The category 2 monetary penalty.

13 **23 Section 33 (penalty)**

14 Repeal the penalty, substitute:

15 Penalty: The category 3 monetary penalty.

16 **Division 3—Tier A monetary penalties for offences**

17 *Work Health and Safety Act 2011*

18 **24 Subsections 104(1), 107(1), 108(1) and 109(1) (penalty)**

19 Repeal the penalty, substitute:

20 Penalty: The tier A monetary penalty.

21 **25 Section 197 (penalty)**

22 Repeal the penalty, substitute:

23 Penalty: The tier A monetary penalty.

1 **Division 4—Tier B monetary penalties for offences**

2 *Work Health and Safety Act 2011*

3 **26 Section 41 (penalty)**

4 Repeal the penalty, substitute:

5 Penalty: The tier B monetary penalty.

6 **27 Subsection 99(2) (penalty)**

7 Repeal the penalty, substitute:

8 Penalty: The tier B monetary penalty.

9 **28 Section 190 (penalty)**

10 Repeal the penalty, substitute:

11 Penalty:

12 (a) In the case of an individual—the tier B monetary penalty or
13 imprisonment for 2 years or both.

14 (b) In the case of a body corporate—the tier B monetary penalty.

15 **29 Section 193 (penalty)**

16 Repeal the penalty, substitute:

17 Penalty: The tier B monetary penalty.

18 **30 Subsection 200(1) (penalty)**

19 Repeal the penalty, substitute:

20 Penalty: The tier B monetary penalty.

21 **31 Section 219 (penalty)**

22 Repeal the penalty, substitute:

23 Penalty: The tier B monetary penalty.

24 **32 Subsection 242(1) (penalty)**

25 Repeal the penalty, substitute:

1 Penalty: The tier B monetary penalty.

2 **Division 5—Tier C monetary penalties for offences**

3 ***Work Health and Safety Act 2011***

4 **33 Subsections 42(1) and (2), 43(1) and (2) and 44(1) and (2)**
5 **(penalty)**

