



Fair Work Act 2009

Act No. 28 of 2009 as amended

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taking into account amendments up to Act No. 175 of 2012

Volume 2 includes: Table of Contents
Sections 537–800
Schedules 1–3
Note 1
Table of Acts
Act Notes
Table of Amendments
Notes 2–4
Table A

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Contents

Chapter 4—Compliance and enforcement	1
Part 4-1—Civil remedies	1
Division 1—Introduction	1
537 Guide to this Part.....	1
538 Meanings of <i>employee</i> and <i>employer</i>	1
Division 2—Orders	2
Subdivision A—Applications for orders	2
539 Applications for orders in relation to contraventions of civil remedy provisions	2
540 Limitations on who may apply for orders etc.	12
541 Applications for orders in relation to safety net contractual entitlements	14
542 Entitlements under contracts.....	15
543 Applications for orders in relation to statutory entitlements derived from contracts.....	15
544 Time limit on applications.....	15
Subdivision B—Orders	16
545 Orders that can be made by particular courts.....	16
546 Pecuniary penalty orders	17
547 Interest up to judgment.....	18
Division 3—Small claims procedure	19
548 Plaintiffs may choose small claims procedure.....	19
Division 4—General provisions relating to civil remedies	21
549 Contravening a civil remedy provision is not an offence.....	21
550 Involvement in contravention treated in same way as actual contravention	21
551 Civil evidence and procedure rules for proceedings relating to civil remedy provisions	21
552 Civil proceedings after criminal proceedings	21
553 Criminal proceedings during civil proceedings	22
554 Criminal proceedings after civil proceedings	22
555 Evidence given in proceedings for pecuniary penalty not admissible in criminal proceedings.....	22
556 Civil double jeopardy	23
557 Course of conduct.....	23
558 Regulations dealing with infringement notices.....	24
Division 5—Unclaimed money	25
559 Unclaimed money.....	25

Part 4-2—Jurisdiction and powers of courts	26
Division 1—Introduction	26
560 Guide to this Part.....	26
561 Meanings of <i>employee</i> and <i>employer</i>	26
Division 2—Jurisdiction and powers of the Federal Court	27
562 Conferring jurisdiction on the Federal Court.....	27
563 Exercising jurisdiction in the Fair Work Division of the Federal Court.....	27
564 No limitation on Federal Court’s powers.....	28
565 Appeals from eligible State or Territory courts.....	28
Division 3—Jurisdiction and powers of the Federal Magistrates Court	29
566 Conferring jurisdiction on the Federal Magistrates Court.....	29
567 Exercising jurisdiction in the Fair Work Division of the Federal Magistrates Court.....	29
568 No limitation on Federal Magistrates Court’s powers.....	29
Division 4—Miscellaneous	30
569 Minister’s entitlement to intervene.....	30
569A State or Territory Minister’s entitlement to intervene.....	30
570 Costs only if proceedings instituted vexatiously etc.	31
571 No imprisonment for failure to pay pecuniary penalty.....	31
572 Regulations dealing with matters relating to court proceedings.....	31
Chapter 5—Administration	32
Part 5-1—The Fair Work Commission	32
Division 1—Introduction	32
573 Guide to this Part.....	32
574 Meanings of <i>employee</i> and <i>employer</i>	33
Division 2—Establishment and functions of the Fair Work Commission	34
Subdivision A—Establishment and functions of the Fair Work Commission	34
575 Establishment of the Fair Work Commission.....	34
576 Functions of the FWC.....	34
577 Performance of functions etc. by the FWC.....	35
578 Matters the FWC must take into account in performing functions etc.	36
579 FWC has privileges and immunities of the Crown.....	36
580 Protection of FWC Members.....	36

Subdivision B—Functions and powers of the President	36
581 Functions of the President	36
581A Dealing with a complaint about an FWC Member	37
581B Code of Conduct.....	38
582 Directions by the President.....	39
583 President not subject to direction.....	40
584 Delegation of functions and powers of the President.....	40
Subdivision C—Protection of persons involved in handling etc. complaints about FWC Members	40
584B Protection of persons involved in handling etc. complaints about FWC Members	40
Division 3—Conduct of matters before the FWC	42
Subdivision A—Applications to the FWC	42
585 Applications in accordance with procedural rules	42
586 Correcting and amending applications and documents etc.	42
587 Dismissing applications	42
588 Discontinuing applications	43
Subdivision B—Conduct of matters before the FWC	43
589 Procedural and interim decisions.....	43
590 Powers of the FWC to inform itself.....	43
591 FWC not bound by rules of evidence and procedure	44
592 Conferences	44
593 Hearings	44
594 Confidential evidence	45
595 FWC’s power to deal with disputes	46
Subdivision C—Representation by lawyers and paid agents and Minister’s entitlement to make submissions	46
596 Representation by lawyers and paid agents	46
597 Minister’s entitlement to make submissions	47
597A State or Territory Minister’s entitlement to make submissions	48
Subdivision D—Decisions of the FWC	48
598 Decisions of the FWC	48
599 FWC not required to decide an application in terms applied for	48
600 Determining matters in the absence of a person	49
601 Writing and publication requirements for the FWC’s decisions	49
602 Correcting obvious errors etc. in relation to the FWC’s decisions.....	50
603 Varying and revoking the FWC’s decisions	50

Subdivision E—Appeals, reviews and referring questions of law	51
604 Appeal of decisions	51
605 Minister’s entitlement to apply for review of a decision	51
606 Staying decisions that are appealed or reviewed.....	52
607 Process for appealing or reviewing decisions	53
608 Referring questions of law to the Federal Court	53
Subdivision F—Miscellaneous	54
609 Procedural rules	54
610 Regulations dealing with any FWC matters	55
611 Costs	55
Division 4—Organisation of the FWC	56
Subdivision A—Functions etc. to be performed by a single FWC Member, a Full Bench or the Minimum Wage Panel	56
612 FWC’s functions etc. may generally be performed by single FWC Member.....	56
613 Appeal of decisions	56
614 Review of decisions by a Full Bench.....	57
615 The President may direct a Full Bench to perform function etc.	57
615A When the President must direct a Full Bench to perform function etc.	57
615B Transfer to a Full Bench from an FWC member	58
615C Transfer to the President from an FWC member or a Full Bench.....	58
616 FWC’s functions etc. that must be performed by a Full Bench.....	59
617 FWC’s functions etc. that must be performed by the Minimum Wage Panel.....	59
Subdivision B—Constitution of the FWC by a single FWC Member, a Full Bench or the Minimum Wage Panel	60
618 Constitution and decision-making of a Full Bench.....	60
619 Seniority of FWC Members	60
620 Constitution and decision-making of the Minimum Wage Panel.....	61
621 Reconstitution of the FWC when single FWC Member becomes unavailable.....	61
622 Reconstitution of the FWC when FWC Member of a Full Bench or the Minimum Wage Panel becomes unavailable.....	62
623 When new FWC Members begin to deal with matters	62
624 FWC’s decisions not invalid when improperly constituted	63

Subdivision C—Delegation of the FWC’s functions and powers	63
625 Delegation by the President of functions and powers of the FWC	63
Division 5—FWC Members	65
Subdivision A—Appointment of FWC Members	65
626 Appointment of FWC Members	65
627 Qualifications for appointment of FWC Members	65
628 Basis of appointment of FWC Members	67
629 Period of appointment of FWC Members.....	67
Subdivision B—Terms and conditions of FWC Members	68
629A Status of the President	68
630 Appointment of a Judge not to affect tenure etc.	68
631 Dual federal and State appointments of Deputy Presidents or Commissioners	68
632 Dual federal and Territory appointments of Deputy Presidents or Commissioners.....	69
633 Outside work of FWC Members.....	69
634 Oath or affirmation of office.....	69
635 Remuneration of the President.....	70
636 Application of Judges’ Pensions Act to the President	70
637 Remuneration of FWC Members other than the President	71
638 Remuneration of Deputy Presidents or Commissioners performing duties on a part-time basis	72
639 Leave of absence of FWC Members other than the President	73
640 Disclosure of interests by FWC Members other than the President.....	73
641 Termination of appointment on grounds of misbehaviour or incapacity	74
641A Minister may handle complaints about FWC Members	74
642 Suspension on grounds of misbehaviour or incapacity	74
643 Termination of appointment for bankruptcy, etc.	75
644 Termination of appointment for outside work [<i>see Note 4</i>].....	76
645 Resignation of FWC Members	76
646 Other terms and conditions of FWC Members	76
647 Appointment of acting President and Vice President	76
648 Appointment of acting Deputy Presidents and Commissioners	78
Division 6—Cooperation with the States	79
649 President to cooperate with prescribed State industrial authorities	79
650 Provision of administrative support.....	79

Division 7—Seals and additional powers and functions of the President and the General Manager	80
651 Seals	80
652 Annual report.....	80
653 Reports about making enterprise agreements, individual flexibility arrangements etc.	81
653A Arrangements with the Federal Court and the Federal Magistrates Court	82
654 President must provide certain information etc. to the Minister and Fair Work Ombudsman	82
655 Disclosure of information by the FWC.....	83
Division 8—General Manager, staff and consultants	84
Subdivision A—Functions of the General Manager	84
656 Establishment	84
657 Functions and powers of the General Manager	84
658 Directions from the President	84
659 General Manager not otherwise subject to direction.....	85
Subdivision B—Appointment and terms and conditions of the General Manager	85
660 Appointment of the General Manager	85
661 Remuneration of the General Manager.....	85
662 Leave of absence of the General Manager.....	85
663 Outside work of the General Manager.....	86
664 Disclosure of interests to the President.....	86
665 Resignation of the General Manager	86
666 Termination of appointment of the General Manager.....	86
667 Other terms and conditions of the General Manager	87
668 Appointment of acting General Manager	87
669 Minister to consult the President	87
Subdivision C—Staff and consultants	87
670 Staff.....	87
671 Delegation by General Manager to staff.....	88
672 Persons assisting the FWC	88
673 Consultants	88
Division 9—Offences relating to the Fair Work Commission	89
674 Offences in relation to the FWC	89
675 Contravening an FWC order.....	91
676 Intimidation etc.....	91
677 Offences in relation to attending before the FWC	92
678 False or misleading evidence.....	93

Part 5-2—Office of the Fair Work Ombudsman	94
Division 1—Introduction	94
679 Guide to this Part.....	94
680 Meanings of <i>employee</i> and <i>employer</i>	94
Division 2—Fair Work Ombudsman	95
Subdivision A—Establishment and functions and powers of the Fair Work Ombudsman	95
681 Establishment	95
682 Functions of the Fair Work Ombudsman.....	95
683 Delegation by the Fair Work Ombudsman	96
684 Directions from the Minister	96
685 Minister may require reports	96
686 Annual report.....	97
Subdivision B—Appointment and terms and conditions of the Fair Work Ombudsman	97
687 Appointment of the Fair Work Ombudsman	97
688 Remuneration of the Fair Work Ombudsman.....	97
689 Leave of absence of the Fair Work Ombudsman.....	98
690 Outside work of the Fair Work Ombudsman.....	98
691 Disclosure of interests to the Minister	98
692 Resignation of the Fair Work Ombudsman	98
693 Termination of appointment of the Fair Work Ombudsman.....	98
694 Other terms and conditions of the Fair Work Ombudsman	99
695 Appointment of acting Fair Work Ombudsman	99
Division 3—Office of the Fair Work Ombudsman	101
Subdivision A—Establishment of the Office of the Fair Work Ombudsman	101
696 Establishment of the Office of the Fair Work Ombudsman.....	101
Subdivision B—Staff and consultants etc.	101
697 Staff.....	101
698 Persons assisting the Fair Work Ombudsman.....	101
699 Consultants	102
Subdivision C—Appointment of Fair Work Inspectors	102
700 Appointment of Fair Work Inspectors	102
701 Fair Work Ombudsman is a Fair Work Inspector.....	102
702 Identity cards	102
Subdivision D—Functions and powers of Fair Work Inspectors	103
703 Conditions and restrictions on functions and powers	103
704 General directions by the Fair Work Ombudsman	104
705 Particular directions by the Fair Work Ombudsman.....	104
706 Purpose for which powers of inspectors may be exercised.....	104

707	When powers of inspectors may be exercised	105
708	Power of inspectors to enter premises	105
709	Powers of inspectors while on premises	105
710	Persons assisting inspectors.....	106
711	Power to ask for person’s name and address	106
712	Power to require persons to produce records or documents.....	107
713	Self-incrimination.....	107
713A	Certain records and documents are inadmissible	108
714	Power to keep records or documents	108
715	Enforceable undertakings relating to contraventions of civil remedy provisions	109
716	Compliance notices	110
717	Review of compliance notices	112
Subdivision E—Disclosure of information by the Office of the Fair Work Ombudsman		
718	Disclosure of information by the Office of the Fair Work Ombudsman.....	112
Chapter 6—Miscellaneous		
Part 6-1—Multiple actions		
Division 1—Introduction		
719	Guide to this Part.....	114
720	Meanings of <i>employee</i> and <i>employer</i>	114
Division 2—Certain actions not permitted if alternative action can be taken		
721	Equal remuneration applications	115
722	Notification and consultation requirements applications	115
723	Unlawful termination applications.....	116
Division 3—Preventing multiple actions		
Subdivision A—Equal remuneration applications		
724	Equal remuneration applications	117
Subdivision B—Applications and complaints relating to dismissal		
725	General rule	118
726	Dismissal remedy bargaining order applications	118
727	General protections FWC applications	118
728	General protections court applications.....	119
729	Unfair dismissal applications.....	119
730	Unlawful termination FWC applications	119
731	Unlawful termination court applications	120
732	Applications and complaints under other laws	120
733	Dismissal does not include failure to provide benefits	121

Subdivision C—General protections applications that do not relate to dismissal	121
734 General rule	121
Part 6-2—Dealing with disputes	122
Division 1—Introduction	122
735 Guide to this Part	122
736 Meanings of <i>employee</i> and <i>employer</i>	122
Division 2—Dealing with disputes	123
Subdivision A—Model term about dealing with disputes	123
737 Model term about dealing with disputes	123
Subdivision B—Dealing with disputes	123
738 Application of this Division	123
739 Disputes dealt with by the FWC	123
740 Dispute dealt with by persons other than the FWC	124
Part 6-3—Extension of National Employment Standards entitlements	126
Division 1—Introduction	126
741 Guide to this Part	126
742 Meanings of <i>employee</i> and <i>employer</i>	126
Division 2—Extension of entitlement to unpaid parental leave and related entitlements	127
Subdivision A—Main provisions	127
743 Object of this Division	127
744 Extending the entitlement to unpaid parental leave and related entitlements	127
745 Contravening the extended parental leave provisions	128
746 References to the National Employment Standards include extended parental leave provisions	129
747 State and Territory laws that are not excluded	129
Subdivision B—Modifications of the extended parental leave provisions	129
748 Non-national system employees are not award/agreement free employees	129
749 Modification of meaning of <i>base rate of pay</i> for pieceworkers	129
750 Modification of meaning of <i>full rate of pay</i> for pieceworkers	130
751 Modification of meaning of <i>ordinary hours of work</i> —if determined by State industrial instrument	130
752 Modification of meaning of <i>ordinary hours of work</i> —if not determined by State industrial instrument	130

753	Modification of meaning of <i>ordinary hours of work</i> — regulations may prescribe usual weekly hours	130
754	Modification of meaning of <i>piecemaker</i>	131
755	Modification of provision about interaction with paid leave	131
756	Modification of provision about relationship between National Employment Standards and agreements	131
757	Modification of power to make regulations	131
Division 3—Extension of entitlement to notice of termination or payment in lieu of notice		133
Subdivision A—Main provisions		133
758	Object of this Division.....	133
759	Extending entitlement to notice of termination or payment in lieu of notice.....	133
760	Contravening the extended notice of termination provisions.....	134
761	References to the National Employment Standards include extended notice of termination provisions.....	134
762	State and Territory laws that are not excluded.....	135
Subdivision B—Modifications of the extended notice of termination provisions		135
763	Non-national system employees are not award/agreement free employees.....	135
764	Modification of meaning of <i>full rate of pay</i> for pieceworkers	135
765	Modification of meaning of <i>piecemaker</i>	135
766	Modification of provision about notice of termination by employee	136
767	Modification of provision about relationship between National Employment Standards and agreements	136
768	Modification of power to make regulations.....	136
Part 6-3A—Transfer of business from a State public sector employer		137
Division 1—Introduction		137
768AA	Guide to this Part.....	137
768AB	Meanings of <i>employee</i> and <i>employer</i>	137
Division 2—Copying terms of State instruments when there is a transfer of business		138
768AC	What this Division is about	138
768AD	When does a transfer of business occur?	138
768AE	Meaning of <i>transferring employee, termination time</i> and <i>re-employment time</i>	139
Division 3—Copied State instruments		140
Subdivision A—Guide to this Division		140
768AF	What this Division is about	140

Subdivision B—Copied State instruments	140
768AG Contravening a copied State instrument	140
768AH What is a copied State instrument?	141
768AI What is a copied State award?	141
768AJ What is a State award?	142
768AK What is a copied State employment agreement?	142
768AL What is a State employment agreement?	143
768AM When does a copied State instrument apply to a person?	144
768AN When does a copied State instrument cover a person?	146
768AO When is a copied State instrument in operation?	147
Division 4—Interaction between copied State instruments and the NES, modern awards and enterprise agreements	149
Subdivision A—Guide to this Division	149
768AP What this Division is about	149
Subdivision B—Interaction with the NES	149
768AQ Interaction between the NES and a copied State instrument	149
768AR Provisions of the NES that allow instruments to contain particular kinds of terms	149
Subdivision C—Interaction with modern awards	150
768AS Modern awards and copied State awards	150
768AT Modern awards and copied State employment agreements	151
Subdivision D—Interaction with enterprise agreements	152
768AU Enterprise agreements and copied State instruments	152
Division 5—Variation and termination of copied State instruments	154
Subdivision A—Guide to this Division	154
768AV What this Division is about	154
Subdivision B—Variation of copied State instruments	154
768AW Variation in limited circumstances	154
768AX Variation of copied State instruments	154
Subdivision C—Termination of copied State instruments	157
768AY Termination in limited circumstances	157
Division 6—FWC orders about coverage of copied State instruments and other instruments	158
Subdivision A—Guide to this Division	158
768AZ What this Division is about	158
768AZA Orders in relation to a transfer of business	158
Subdivision B—Coverage orders	158
768BA FWC orders about coverage for transferring employees	158
768BB FWC orders about coverage for employee organisations	160