6 Repeal the penalty, substitute:

7 Penalty: The tier C monetary penalty.

8 **34 Section 45 (penalty)**

9 Repeal the penalty, substitute:

10 Penalty: The tier C monetary penalty.

11 **35 Section 46 (penalty)**

12 Repeal the penalty, substitute:

13 Penalty: The tier C monetary penalty.

14 **36 Subsection 47(1) (penalty)**

15 Repeal the penalty, substitute:

16 Penalty: The tier C monetary penalty.

17 **Division 6—Tier D monetary penalties for offences**

18 ***Work Health and Safety Act 2011***

19 **37 Subsections 38(1) and 39(1) (penalty)**

20 Repeal the penalty, substitute:

21 Penalty: The tier D monetary penalty.

22 **38 Subsection 52(5) (penalty)**

23 Repeal the penalty, substitute:

24 Penalty: The tier D monetary penalty.

1 **39 Subsection 56(2) (penalty)**

2 Repeal the penalty, substitute:

3 Penalty: The tier D monetary penalty.

4 **40 Subsection 61(4) (penalty)**

5 Repeal the penalty, substitute:

6 Penalty: The tier D monetary penalty.

7 **41 Subsections 70(1) and (2), 71(2) and 72(7) (penalty)**

8 Repeal the penalty, substitute:

9 Penalty: The tier D monetary penalty.

10 **42 Subsections 79(1), (3) and (4) (penalty)**

11 Repeal the penalty, substitute:

12 Penalty: The tier D monetary penalty.

13 **43 Subsection 155(5) (penalty)**

14 Repeal the penalty, substitute:

15 Penalty: The tier D monetary penalty.

16 **44 Subsection 165(2) (penalty)**

17 Repeal the penalty, substitute:

18 Penalty: The tier D monetary penalty.

19 **45 Subsections 171(6) and 177(2) and (6) (penalty)**

20 Repeal the penalty, substitute:

21 Penalty: The tier D monetary penalty.

22 **46 Subsection 185(4) (penalty)**

23 Repeal the penalty, substitute:

24 Penalty: The tier D monetary penalty.

1 **47 Sections 188 and 189 (penalty)**

2 Repeal the penalty, substitute:

3 Penalty: The tier D monetary penalty.

4 **48 Subsections 271(2) and (4) (penalty)**

5 Repeal the penalty, substitute:

6 Penalty: The tier D monetary penalty.

7 **Division 7—Tier F monetary penalties for offences**

8 ***Work Health and Safety Act 2011***

9 **49 Subsection 38(7) (penalty)**

10 Repeal the penalty, substitute:

11 Penalty: The tier F monetary penalty.

12 **50 Subsection 75(1) (penalty)**

13 Repeal the penalty, substitute:

14 Penalty: The tier F monetary penalty.

15 **51 Subsections 97(1) and (2) (penalty)**

16 Repeal the penalty, substitute:

17 Penalty: The tier F monetary penalty.

18 **52 Subsections 210(1) and (2) (penalty)**

19 Repeal the penalty, substitute:

20 Penalty: The tier F monetary penalty.

21 **53 Section 273 (penalty)**

22 Repeal the penalty, substitute:

23 Penalty: The tier F monetary penalty.

1 **Division 8—Tier H monetary penalties for offences**

2 *Work Health and Safety Act 2011*

3 **54 Subsections 53(1) and (2) (penalty)**

4 Repeal the penalty, substitute:

5 Penalty: The tier H monetary penalty.

6 **55 Subsections 57(1) and (2) (penalty)**

7 Repeal the penalty, substitute:

8 Penalty: The tier H monetary penalty.

9 **56 Subsection 74(1) (penalty)**

10 Repeal the penalty, substitute:

11 Penalty: The tier H monetary penalty.

12 **Division 9—Penalties for WHS civil penalty provisions**

13 *Work Health and Safety Act 2011*

14 **57 Subsection 118(3) (penalty)**

15 Repeal the penalty (not including the heading), substitute:

16 Penalty: The WHS civil penalty provision tier 2.

17 **58 Section 123 (penalty)**

18 Repeal the penalty (not including the heading), substitute:

19 Penalty: The WHS civil penalty provision tier 1.

20 **59 Sections 124 to 126, 128 and 129 (penalty)**

21 Repeal the penalty (not including the heading), substitute:

22 Penalty: The WHS civil penalty provision tier 2.

1 **60 Section 143 (penalty)**

2 Repeal the penalty (not including the heading), substitute:

3 Penalty: The WHS civil penalty provision tier 2.

4 **61 Subsection 144(1) (penalty)**

5 Repeal the penalty (not including the heading), substitute:

6 Penalty: The WHS civil penalty provision tier 2.

7 **62 Sections 145 and 146 (penalty)**

8 Repeal the penalty (not including the heading), substitute:

9 Penalty: The WHS civil penalty provision tier 2.

10 **63 Subsection 147(1) (penalty)**

11 Repeal the penalty (not including the heading), substitute:

12 Penalty: The WHS civil penalty provision tier 2.

13 **64 Section 148 (penalty)**

14 Repeal the penalty (not including the heading), substitute:

15 Penalty: The WHS civil penalty provision tier 2.

16 **65 Subsection 149(1) (penalty)**

17 Repeal the penalty (not including the heading), substitute:

18 Penalty: The WHS civil penalty provision tier 4.

19 **66 Section 150 (penalty)**

20 Repeal the penalty (not including the heading), substitute:

21 Penalty: The WHS civil penalty provision tier 3.

22 **67 Paragraphs 254(1)(a) and (2)(a)**

23 Omit “1 or more amounts by way of monetary penalty are”, substitute
24 “a penalty, expressed as a WHS civil penalty provision tier, is”.

1 **68 Subsection 259(2)**

2 Omit “maximum”.

3 **69 Application provision**

4 The amendments of the *Work Health and Safety Act 2011* made by this
5 Division apply in relation to a contravention of a WHS civil penalty
6 provision that occurs on or after the commencement of this Division.

7 **Division 10—Penalties prescribed by the regulations**

8 ***Work Health and Safety Act 2011***

9 **70 Paragraph 276(3)(h)**

10 Repeal the paragraph, substitute:

11 (h) prescribe any of the following as the penalty for an offence
12 under the regulations:

- 13 (i) a tier E monetary penalty;
14 (ii) a tier F monetary penalty;
15 (iii) a tier G monetary penalty;
16 (iv) a tier H monetary penalty;
17 (v) a tier I monetary penalty; or

18 **71 Transitional provision—existing penalty provisions**

- 19 (1) This item applies to a provision (an *existing penalty provision*) in the
20 *Work Health and Safety Regulations 2011* if, immediately before the
21 commencement of this Division, the provision prescribed a monetary
22 penalty for an offence against those regulations.
- 23 (2) Despite the amendment of paragraph 276(3)(h) of the *Work Health and*
24 *Safety Act 2011* by this Division, but subject to subitem (3) of this item,
25 an existing penalty provision continues in force on and after the
26 commencement of this Division.
- 27 (3) An existing penalty provision may, on or after the commencement of
28 this Division, be repealed or amended by regulations made under
29 section 276 of the *Work Health and Safety Act 2011*.

Division 11—Penalty amounts

Work Health and Safety Act 2011

72 At the end of the Act

Add:

Schedule 4—Penalty amounts

1 Monetary penalties—categories 1 to 3

A penalty referred to in column 1 of an item of the following table, for a person referred to in the heading to another column of the table, is the amount specified in that other column of that item, as indexed under clause 4 and rounded under clause 5.

Monetary penalties—categories 1 to 3

Item	Column 1	Column 2	Column 3	Column 4
	Kind of penalty	An individual who commits an offence as: (a) a person conducting a business undertaking; or (b) an officer of a person conducting a business undertaking	An individual who commits an offence (other than as mentioned in column 2)	A body corporate
1	the <i>category 1 monetary penalty</i>	\$3,000,000	\$1,500,000	\$15,000,000
2	the <i>category 2 monetary penalty</i>	\$418,000	\$209,000	\$2,090,000
3	the <i>category 3 monetary penalty</i>	\$140,000	\$70,000	\$700,000

1 **2 Monetary penalties—tiers A to I**

2 A penalty referred to in column 1 of an item of the following table,
3 for a person referred to in the heading to another column of the
4 table, is the amount specified in that other column of that item, as
5 indexed under clause 4 and rounded under clause 5.
6

Monetary penalties—tiers A to I			
Item	Column 1	Column 2	Column 3
	Kind of penalty	An individual	A body corporate
1	the <i>tier A monetary penalty</i>	\$139,000	\$695,000
2	the <i>tier B monetary penalty</i>	\$70,000	\$350,000
3	the <i>tier C monetary penalty</i>	\$28,000	\$140,000
4	the <i>tier D monetary penalty</i>	\$14,000	\$70,000
5	the <i>tier E monetary penalty</i>	\$8,400	\$42,000
6	the <i>tier F monetary penalty</i>	\$7,000	\$35,000
7	the <i>tier G monetary penalty</i>	\$5,000	\$25,000
8	the <i>tier H monetary penalty</i>	\$2,800	\$14,000
9	the <i>tier I monetary penalty</i>	\$1,700	\$8,500

7
8 **3 Monetary penalties—WHS civil penalty provision—tiers 1 to 4**

9 A penalty referred to in column 1 of an item of the following table,
10 for a person referred to in the heading to another column of the
11 table, is the amount specified in that other column of that item, as
12 indexed under clause 4 and rounded under clause 5.
13

WHS civil penalty provision—tiers 1 to 4			
Item	Column 1	Column 2	Column 3
	Kind of penalty	An individual	A body corporate
1	the <i>WHS civil penalty provision tier 1</i>	\$28,000	\$140,000
2	the <i>WHS civil penalty provision tier 2</i>	\$14,000	\$70,000
3	the <i>WHS civil penalty provision tier 3</i>	\$7,000	\$35,000
4	the <i>WHS civil penalty provision tier 4</i>	\$2,800	\$14,000

1

2 **4 Indexation of penalty amounts**

3 (1) The amount of each monetary penalty set out in clause 1, 2 or 3
4 must be indexed for the year commencing on 1 July 2024, and for
5 each subsequent year, in accordance with this clause.

6 (2) The amount of a monetary penalty applying in each year is to be
7 calculated as follows:

8
$$A \times \frac{B}{C}$$

9 where:

10 **A** is the amount of the monetary penalty set out in clause 1, 2 or 3.

11 **B** is the CPI number for the March quarter in the year immediately
12 preceding the year for which the amount is calculated.

13 **C** is the CPI number for the March quarter of 2022.

14 Note: For **CPI number** and **year**, see clause 7.

15 (3) If the amount of a monetary penalty calculated for a year is less
16 than the amount that applied in the previous year, then the amount
17 for the previous year continues to apply.