Division 7—FWC orders about consolidating copied State instruments etc.	161
Subdivision A—Guide to this Division	161
768BC What this Division is about	161
768BCA Orders in relation to a transfer of business	161
Subdivision B—Consolidation orders in relation to transferring employees	162
768BD Consolidation orders in relation to transferring employees [see Note 4]	162
768BE Consolidation order to deal with application and coverage	163
768BF Effect of this Act after a consolidation order is made.....	164
Subdivision C—Consolidation orders in relation to non-transferring employees	164
768BG Consolidation orders in relation to non-transferring employees	164
768BH Consolidation order to deal with application and coverage	165
768BI Effect of this Act after a consolidation order is made.....	166
Division 8—Special rules for copied State instruments	167
Subdivision A—Guide to this Division	167
768BJ What this Division is about	167
Subdivision B—Terms about disputes	167
768BK Where no term dealing with disputes	167
Subdivision C—Service and entitlements of a transferring employee	168
768BL Service for the purposes of this Act.....	168
768BM NES—working out non-accruing entitlements	169
768BN NES—working out accruing entitlements	170
768BO Copied State instrument—service	171
768BP Copied State instrument—working out non-accruing entitlements	172
768BQ Copied State instrument—working out accruing entitlements.....	172
Subdivision D—Cessation of copied State awards: avoiding reductions in take-home pay	173
768BR Cessation not intended to result in reduction in take-home pay	173
768BS Orders remedying reductions in take-home pay	174
768BT Contravening a take-home pay order	175
768BU How long a take-home pay order continues to apply	175
768BV Interaction of take-home pay orders with modern awards and enterprise agreements	175
768BW Application of this Act to take-home pay orders	175

Subdivision E—Modification of this Act	176
768BX Modification of this Act for copied State instruments	176
Subdivision F—Modification of the Transitional Act	177
768BY Modification of the Transitional Act for copied State instruments	177
Subdivision G—Modification of the Registered Organisations Act	181
768BZ Modification of the Registered Organisations Act for copied State instruments	181
Division 9—Regulations	182
768CA Regulations	182
Part 6-4—Additional provisions relating to termination of employment	184
Division 1—Introduction	184
769 Guide to this Part	184
770 Meanings of <i>employee</i> and <i>employer</i>	184
Division 2—Termination of employment	185
771 Object of this Division	185
772 Employment not to be terminated on certain grounds	185
773 Application for the FWC to deal with a dispute	187
774 Time for application	187
775 Application fees	187
776 Conferences	188
777 Certificate if dispute not resolved	188
778 Advice on unlawful termination court application	188
779 Unlawful termination court applications	188
780 Costs orders against lawyers and paid agents	189
781 Applications for costs orders	190
782 Contravening costs orders	190
783 Reason for action to be presumed unless proved otherwise	190
Division 3—Notification and consultation requirements relating to certain terminations of employment	191
Subdivision A—Object of this Division	191
784 Object of this Division	191
Subdivision B—Requirement to notify Centrelink	191
785 Employer to notify Centrelink of certain proposed terminations	191
Subdivision C—Failure to notify or consult registered employee associations	192
786 FWC may make orders where failure to notify or consult registered employee associations about terminations	192

787	Orders that the FWC may make	193
788	Application to the FWC for order.....	194
Subdivision D—Limits on scope of this Division		194
789	Limits on scope of this Division.....	194
Part 6-4A—Special provisions about TCF outworkers		196
Division 1—Introduction		196
789AA	Guide to this Part.....	196
789AB	Meanings of <i>employee</i> and <i>employer</i>	196
789AC	Objects of this Part	196
Division 2—TCF contract outworkers taken to be employees in certain circumstances		198
789BA	Provisions covered by this Division	198
789BB	TCF contract outworkers taken to be employees in certain circumstances	198
789BC	Regulations relating to TCF outworkers who are taken to be employees.....	200
Division 3—Recovery of unpaid amounts		201
789CA	When this Division applies.....	201
789CB	Liability of indirectly responsible entity for unpaid amount.....	203
789CC	Demand for payment from an apparent indirectly responsible entity.....	203
789CD	Court order for entity to pay amount demanded	203
789CE	Effect of payment by entity (including entity’s right to recover from responsible person)	205
789CF	Division does not limit other liabilities or rights	206
Division 4—Code of practice relating to TCF outwork		207
789DA	Regulations may provide for a code	207
789DB	Matters that may be dealt with in TCF outwork code.....	207
789DC	Persons on whom obligations may be imposed by TCF outwork code	207
789DD	Other general matters relating to content of TCF outwork code	209
789DE	Relationship between the TCF outwork code and other instruments	209
Division 5—Miscellaneous		211
789EA	Part not intended to exclude or limit State or Territory laws relating to outworkers.....	211
Part 6-5—Miscellaneous		212
Division 1—Introduction		212
790	Guide to this Part.....	212
791	Meanings of <i>employee</i> and <i>employer</i>	212

Division 2—Miscellaneous	213
792 Delegation by Minister	213
793 Liability of bodies corporate.....	213
794 Signature on behalf of body corporate.....	214
795 Public sector employer to act through employing authority	214
795A The Schedules.....	216
796 Regulations—general	216
796A Regulations conferring functions.....	216
797 Regulations dealing with offences	216
798 Regulations dealing with civil penalties	216
799 Regulations dealing with infringement notices.....	217
800 Regulations dealing with exhibiting fair work instruments	217
 Schedule 1—Application, saving and transitional provisions relating to amendments of this Act	 218
 Part 1—Amendments made by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012	 218
1 Definitions	218
2 Section 789BB of amended Act applies to contracts entered into after commencement	218
3 Effect on TCF contract outworker’s entitlements	219
4 Fair work instruments etc. made before commencement.....	219
5 Application of Division 3 of Part 6-4A of amended Act	220
6 Application of subsection 203(2A) of amended Act.....	220
7 Regulations dealing with various matters	220
 Part 2—Amendments made by the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012	 222
8 Definitions	222
9 Application of sections 149A and 155A of amended Act.....	222
10 FWA to vary certain modern awards	222
11 FWA to update text of certain modern awards	223
12 Application of paragraph 194(h) of amended Act	223
 Schedule 2—Amendments made by the Fair Work Amendment (Transfer of Business) Act 2012	 224
1 Definitions	224
2 Application of the amendments made by the amending Act	224

Schedule 3—Amendments made by the Fair Work Amendment Act 2012	225
Part 1—Preliminary	225
1 Definitions	225
Part 2—Default superannuation (Schedule 1)	226
2 Schedule 1 to the amending Act	226
Part 3—Modern awards (Schedule 3)	227
3 Part 1 of Schedule 3 to the amending Act.....	227
Part 4—Enterprise agreements (Schedule 4)	228
4 Part 1 of Schedule 4 to the amending Act.....	228
5 Part 2 of Schedule 4 to the amending Act.....	228
6 Part 3 of Schedule 4 to the amending Act.....	228
7 Part 4 of Schedule 4 to the amending Act.....	228
8 Part 5 of Schedule 4 to the amending Act.....	229
Part 5—General protections (Schedule 5)	230
9 Part 1 of Schedule 5 to the amending Act.....	230
Part 6—Unfair dismissal (Schedule 6)	231
10 Part 1 of Schedule 6 to the amending Act.....	231
11 Part 2 of Schedule 6 to the amending Act.....	231
12 Part 3 of Schedule 6 to the amending Act.....	231
13 Part 4 of Schedule 6 to the amending Act.....	231
Part 7—Industrial action (Schedule 7)	232
14 Part 1 of Schedule 7 to the amending Act.....	232
15 Part 2 of Schedule 7 to the amending Act.....	232
16 Part 3 of Schedule 7 to the amending Act.....	232
Part 8—The Fair Work Commission (Schedule 8)	233
17 Part 1 of Schedule 8 to the amending Act.....	233
18 Part 2 of Schedule 8 to the amending Act.....	233
19 Part 4 of Schedule 8 to the amending Act.....	233
20 Part 5 of Schedule 8 to the amending Act.....	233
21 Part 6 of Schedule 8 to the amending Act.....	233
22 Part 7 of Schedule 8 to the amending Act.....	233
23 Part 8 of Schedule 8 to the amending Act.....	234
Part 9—Changing the name of Fair Work Australia (Schedule 9)	235
24 Transitional provision—President	235
25 Transitional provision—Deputy President	235

26	Transitional provision—Commissioner.....	236
27	Transitional provision—Minimum Wage Panel Member.....	237
28	Operation of laws—things done by, or in relation to, FWA.....	238
29	Transitional provision—General Manager and staff of FWA.....	239
30	Operation of section 7 and subsection 25B(1) of the <i>Acts Interpretation Act 1901</i> not limited.....	240
Part 10—Other amendments (Schedule 10)		241
31	Part 1 of Schedule 10 to the amending Act.....	241
Part 11—Regulations		242
32	Regulations about application, transitional and saving matters.....	242
Notes		243

Chapter 4—Compliance and enforcement

Part 4-1—Civil remedies

Division 1—Introduction

537 Guide to this Part

This Part is about civil remedies. Certain provisions in this Act impose obligations on certain persons. Civil remedies may be sought in relation to contraventions of these civil remedy provisions.

Subdivision A of Division 2 deals with applications for orders in relation to contraventions of civil remedy provisions and safety net contractual entitlements, and applications for orders to enforce entitlements arising under subsection 542(1).

Subdivision B of Division 2 sets out the orders that can be made by the Federal Court, the Federal Magistrates Court or an eligible State or Territory Court in relation to a contravention of a civil remedy provision.

Division 3 sets out when proceedings relating to a contravention of a civil remedy provision may be dealt with as small claims proceedings.

Division 4 deals with general provisions relating to civil remedies, including rules about evidence and procedure.

Division 5 deals with unclaimed money.

538 Meanings of *employee* and *employer*

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

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

Division 2—Orders

Subdivision A—Applications for orders

539 Applications for orders in relation to contraventions of civil remedy provisions

- (1) A provision referred to in column 1 of an item in the table in subsection (2) is a *civil remedy provision*.
- (2) For each civil remedy provision, the persons referred to in column 2 of the item may, subject to sections 540 and 544 and Subdivision B, apply to the courts referred to in column 3 of the item for orders in relation to a contravention or proposed contravention of the provision, including the maximum penalty referred to in column 4 of the item.

Note 1: Civil remedy provisions within a single Part may be grouped together in a single item of the table.

Note 2: Applications cannot be made by an inspector in relation to a contravention of a civil remedy provision by a person in certain cases where an undertaking or compliance notice has been given (see subsections 715(4) and 716(4A)).

Note 3: The regulations may also prescribe persons for the purposes of an item in column 2 of the table (see subsection 540(8)).

Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
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Part 2-1—Core provisions

1	44(1)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
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Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
2	45 (other than in relation to a contravention or proposed contravention of an outworker term)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an employer organisation; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
3	45 (in relation to a contravention or proposed contravention of an outworker term)	(a) an outworker; (b) an employer; (c) an outworker entity; (d) an employee organisation; (e) an employer organisation; (f) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
4	50 (other than in relation to a contravention or proposed contravention of a term that would be an outworker term if it were included in a modern award)	(a) an employee; (b) an employer; (c) an employee organisation to which the enterprise agreement concerned applies; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

Section 539

Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
5	50 (in relation to a contravention or proposed contravention of a term that would be an outworker term if it were included in a modern award)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
Part 2-4—Enterprise agreements				
6	233	(a) an employee who the proposed enterprise agreement will cover; (b) a bargaining representative for the proposed enterprise agreement; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
Part 2-5—Workplace determinations				
7	280	(a) an employee; (b) an employer; (c) an employee organisation to which the workplace determination concerned applies; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units

Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
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Part 2-6—Minimum wages

8	293	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
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Part 2-7—Equal remuneration

9	305	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
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Part 2-9—Other terms and conditions of employment

10	323(1) 323(3) 325(1) 328(1) 328(2) 328(3)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
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Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

Section 539

Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
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Part 3-1—General protections

11	340(1) 340(2) 343(1) 344 345(1) 346 348 349(1) 350(1) 350(2) 351(1) 352 353(1) 354(1) 355 357(1) 358 359	(a) a person affected by the contravention; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
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12	378	(a) a person to whom the costs are payable; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
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Part 3-2—Unfair dismissal

13	405	(a) a person affected by the contravention; (b) an employee organisation; (c) an employer organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
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Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
Part 3-3—Industrial action				
14	417(1)	(a) an employee; (b) an employer; (c) an employee organisation covered by the enterprise agreement or workplace determination concerned; (d) a person affected by the industrial action; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
15	421(1)	(a) a person affected by the contravention; (b) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
16	434	an inspector	the Federal Court	60 penalty units
17	458(2)	(a) an employee; (b) an employer; (c) an applicant for the protected action ballot order; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	30 penalty units

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

Section 539

Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
18	462(1) 462(3)	(a) an employee; (b) an employer; (c) an applicant for the protected action ballot order; (d) the protected action ballot agent; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	30 penalty units
19	463(1) 463(2)	(a) an employee; (b) an employer; (c) an applicant for the protected action ballot order; (d) the protected action ballot agent; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
20	467(1)	(a) an employee; (b) an employer; (c) an applicant for the protected action ballot order; (d) the protected action ballot agent; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	30 penalty units
21	470(1)	an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
22	473(1) 473(2)	(a) an employer; (b) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units

Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
23	474(1)	an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
24	475(1) 475(2)	(a) an employer; (b) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units

Part 3-4—Right of entry

25	482(3) 483(4) 483B(4) 483C(5) 483D(4) 483E(5) 494(1) 495(1) 496 497 498 499 500 501 502(1) 503(1) 504 506 509	(a) a person affected by the contravention; (b) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
26	517(1)	an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units

Part 3-5—Stand down

27	527	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
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Chapter 4 Compliance and enforcement**Part 4-1** Civil remedies**Division 2** Orders

Section 539

Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
Part 3-6—Other rights and responsibilities				
28	530(4)	(a) an employee; (b) a registered employee association; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	30 penalty units
29	535(1) 535(2) 536(1) 536(2)	(a) an employee; (b) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	30 penalty units
Part 5-1—The Fair Work Commission				
30	611(3)	(a) a person to whom the costs are payable; (b) an employee organisation; (c) an employer organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
Part 5-2—Office of the Fair Work Ombudsman				
31	711(3)	an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	30 penalty units
32	712(3)	an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units

Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
33	716(5)	an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	30 penalty units

Part 6-3—Extension of National Employment Standards entitlements

34	745(1) 760	(a) an employee; (b) a registered employee association; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
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Part 6-3A—Transfer of business from a State public sector employer

34A	768AG	(a) the transferring employee; (b) an employer; (c) an employee organisation; (d) an employer organisation; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
34B	768BT	(a) the transferring employee; (b) an employer; (c) an employee organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units

Part 6-4—Additional provisions relating to termination of employment

35	772(1)	(a) a person affected by the contravention; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
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Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

Section 540

Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
36	782	(a) a person to whom the costs are payable; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units
37	785(4)	(a) an employee; (b) a registered employee association; (c) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	30 penalty units

- (3) The regulations may provide that a provision set out in the regulations is a *civil remedy provision*.
- (4) If the regulations make provision as mentioned in subsection (3):
- (a) the regulations must set out:
 - (i) the persons who would be referred to in column 2; and
 - (ii) the courts that would be referred to in column 3; and
 - (iii) the maximum penalty that would be referred to in column 4;of the table in subsection (2) if there were an item for the civil remedy provision in the table; and
 - (b) this Part has effect as if the matters referred to subparagraphs (a)(i) to (iii) were set out in such an item in the table.

Note: See section 798 for limits on the penalties that may be set out in the regulations.

540 Limitations on who may apply for orders etc.

Employees, employers, outworkers and outworker entities

- (1) The following persons may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the person is affected by the contravention, or will be affected by the proposed contravention:
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- (a) an employee;
- (b) an employer;
- (c) an outworker;
- (d) an outworker entity.

Employee organisations and registered employee associations

- (2) An employee organisation or a registered employee association may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision in relation to an employee, only if:
 - (a) the employee is affected by the contravention, or will be affected by the proposed contravention; and
 - (b) the organisation or association is entitled to represent the industrial interests of the employee.
- (3) However, subsection (2) does not apply in relation to:
 - (a) items 4, 7 and 14 in the table in subsection 539(2); or
 - (b) a contravention or proposed contravention of:
 - (i) an outworker term in a modern award; or
 - (ii) a term in an enterprise agreement that would be an outworker term if it were included in a modern award.
- (4) An employee organisation may apply for an order under this Division, in relation to a contravention or proposed contravention of:
 - (a) an outworker term in a modern award; or
 - (b) a term in an enterprise agreement that would be an outworker term if it were included in a modern award;only if the employee organisation is entitled to represent the industrial interests of an outworker to whom the term relates.

Employer organisations

- (5) An employer organisation may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the organisation has a member who is affected by the contravention, or who will be affected by the proposed contravention.

Industrial associations

- (6) An industrial association may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if:
- (a) the industrial association is affected by the contravention, or will be affected by the proposed contravention; or
 - (b) if the contravention is in relation to a person:
 - (i) the person is affected by the contravention, or will be affected by the proposed contravention; and
 - (ii) the industrial association is entitled to represent the industrial interests of the person.
- (7) If an item in column 2 of the table in subsection 539(2) refers to an industrial association then, to avoid doubt, an employee organisation, a registered employee association or an employer organisation may apply for an order, in relation to a contravention or proposed contravention of a civil remedy provision, only if the organisation or association is entitled to apply for the order under subsection (6).

Regulations

- (8) The regulations may prescribe a person for the purposes of an item in column 2 of the table in subsection 539(2). The regulations may provide that the person is prescribed only in relation to circumstances specified in the regulations.

541 Applications for orders in relation to safety net contractual entitlements

- (1) This section applies if an inspector applies to a court for an order under this Division, in relation to an employer's contravention or proposed contravention of a provision or term referred to in subsection (3) in relation to an employee.
- (2) The inspector may also apply to the court, on behalf of the employee, for an order in relation to the employer's contravention, or proposed contravention, of a safety net contractual entitlement of the employee.
- (3) The provisions and terms are the following:
- (a) a provision of the National Employment Standards;

- (b) a term of a modern award;
- (c) a term of an enterprise agreement;
- (d) a term of a workplace determination;
- (e) a term of a national minimum wage order;
- (f) a term of an equal remuneration order.

542 Entitlements under contracts

- (1) For the purposes of this Part, a safety net contractual entitlement of a national system employer or a national system employee, as in force from time to time, also has effect as an entitlement of the employer or employee under this Act.
- (2) The entitlement has effect under this Act subject to any modifications, by a law of the Commonwealth (including this Act or a fair work instrument), a State or a Territory, of the safety net contractual entitlement.

543 Applications for orders in relation to statutory entitlements derived from contracts

A national system employer or a national system employee may apply to the Federal Court or the Federal Magistrates Court to enforce an entitlement of the employer or employee arising under subsection 542(1).

544 Time limit on applications

A person may apply for an order under this Division in relation to a contravention of one of the following only if the application is made within 6 years after the day on which the contravention occurred:

- (a) a civil remedy provision;
- (b) a safety net contractual entitlement;
- (c) an entitlement arising under subsection 542(1).

Note 1: This section does not apply in relation to general protections court applications or unlawful termination court applications (see subsections 371(2) and 779(2)).

Note 2: For time limits on orders relating to underpayments, see subsection 545(5).

Subdivision B—Orders

545 Orders that can be made by particular courts

Federal Court and Federal Magistrates Court

- (1) The Federal Court or the Federal Magistrates Court may make any order the court considers appropriate if the court is satisfied that a person has contravened, or proposes to contravene, a civil remedy provision.

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

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

Note 3: The Federal Court and the Federal Magistrates Court may grant injunctions in relation to industrial action under subsections 417(3) and 421(3).

Note 4: There are limitations on orders that can be made in relation to contraventions of subsection 65(5), 76(4), 463(1) or 463(2) (which deal with reasonable business grounds and protected action ballot orders) (see subsections 44(2), 463(3) and 745(2)).

- (2) Without limiting subsection (1), orders the Federal Court or Federal Magistrates Court may make include the following:
- (a) an order granting an injunction, or interim injunction, to prevent, stop or remedy the effects of a contravention;
 - (b) an order awarding compensation for loss that a person has suffered because of the contravention;
 - (c) an order for reinstatement of a person.

Eligible State or Territory courts

- (3) An eligible State or Territory court may order an employer to pay an amount to, or on behalf of, an employee of the employer if the court is satisfied that:
- (a) the employer was required to pay the amount under this Act or a fair work instrument; and
 - (b) the employer has contravened a civil remedy provision by failing to pay the amount.

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

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

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

- (a) the outworker entity was required to pay the amount under a modern award; and
- (b) the outworker entity has contravened a civil remedy provision by failing to pay the amount.

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

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

When orders may be made

- (4) A court may make an order under this section:
- (a) on its own initiative, during proceedings before the court; or
 - (b) on application.

Time limit for orders in relation to underpayments

- (5) A court must not make an order under this section in relation to an underpayment that relates to a period that is more than 6 years before the proceedings concerned commenced.

546 Pecuniary penalty orders

- (1) The Federal Court, the Federal Magistrates Court or an eligible State or Territory court may, on application, order a person to pay a pecuniary penalty that the court considers is appropriate if the court is satisfied that the person has contravened a civil remedy provision.

Note: Pecuniary penalty orders cannot be made in relation to conduct that contravenes a term of a modern award, a national minimum wage order or an enterprise agreement only because of the retrospective effect of a determination (see subsections 167(3) and 298(2)).

Determining amount of pecuniary penalty

- (2) The pecuniary penalty must not be more than:
- (a) if the person is an individual—the maximum number of penalty units referred to in the relevant item in column 4 of the table in subsection 539(2); or

Section 547

- (b) if the person is a body corporate—5 times the maximum number of penalty units referred to in the relevant item in column 4 of the table in subsection 539(2).

Payment of penalty

- (3) The court may order that the pecuniary penalty, or a part of the penalty, be paid to:
 - (a) the Commonwealth; or
 - (b) a particular organisation; or
 - (c) a particular person.

Recovery of penalty

- (4) The pecuniary penalty may be recovered as a debt due to the person to whom the penalty is payable.

No limitation on orders

- (5) To avoid doubt, a court may make a pecuniary penalty order in addition to one or more orders under section 545.

547 Interest up to judgment

- (1) This section applies to an order (other than a pecuniary penalty order) under this Division in relation to an amount that a person was required to pay to, or on behalf of, another person under this Act or a fair work instrument.
- (2) In making the order the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.
- (3) Without limiting subsection (2), in determining the amount of interest, the court must take into account the period between the day the relevant cause of action arose and the day the order is made.

Division 3—Small claims procedure

548 Plaintiffs may choose small claims procedure

- (1) Proceedings are to be dealt with as small claims proceedings under this section if:
 - (a) a person applies for an order (other than a pecuniary penalty order) under Division 2 from a magistrates court or the Federal Magistrates Court; and
 - (b) the order relates to an amount referred to in subsection (1A); and
 - (c) the person indicates, in a manner prescribed by the regulations or by the rules of the court, that he or she wants the small claims procedure to apply to the proceedings.
- (1A) The amounts are as follows:
 - (a) an amount that an employer was required to pay to, or on behalf of, an employee:
 - (i) under this Act or a fair work instrument; or
 - (ii) because of a safety net contractual entitlement; or
 - (iii) because of an entitlement of the employee arising under subsection 542(1);
 - (b) an amount that an outworker entity was required to pay to, or on behalf of, an outworker under a modern award.

Limits on award

- (2) In small claims proceedings, the court may not award more than:
 - (a) \$20,000; or
 - (b) if a higher amount is prescribed by the regulations—that higher amount.

Procedure

- (3) In small claims proceedings, the court is not bound by any rules of evidence and procedure and may act:
 - (a) in an informal manner; and
 - (b) without regard to legal forms and technicalities.

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 3 Small claims procedure

Section 548

- (4) At any stage of the small claims proceedings, the court may amend the papers commencing the proceedings if sufficient notice is given to any party adversely affected by the amendment.

Legal representation

- (5) A party to small claims proceedings may be represented in the proceedings by a lawyer only with the leave of the court.
- (6) If the court grants leave for a party to the proceedings to be represented by a lawyer, the court may, if it considers appropriate, do so subject to conditions designed to ensure that no other party is unfairly disadvantaged.
- (7) For the purposes of this section, a person is taken not to be represented by a lawyer if the lawyer is an employee or officer of the person.

Representation by an industrial association

- (8) The regulations may provide for a party to small claims proceedings to be represented in the proceedings, in specified circumstances, by an official of an industrial association.
- (9) However, if small claims proceedings are heard in a court of a State, the regulations may so provide only if the law of the State allows a party to be represented in that court in those circumstances by officials of bodies representing interests related to the matters in dispute.

Division 4—General provisions relating to civil remedies

549 Contravening a civil remedy provision is not an offence

A contravention of a civil remedy provision is not an offence.

550 Involvement in contravention treated in same way as actual contravention

- (1) A person who is involved in a contravention of a civil remedy provision is taken to have contravened that provision.
- (2) A person is *involved in* a contravention of a civil remedy provision if, and only if, the person:
 - (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced the contravention, whether by threats or promises or otherwise; or
 - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
 - (d) has conspired with others to effect the contravention.

551 Civil evidence and procedure rules for proceedings relating to civil remedy provisions

A court must apply the rules of evidence and procedure for civil matters when hearing proceedings relating to a contravention, or proposed contravention, of a civil remedy provision.

552 Civil proceedings after criminal proceedings

A court must not make a pecuniary penalty order against a person for a contravention of a civil remedy provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

553 Criminal proceedings during civil proceedings

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil remedy provision are stayed if:
 - (a) criminal proceedings are commenced or have already commenced against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct in relation to which the order would be made.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

554 Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct constituting a contravention of a civil remedy provision regardless of whether an order has been made against the person under Division 2.

555 Evidence given in proceedings for pecuniary penalty not admissible in criminal proceedings

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
 - (a) the individual previously gave the information or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil remedy provision (whether or not the order was made); and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct in relation to which the order was sought.
- (2) However, this does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

556 Civil double jeopardy

If a person is ordered to pay a pecuniary penalty under a civil remedy provision in relation to particular conduct, the person is not liable to be ordered to pay a pecuniary penalty under some other provision of a law of the Commonwealth in relation to that conduct.

Note: A court may make other orders, such as an order for compensation, in relation to particular conduct even if the court has made a pecuniary penalty order in relation to that conduct (see subsection 546(5)).

557 Course of conduct

- (1) For the purposes of this Part, 2 or more contraventions of a civil remedy provision referred to in subsection (2) are, subject to subsection (3), taken to constitute a single contravention if:
 - (a) the contraventions are committed by the same person; and
 - (b) the contraventions arose out of a course of conduct by the person.
- (2) The civil remedy provisions are the following:
 - (a) subsection 44(1) (which deals with contraventions of the National Employment Standards);
 - (b) section 45 (which deals with contraventions of modern awards);
 - (c) section 50 (which deals with contraventions of enterprise agreements);
 - (d) section 280 (which deals with contraventions of workplace determinations);
 - (e) section 293 (which deals with contraventions of national minimum wage orders);
 - (f) section 305 (which deals with contraventions of equal remuneration orders);
 - (g) subsection 323(1) (which deals with methods and frequency of payment);
 - (h) subsection 323(3) (which deals with methods of payment specified in modern awards or enterprise agreements);
 - (i) subsection 325(1) (which deals with unreasonable requirements to spend amounts);
 - (j) subsection 417(1) (which deals with industrial action before the nominal expiry date of an enterprise agreement etc.);

Section 558

- (k) subsection 421(1) (which deals with contraventions of orders in relation to industrial action);
 - (l) section 434 (which deals with contraventions of Ministerial directions in relation to industrial action);
 - (m) subsection 530(4) (which deals with notifying Centrelink of certain proposed dismissals);
 - (n) subsections 535(1) and (2) (which deal with employer obligations in relation to employee records);
 - (o) subsections 536(1) and (2) (which deal with employer obligations in relation to pay slips);
 - (p) subsection 745(1) (which deals with contraventions of the extended parental leave provisions);
 - (q) section 760 (which deals with contraventions of the extended notice of termination provisions);
 - (r) subsection 785(4) (which deals with notifying Centrelink of certain proposed terminations);
 - (s) any other civil remedy provisions prescribed by the regulations.
- (3) Subsection (1) does not apply to a contravention of a civil remedy provision that is committed by a person after a court has imposed a pecuniary penalty on the person for an earlier contravention of the provision.

558 Regulations dealing with infringement notices

- (1) The regulations may provide for a person who is alleged to have contravened a civil remedy provision to pay a penalty to the Commonwealth as an alternative to civil proceedings.
- (2) The penalty must not exceed one-tenth of the maximum penalty that a court could have ordered the person to pay under section 546 if the court was satisfied that the person had contravened that provision.

Division 5—Unclaimed money

559 Unclaimed money

Payment to the Commonwealth

- (1) An employer may pay an amount to the Commonwealth if:
 - (a) the employer was required to pay the amount to an employee under this Act or a fair work instrument; and
 - (b) the employee has left the employment of the employer without having been paid the amount; and
 - (c) the employer is unable to pay the amount to the employee because the employer does not know the employee's whereabouts.

Discharge of employer

- (2) Payment of the amount to the Commonwealth is a sufficient discharge to the employer, as against the employee, for the amount paid.

Payment where money later claimed

- (3) The Fair Work Ombudsman, on behalf of the Commonwealth, must pay an amount to a person if:
 - (a) the amount has been paid to the Commonwealth under this section; and
 - (b) the person has made a claim for the amount in accordance with the form prescribed by the regulations; and
 - (c) the Fair Work Ombudsman is satisfied that the person is entitled to the amount.

Appropriation of Consolidated Revenue Fund

- (4) The Consolidated Revenue Fund is appropriated for the purposes of this section.

Part 4-2—Jurisdiction and powers of courts

Division 1—Introduction

560 Guide to this Part

This Part is about the jurisdiction and powers of the courts in relation to matters arising under this Act.

Divisions 2 and 3 confer jurisdiction on the Federal Court and the Federal Magistrates Court. That jurisdiction is generally required to be exercised in the Fair Work Divisions of those courts.

Division 4 deals with intervention, costs, limitation on imprisonment, and regulations, in relation to proceedings in the Federal Court, the Federal Magistrates Court and, in some cases, a court of a State or Territory.

561 Meanings of *employee* and *employer*

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

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

Division 2—Jurisdiction and powers of the Federal Court

562 Conferring jurisdiction on the Federal Court

Jurisdiction is conferred on the Federal Court in relation to any matter (whether civil or criminal) arising under this Act.

563 Exercising jurisdiction in the Fair Work Division of the Federal Court

The jurisdiction conferred on the Federal Court under section 562 is to be exercised in the Fair Work Division of the Federal Court if:

- (a) an application is made to the Federal Court under this Act; or
- (b) a writ of mandamus or prohibition or an injunction is sought in the Federal Court against a person holding office under this Act; or
- (c) a declaration is sought under section 21 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or
- (d) an injunction is sought under section 23 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or
- (e) a prosecution is instituted in the Federal Court under this Act; or
- (f) an appeal is instituted in the Federal Court from a judgment of the Federal Magistrates Court or a court of a State or Territory in a matter arising under this Act; or
- (g) proceedings in relation to a matter arising under this Act are transferred to the Federal Court from the Federal Magistrates Court; or
- (h) the Federal Magistrates Court or a court of a State or Territory states a case or reserves a question for the consideration of the Federal Court in a matter arising under this Act; or
- (i) the President refers, under section 608 of this Act, a question of law to the Federal Court; or
- (j) the High Court remits a matter arising under this Act to the Federal Court.

564 No limitation on Federal Court's powers

To avoid doubt, nothing in this Act limits the Federal Court's powers under section 21, 22 or 23 of the *Federal Court of Australia Act 1976*.

565 Appeals from eligible State or Territory courts

Appeals from original decisions of eligible State or Territory courts

- (1) An appeal lies to the Federal Court from a decision of an eligible State or Territory court exercising jurisdiction under this Act.
- (1A) No appeal lies from a decision of an eligible State or Territory court exercising jurisdiction under this Act, except:
 - (a) if the court was exercising summary jurisdiction—an appeal, to that court or another eligible State or Territory court of the same State or Territory, as provided for by a law of that State or Territory; or
 - (b) in any case—an appeal as provided for by subsection (1).

Appeals from appellate decisions of eligible State or Territory courts

- (1B) An appeal lies to the Federal Court from a decision of an eligible State or Territory court made on appeal from a decision that:
 - (a) was a decision of that court or another eligible State or Territory court of the same State or Territory; and
 - (b) was made in the exercise of jurisdiction under this Act.
- (1C) No appeal lies from a decision to which subsection (1B) applies, except an appeal as provided for by that subsection.

Leave to appeal not required

- (2) It is not necessary to obtain the leave of the Federal Court, or the court appealed from, in relation to an appeal under subsection (1) or (1B).

Division 3—Jurisdiction and powers of the Federal Magistrates Court

566 Conferring jurisdiction on the Federal Magistrates Court

Jurisdiction is conferred on the Federal Magistrates Court in relation to any civil matter arising under this Act.

567 Exercising jurisdiction in the Fair Work Division of the Federal Magistrates Court

Jurisdiction conferred on the Federal Magistrates Court under section 566 is to be exercised in the Fair Work Division of the Federal Magistrates Court if:

- (a) an application is made to the Federal Magistrates Court under this Act; or
- (b) an injunction is sought under section 15 of the *Federal Magistrates Act 1999* in relation to a matter arising under this Act; or
- (c) a declaration is sought under section 16 of the *Federal Magistrates Act 1999* in relation to a matter arising under this Act; or
- (d) proceedings in relation to a matter arising under this Act are transferred to the Federal Magistrates Court from the Federal Court; or
- (e) the High Court remits a matter arising under this Act to the Federal Magistrates Court.

568 No limitation on Federal Magistrates Court's powers

To avoid doubt, nothing in this Act limits the Federal Magistrates Court's powers under section 14, 15 or 16 of the *Federal Magistrates Act 1999*.

Division 4—Miscellaneous

569 Minister's entitlement to intervene

- (1) The Minister may intervene on behalf of the Commonwealth in proceedings before a court (including a court of a State or Territory) in relation to a matter arising under this Act if the Minister believes it is in the public interest to do so.
- (2) If the Minister intervenes, the Minister is taken to be a party to the proceedings for the purposes of instituting an appeal from a judgment given in the proceedings.
- (3) Despite section 570, a court may make an order as to costs against the Commonwealth if:
 - (a) the Minister intervenes under subsection (1); or
 - (b) the Minister institutes an appeal from a judgment as referred to in subsection (2).

569A State or Territory Minister's entitlement to intervene

- (1) The Minister of a State or Territory who has responsibility for workplace relations matters may intervene on behalf of the State or Territory in proceedings before a court (including a court of a State or Territory) in relation to a matter arising under this Act if he or she believes it is in the public interest of the State or Territory to do so.
- (2) If the Minister of a State or Territory who has responsibility for workplace relations matters intervenes, he or she is taken to be a party to the proceedings for the purposes of instituting an appeal from a judgment given in the proceedings.
- (3) Despite section 570, a court may make an order as to costs against a State or Territory if:
 - (a) the Minister of a State or Territory who has responsibility for workplace relations matters intervenes under subsection (1); or
 - (b) he or she institutes an appeal from a judgment as referred to in subsection (2).

570 Costs only if proceedings instituted vexatiously etc.

- (1) A party to proceedings (including an appeal) in a court (including a court of a State or Territory) in relation to a matter arising under this Act may be ordered by the court to pay costs incurred by another party to the proceedings only in accordance with subsection (2) or section 569 or 569A.

Note: The Commonwealth might be ordered to pay costs under section 569.
A State or Territory might be ordered to pay costs under section 569A.

- (2) The party may be ordered to pay the costs only if:
- (a) the court is satisfied that the party instituted the proceedings vexatiously or without reasonable cause; or
 - (b) the court is satisfied that the party's unreasonable act or omission caused the other party to incur the costs; or
 - (c) the court is satisfied of both of the following:
 - (i) the party unreasonably refused to participate in a matter before the FWC;
 - (ii) the matter arose from the same facts as the proceedings.

571 No imprisonment for failure to pay pecuniary penalty

- (1) A court (including a court of a State or Territory) may not order a person to serve a sentence of imprisonment if the person fails to pay a pecuniary penalty imposed under this Act.
- (2) This section applies despite any other law of the Commonwealth, a State or a Territory.

572 Regulations dealing with matters relating to court proceedings

The regulations may provide for the fees to be charged in relation to proceedings in a court (including a court of a State or Territory) under this Act.

Chapter 5—Administration

Part 5-1—The Fair Work Commission

Division 1—Introduction

573 Guide to this Part

This Part is about the Fair Work Commission.

Division 2 establishes and confers functions on the FWC. The FWC consists of the President, Vice Presidents, Deputy Presidents, Commissioners and Minimum Wage Panel Members. Division 2 also confers functions on the President.

Division 3 deals with the conduct of matters before the FWC (such as applications, representation by lawyers, the FWC's decisions and appeals).

Division 4 deals with the organisation of the FWC, who may perform functions of the FWC and delegation of the FWC's functions and powers. Certain functions must be performed by a Full Bench or the Minimum Wage Panel.

Division 5 deals with the appointment, terms and conditions of FWC Members.

Division 6 deals with cooperation with the States.

Division 7 deals with the FWC's seal. It also deals with other powers and functions of the President and the General Manager (including in relation to annual reports, reports on making enterprise agreements, arrangements with certain courts, and disclosing information obtained by the FWC).

Division 8 is about the General Manager of the FWC (whose function is to assist the President), staff of the FWC and others assisting the FWC.

Division 9 contains offences in relation to the FWC.

574 Meanings of *employee* and *employer*

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

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

Division 2—Establishment and functions of the Fair Work Commission

Subdivision A—Establishment and functions of the Fair Work Commission

575 Establishment of the Fair Work Commission

- (1) The body known immediately before the commencement of this subsection as Fair Work Australia is continued in existence as the Fair Work Commission.