18 **5 Rounding of penalty amounts**

19 If, after indexation under clause 4, the amount of a monetary
20 penalty applying in a year is:

21 (a) less than \$10,000 and not a multiple of \$100:

22 (i) the amount must be rounded to the nearest \$100; and

23 (ii) an amount of \$50 is rounded down; or

24 (b) more than \$10,000 and not a multiple of \$1,000:

25 (i) the amount must be rounded to the nearest \$1,000; and

26 (ii) an amount of \$500 is rounded down.

1 **6 Public notification of adjusted penalty amounts**

2 As soon as practicable after publication by the Australian
3 Statistician of the CPI number for the March quarter in a year, the
4 regulator must, by notifiable instrument, give notice of the amount
5 of each monetary penalty calculated under this Schedule.

6 **7 Definitions**

7 In this Schedule:

8 ***CPI number*** means the All Groups Consumer Price Index number,
9 that is, the weighted average of the 8 Australian capital cities,
10 published by the Australian Statistician.

11 ***year*** means a period of 12 months starting on 1 July.

1 **Part 7—Tied amendments**

2 *Work Health and Safety Act 2011*

3 **73 Subsections 272A(1) and 272B(1) (penalty)**

4 Repeal the penalty, substitute:

5 Penalty: The tier B monetary penalty.

1 **Part 8—Family and Injured Workers Advisory**
2 **Committee**

3 *Work Health and Safety Act 2011*

4 **74 After Part 3 of Schedule 2**

5 Insert:

6 **Part 3A—Family and Injured Workers Advisory**
7 **Committee**
8

9 **3A Definitions for this Part**

10 In this Part:

11 *Advisory Committee* means the Family and Injured Workers
12 Advisory Committee established under clause 3B.

13 *Advisory Committee member* means a member of the Advisory
14 Committee and includes the Co-Chairs.

15 *Co-Chair* means a Co-Chair of the Advisory Committee.

16 *first Co-Chair* means the Co-Chair appointed in accordance with
17 subclause 3E(5).

18 *second Co-Chair* means the Co-Chair appointed in accordance
19 with subclause 3E(6).

20 *serious work-related incident* means the death of a person, or a
21 serious injury or illness of a person, arising out of the conduct of a
22 business or undertaking.

23 **3B Establishment of the Family and Injured Workers Advisory**
24 **Committee**

25 The Minister must establish a committee called the Family and
26 Injured Workers Advisory Committee. The Advisory Committee

1 must be established before the end of the period of 12 months
2 beginning on the day this Part commences.

3 **3C Functions of the Advisory Committee**

4 The functions of the Advisory Committee are as follows:

- 5 (a) to give advice, and make recommendations, to the Minister
6 about the needs of persons affected, directly or indirectly, by
7 serious work-related incidents;
- 8 (b) to give advice to Comcare about, and contribute to the
9 development and review of, Comcare's policies, practices
10 and strategies for liaising with, and providing information to,
11 persons affected, directly or indirectly, by serious
12 work-related incidents that arise out of the conduct of a
13 business or undertaking by the Commonwealth, a public
14 authority or a non-Commonwealth licensee;
- 15 (c) to give advice to the Australian Maritime Safety Authority
16 about, and contribute to the development and review of, the
17 Authority's policies, practices and strategies for liaising with,
18 and providing information to, persons affected, directly or
19 indirectly, by serious work-related incidents that arise on a
20 prescribed ship (within the meaning of the *Occupational*
21 *Health and Safety (Maritime Industry) Act 1993*) or a
22 prescribed unit (within the meaning of that Act) that is
23 engaged in trade or commerce of the kind referred to in
24 subsection 6(1) of that Act;
- 25 (d) to give advice to the National Offshore Petroleum Safety and
26 Environmental Management Authority about, and contribute
27 to the development and review of, the Authority's policies,
28 practices and strategies for liaising with, and providing
29 information to, persons affected, directly or indirectly, by
30 serious work-related incidents that arise:
- 31 (i) at a facility (within the meaning of Schedule 3 to the
32 *Offshore Petroleum and Greenhouse Gas Storage Act*
33 *2006*) located in Commonwealth waters (within the
34 meaning of that Schedule); or
- 35 (ii) out of the conduct of a business or undertaking in the
36 Commonwealth offshore area (within the meaning of
37 the *Offshore Electricity Infrastructure Act 2021*);
- 38 (e) such other functions as are prescribed by the regulations.