Note: See also subsection 25B(1) of the *Acts Interpretation Act 1901*.

- (2) The Fair Work Commission consists of:
 - (a) the President; and
 - (aa) 2 Vice Presidents; and
 - (b) such number of Deputy Presidents as, from time to time, hold office under this Act; and
 - (c) such number of Commissioners as, from time to time, hold office under this Act; and
 - (d) a minimum of 3, and no more than 6, Minimum Wage Panel Members.

Note: The Fair Work Commission also has a General Manager and staff (see Division 8).

576 Functions of the FWC

- (1) The FWC has the functions conferred by this Act in relation to the following subject matters:
 - (a) the National Employment Standards (Part 2-2);
 - (b) modern awards (Part 2-3);
 - (c) enterprise agreements (Part 2-4);
 - (d) workplace determinations (Part 2-5);
 - (e) minimum wages (Part 2-6);
 - (f) equal remuneration (Part 2-7);
 - (g) transfer of business (Part 2-8);
 - (h) general protections (Part 3-1);
 - (i) unfair dismissal (Part 3-2);

- (j) industrial action (Part 3-3);
 - (k) right of entry (Part 3-4);
 - (l) stand down (Part 3-5);
 - (m) other rights and responsibilities (Part 3-6);
 - (n) the extension of the National Employment Standards entitlements (Part 6-3);
 - (o) unlawful termination protections (Part 6-4).
- (2) The FWC also has the following functions:
- (a) dealing with disputes as referred to in section 595;
 - (b) providing assistance and advice about its functions and activities;
 - (c) providing administrative support in accordance with an arrangement under section 650 or 653A;
 - (ca) mediating any proceedings, part of proceedings or matter arising out of any proceedings that, under section 53A of the *Federal Court of Australia Act 1976* or section 34 of the *Federal Magistrates Act 1999*, have been referred by the Fair Work Division of the Federal Court or Federal Magistrates Court to the FWC for mediation;
 - (d) any other function conferred on the FWC by a law of the Commonwealth.

Note: Section 13 of the Registered Organisations Act confers additional functions on the FWC.

577 Performance of functions etc. by the FWC

The FWC must perform its functions and exercise its powers in a manner that:

- (a) is fair and just; and
- (b) is quick, informal and avoids unnecessary technicalities; and
- (c) is open and transparent; and
- (d) promotes harmonious and cooperative workplace relations.

Note: The President also is responsible for ensuring that the FWC performs its functions and exercises its powers efficiently etc. (see section 581).

578 Matters the FWC must take into account in performing functions etc.

In performing functions or exercising powers, in relation to a matter, under a part of this Act (including this Part), the FWC must take into account:

- (a) the objects of this Act, and any objects of the part of this Act; and
- (b) equity, good conscience and the merits of the matter; and
- (c) the need to respect and value the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

579 FWC has privileges and immunities of the Crown

The FWC has the privileges and immunities of the Crown in right of the Commonwealth.

580 Protection of FWC Members

An FWC Member has, in performing his or her functions or exercising his or her powers as an FWC Member, the same protection and immunity as a Justice of the High Court.

Note: See also section 584B (which deals with protection of persons involved in handling etc. complaints about FWC Members).

Subdivision B—Functions and powers of the President

581 Functions of the President

The President is responsible for ensuring that the FWC performs its functions and exercises its powers in a manner that:

- (a) is efficient; and
- (b) adequately serves the needs of employers and employees throughout Australia.

Note: The President must perform his or her own functions and exercise his or her own powers in a manner that facilitates cooperation with prescribed State industrial authorities (see section 649).

581A Dealing with a complaint about an FWC Member

- (1) Without limiting section 581 (which deals with the functions of the President), the President may:
- (a) deal, in accordance with subsection (2) of this section, with a complaint about the performance by another FWC Member of his or her duties; and
 - (b) take any measures that the President believes are reasonably necessary to maintain public confidence in the FWC, including (but not limited to) temporarily restricting the duties of the FWC Member.

Note 1: The complaint is a *complaint about an FWC Member* (see section 12).

Note 2: The Minister may also handle complaints about FWC Members (see section 641A).

- (2) The President may deal with a complaint about an FWC Member referred to in paragraph (1)(a) by doing either or both of the following:
- (a) deciding whether or not to handle the complaint and then doing one of the following:
 - (i) dismissing the complaint;
 - (ii) handling the complaint if the President has a relevant belief in relation to the complaint;
 - (iii) arranging for any other person to assist the President to handle the complaint if the President has a relevant belief in relation to the complaint;
 - (b) arranging for any other complaint handlers to decide whether or not to handle the complaint and then to do one of the following:
 - (i) dismiss the complaint;
 - (ii) handle the complaint if each of the complaint handlers has a relevant belief in relation to the complaint.

Note 1: A complaint handler (other than the President) may handle a complaint by referring it to the President. The President may then do either or both of the things referred to in paragraph (2)(a) or (b) in respect of the complaint.

Note 2: For protections for persons involved in relation to handling a complaint about an FWC Member, see section 584B.

Section 581B

Authorisation of persons or bodies

- (3) The President may authorise, in writing, a person or a body to do one or more of the following in relation to a complaint about an FWC Member referred to in paragraph (1)(a) (whether in relation to a specific complaint or generally):
- (a) assist the President to handle the complaint or complaints;
 - (b) decide whether or not to handle the complaint or complaints;
 - (c) dismiss the complaint or complaints;
 - (d) handle the complaint or complaints.

Referral to Minister

- (4) The President must refer a complaint about an FWC Member referred to in paragraph (1)(a) to the Minister if, after the complaint has been handled in accordance with subsection (2), the President is satisfied that:
- (a) one or more of the circumstances that gave rise to the complaint have been substantiated; and
 - (b) each House of the Parliament should consider whether to present to the Governor-General an address praying for the termination of the appointment of the FWC Member.

Note: The appointment of an FWC Member may be terminated under section 641 if each House of the Parliament presents such an address to the Governor-General.

- (5) The Minister must consider whether each House of the Parliament should consider the matter referred to in paragraph (4)(b).

581B Code of Conduct

- (1) After consulting the other FWC Members, the President may determine a Code of Conduct for FWC Members.
- (2) Subsection (1) does not limit section 582 (which deals with directions by the President).
- (3) The Code of Conduct must be published on the FWC's website or by any other means that the President considers appropriate.
- (4) A determination under subsection (1) is not a legislative instrument.

582 Directions by the President

The President may give directions

- (1) The President may give directions under subsection (2) as to the manner in which the FWC is to perform its functions, exercise its powers or deal with matters.
- (2) The President may give a direction that is of a general nature, or that relates to a particular matter, to one or more of the following persons:
 - (a) an FWC Member;
 - (b) a Full Bench;
 - (c) the Minimum Wage Panel;
 - (d) the General Manager.
- (3) The direction must not relate to a decision by the FWC.
- (4) Without limiting subsection (2), the direction may be a direction of the following kind:
 - (a) a direction about the conduct of 4 yearly reviews of modern awards;
 - (b) a direction about the conduct of annual wage reviews;
 - (c) a direction that 2 or more matters be dealt with jointly by one or more single FWC Members or one or more Full Benches;
 - (d) a direction about the transfer between FWC Members (including a transfer between Full Benches) of one or more matters being dealt with by the FWC.

Persons must comply with the President's directions

- (5) A person to whom a direction is given must comply with the direction.

Note: For directions to the General Manager, see section 658.

Direction is not a legislative instrument

- (6) If a direction is in writing, the direction is not a legislative instrument.

583 President not subject to direction

The President is not subject to direction by or on behalf of the Commonwealth.

584 Delegation of functions and powers of the President

- (1) The President may, in writing, delegate to a Vice President or a Deputy President all or any of the President's functions or powers, other than under:
 - (aa) paragraph 581A(1)(b) (which deals with taking measures to maintain public confidence in the FWC); or
 - (a) section 620 (which deals with the constitution and decision-making of the Minimum Wage Panel); or
 - (b) section 625 (which deals with the delegation of functions and powers of the FWC).
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the President.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

Subdivision C—Protection of persons involved in handling etc. complaints about FWC Members

584B Protection of persons involved in handling etc. complaints about FWC Members

- (1) A person who is exercising powers or performing functions under or for the purposes of paragraph 581A(1)(a), subsections 581A(2) to (5), or section 641A, in relation to a complaint about an FWC Member, or assisting in exercising those powers or performing those functions, has the same protection and immunity as a Justice of the High Court.
- (2) A witness requested to attend, or appearing, before a complaint handler or any other person, in relation to a complaint about an FWC Member, has the same protection, and is subject to the same liabilities in proceedings, as a witness in a case tried by the High Court.
- (3) A lawyer assisting, or appearing on behalf of a person before, a complaint handler or any other person, in relation to a complaint

about an FWC Member, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

Division 3—Conduct of matters before the FWC

Subdivision A—Applications to the FWC

585 Applications in accordance with procedural rules

An application to the FWC must be in accordance with the procedural rules (if any) relating to applications of that kind.

Note 1: Certain provisions might impose additional requirements in relation to particular kinds of applications (see for example subsection 185(2)).

Note 2: The FWC may, under section 587, dismiss an application that is not made in accordance with the procedural rules.

586 Correcting and amending applications and documents etc.

The FWC may:

- (a) allow a correction or amendment of any application, or other document relating to a matter before the FWC, on any terms that it considers appropriate; or
- (b) waive an irregularity in the form or manner in which an application is made to the FWC.

587 Dismissing applications

- (1) Without limiting when the FWC may dismiss an application, the FWC may dismiss an application if:
 - (a) the application is not made in accordance with this Act; or
 - (b) the application is frivolous or vexatious; or
 - (c) the application has no reasonable prospects of success.

Note: For another power of the FWC to dismiss an application for a remedy for unfair dismissal made under Division 5 of Part 3-2, see section 399A.

- (2) Despite paragraphs (1)(b) and (c), the FWC must not dismiss an application under section 365 or 773 on the ground that the application:
 - (a) is frivolous or vexatious; or
 - (b) has no reasonable prospects of success.

- (3) The FWC may dismiss an application:
 - (a) on its own initiative; or
 - (b) on application.

588 Discontinuing applications

A person who has applied to the FWC may discontinue the application:

- (a) in accordance with the procedural rules (if any); and
- (b) whether or not the matter has been settled.

Subdivision B—Conduct of matters before the FWC

589 Procedural and interim decisions

- (1) The FWC may make decisions as to how, when and where a matter is to be dealt with.
- (2) The FWC may make an interim decision in relation to a matter before it.
- (3) The FWC may make a decision under this section:
 - (a) on its own initiative; or
 - (b) on application.
- (4) This section does not limit the FWC's power to make decisions.

590 Powers of the FWC to inform itself

- (1) The FWC may, except as provided by this Act, inform itself in relation to any matter before it in such manner as it considers appropriate.
- (2) Without limiting subsection (1), the FWC may inform itself in the following ways:
 - (a) by requiring a person to attend before the FWC;
 - (b) by inviting, subject to any terms and conditions determined by the FWC, oral or written submissions;
 - (c) by requiring a person to provide copies of documents or records, or to provide any other information to the FWC;
 - (d) by taking evidence under oath or affirmation in accordance with the regulations (if any);

Section 591

- (e) by requiring an FWC Member, a Full Bench or the Minimum Wage Panel to prepare a report;
- (f) by conducting inquiries;
- (g) by undertaking or commissioning research;
- (h) by conducting a conference (see section 592);
- (i) by holding a hearing (see section 593).

591 FWC not bound by rules of evidence and procedure

The FWC is not bound by the rules of evidence and procedure in relation to a matter before it (whether or not the FWC holds a hearing in relation to the matter).

592 Conferences

- (1) For the purpose of performing a function or exercising a power of the FWC (other than a function or power under Part 2-6), the FWC may direct a person to attend a conference at a specified time and place.

Note: Part 2-6 deals with minimum wages. For the conduct of annual wage reviews, see Subdivision B of Division 3 of Part 2-6.

- (2) An FWC Member (other than a Minimum Wage Panel Member), or a delegate of the FWC, is responsible for conducting the conference.
- (3) The conference must be conducted in private, unless the person responsible for conducting the conference directs that it be conducted in public.

Note: This subsection does not apply in relation to conferences conducted in relation to unfair dismissal or general protection matters (see sections 368, 374, 398 and 776).

593 Hearings

- (1) The FWC is not required to hold a hearing in performing functions or exercising powers, except as provided by this Act.
- (2) If the FWC holds a hearing in relation to a matter, the hearing must be held in public, except as provided by subsection (3).

Confidential evidence in hearings

- (3) The FWC may make the following orders in relation to a hearing that the FWC holds if the FWC is satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reason:
 - (a) orders that all or part of the hearing is to be held in private;
 - (b) orders about who may be present at the hearing;
 - (c) orders prohibiting or restricting the publication of the names and addresses of persons appearing at the hearing;
 - (d) orders prohibiting or restricting the publication of, or the disclosure to some or all of the persons present at the hearing of, the following:
 - (i) evidence given in the hearing;
 - (ii) matters contained in documents before the FWC in relation to the hearing.
- (4) Subsection (3) does not apply to the publication of a submission made to the FWC for consideration in an annual wage review (see subsection 289(2)).

594 Confidential evidence

- (1) The FWC may make an order prohibiting or restricting the publication of the following in relation to a matter before the FWC (whether or not the FWC holds a hearing in relation to the matter) if the FWC is satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reason:
 - (a) evidence given to the FWC in relation to the matter;
 - (b) the names and addresses of persons making submissions to the FWC in relation to the matter;
 - (c) matters contained in documents lodged with the FWC or received in evidence by the FWC in relation to the matter;
 - (d) the whole or any part of its decisions or reasons in relation to the matter.
- (2) Subsection (1) does not apply to the publication of a submission made to the FWC for consideration in an annual wage review (see subsection 289(2)).

595 FWC's power to deal with disputes

- (1) The FWC may deal with a dispute only if the FWC is expressly authorised to do so under or in accordance with another provision of this Act.
- (2) The FWC may deal with a dispute (other than by arbitration) as it considers appropriate, including in the following ways:
 - (a) by mediation or conciliation;
 - (b) by making a recommendation or expressing an opinion.
- (3) The FWC may deal with a dispute by arbitration (including by making any orders it considers appropriate) only if the FWC is expressly authorised to do so under or in accordance with another provision of this Act.

Example: Parties may consent to the FWC arbitrating a bargaining dispute (see subsection 240(4)).

- (4) In dealing with a dispute, the FWC may exercise any powers it has under this Subdivision.

Example: The FWC could direct a person to attend a conference under section 592.

- (5) To avoid doubt, the FWC must not exercise any of the powers referred to in subsection (2) or (3) in relation to a matter before the FWC except as authorised by this section.

Subdivision C—Representation by lawyers and paid agents and Minister's entitlement to make submissions

596 Representation by lawyers and paid agents

- (1) Except as provided by subsection (3) or the procedural rules, a person may be represented in a matter before the FWC (including by making an application or submission to the FWC on behalf of the person) by a lawyer or paid agent only with the permission of the FWC.
- (2) The FWC may grant permission for a person to be represented by a lawyer or paid agent in a matter before the FWC only if:
 - (a) it would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter; or

- (b) it would be unfair not to allow the person to be represented because the person is unable to represent himself, herself or itself effectively; or
- (c) it would be unfair not to allow the person to be represented taking into account fairness between the person and other persons in the same matter.

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

- (a) where a person is from a non-English speaking background or has difficulty reading or writing;
 - (b) where a small business is a party to a matter and has no specialist human resources staff while the other party is represented by an officer or employee of an industrial association or another person with experience in workplace relations advocacy.
- (3) The FWC's permission is not required for a person to be represented by a lawyer or paid agent in making a written submission under Part 2-3 or 2-6 (which deal with modern awards and minimum wages).
 - (4) For the purposes of this section, a person is taken not to be represented by a lawyer or paid agent if the lawyer or paid agent:
 - (a) is an employee or officer of the person; or
 - (b) is an employee or officer of:
 - (i) an organisation; or
 - (ii) an association of employers that is not registered under the Registered Organisations Act; or
 - (iii) a peak council; or
 - (iv) a bargaining representative; that is representing the person; or
 - (c) is a bargaining representative.

597 Minister's entitlement to make submissions

- (1) The Minister is entitled to make a submission for consideration in relation to a matter before the FWC if:
 - (a) the matter is before a Full Bench and it is in the public interest for the Minister to make a submission; or
 - (b) the matter involves public sector employment.
- (2) Subsection (1) applies whether or not the FWC holds a hearing in relation to the matter.

597A State or Territory Minister’s entitlement to make submissions

- (1) The Minister of a State or Territory who has responsibility for workplace relations matters is entitled to make a submission for consideration in relation to a matter before the FWC if:
 - (a) the matter is before a Full Bench; and
 - (b) it is in the public interest of the State or Territory for the Minister of the State or Territory to make a submission.
- (2) Subsection (1) applies whether or not the FWC holds a hearing in relation to the matter.

Subdivision D—Decisions of the FWC

598 Decisions of the FWC

- (1) A reference in this Part to a decision of the FWC includes any decision of the FWC however described. However, to avoid doubt, a reference to a decision of the FWC does not include an outcome of a process carried out in accordance with subsection 595(2) (which deals with the FWC’s power to deal with disputes).

Note: Examples of decisions that the FWC makes include making modern awards, approving or refusing to approve enterprise agreements, decisions as to how, when and where a matter is to be dealt with, deciding whether to grant permission to hear an appeal, and decisions in relation to appeals.

- (2) If the FWC makes a decision that makes or varies an instrument, a reference in this Part to a decision of the FWC includes the FWC’s decision to make or vary the instrument in the particular terms decided.
- (3) A decision of the FWC that is described as an order must be made by order.

Note: An example of a decision that is described as an order is a bargaining order.
- (4) A decision of the FWC that is not described as an order may be made by order.

599 FWC not required to decide an application in terms applied for

Except as provided by this Act, the FWC is not required to make a decision in relation to an application in the terms applied for.

600 Determining matters in the absence of a person

The FWC may determine a matter before it in the absence of a person who has been required to attend before it.

601 Writing and publication requirements for the FWC's decisions

- (1) The following decisions of the FWC must be in writing:
 - (a) a decision of the FWC made under a Part of this Act other than this Part;
 - (b) an interim decision that relates to a decision to be made under a Part of this Act other than this Part;
 - (c) a decision in relation to an appeal or review.

Note: For appeals and reviews, see sections 604 and 605.

- (2) The FWC may give written reasons for any decision that it makes.
- (3) A decision, and reasons, that are in writing must be expressed in plain English and be easy to understand in structure and content.
- (4) The FWC must publish the following, on its website or by any other means that the FWC considers appropriate:
 - (a) a decision that is required to be in writing and any written reasons that the FWC gives in relation to such a decision;
 - (b) an enterprise agreement that has been approved by the FWC under Part 2-4.

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

- (5) Subsection (4) does not apply to any of the following decisions or reasons in relation to such decisions:
 - (a) a decision to issue, or refuse to issue, a certificate under section 369;
 - (c) a decision to issue an entry permit under section 512;
 - (d) a decision to impose conditions on an entry permit under section 515;
 - (e) a decision to issue, or refuse to issue, an exemption certificate under section 519;
 - (f) a decision to issue, or refuse to issue, an affected member certificate under section 520;

Section 602

- (g) a decision or reasons in relation to which an order is in operation under paragraph 594(1)(d).
- (6) Subsections (1) and (4) do not limit the FWC's power to put decisions in writing or publish decisions.

602 Correcting obvious errors etc. in relation to the FWC's decisions

- (1) The FWC may correct or amend any obvious error, defect or irregularity (whether in substance or form) in relation to a decision of the FWC (other than an error, defect or irregularity in a modern award or national minimum wage order).

Note 1: If the FWC makes a decision to make an instrument, the FWC may correct etc. the instrument under this section (see subsection 598(2)).

Note 2: The FWC corrects modern awards and national minimum wage orders under sections 160 and 296.

- (2) The FWC may correct or amend the error, defect or irregularity:
 - (a) on its own initiative; or
 - (b) on application.

603 Varying and revoking the FWC's decisions

- (1) The FWC may vary or revoke a decision of The FWC that is made under this Act (other than a decision referred to in subsection (3)).

Note: If The FWC makes a decision to make an instrument, The FWC may vary or revoke the instrument under this subsection (see subsection 598(2)).

- (2) The FWC may vary or revoke a decision under this section:
 - (a) on its own initiative; or
 - (b) on application by:
 - (i) a person who is affected by the decision; or
 - (ii) if the kind of decision is prescribed by the regulations— a person prescribed by the regulations in relation to that kind of decision.
- (3) The FWC must not vary or revoke any of the following decisions of the FWC under this section:
 - (a) a decision under Part 2-3 (which deals with modern awards);

- (b) a decision under section 235 or Division 4, 7, 9 or 10 of Part 2-4 (which deal with enterprise agreements);
- (c) a decision under Part 2-5 (which deals with workplace determinations);
- (d) a decision under Part 2-6 (which deals with minimum wages);
- (e) a decision under Division 3 of Part 2-8 (which deals with transfer of business);
- (f) a decision under Division 8 of Part 3-3 (which deals with protected action ballots);
- (g) a decision under section 472 (which deals with partial work bans);
- (h) a decision that is prescribed by the regulations.

Note: The FWC can vary or revoke decisions, and instruments made by decisions, under other provisions of this Act (see, for example, sections 447 and 448).

Subdivision E—Appeals, reviews and referring questions of law

604 Appeal of decisions

- (1) A person who is aggrieved by a decision:
 - (a) made by the FWC (other than a decision of a Full Bench or the Minimum Wage Panel); or
 - (b) made by the General Manager (including a delegate of the General Manager) under the Registered Organisations Act;may appeal the decision, with the permission of the FWC.
- (2) Without limiting when the FWC may grant permission, the FWC must grant permission if the FWC is satisfied that it is in the public interest to do so.

Note: Subsection (2) does not apply in relation to an application for an unfair dismissal (see section 400).

- (3) A person may appeal the decision by applying to the FWC.

605 Minister's entitlement to apply for review of a decision

- (1) The Minister may apply to the FWC for a review to be conducted by the FWC of a decision made by the FWC (other than a decision

Section 606

of a Full Bench or the Minimum Wage Panel) if the Minister believes that the decision is contrary to the public interest.

- (2) Without limiting when the FWC may conduct a review, the FWC must conduct a review of the decision if the FWC is satisfied that it is in the public interest to conduct the review.

Note: The FWC must be constituted by a Full Bench to decide whether to conduct a review, and to conduct the review (see section 614).

- (3) In conducting a review:
- (a) the FWC must take such steps as it considers appropriate to ensure that each person with an interest in the review is made aware of the review; and
 - (b) the Minister is entitled to make submissions for consideration in the review.
- (4) Nothing in this section affects any right of appeal or any power of the FWC under section 604 or 607. A review of a decision and an appeal of the decision may be dealt with together if the FWC considers it appropriate.

606 Staying decisions that are appealed or reviewed

- (1) If, under section 604 or 605, the FWC hears an appeal from, or conducts a review of, a decision, the FWC may (except as provided by subsection (3)) order that the operation of the whole or part of the decision be stayed, on any terms and conditions that the FWC considers appropriate, until a decision in relation to the appeal or review is made or the FWC makes a further order.
- (2) If a Full Bench is hearing the appeal or conducting the review, an order under subsection (1) in relation to the appeal or review may be made by:
- (a) the Full Bench; or
 - (b) the President; or
 - (c) a Vice President; or
 - (d) a Deputy President.
- (3) This section does not apply in relation to a decision to make a protected action ballot order.

607 Process for appealing or reviewing decisions

- (1) An appeal from, or a review of, a decision of the FWC or the General Manager may be heard or conducted without holding a hearing only if:
 - (a) it appears to the FWC that the appeal or review can be adequately determined without persons making oral submissions for consideration in the appeal or review; and
 - (b) the persons who would otherwise, or who will, make submissions (whether oral or written) for consideration in the appeal or review consent to the appeal or review being heard or conducted without a hearing.
- (2) The FWC may:
 - (a) admit further evidence; and
 - (b) take into account any other information or evidence.
- (3) The FWC may do any of the following in relation to the appeal or review:
 - (a) confirm, quash or vary the decision;
 - (b) make a further decision in relation to the matter that is the subject of the appeal or review;
 - (c) refer the matter that is the subject of the appeal or review to an FWC Member (other than a Minimum Wage Panel Member) and:
 - (i) require the FWC Member to deal with the subject matter of the decision; or
 - (ii) require the FWC Member to act in accordance with the directions of the FWC.

608 Referring questions of law to the Federal Court

- (1) The President may refer a question of law arising in a matter before the FWC for the opinion of the Federal Court.
- (2) A question of law referred under subsection (1) must be determined by the Full Court of the Federal Court.
- (3) The FWC may make a decision in relation to the matter even if the Federal Court is determining the question of law, except if the question is whether the FWC may exercise powers in relation to the matter.

Section 609

- (4) Once the Federal Court has determined the question, the FWC may only make a decision in relation to the matter that is not inconsistent with the opinion of the Federal Court (if the FWC has not already done so).
- (5) However, if the FWC has made a decision in relation to the matter that is inconsistent with the opinion of the Federal Court, the FWC must vary the decision in such a way as to make it consistent with the opinion of the Federal Court.

Subdivision F—Miscellaneous

609 Procedural rules

- (1) After consulting the other FWC Members, the President may, by legislative instrument, make procedural rules in relation to:
 - (a) the practice and procedure to be followed by the FWC; or
 - (b) the conduct of business in relation to matters allowed or required to be dealt with by the FWC.
- (2) Without limiting subsection (1), the procedural rules may provide for the following:
 - (a) the requirements for making an application to the FWC;
 - (b) the circumstances in which a lawyer or paid agent may make an application or submission to the FWC on behalf of a person who is entitled to make the application or submission;
 - (c) the form and manner in which, and the time within which, submissions may or must be made to the FWC;
 - (d) the procedural requirements for making decisions of the FWC;
 - (e) the form and manner in which the FWC gives directions and notifies persons of things;
 - (f) who is notified by the FWC of things;
 - (g) the manner in which conferences are to be conducted in relation to applications made under Part 3-1, 3-2 or Part 6-4 (which deal with general protections, unfair dismissal and unlawful termination).
- (3) To avoid doubt, subsection (1) includes the power to make procedural rules in relation to any functions conferred on the FWC by any other law of the Commonwealth.

610 Regulations dealing with any FWC matters

The regulations may provide for any matter that the procedural rules may provide for.

Note: Regulations made under this section prevail over procedural rules (see subsection 796(2)).

611 Costs

- (1) A person must bear the person's own costs in relation to a matter before the FWC.
- (2) However, the FWC may order a person (the *first person*) to bear some or all of the costs of another person in relation to an application to the FWC if:
 - (a) the FWC is satisfied that the first person made the application, or the first person responded to the application, vexatiously or without reasonable cause; or
 - (b) the FWC is satisfied that it should have been reasonably apparent to the first person that the first person's application, or the first person's response to the application, had no reasonable prospect of success.

Note: The FWC can also order costs under sections 376, 400A, 401 and 780.

- (3) A person to whom an order for costs applies must not contravene a term of the order.

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

Division 4—Organisation of the FWC

Subdivision A—Functions etc. to be performed by a single FWC Member, a Full Bench or the Minimum Wage Panel

612 FWC’s functions etc. may generally be performed by single FWC Member

- (1) A function or power of the FWC may be performed or exercised by a single FWC Member (other than a Minimum Wage Panel Member), as directed by the President, except as provided by this Subdivision.

Note: The President gives directions under section 582.

- (2) Action taken under subsection 508(1) (which deals with misuse of rights under Part 3-4) must be taken by a Vice President or a Deputy President, except as provided by section 615.
- (3) This section does not limit the power of the President to delegate a function or power of the FWC under section 625.

613 Appeal of decisions

- (1) A Full Bench must (except as provided by subsection (2)):
 - (a) decide under section 604 whether to grant permission to appeal a decision; and
 - (b) if the Full Bench decides to grant the permission—hear the appeal in accordance with section 607.

Note: For the constitution of a Full Bench, see section 618.

- (2) The President, a Vice President or a Deputy President directed by the President, may:
 - (a) decide under section 604 whether to grant permission to appeal:
 - (i) a decision of a delegate under subsection 625(2); or
 - (ii) a decision of the General Manager (including a delegate of the General Manager) under the Registered Organisations Act; and

- (b) if the President, the Vice President or the Deputy President (as the case may be) grants the permission—hear the appeal in accordance with section 607.

Note: The President gives directions under section 582.

614 Review of decisions by a Full Bench

A Full Bench must:

- (a) decide under section 605 whether to conduct a review of a decision; and
- (b) if the Full Bench decides to conduct the review—conduct the review in accordance with section 607.

Note: For the constitution of a Full Bench, see section 618.

615 The President may direct a Full Bench to perform function etc.

- (1) A function or power of the FWC may be performed or exercised by a Full Bench if the President so directs.

Note: The President gives directions under section 582.

- (2) The President may direct that the function or power be exercised by a Full Bench generally, or in relation to a particular matter or class of matters.
- (3) To avoid doubt, a reference in this section to a Full Bench includes a reference to more than one Full Bench.

Note: For the constitution of a Full Bench, see section 618.

615A When the President must direct a Full Bench to perform function etc.

- (1) The President must direct a Full Bench to perform a function or exercise a power in relation to a matter if:
 - (a) an application is made under subsection (2); and
 - (b) the President is satisfied that it is in the public interest to do so.

Note: The President gives directions under section 582.

- (2) The following persons may apply to the FWC to have a Full Bench perform a function or exercise a power in relation to a matter:

Section 615B

- (a) a person who has made, or will make, submissions for consideration in the matter;
- (b) the Minister.

615B Transfer to a Full Bench from an FWC member

- (1) This section applies if:
 - (a) the President gives a direction referred to in section 615 or 615A that a function be performed or a power be exercised by a Full Bench; and
 - (b) before the President gave the direction, the President had given a direction (the *earlier direction*) to an FWC member to perform the function or exercise the power.
- (2) The President is taken to have revoked the earlier direction.
- (3) The Full Bench must, when performing the function or exercising the power, take into account:
 - (a) everything that occurred before the FWC; and
 - (b) everything that the FWC did;in relation to the matter before the Full Bench began to perform the function or exercise the power.

615C Transfer to the President from an FWC member or a Full Bench

- (1) This section applies if:
 - (a) the President decides to perform a function or exercise a power; and
 - (b) before the President made that decision, the President had given a direction (the *earlier direction*) that the function be performed or the power be exercised by a Full Bench or an FWC member.
- (2) The President is taken to have revoked the earlier direction.
- (3) The President must, when performing the function or exercising the power, take into account:
 - (a) everything that occurred before the FWC; and
 - (b) everything that the FWC did;

in relation to the matter before the President began to perform the function or exercise the power.

616 FWC's functions etc. that must be performed by a Full Bench

Modern awards

- (1) A modern award must be made under Part 2-3 by a Full Bench.
- (2) A 4 yearly review of modern awards must be conducted under Part 2-3 by a Full Bench.
- (3) A determination that varies or revokes a modern award made in a 4 yearly review of modern awards must be made by a Full Bench.

Note: A determination that varies or revokes a modern award may be made by a single FWC Member if it is not made in a 4 yearly review of modern awards or in an annual wage review.

Workplace determinations

- (4) A workplace determination must be made under Part 2-5 by a Full Bench.

Full Benches

- (5) To avoid doubt, a reference in this section to a Full Bench includes a reference to more than one Full Bench.

Note: For the constitution of a Full Bench, see section 618.

617 FWC's functions etc. that must be performed by the Minimum Wage Panel

- (1) An annual wage review must be conducted under Part 2-6 by the Minimum Wage Panel.

Note: For the constitution of the Minimum Wage Panel, see section 620.

- (2) A national minimum wage order, or a determination, made in an annual wage review must be made by the Minimum Wage Panel.
- (3) A determination that varies a national minimum wage order must be made under Part 2-6 by the Minimum Wage Panel.

Subdivision B—Constitution of the FWC by a single FWC Member, a Full Bench or the Minimum Wage Panel

618 Constitution and decision-making of a Full Bench

Constitution of a Full Bench

- (1) A Full Bench constituted under this section consists of at least 3 FWC Members, including at least one FWC Member who is the President, a Vice President or a Deputy President.

Note: A Minimum Wage Panel Member might form part of a Full Bench.

- (2) The President may determine which FWC Members form part of a Full Bench.

Making decisions

- (3) A decision of a majority of the FWC Members on the Full Bench prevails.
- (4) However, if there is no majority, the decision of the FWC Member who has seniority under section 619 prevails.

619 Seniority of FWC Members

- (1) While the FWC is constituted by a Full Bench, the FWC Members on the Full Bench have seniority according to the following order:
 - (a) the President;
 - (aa) the Vice Presidents, according to the days on which their appointments as Vice Presidents took effect;
 - (ab) if 2 appointments as Vice Presidents took effect on the same day—the Vice Presidents, according to the precedence assigned to them in their instruments of appointment;
 - (b) the Deputy Presidents, according to the days on which their appointments as Deputy Presidents took effect;
 - (c) if 2 or more appointments as Deputy Presidents took effect on the same day—the Deputy Presidents, according to the precedence assigned to them in their instruments of appointment.

- (2) The FWC Member on a Full Bench who has seniority under this section is responsible for managing the Full Bench in performing functions and exercising powers of the FWC.

Note: The FWC Member who has seniority also has a deciding vote if there is no majority (see subsection 618(4)).

620 Constitution and decision-making of the Minimum Wage Panel

Constitution of the Minimum Wage Panel

- (1) The Minimum Wage Panel constituted under this section consists of 7 FWC Members (except as provided by section 622), and must include:
 - (a) the President; and
 - (b) at least 3 Minimum Wage Panel Members.
- (2) The President may determine which FWC Members form part of the Minimum Wage Panel.
- (3) The President is responsible for managing the Minimum Wage Panel in performing the functions and exercising the powers referred to in section 617.

Making decisions

- (4) A decision of the majority of the FWC Members of the Minimum Wage Panel prevails.
- (5) However, if there is no majority, the decision of the President prevails.

621 Reconstitution of the FWC when single FWC Member becomes unavailable

- (1) This section applies if:
 - (a) an FWC Member is dealing with a matter (other than by forming part of a Full Bench or the Minimum Wage Panel in relation to a matter); and
 - (b) the FWC Member becomes unavailable to continue dealing with the matter before the matter is completely dealt with.
- (2) The President must direct another FWC Member to constitute the FWC for the purposes of dealing with the matter.

Section 622

Note: The new FWC Member must take into account everything that happened before the FWC Member began to deal with the matter (see section 623).

622 Reconstitution of the FWC when FWC Member of a Full Bench or the Minimum Wage Panel becomes unavailable

- (1) This section applies if:
 - (a) an FWC Member (the *unavailable member*) forms part of a Full Bench or the Minimum Wage Panel in relation to a matter; and
 - (b) the FWC Member becomes unavailable to continue dealing with the matter before the matter is completely dealt with.
- (2) The Full Bench or the Minimum Wage Panel may continue to deal with the matter without the unavailable member if the Full Bench or the Minimum Wage Panel consists of the following:
 - (a) for the Minimum Wage Panel—the President and at least 2 Minimum Wage Panel Members;
 - (b) for a Full Bench—at least 3 FWC Members, including at least one FWC Member who is the President, a Vice President or a Deputy President.
- (3) Otherwise, the President must direct another FWC member to form part of the Full Bench or the Minimum Wage Panel. After the President does so, the Full Bench or the Minimum Wage Panel may continue to deal with the matter without the unavailable member.

Note: The new FWC Member must take into account everything that happened before the FWC Member began to deal with the matter (see section 623).

623 When new FWC Members begin to deal with matters

If an FWC Member begins to deal with a matter under section 621 or 622, the FWC Member must take into account everything that occurred before the FWC, and everything that the FWC did, in relation to the matter before the FWC Member began to deal with the matter.

624 FWC's decisions not invalid when improperly constituted

A decision of the FWC is not invalid merely because it was made by a Full Bench, or the Minimum Wage Panel, constituted otherwise than as provided by this Division.

Note: If the FWC makes a decision to make an instrument while constituted otherwise than as provided by this Division, the instrument is not invalid (see subsection 598(2)).

Subdivision C—Delegation of the FWC's functions and powers

625 Delegation by the President of functions and powers of the FWC

- (1) The President may, in writing, delegate all or any of the following powers of the FWC to the General Manager or a member of the staff of the FWC:
 - (a) correcting or amending applications and documents, or waiving irregularities, under section 586;
 - (b) informing itself as it considers appropriate under section 590 (other than the FWC's power to hold a hearing);
 - (c) conducting a conference in accordance with section 592;
 - (d) correcting or amending obvious errors, defects or irregularities under section 602.
- (2) The President may, in writing, delegate all or any of the following functions or powers of the FWC to a person referred to in subsection (3):
 - (a) publishing varied modern awards under section 168;
 - (b) publishing submissions under section 289;
 - (c) publishing research under section 291;
 - (d) publishing varied wage rates under section 292;
 - (da) publishing the results of a protected action ballot under section 457;
 - (f) imposing conditions on entry permits, revoking or suspending entry permits, or banning the issue of any further entry permits, under section 507 or 510;
 - (g) the functions and powers of the FWC under Division 6 of Part 3-4 (which deals with entry permits, entry notices and certificates);
 - (h) publishing enterprise agreements under paragraph 601(4)(b);
 - (i) any function or power prescribed by the regulations.