1 **3D Membership of the Advisory Committee**

- 2 The Advisory Committee consists of the following members:
3 (a) 2 Co-Chairs;
4 (b) at least 3 other members.

5 **3E Appointment of Advisory Committee members**

- 6 (1) Each Advisory Committee member is to be appointed by the
7 Minister, by written instrument, on a part-time basis.

8 Note: An Advisory Committee member may be reappointed (see
9 section 33AA of the *Acts Interpretation Act 1901*).

- 10 (2) The instrument of appointment of an Advisory Committee member
11 must specify whether the member is appointed as the first
12 Co-Chair, second Co-Chair or another member.

13 *Period of appointment*

- 14 (3) An Advisory Committee member holds office for the period
15 specified in the member's instrument of appointment. The period
16 must not be more than 3 years.
- 17 (4) An Advisory Committee member is eligible for reappointment but
18 must not hold office for a total of more than 9 years.

19 *Eligibility for appointment as Advisory Committee member*
20 *(including first Co-Chair but not including second Co-Chair)*

- 21 (5) A person is eligible for appointment as an Advisory Committee
22 member (including the first Co-Chair, but not including the second
23 Co-Chair) only if the Minister is satisfied that:
24 (a) the person has, or has had, a serious injury or illness that
25 arose out of the conduct of a business or undertaking; or
26 (b) the person has lived experience as family member or carer of
27 another person who:
28 (i) has died, if the person's death arose out of the conduct
29 of a business or undertaking; or
30 (ii) has, or has had, a serious injury or illness that arose out
31 of the conduct of a business or undertaking; or

1 (c) the person has been affected, directly or indirectly, by a
2 serious work-related incident suffered by another person.

3 Note: Examples of persons for the purposes of paragraph (c) are friends and
4 co-workers.

5 *Eligibility for appointment as second Co-Chair*

6 (6) A person is eligible for appointment as the second Co-Chair only if
7 the Minister is satisfied that the person has relevant skills and
8 experience in relation to trauma and group facilitation.

9 *Additional member*

10 (7) Without limiting this clause, if the Advisory Committee already
11 has at least 5 members (including the first Co-Chair and the second
12 Co-Chair), the Minister may appoint an additional Advisory
13 Committee member under subclause (1) who has relevant skills
14 and experience in relation to trauma and grief.

15 **3F Invited participants**

16 (1) A Co-Chair may, after consulting the other members of the
17 Advisory Committee, invite a person, body or organisation to
18 participate in a meeting.

19 (2) A Co-Chair may terminate the invitation at any time, including
20 during a meeting.

21 (3) The participation of a person in a meeting does not make the
22 person a member.

23 (4) A person invited to participate in a meeting:
24 (a) is entitled to payment of travel allowance prescribed by the
25 regulations for the purposes of this paragraph; and
26 (b) must comply with any requirements prescribed by the
27 regulations for the purposes of this paragraph.

28 (5) Regulations made for the purposes of subclause (4) may identify a
29 rate by reference to the rate of travelling allowance that is payable
30 to a particular class of office holders under a determination of the
31 Remuneration Tribunal as in force at a particular time, or as in
32 force from time to time.

- 1 (4) The Minister may, by written instrument, appoint a person to act as
2 an Advisory Committee member (other than a Co-Chair):
3 (a) during a vacancy in the office of an Advisory Committee
4 member (other than a Co-Chair) (whether or not an
5 appointment has previously been made to the office); or
6 (b) during any period, or during all periods, when an Advisory
7 Committee member (other than a Co-Chair):
8 (i) is absent from duty or from Australia; or
9 (ii) is, for any reason, unable to perform the duties of the
10 office.

- 11 (5) A person is not eligible for appointment under subclause (4) unless
12 the person is eligible for appointment as an Advisory Committee
13 member under subclause 3E(5).

14 Note: For rules that apply to acting appointments, see sections 33AB and
15 33A of the *Acts Interpretation Act 1901*.