Section 625

- (3) The people to whom a delegation may be given under subsection (2) are any of the following:
- (a) the General Manager;
 - (b) a member of the staff of the FWC who is an SES employee or acting SES employee;
 - (c) a member of the staff of the FWC who is in a class of employees prescribed by the regulations.
- (4) In performing functions or exercising powers under a delegation under subsection (1) or (2), the delegate must comply with any directions of the President.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

Division 5—FWC Members

Subdivision A—Appointment of FWC Members

626 Appointment of FWC Members

- (1) An FWC Member is to be appointed by the Governor-General by written instrument.
 - (2) The instrument of appointment must specify whether the FWC Member is the President, a Vice President, a Deputy President, a Commissioner or a Minimum Wage Panel Member.
 - (3) The instrument of appointment must assign a precedence to the FWC Member if:
 - (a) the FWC Member and one other FWC Member are appointed as Vice Presidents on the same day; or
 - (b) the FWC Member and one or more other FWC Members are appointed as Deputy Presidents on the same day.
- Note: Precedence is relevant to the seniority of Vice Presidents and Deputy Presidents (see paragraphs 619(1)(ab) and (c)).
- (4) The same person must not hold, at the same time, an appointment as both:
 - (a) a Minimum Wage Panel Member; and
 - (b) the President, a Vice President, a Deputy President or a Commissioner.

627 Qualifications for appointment of FWC Members

President and Vice Presidents

- (1) Before the Governor-General appoints a person as the President or a Vice President, the Minister must be satisfied that the person:
 - (a) is or has been a Judge of a court created by the Parliament; or
 - (b) is qualified for appointment because the person has knowledge of, or experience in, one or more of the following fields:
 - (i) workplace relations;
 - (ii) law;

- (iii) business, industry or commerce.

Deputy Presidents

- (2) Before the Governor-General appoints a person as a Deputy President, the Minister must be satisfied that the person:
 - (a) either:
 - (i) is or has been a Judge of a court created by the Parliament; or
 - (ii) has been a Judge of a court of a State or Territory; or
 - (b) has a high level of experience in the field of workplace relations, including a high level of experience that has been acquired:
 - (i) through legal practice; or
 - (ii) in the service of a peak council or another association representing the interests of employers or employees; or
 - (iii) in the service of government or an authority of government; or
 - (iv) in academia.

Commissioners

- (3) Before the Governor-General appoints a person as a Commissioner, the Minister must be satisfied that the person is qualified for appointment because the person has knowledge of, or experience in, one or more of the following fields:
 - (a) workplace relations;
 - (b) law;
 - (c) business, industry or commerce.

Minimum Wage Panel Members

- (4) Before the Governor-General appoints a person as a Minimum Wage Panel Member, the Minister must be satisfied that the person is qualified for appointment because the person has knowledge of, or experience in, one or more of the following fields:
 - (a) workplace relations;
 - (b) economics;
 - (c) social policy;
 - (d) business, industry or commerce.

628 Basis of appointment of FWC Members

President, Vice Presidents, Deputy Presidents and Commissioners

- (1) The President, a Vice President, a Deputy President or a Commissioner holds office on a full-time basis.
- (2) A Deputy President or a Commissioner may perform his or her duties on a part-time basis, with the President's approval.

Minimum Wage Panel Members

- (3) A Minimum Wage Panel Member holds office on a part-time basis.

629 Period of appointment of FWC Members

President, Vice Presidents, Deputy Presidents and Commissioners

- (1) The President, a Vice President, a Deputy President or a Commissioner holds office until the earliest of the following:
 - (a) he or she attains the age of 65 years;
 - (b) he or she resigns or the appointment is terminated under this Part.

Members of a prescribed State industrial authority

- (2) Despite subsection (1), a person who is a member of a prescribed State industrial authority may be appointed as a Deputy President or Commissioner for a period specified in the instrument of appointment.

Note: A member of a prescribed State industrial authority may hold office as a Deputy President or Commissioner (see section 631).

- (3) If a person is so appointed, the person holds office as Deputy President or Commissioner until the earliest of the following:
 - (a) the specified period ends;
 - (b) the person ceases to be a member of the prescribed State industrial authority;
 - (c) the person resigns or the appointment is terminated under this Part.

Section 629A

Minimum Wage Panel Members

- (4) A Minimum Wage Panel Member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: A Minimum Wage Panel Member is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

Subdivision B—Terms and conditions of FWC Members

629A Status of the President

The President has the same status as a Judge of the Federal Court.

630 Appointment of a Judge not to affect tenure etc.

- (1) The appointment of a Judge of a court created by the Parliament as an FWC Member, or service by such a Judge as an FWC Member, does not affect:
- (a) the Judge's tenure of office as a Judge; or
 - (b) the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his or her office as a Judge.
- (2) For all purposes, the Judge's service as the FWC Member is taken to be service as a Judge.

631 Dual federal and State appointments of Deputy Presidents or Commissioners

- (1) Nothing in this Act prevents a Deputy President or Commissioner from being appointed to, and holding at the same time, an office as a member of a prescribed State industrial authority, with the President's approval.
- (2) Nothing in this Act prevents a member of a prescribed State industrial authority from being appointed to, and holding at the same time, an office as a Deputy President or Commissioner.

Note 1: A member of a prescribed State industrial authority may hold office as a Deputy President or Commissioner only if he or she is qualified for appointment (see section 627).

Note 2: For the period of appointment, and remuneration and allowances, of a Deputy President or Commissioner who is a member of a prescribed State industrial authority, see sections 629 and 637.

- (3) Subsections (1) and (2) have effect subject to any law of the relevant State.

632 Dual federal and Territory appointments of Deputy Presidents or Commissioners

Nothing in this Act prevents a Deputy President or Commissioner from being appointed to, and holding at the same time, one of the following offices, with the President's approval:

- (a) an office as a member of a Commonwealth or Territory tribunal prescribed by the regulations (other than a court);
- (b) an office under a Commonwealth or Territory law that provides for the office to be held by an FWC Member.

633 Outside work of FWC Members

Vice Presidents, Deputy Presidents and Commissioners

- (1) A Vice President, Deputy President or Commissioner (whether performing duties on a full-time or part-time basis) must not engage in paid work outside the duties of his or her office without the President's approval.
- (2) However, the President's approval is not required if the paid work is an office or appointment in the Defence Force.

Minimum Wage Panel Members

- (3) A Minimum Wage Panel Member must not engage in any paid employment that, in the President's opinion, conflicts or may conflict with the proper performance of his or her duties.

634 Oath or affirmation of office

Before beginning to discharge the duties of his or her office, an FWC Member must take an oath or affirmation in accordance with the regulations.

635 Remuneration of the President

Remuneration if the President is not a Judge

- (1) The President (other than a President who is a Judge of a court created by the Parliament) is to be paid:
 - (a) salary at an annual rate equal to the annual rate of salary payable to the Chief Justice of the Federal Court; and
 - (b) such travelling allowances as are determined from time to time by the Remuneration Tribunal; and
 - (c) such other allowances as are prescribed by the regulations.

Remuneration if the President is a Judge

- (2) A President who is a Judge of a court created by the Parliament must be paid an additional allowance, in accordance with subsection (3), if the salary payable to the person as a Judge is less than the salary that would be payable to the person as President under subsection (1).
- (3) The amount of the allowance is the difference between the Judge's salary and the salary that is payable to the President under subsection (1).

Additional amount

- (4) The President or a former President must be paid an amount in accordance with subsection 7(5E) of the *Remuneration Tribunal Act 1973* if the President, or former President, would be entitled to that amount had the President or former President held the office of Chief Justice of the Federal Court instead of the office of President.

636 Application of Judges' Pensions Act to the President

- (1) The *Judges' Pensions Act 1968* does not apply to the President if:
 - (a) immediately before being appointed as the President, he or she was one of the following (a **public sector superannuation scheme member**):
 - (i) an eligible employee for the purposes of the *Superannuation Act 1976*;
 - (ii) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;

- (iii) an ordinary employer-sponsored member of PSSAP (within the meaning of the *Superannuation Act 2005*); and
 - (b) he or she does not make an election under subsection (2).
- (2) The President may elect to cease to be a public sector superannuation scheme member.
 - (3) The election must be made:
 - (a) within 3 months of the President's appointment; and
 - (b) by written notice to the Minister.
 - (4) If the President makes the election:
 - (a) he or she is taken to have ceased to be a public sector superannuation scheme member immediately before being appointed as the President; and
 - (b) the *Judges' Pensions Act 1968* applies to him or her, and is taken to have so applied, immediately after he or she was appointed as the President.

637 Remuneration of FWC Members other than the President

Remuneration if an FWC Member is not a Judge

- (1) An FWC Member (other than an FWC Member who is a Judge of a court created by the Parliament) is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the FWC Member is to be paid the remuneration that is prescribed by the regulations.
- (2) An FWC Member is to be paid the allowances that are prescribed by the regulations.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973* and to section 638 (which deals with remuneration of part-time Deputy Presidents and Commissioners).
- (4) Despite subsections (1) to (3), if a person who is a member of a prescribed State industrial authority is appointed as a Deputy President or Commissioner, the person is not to be paid any remuneration or allowances in relation to the office of Deputy

Section 638

President or Commissioner other than any travel allowance prescribed under subsection (2).

Remuneration if an FWC Member is a Judge

- (5) An FWC Member who is a Judge (other than the Chief Justice of the Federal Court) of a court created by the Parliament is to be paid an additional allowance, in accordance with subsection (6), if the salary payable to the person as a Judge is less than the salary that would be payable to the person as an FWC Member under subsection (1).
- (6) The amount of the allowance is the difference between the Judge's salary and the salary that is payable to the FWC Member under subsection (1).

Section does not apply to the President

- (7) This section does not apply to the President.

638 Remuneration of Deputy Presidents or Commissioners performing duties on a part-time basis

- (1) If the President approves a Deputy President or Commissioner (the *part-time member*) performing his or her duties on a part-time basis, the President and the part-time member are to enter into a written agreement specifying the proportion (the *agreed proportion*) of full-time duties to be worked by the part-time member.
- (2) The agreed proportion may be varied by a written agreement between the President and the part-time member.
- (3) The part-time member's annual rate of salary at a particular time is equal to the agreed proportion at that time of the annual rate of salary that would be payable to the part-time member if he or she were performing his or her duties on a full-time basis.
- (4) The allowances that are to be paid to the part-time member under section 637 are not affected by this section.

639 Leave of absence of FWC Members other than the President

- (1) An FWC Member has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The President may grant an FWC Member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise as the President determines.
- (3) In making a determination in accordance with this section, the Remuneration Tribunal and the President must take into account:
 - (a) any past employment of the FWC Member in the service of a State or an authority of a State; or
 - (b) any past service of the FWC Member as a member of an authority of a State.
- (4) This section does not apply to the President.

640 Disclosure of interests by FWC Members other than the President

- (1) This section applies if:
 - (a) an FWC Member (other than the President) is dealing, or will deal, with a matter; and
 - (b) the FWC Member has or acquires any interest (the *potential conflict*), pecuniary or otherwise, that conflicts or could conflict with the proper performance of the FWC Member's functions in relation to the matter.
- (2) The FWC member must disclose the potential conflict to:
 - (a) a person who has made, or will make, a submission for consideration in the matter; and
 - (b) a person who the FWC member considers is likely to make a submission for consideration in the matter; and
 - (c) the President.
- (4) The President must give a direction to the FWC Member not to deal, or to no longer deal, with the matter if:
 - (a) the President becomes aware that an FWC Member has a potential conflict in relation to a matter (whether or not because of a disclosure under subsection (2)); and

Section 641

- (b) the President considers that the FWC Member should not deal, or should no longer deal, with the matter.

641 Termination of appointment on grounds of misbehaviour or incapacity

The Governor-General may terminate the appointment of an FWC Member if an address praying for the termination, on one of the following grounds, is presented to the Governor-General by each House of the Parliament in the same session:

- (a) proved misbehaviour;
- (b) the FWC Member is unable to perform the duties of his or her office because of physical or mental incapacity.

641A Minister may handle complaints about FWC Members

The Minister may handle a complaint about the performance by an FWC Member of his or her duties:

- (a) for the purpose of considering whether each House of the Parliament should consider whether to present to the Governor-General an address praying for the termination of the appointment of the FWC Member; and
- (b) for the purpose of considering whether to advise the Governor-General to suspend the FWC Member.

Note 1: The appointment of an FWC Member may be terminated under section 641 if each House of the Parliament presents such an address to the Governor-General.

Note 2: The FWC Member may be suspended under section 642.

Note 3: The complaint is a *complaint about an FWC Member* (see section 12).

Note 4: For protections for persons involved in relation to handling a complaint about an FWC Member, see section 584B.

642 Suspension on grounds of misbehaviour or incapacity

Governor-General may suspend an FWC Member

- (1) The Governor-General may suspend an FWC Member (other than the President) from office:
 - (a) for misbehaviour; or

- (b) if the FWC Member is unable to perform the duties of his or her office because of physical or mental incapacity.

Statement of grounds

- (2) The Minister must cause to be tabled in each House of Parliament, within 7 sitting days of that House after the suspension, a statement identifying the FWC Member and setting out the ground of the suspension.

Resolution by a House of Parliament

- (3) A House of the Parliament may, within 15 sitting days of that House after the day on which the statement has been tabled in it, declare by resolution that the appointment of the FWC Member should be terminated.

Suspension terminates

- (4) If a House does not pass a resolution in that way, the suspension terminates.

Appointment to be terminated

- (5) If each House of the Parliament passes a resolution in that way, the Governor-General must terminate the appointment of the FWC Member.

Suspension not to affect entitlements

- (6) The suspension of an FWC Member under this section does not affect any entitlement of the FWC Member to be paid remuneration, and allowances, in accordance with this Act.

643 Termination of appointment for bankruptcy, etc.

The Governor-General must terminate the appointment of an FWC Member (other than the President) if:

- (a) the FWC Member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or

- (b) the FWC Member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

644 Termination of appointment for outside work [see Note 4]

Deputy Presidents and Commissioners

- (1) The Governor-General must terminate the appointment of a Deputy President or Commissioner if the Deputy President or Commissioner engages, except with the President's approval, in paid work outside the duties of his or her office (see subsection 633(1)).

Minimum Wage Panel Members

- (2) The Governor-General must terminate the appointment of a Minimum Wage Panel Member if the Minimum Wage Panel Member engages in paid employment that, in the President's opinion, conflicts or may conflict with the proper performance of his or her duties (see subsection 633(3)).

645 Resignation of FWC Members

- (1) An FWC Member may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

646 Other terms and conditions of FWC Members

An FWC Member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

647 Appointment of acting President and Vice President

Appointment by Governor-General

- (1) The Governor-General may, by written instrument, appoint a Vice President to act as the President:

- (a) during a vacancy in the office of the President (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the President is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

(1A) The Governor-General may, by written instrument, appoint a Deputy President to act as a Vice President:

- (a) during a vacancy in the office of a Vice President (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when a Vice President is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

No invalidity

- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

Not disqualified

- (3) A person is not disqualified from being appointed under subsection (1) or (1A) merely because the person is over 65.

648 Appointment of acting Deputy Presidents and Commissioners

Appointment by Governor-General

- (1) The Governor-General may, by written instrument, appoint a person who is qualified for appointment as a Deputy President to act as a Deputy President for a specified period (including a period that exceeds 12 months).

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (1A) The Governor-General may, by written instrument, appoint a person who is qualified for appointment as a Commissioner to act as a Commissioner for a specified period (including a period that exceeds 12 months).

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (2) Before the Governor-General appoints a person under subsection (1) or (1A), the Minister must be satisfied that the appointment is necessary to enable the FWC to perform its functions effectively.

No invalidity

- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

Not disqualified

- (4) A person is not disqualified from being appointed under subsection (1) or (1A) merely because the person is over 65.

Division 6—Cooperation with the States

649 President to cooperate with prescribed State industrial authorities

- (1) The President must perform his or her functions, and exercise his or her powers, in a manner that facilitates and encourages cooperation between the FWC and prescribed State industrial authorities.
- (2) Without limiting subsection (1), the President may invite the heads of prescribed State industrial authorities, or the principal registrars of prescribed State industrial authorities, to meet with the President to exchange information and discuss matters of mutual interest in relation to workplace relations.

650 Provision of administrative support

The President may make a written arrangement with a prescribed State industrial authority for:

- (a) the FWC to provide administrative support to the authority;
or
- (b) the authority to provide administrative support to the FWC.

Division 7—Seals and additional powers and functions of the President and the General Manager

651 Seals

Seal of the FWC

- (1) The FWC must have a seal on which are inscribed the words “The Seal of the Fair Work Commission”.

Duplicate seals

- (2) There are to be such duplicates of the seal of the FWC as the President directs.

Note: The President gives directions under section 582.

- (3) A document to which a duplicate seal of the FWC is affixed is taken to have the seal of the FWC affixed to it.

Custody and use of the seal of the FWC and duplicate seals

- (4) The seal of the FWC, and the duplicates of that seal, are to be kept in such custody as the President directs and must not be used except as authorised by the President.

Note: The President gives directions under section 582.

Judicial notice of the seal of the FWC

- (5) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the FWC appearing on a document; and
 - (b) presume that the document was duly sealed.

652 Annual report

- (1) The President must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the FWC during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) To avoid doubt, subsection (1) does not require or authorise the disclosure of information for the purposes of the *Privacy Act 1988*.

653 Reports about making enterprise agreements, individual flexibility arrangements etc.

Review and research

- (1) The General Manager must:
- (a) review the developments, in Australia, in making enterprise agreements; and
 - (b) conduct research into the extent to which individual flexibility arrangements under modern awards and enterprise agreements are being agreed to, and the content of those arrangements; and
 - (c) conduct research into the operation of the provisions of the National Employment Standards relating to:
 - (i) requests for flexible working arrangements under subsection 65(1); and
 - (ii) requests for extensions of unpaid parental leave under subsection 76(1); and
 - (d) conduct research into:
 - (i) the circumstances in which employees make such requests; and
 - (ii) the outcome of such requests; and
 - (iii) the circumstances in which such requests are refused.
- (1A) The review and research must be conducted in relation to each of the following periods:
- (a) the 3 year period that starts when this section commences;
 - (b) each later 3 year period.
- (2) Without limiting subsection (1), the General Manager must, in conducting the review and research, consider the effect that the matters referred to in paragraphs (1)(a) to (d) have had, during the period, on the employment (including wages and conditions of employment) of the following persons:
- (a) women;

Chapter 5 Administration

Part 5-1 The Fair Work Commission

Division 7 Seals and additional powers and functions of the President and the General Manager

Section 653A

- (b) part-time employees;
- (c) persons from a non-English speaking background;
- (d) mature age persons;
- (e) young persons;
- (f) any other persons prescribed by the regulations.

Report

- (3) The General Manager must give the Minister a written report of the review and research as soon as practicable, and in any event within 6 months, after the end of the period to which it relates.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (5) Subsections 34C(4) to (7) of the *Acts Interpretation Act 1901* apply to the report as if it were a periodic report as defined in subsection 34C(1) of that Act.

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

The General Manager may make a written arrangement with the Federal Court or the Federal Magistrates Court for the FWC to provide administrative support to the Fair Work Division of the Court.

654 President must provide certain information etc. to the Minister and Fair Work Ombudsman

- (1) The President must provide to the Minister and the Fair Work Ombudsman information and copies of documents prescribed by the regulations by the time, and in the form, prescribed.
- (2) The regulations may prescribe:
 - (a) information that is publicly available, or derived from information that is publicly available, relating to:
 - (i) a decision of the FWC; or
 - (ii) a notice, notification or application given or made to the FWC; and
 - (b) a decision of the FWC that is publicly available.

655 Disclosure of information by the FWC

Information to which this section applies

- (1) This section applies to the following information:
 - (a) information acquired by the FWC, or a member of the staff of the FWC, in the course of performing functions or exercising powers as the FWC;
 - (b) information acquired by a person in the course of assisting the FWC under section 672, or in the course of performing functions, or exercising powers, as a consultant under section 673.

Disclosure that is necessary or appropriate, or likely to assist administration or enforcement

- (2) The President may disclose, or authorise the disclosure of, the information if the President reasonably believes:
 - (a) that it is necessary or appropriate to do so in the course of performing functions, or exercising powers, of the FWC; or
 - (b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

Division 8—General Manager, staff and consultants

Subdivision A—Functions of the General Manager

656 Establishment

There is to be a General Manager of the Fair Work Commission.

657 Functions and powers of the General Manager

- (1) The General Manager is to assist the President in ensuring that the FWC performs its functions and exercises its powers.
- (1A) The General Manager also has the following functions:
 - (a) any function conferred on him or her by a fair work instrument;
 - (b) any function conferred on him or her by a law of the Commonwealth.

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

- (2) The General Manager has power to do all things necessary or convenient to be done for the purpose of performing his or her functions.

658 Directions from the President

Despite the President's power of direction under section 582, the General Manager is not required to comply with a direction by the President to the extent that:

- (a) compliance with the direction would be inconsistent with the General Manager's performance of functions or exercise of powers under the *Financial Management and Accountability Act 1997* in relation to the FWC; or
- (b) the direction relates to the General Manager's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the FWC; or
- (c) the direction relates to the conduct by the General Manager of the review and research, and the preparation of the report, under section 653.

659 General Manager not otherwise subject to direction

Except as provided by this or any other Act, the General Manager is not subject to direction by or on behalf of the Commonwealth.

Subdivision B—Appointment and terms and conditions of the General Manager

660 Appointment of the General Manager

- (1) The General Manager is to be appointed by the Governor-General by written instrument on the nomination of the President.
- (2) The General Manager holds office on a full-time basis.
- (3) The General Manager holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The General Manager is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

661 Remuneration of the General Manager

- (1) The General Manager is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the General Manager is to be paid the remuneration that is prescribed by the regulations.
- (2) The General Manager is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

662 Leave of absence of the General Manager

- (1) The General Manager has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the General Manager leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

663 Outside work of the General Manager

The General Manager must not engage in paid work outside the duties of his or her office without the President's approval.

664 Disclosure of interests to the President

The General Manager must give written notice to the President of all interests, pecuniary or otherwise, that the General Manager has or acquires and that conflict or could conflict with the proper performance of the General Manager's functions.

665 Resignation of the General Manager

- (1) The General Manager may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

666 Termination of appointment of the General Manager

- (1) The Governor-General may terminate the appointment of the General Manager:
 - (a) for misbehaviour; or
 - (b) if the General Manager is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the General Manager if:
 - (a) the General Manager becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the General Manager is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the General Manager engages, except with the President's approval, in paid work outside the duties of his or her office (see section 663); or

- (d) the General Manager fails, without reasonable excuse, to comply with section 664 (which deals with disclosure of interests to the President).

667 Other terms and conditions of the General Manager

The General Manager holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

668 Appointment of acting General Manager

- (1) The Minister may, by written instrument, appoint a person who is nominated by the President to act as the General Manager:
 - (a) during a vacancy in the office of the General Manager (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the General Manager is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

669 Minister to consult the President

The Minister must consult the President before terms and conditions are determined under section 667.

Subdivision C—Staff and consultants

670 Staff

- (1) The staff of the FWC must be persons engaged under the *Public Service Act 1999*.

Section 671

- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the General Manager and the staff of FWA together constitute a Statutory Agency; and
 - (b) the General Manager is the Head of that Statutory Agency.

671 Delegation by General Manager to staff

- (1) The General Manager may, in writing, delegate all or any of his or her functions or powers to:
 - (a) a member of the staff of the FWC who is an SES employee or acting SES employee; or
 - (b) a member of the staff of the FWC who is in a class of employees prescribed by the regulations.
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the General Manager.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

672 Persons assisting the FWC

The FWC may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State or Territory; or
- (c) by officers and employees of authorities of the Commonwealth, a State or a Territory;

whose services are made available to the FWC in connection with the performance of any of its functions.

673 Consultants

The General Manager may engage persons having suitable qualifications and experience as consultants to the FWC.

Division 9—Offences relating to the Fair Work Commission

674 Offences in relation to the FWC

Insulting or disturbing an FWC Member

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct insults or disturbs an FWC Member in the performance of functions, or the exercise of powers, as an FWC Member.

Penalty: Imprisonment for 12 months.

Using insulting language

- (2) A person commits an offence if:
- (a) the person uses insulting language towards another person; and
 - (b) the person is reckless as to whether the language is insulting; and
 - (c) the other person is an FWC Member performing functions, or exercising powers, as an FWC Member.

Penalty: Imprisonment for 12 months.

Interrupting matters before the FWC

- (3) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct interrupts a matter before the FWC.

Penalty: Imprisonment for 12 months.

Creating or continuing a disturbance

- (4) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct creates, or contributes to creating or continuing, a disturbance; and

Section 674

- (c) the disturbance is in or near a place where the FWC is dealing with a matter.

Penalty: Imprisonment for 12 months.

Improper influence of FWC Members etc.

- (5) A person commits an offence if:
 - (a) the person uses words (whether by writing or speech) that are intended to improperly influence another person; and
 - (b) the other person is an FWC Member or a person attending before the FWC.

Penalty: Imprisonment for 12 months.

Delegates of the FWC

- (6) A reference in subsections (1) to (5) to the FWC or an FWC Member includes a delegate of the FWC.

Adversely affecting public confidence in the FWC

- (7) A person commits an offence if:
 - (a) the person publishes a statement; and
 - (b) the statement implies or states that an FWC Member (whether identified or not) has engaged in misconduct in relation to the performance of functions, or the exercise of powers, as an FWC Member; and
 - (c) the FWC Member has not engaged in that misconduct; and
 - (d) the publication is likely to have a significant adverse effect on public confidence that the FWC is properly performing its functions and exercising its powers.

Penalty: 12 months imprisonment.

Note 1: Sections 135.1, 135.4, 139.1, 141.1 and 142.1 of the *Criminal Code* create offences of using various dishonest means to influence a Commonwealth public official.

Note 2: Sections 676 and 678 of this Act and sections 36A, 37, 38 and 40 of the *Crimes Act 1914* create offences relating to interference with a witness. Section 39 of that Act makes it an offence to destroy anything that may be required in evidence.

675 Contravening an FWC order

- (1) A person commits an offence if:
 - (a) the FWC has made an order under this Act; and
 - (b) either of the following applies:
 - (i) the order applies to the person;
 - (ii) a term of the order applies to the person; and
 - (c) the person engages in conduct; and
 - (d) the conduct contravenes:
 - (i) a term of the order referred to in subparagraph (b)(i); or
 - (ii) the term referred to in subparagraph (b)(ii).

- (2) However, subsection (1) does not apply to the following orders:
 - (a) an order under Part 2-3 (which deals with modern awards);
 - (b) a bargaining order;
 - (c) a scope order;
 - (d) an order under Part 2-6 (which deals with minimum wages);
 - (e) an equal remuneration order;
 - (f) an order under Part 2-8 (which deals with transfer of business);
 - (g) an order under Division 6 of Part 3-3 (which deals with the suspension or termination of protected industrial action);
 - (h) a protected action ballot order, or an order in relation to a protected action ballot order or a protected action ballot;
 - (i) an order under Part 3-5 (which deals with stand down).

Penalty: Imprisonment for 12 months.

- (3) Strict liability applies to paragraphs (1)(a) and (b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

676 Intimidation etc.

A person commits an offence if:

- (a) the person threatens, intimidates, coerces or prejudices another person; and
- (b) the person does so because the other person has given, or proposes to give, information or documents to the FWC.

Penalty: Imprisonment for 12 months.

Section 677

Note: A person may also contravene a civil remedy provision by threatening etc. a person who has given, or proposes to give, information or documents to the FWC (see section 343).

677 Offences in relation to attending before the FWC

Required to attend

- (1) A person commits an offence if:
- (a) the person has been required to attend before the FWC; and
 - (b) the person fails to attend as required.

Penalty: Imprisonment for 6 months.

Oath or affirmation

- (2) A person commits an offence if:
- (a) the person attends before the FWC; and
 - (b) the FWC requires the person to take an oath or make an affirmation; and
 - (c) the person refuses or fails to be sworn or to make an affirmation as required.

Penalty: Imprisonment for 6 months.

Questions or documents

- (3) A person commits an offence if:
- (a) the person attends before the FWC; and
 - (b) the FWC requires the person to answer a question or produce a document; and
 - (c) the person refuses or fails to answer the question or produce the document.

Penalty: Imprisonment for 6 months.

Reasonable excuse

- (4) Subsection (1), (2) or (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) A reference in this section to the FWC or an FWC Member includes a delegate of the FWC.

678 False or misleading evidence

Giving false or misleading evidence

- (1) A person (the **witness**) commits an offence if:
- (a) the witness gives sworn or affirmed evidence; and
 - (b) the witness gives the evidence as a witness:
 - (i) in a matter before the FWC; or
 - (ii) before a person taking evidence on behalf of the FWC for use in a matter that the witness will start by application to the FWC; and
 - (c) the evidence is false or misleading.

Penalty: Imprisonment for 12 months.

Note: A person will not commit an offence if the person carries out the conduct constituting the offence under duress (see section 10.2 of the *Criminal Code*).

Inducing or coercing another person to give false or misleading evidence

- (2) A person (the **offender**) commits an offence if:
- (a) another person (the **witness**) has been, or will be, required to appear as a witness in a matter before the FWC (whether the person is to appear before the FWC or a delegate of the FWC); and
 - (b) the offender induces, threatens or intimidates the witness to give false or misleading evidence in the matter.

Penalty: Imprisonment for 12 months.

Part 5-2—Office of the Fair Work Ombudsman

Division 1—Introduction

679 Guide to this Part

This Part is about the Office of the Fair Work Ombudsman.

Division 2 is about the Fair Work Ombudsman. The Fair Work Ombudsman's functions include promoting and monitoring compliance with this Act, and providing education, assistance and advice to employees, employers, outworkers, outworker entities and organisations.

Division 3 is about the Office of the Fair Work Ombudsman. The Office of the Fair Work Ombudsman consists of the Fair Work Ombudsman, Fair Work Inspectors and staff.

The inspectors exercise compliance powers for purposes including determining whether this Act is being complied with. The compliance powers include the power to enter certain premises, and to inspect and make copies of documents on the premises.

680 Meanings of *employee* and *employer*

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

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

Division 2—Fair Work Ombudsman

Subdivision A—Establishment and functions and powers of the Fair Work Ombudsman

681 Establishment

There is to be a Fair Work Ombudsman.

682 Functions of the Fair Work Ombudsman

- (1) The Fair Work Ombudsman has the following functions:
 - (a) to promote:
 - (i) harmonious, productive and cooperative workplace relations; and
 - (ii) compliance with this Act and fair work instruments; including by providing education, assistance and advice to employees, employers, outworkers, outworker entities and organisations and producing best practice guides to workplace relations or workplace practices;
 - (b) to monitor compliance with this Act and fair work instruments;
 - (c) to inquire into, and investigate, any act or practice that may be contrary to this Act, a fair work instrument or a safety net contractual entitlement;
 - (d) to commence proceedings in a court, or to make applications to the FWC, to enforce this Act, fair work instruments and safety net contractual entitlements;
 - (e) to refer matters to relevant authorities;
 - (f) to represent employees or outworkers who are, or may become, a party to proceedings in a court, or a party to a matter before the FWC, under this Act or a fair work instrument, if the Fair Work Ombudsman considers that representing the employees or outworkers will promote compliance with this Act or the fair work instrument;
 - (g) any other functions conferred on the Fair Work Ombudsman by any Act.

Note 1: The Fair Work Ombudsman also has the functions of an inspector (see section 701).

Section 683

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

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

683 Delegation by the Fair Work Ombudsman

- (1) The Fair Work Ombudsman may, in writing, delegate to a member of the staff of the Office of the Fair Work Ombudsman or to an inspector all or any of the Fair Work Ombudsman's functions or powers under any Act (other than his or her functions or powers as an inspector).
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Fair Work Ombudsman.

684 Directions from the Minister

- (1) The Minister may, by legislative instrument, give written directions to the Fair Work Ombudsman about the performance of his or her functions.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) The direction must be of a general nature only.
- (3) The Fair Work Ombudsman must comply with the direction.
- (4) The Fair Work Ombudsman is not required to comply with the direction to the extent that it relates to the Fair Work Ombudsman's performance of functions, or exercise of powers, under the *Public Service Act 1999* in relation to the Office of the Fair Work Ombudsman.

685 Minister may require reports

- (1) The Minister may, in writing, direct the Fair Work Ombudsman to give the Minister specified reports relating to the Fair Work Ombudsman's functions.

- (2) The Fair Work Ombudsman must comply with the direction.
- (3) The direction, or the report (if made in writing), is not a legislative instrument.

686 Annual report

- (1) The Fair Work Ombudsman must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Office of the Fair Work Ombudsman during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) To avoid doubt, subsection (1) does not require or authorise the disclosure of information for the purposes of the *Privacy Act 1988*.

Subdivision B—Appointment and terms and conditions of the Fair Work Ombudsman

687 Appointment of the Fair Work Ombudsman

- (1) The Fair Work Ombudsman is to be appointed by the Governor-General by written instrument.
- (2) Before the Governor-General appoints a person as the Fair Work Ombudsman, the Minister must be satisfied that the person:
 - (a) has suitable qualifications or experience; and
 - (b) is of good character.
- (3) The Fair Work Ombudsman holds office on a full-time basis.
- (4) The Fair Work Ombudsman holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Fair Work Ombudsman is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

688 Remuneration of the Fair Work Ombudsman

- (1) The Fair Work Ombudsman is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Fair Work

Section 689

Ombudsman is to be paid the remuneration that is prescribed by the regulations.

- (2) The Fair Work Ombudsman is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

689 Leave of absence of the Fair Work Ombudsman

- (1) The Fair Work Ombudsman has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Fair Work Ombudsman leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

690 Outside work of the Fair Work Ombudsman

The Fair Work Ombudsman must not engage in paid work outside the duties of his or her office without the Minister's approval.

691 Disclosure of interests to the Minister

The Fair Work Ombudsman must give written notice to the Minister of all interests, pecuniary or otherwise, that the Fair Work Ombudsman has or acquires and that conflict or could conflict with the proper performance of the Fair Work Ombudsman's functions.

692 Resignation of the Fair Work Ombudsman

- (1) The Fair Work Ombudsman may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

693 Termination of appointment of the Fair Work Ombudsman

- (1) The Governor-General may terminate the appointment of the Fair Work Ombudsman:

- (a) for misbehaviour; or
 - (b) if the Fair Work Ombudsman is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the Fair Work Ombudsman if:
- (a) the Fair Work Ombudsman becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Fair Work Ombudsman is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Fair Work Ombudsman engages, except with the Minister's approval, in paid work outside the duties of his or her office (see section 690); or
 - (d) the Fair Work Ombudsman fails, without reasonable excuse, to comply with section 691 (which deals with disclosure of interests to the Minister).

694 Other terms and conditions of the Fair Work Ombudsman

The Fair Work Ombudsman holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

695 Appointment of acting Fair Work Ombudsman

- (1) The Minister may, by written instrument, appoint a person who is qualified for appointment as the Fair Work Ombudsman to act as the Fair Work Ombudsman:
- (a) during a vacancy in the office of Fair Work Ombudsman (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Fair Work Ombudsman is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

Section 695

- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Division 3—Office of the Fair Work Ombudsman

Subdivision A—Establishment of the Office of the Fair Work Ombudsman

696 Establishment of the Office of the Fair Work Ombudsman

- (1) The Office of the Fair Work Ombudsman is established by this section.
- (2) The Office of the Fair Work Ombudsman consists of:
 - (a) the Fair Work Ombudsman; and
 - (b) the staff of the Office of the Fair Work Ombudsman; and
 - (c) the inspectors appointed under section 700.

Subdivision B—Staff and consultants etc.

697 Staff

- (1) The staff of the Office of the Fair Work Ombudsman must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Fair Work Ombudsman and the staff of the Office of the Fair Work Ombudsman together constitute a Statutory Agency; and
 - (b) the Fair Work Ombudsman is the Head of that Statutory Agency.

698 Persons assisting the Fair Work Ombudsman

The Fair Work Ombudsman may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State or Territory; or
- (c) by officers and employees of authorities of the Commonwealth, a State or a Territory;

whose services are made available to the Fair Work Ombudsman in connection with the performance of any of his or her functions.

Note: For example, State or Territory employees could be made available to assist the Fair Work Ombudsman in providing education in a particular region.

699 Consultants

The Fair Work Ombudsman may engage persons having suitable qualifications and experience as consultants to the Office of the Fair Work Ombudsman.

Subdivision C—Appointment of Fair Work Inspectors

700 Appointment of Fair Work Inspectors

- (1) The Fair Work Ombudsman may, in writing, appoint as a Fair Work Inspector:
 - (a) a person who has been appointed, or who is employed, by the Commonwealth; or
 - (b) a person who is employed by a State or Territory.
- (2) The Fair Work Ombudsman may appoint a person as a Fair Work Inspector only if the Fair Work Ombudsman is satisfied that the person is of good character.
- (3) A Fair Work Inspector is appointed for the period specified in the instrument of appointment. The period must not exceed 4 years.

Note: A Fair Work Inspector is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

701 Fair Work Ombudsman is a Fair Work Inspector

The Fair Work Ombudsman is a Fair Work Inspector by force of this section.

702 Identity cards

- (1) The Fair Work Ombudsman must issue an identity card to an inspector appointed under section 700.
- (2) The Minister must issue an identity card to the Fair Work Ombudsman.

Form of identity card

- (3) The identity card must:
- (a) be in the form approved by the Fair Work Ombudsman; and
 - (b) contain a recent photograph of the inspector.