16 **3H Remuneration and allowances**

- 17 (1) An Advisory Committee member is to be paid the remuneration
18 that is determined by the Remuneration Tribunal. If no
19 determination of that remuneration by the Tribunal is in operation,
20 the Advisory Committee member is to be paid the remuneration
21 that is prescribed by the regulations.
- 22 (2) An Advisory Committee member is to be paid the allowances that
23 are prescribed by the regulations.
- 24 (3) This clause has effect subject to the *Remuneration Tribunal Act*
25 *1973*.

26 **3J Leave of absence**

- 27 (1) The Minister may grant leave of absence to a Co-Chair on the
28 terms and conditions that the Minister determines.
- 29 (2) A Co-Chair may grant leave of absence to an Advisory Committee
30 member (other than a Co-Chair) on the terms and conditions that
31 the Co-Chair determines.

1 **3K Disclosure of interests to the Minister**

2 An Advisory Committee member must give written notice to the
3 Minister of all interests, pecuniary or otherwise, that the member
4 has or acquires and that conflict or could conflict with the proper
5 performance of the member’s functions.

6 **3L Disclosure of interests to the Advisory Committee**

- 7 (1) An Advisory Committee member who has an interest, pecuniary or
8 otherwise, in a matter being considered or about to be considered
9 by the Advisory Committee must disclose the nature of the interest
10 to a meeting of the Advisory Committee.
- 11 (2) The disclosure must be made as soon as possible after the relevant
12 facts have come to the Advisory Committee member’s knowledge.
- 13 (3) The disclosure must be recorded in the minutes of the meeting.

14 **3M Resignation**

- 15 (1) An Advisory Committee member may resign the member’s
16 appointment by giving the Minister a written resignation.
- 17 (2) The resignation takes effect on the day it is received by the
18 Minister or, if a later day is specified in the resignation, on that
19 later day.

20 **3N Termination of appointment**

- 21 (1) The Minister may terminate the appointment of an Advisory
22 Committee member:
23 (a) for misbehaviour; or
24 (b) if the Advisory Committee member is unable to perform the
25 duties of the office because of physical or mental incapacity.
- 26 (2) The Minister may terminate the appointment of an Advisory
27 Committee member if:
28 (a) the Advisory Committee member:
29 (i) becomes bankrupt; or
30 (ii) applies to take the benefit of any law for the relief of
31 bankrupt or insolvent debtors; or

- 1 (iii) compounds with the member's creditors; or
2 (iv) makes an assignment of the member's remuneration for
3 the benefit of the member's creditors; or
4 (b) the Advisory Committee member fails, without reasonable
5 excuse, to comply with clause 3K or 3L (which deal with
6 disclosure of interests).
- 7 (3) The Minister must terminate the appointment of an Advisory
8 Committee member if the Advisory Committee member is absent,
9 except on leave of absence, from 3 consecutive meetings of the
10 Advisory Committee.

11 **3P Other terms and conditions**

12 An Advisory Committee member holds office on the terms and
13 conditions (if any) in relation to matters not covered by this Act
14 that are determined by the Minister.

15 **3Q Meetings and procedures**

- 16 (1) The regulations may prescribe the procedures to be followed at, or
17 in relation to, meetings of the Advisory Committee, including
18 matters relating to the following:
19 (a) convening meetings;
20 (b) the number of Advisory Committee members who are to
21 constitute a quorum at a meeting;
22 (c) the selection of an Advisory Committee member to preside at
23 a meeting in the absence of a Co-Chair;
24 (d) the manner in which questions arising at a meeting are to be
25 decided;
26 (e) inviting persons with appropriate expertise or technical
27 knowledge to attend meetings;
28 (f) keeping minutes of meetings.
- 29 (2) A resolution is taken to have been passed at a meeting of the
30 Advisory Committee if:
31 (a) without meeting, a majority of Advisory Committee
32 members indicate agreement with the resolution in
33 accordance with the method determined by the Advisory
34 Committee under subclause (3); and

1 (b) all Advisory Committee members were informed of the
2 proposed resolution, or reasonable efforts had been made to
3 inform all Advisory Committee members of the proposed
4 resolution.

5 (3) Subclause (2) applies only if the Advisory Committee:

6 (a) determines that it applies; and

7 (b) determines the method by which Advisory Committee
8 members are to indicate agreement with resolutions.

9 **3R Administrative support**

10 The Secretary of the Department must ensure that the Advisory
11 Committee has the necessary administrative and other support to
12 enable the Advisory Committee to perform its functions efficiently
13 and effectively.
14

(105/23)