Inspector must carry card

- (4) An inspector must carry the identity card at all times when performing functions or exercising powers as an inspector.

Offence

- (5) A person commits an offence if:
- (a) the person ceases to be an inspector; and
 - (b) the person does not, within 14 days of so ceasing, return the person's identity card to the Fair Work Ombudsman or the Minister (as the case may be).

Penalty: 1 penalty unit.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defence—card lost or destroyed

- (7) Subsection (5) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Subdivision D—Functions and powers of Fair Work Inspectors

703 Conditions and restrictions on functions and powers

The functions, and powers (*compliance powers*), conferred on an inspector are subject to such conditions and restrictions as are specified in his or her instrument of appointment.

704 General directions by the Fair Work Ombudsman

- (1) The Fair Work Ombudsman may, by legislative instrument, give a written direction to inspectors relating to the performance of their functions or the exercise of their powers as inspectors.
- (2) The direction must be of a general nature only, and cannot relate to a particular case.
- (3) An inspector must comply with the direction.

705 Particular directions by the Fair Work Ombudsman

- (1) The Fair Work Ombudsman may give a direction to an inspector relating to the performance of the inspector's functions or the exercise of the inspector's powers as an inspector.
- (2) The inspector must comply with the direction.
- (3) If a direction is in writing, the direction is not a legislative instrument.

706 Purpose for which powers of inspectors may be exercised

- (1) An inspector may exercise compliance powers (other than a power under section 715 or 716) for one or more of the following purposes (*compliance purposes*):
 - (a) determining whether this Act or a fair work instrument is being, or has been, complied with;
 - (b) subject to subsection (2), determining whether a safety net contractual entitlement is being, or has been, contravened by a person;
 - (c) the purposes of a provision of the regulations that confers functions or powers on inspectors;
 - (d) the purposes of a provision of another Act that confers functions or powers on inspectors.

Note: The powers in sections 715 (which deals with enforceable undertakings) and 716 (which deals with compliance notices) may be exercised for the purpose of remedying the effects of certain contraventions.

- (2) An inspector may exercise compliance powers for the purpose referred to in paragraph (1)(b) only if the inspector reasonably

believes that the person has contravened one or more of the following:

- (a) a provision of the National Employment Standards;
- (b) a term of a modern award;
- (c) a term of an enterprise agreement;
- (d) a term of a workplace determination;
- (e) a term of a national minimum wage order;
- (f) a term of an equal remuneration order.

707 When powers of inspectors may be exercised

An inspector may exercise compliance powers:

- (a) at any time during working hours; or
- (b) at any other time, if the inspector reasonably believes that it is necessary to do so for compliance purposes.

708 Power of inspectors to enter premises

- (1) An inspector may, without force:
 - (a) enter premises, if the inspector reasonably believes that this Act or a fair work instrument applies to work that is being, or applied to work that has been, performed on the premises; or
 - (b) enter business premises, if the inspector reasonably believes that there are records or documents relevant to compliance purposes on the premises, or accessible from a computer on the premises.
- (2) Despite paragraph (1)(a), an inspector must not enter a part of premises that is used for residential purposes unless the inspector reasonably believes that the work referred to in that paragraph is being performed on that part of the premises.
- (3) The inspector must, either before or as soon as practicable after entering premises, show his or her identity card to the occupier, or another person who apparently represents the occupier, if the occupier or other person is present at the premises.

709 Powers of inspectors while on premises

The inspector may exercise one or more of the following powers while on the premises:

Section 710

- (a) inspect any work, process or object;
- (b) interview any person;
- (c) require a person to tell the inspector who has custody of, or access to, a record or document;
- (d) require a person who has the custody of, or access to, a record or document to produce the record or document to the inspector either while the inspector is on the premises, or within a specified period;
- (e) inspect, and make copies of, any record or document that:
 - (i) is kept on the premises; or
 - (ii) is accessible from a computer that is kept on the premises;
- (f) take samples of any goods or substances in accordance with any procedures prescribed by the regulations.

Note: See also sections 713, 713A and 714 (which deal with self-incrimination and produced documents etc.).

710 Persons assisting inspectors

- (1) A person (the *assistant*) may accompany the inspector onto the premises to assist the inspector if the Fair Work Ombudsman is satisfied that:
 - (a) the assistance is necessary and reasonable; and
 - (b) the assistant has suitable qualifications and experience to properly assist the inspector.
- (2) The assistant:
 - (a) may do such things on the premises as the inspector requires to assist the inspector to exercise compliance powers; but
 - (b) must not do anything that the inspector does not have power to do.
- (3) Anything done by the assistant is taken for all purposes to have been done by the inspector.

711 Power to ask for person's name and address

- (1) An inspector may require a person to tell the inspector the person's name and address if the inspector reasonably believes that the person has contravened a civil remedy provision.

- (2) If the inspector reasonably believes that the name or address is false, the inspector may require the person to give evidence of its correctness.
- (3) A person must comply with a requirement under subsection (1) or (2) if:
 - (a) the inspector advises the person that he or she may contravene a civil remedy provision if he or she fails to comply with the requirement; and
 - (b) the inspector shows his or her identity card to the person.

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

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

712 Power to require persons to produce records or documents

- (1) An inspector may require a person, by notice, to produce a record or document to the inspector.
- (2) The notice must:
 - (a) be in writing; and
 - (b) be served on the person; and
 - (c) require the person to produce the record or document at a specified place within a specified period of at least 14 days.

The notice may be served by sending the notice to the person's fax number.

- (3) A person who is served with a notice to produce must not fail to comply with the notice.

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

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

713 Self-incrimination

- (1) A person is not excused from producing a record or document under paragraph 709(d), or subsection 712(1), on the ground that the production of the record or document might tend to incriminate the person or expose the person to a penalty.

Section 713A

- (2) However, in the case of an individual none of the following are admissible in evidence against the individual in criminal proceedings:
- (a) the record or document produced;
 - (b) producing the record or document;
 - (c) any information, document or thing obtained as a direct or indirect consequence of producing the record or document;

713A Certain records and documents are inadmissible

The following are not admissible in evidence in criminal proceedings against an individual:

- (a) any record or document inspected or copied under paragraph 709(e) of which the individual had custody, or to which the individual had access, when it was inspected or copied;
- (b) any information, document or thing obtained as a direct or indirect consequence of inspecting or copying a record or document of which the individual had custody, or to which the individual had access, when it was inspected or copied under paragraph 709(e).

714 Power to keep records or documents

- (1) If a record or document is produced to an inspector in accordance with this Subdivision, the inspector may:
- (a) inspect, and make copies of, the record or document; and
 - (b) keep the record or document for such period as is necessary.
- (2) While an inspector keeps a record or document, the inspector must allow the following persons to inspect, or make copies of, the record or document at all reasonable times:
- (a) the person who produced the record or document;
 - (b) any person otherwise entitled to possession of the record or document;
 - (c) a person authorised by the person referred to in paragraph (b).

715 Enforceable undertakings relating to contraventions of civil remedy provisions

Application of this section

- (1) This section applies if the Fair Work Ombudsman reasonably believes that a person has contravened a civil remedy provision.

Accepting an undertaking

- (2) The Fair Work Ombudsman may accept a written undertaking given by the person in relation to the contravention, except as provided by subsection (5).

Withdrawing or varying an undertaking

- (3) The person may withdraw or vary the undertaking at any time, but only with the Fair Work Ombudsman's consent.

Relationship with orders in relation to contraventions of civil remedy provisions

- (4) An inspector must not apply for an order under Division 2 of Part 4-1 in relation to a contravention of a civil remedy provision by a person if an undertaking given by the person under this section in relation to the contravention has not been withdrawn.

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

Relationship with compliance notices

- (5) The Fair Work Ombudsman must not accept an undertaking in relation to a contravention if the person has been given a notice in relation to the contravention under section 716.

Enforcement of undertakings

- (6) If the Fair Work Ombudsman considers that the person who gave the undertaking has contravened any of its terms, the Fair Work Ombudsman may apply to the Federal Court, the Federal Magistrates Court or an eligible State or Territory Court for an order under subsection (7).

Section 716

- (7) If the court is satisfied that the person has contravened a term of the undertaking, the court may make one or more of the following orders:
- (a) an order directing the person to comply with the term of the undertaking;
 - (b) an order awarding compensation for loss that a person has suffered because of the contravention;
 - (c) any other order that the court considers appropriate.

716 Compliance notices

Application of this section

- (1) This section applies if an inspector reasonably believes that a person has contravened one or more of the following:
- (a) a provision of the National Employment Standards;
 - (b) a term of a modern award;
 - (c) a term of an enterprise agreement;
 - (d) a term of a workplace determination;
 - (e) a term of a national minimum wage order;
 - (f) a term of an equal remuneration order.

Giving a notice

- (2) The inspector may, except as provided by subsection (4), give the person a notice requiring the person to do either or both of the following within such reasonable time as is specified in the notice:
- (a) take specified action to remedy the direct effects of the contravention referred to in subsection (1);
 - (b) produce reasonable evidence of the person's compliance with the notice.
- (3) The notice must also:
- (a) set out the name of the person to whom the notice is given; and
 - (b) set out the name of the inspector who gave the notice; and
 - (c) set out brief details of the contravention; and
 - (d) explain that a failure to comply with the notice may contravene a civil remedy provision; and

- (e) explain that the person may apply to the Federal Court, the Federal Magistrates Court or an eligible State or Territory Court for a review of the notice on either or both of the following grounds:
 - (i) the person has not committed a contravention set out in the notice;
 - (ii) the notice does not comply with subsection (2) or this subsection; and
- (f) set out any other matters prescribed by the regulations.

Relationship with enforceable undertakings

- (4) An inspector must not give a person a notice in relation to a contravention if:
 - (a) the person has given an undertaking under section 715 in relation to the contravention; and
 - (b) the undertaking has not been withdrawn.

Relationship with civil remedy provisions

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

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

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

Section 717

Person must not fail to comply with notice

- (5) A person must not fail to comply with a notice given under this section.

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

- (6) Subsection (5) does not apply if the person has a reasonable excuse.

717 Review of compliance notices

- (1) A person who has been given a notice under section 716 may apply to the Federal Court, the Federal Magistrates Court or an eligible State or Territory Court for a review of the notice on either or both of the following grounds:
- (a) the person has not committed a contravention set out in the notice;
 - (b) the notice does not comply with subsection 716(2) or (3).
- (2) At any time after the application has been made, the court may stay the operation of the notice on the terms and conditions that the court considers appropriate.
- (3) The court may confirm, cancel or vary the notice after reviewing it.

Subdivision E—Disclosure of information by the Office of the Fair Work Ombudsman

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

Information to which this section applies

- (1) This section applies to the following information:
- (a) information acquired by the Fair Work Ombudsman in the course of performing functions, or exercising powers, as the Fair Work Ombudsman;
 - (b) information acquired by an inspector in the course of performing functions, or exercising powers, as an inspector;
 - (c) information acquired by a member of the staff of the Office of the Fair Work Ombudsman in the course of performing functions, or exercising powers, as a member of that staff;

- (d) information acquired by a person in the course of assisting the Fair Work Ombudsman under section 698, or in the course of performing functions, or exercising powers, as a consultant under section 699;
- (e) information acquired by a person in the course of assisting an inspector under section 710.

Disclosure that is necessary or appropriate, or likely to assist administration or enforcement

- (2) The Fair Work Ombudsman may disclose, or authorise the disclosure of, the information if the Fair Work Ombudsman reasonably believes:
 - (a) that it is necessary or appropriate to do so in the course of performing functions, or exercising powers, under this Act; or
 - (b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

Disclosure to the Minister

- (3) The Fair Work Ombudsman may disclose, or authorise the disclosure of, the information to the Minister if the Fair Work Ombudsman reasonably believes that the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act.

Disclosure to the Department

- (4) The Fair Work Ombudsman may disclose, or authorise the disclosure of, the information to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or an APS employee, in the Department;for the purpose of briefing, or considering briefing, the Minister if the Fair Work Ombudsman reasonably believes the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act.

Chapter 6—Miscellaneous

Part 6-1—Multiple actions

Division 1—Introduction

719 Guide to this Part

This Part provides rules relating to applications for remedies under this Act.

Division 2 prevents certain applications where other remedies are available.

Division 3 prevents multiple applications or complaints in relation to the same conduct.

720 Meanings of *employee* and *employer*

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

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

Division 2—Certain actions not permitted if alternative action can be taken

721 Equal remuneration applications

- (1) The FWC must not deal with an application for an equal remuneration order if the FWC is satisfied that there is available to the employees to whom the order will apply, an adequate alternative remedy that:
 - (a) exists under a law of the Commonwealth (other than Part 2-7) or a law of a State or Territory; and
 - (b) will ensure equal remuneration for work of equal or comparable value for those employees.
- (2) A remedy that:
 - (a) exists under a law of the Commonwealth, a State or a Territory relating to discrimination in relation to employment; and
 - (b) consists solely of compensation for past actions;is not an adequate alternative remedy for the purposes of this section.

722 Notification and consultation requirements applications

The FWC must not make an order under subsection 532(1) or 787(1) if the FWC is satisfied that there is available to the applicant, or to the employees represented by the applicant, an alternative remedy that:

- (a) exists under a law of the Commonwealth (other than Division 2 of Part 3-6 or Division 3 of Part 6-4) or a law of a State or Territory; and
- (b) will give effect, in relation to the employees and registered employee associations concerned, to the requirements of Article 13 of the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4).

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

723 Unlawful termination applications

A person must not make an unlawful termination application in relation to conduct if the person is entitled to make a general protections court application in relation to the conduct.

Division 3—Preventing multiple actions

Subdivision A—Equal remuneration applications

724 Equal remuneration applications

- (1) The FWC must not deal with an application for an equal remuneration order in relation to an employee if proceedings for an alternative remedy:
 - (a) to ensure equal remuneration for work of equal or comparable value for the employee; or
 - (b) against unequal remuneration for work of equal or comparable value for the employee;have commenced under a law of the Commonwealth (other than Part 2-7) or a law of a State or Territory.
- (2) Subsection (1) does not prevent the FWC from dealing with the application if the proceedings for the alternative remedy:
 - (a) have been discontinued by the party who commenced the proceedings; or
 - (b) have failed for want of jurisdiction.
- (3) If an application has been made to the FWC for an equal remuneration order in relation to an employee, a person is not entitled to commence proceedings for an alternative remedy under a law of the Commonwealth (other than Part 2-7) or a law of a State or Territory:
 - (a) to ensure equal remuneration for work of equal or comparable value for the employee; or
 - (b) against unequal remuneration for work of equal or comparable value for the employee.
- (4) Subsection (3) does not prevent a person from commencing proceedings for an alternative remedy if:
 - (a) the applicant has discontinued the application for the equal remuneration order; or
 - (b) the application has failed for want of jurisdiction.

Section 725

- (5) A remedy that:
- (a) exists under a law of the Commonwealth, a State or a Territory relating to discrimination in relation to employment; and
 - (b) consists solely of compensation for past actions;
- is not an alternative remedy for the purposes of this section.

Subdivision B—Applications and complaints relating to dismissal

725 General rule

A person who has been dismissed must not make an application or complaint of a kind referred to in any one of sections 726 to 732 in relation to the dismissal if any other of those sections applies.

726 Dismissal remedy bargaining order applications

- (1) This section applies if:
- (a) a dismissal remedy bargaining order application has been made by, or on behalf of, the person in relation to the dismissal; and
 - (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.
- (2) A *dismissal remedy bargaining order application* is an application for a bargaining order made on the ground that the person was dismissed in contravention of the good faith bargaining requirement in paragraph 228(1)(e).

727 General protections FWC applications

- (1) This section applies if:
- (a) a general protections FWC application has been made by, or on behalf of, the person in relation to the dismissal; and
 - (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction; or

- (iii) resulted in the issue of a certificate under section 369 (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute have been, or are likely to be, unsuccessful).
- (2) A **general protections FWC application** is an application under section 365 for the FWC to deal with a dispute that relates to dismissal.

728 General protections court applications

This section applies if:

- (a) a general protections court application has been made by, or on behalf of, the person in relation to the dismissal; and
- (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.

729 Unfair dismissal applications

- (1) This section applies if:
- (a) an unfair dismissal application has been made by the person in relation to the dismissal; and
 - (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction; or
 - (iii) failed because the FWC was satisfied that the dismissal was a case of genuine redundancy.
- (2) An **unfair dismissal application** is an application under subsection 394(1) for a remedy for unfair dismissal.

730 Unlawful termination FWC applications

- (1) This section applies if:
- (a) an unlawful termination FWC application has been made by, or on behalf of, the person in relation to the dismissal; and

Section 731

- (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction; or
 - (iii) resulted in the issue of a certificate under section 777 (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute have been, or are likely to be, unsuccessful).
- (2) An *unlawful termination FWC application* is an application under section 773 for the FWC to deal with a dispute that relates to dismissal.

731 Unlawful termination court applications

This section applies if:

- (a) an unlawful termination court application has been made by, or on behalf of, the person in relation to the dismissal; and
- (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.

732 Applications and complaints under other laws

- (1) This section applies if:
 - (a) an application or complaint under another law has been made by, or on behalf of, the person in relation to the dismissal; and
 - (b) the application or complaint has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.
- (2) An *application or complaint under another law* is an application or complaint made under:
 - (a) a law of the Commonwealth (other than this Act); or
 - (b) a law of a State or Territory.
- (3) For the purposes of this Subdivision, if a complaint under the *Australian Human Rights Commission Act 1986* relates to a

dismissal only as a result of an amendment of the complaint, the complaint is taken to be made when the complaint is amended.

733 Dismissal does not include failure to provide benefits

For the purposes of this Subdivision, a reference to an application or complaint made in relation to a dismissal does not include a reference to an application or complaint made only in relation to failure by the employer concerned to provide a benefit to which the dismissed person is entitled as a result of the dismissal.

Subdivision C—General protections applications that do not relate to dismissal

734 General rule

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

Part 6-2—Dealing with disputes

Division 1—Introduction

735 Guide to this Part

This Part is about dealing with disputes between national system employees and their employers.

Division 2 deals with the powers of the FWC and other persons to deal with a dispute if a modern award, enterprise agreement or contract of employment includes a term that provides for the FWC or the person to deal with the dispute.

736 Meanings of *employee* and *employer*

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

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

Division 2—Dealing with disputes

Subdivision A—Model term about dealing with disputes

737 Model term about dealing with disputes

The regulations must prescribe a model term for dealing with disputes for enterprise agreements.

Subdivision B—Dealing with disputes

738 Application of this Division

This Division applies if:

- (a) a modern award includes a term that provides a procedure for dealing with disputes, including a term in accordance with section 146; or
- (b) an enterprise agreement includes a term that provides a procedure for dealing with disputes, including a term referred to in subsection 186(6); or
- (c) a contract of employment or other written agreement includes a term that provides a procedure for dealing with disputes between the employer and the employee, to the extent that the dispute is about any matters in relation to the National Employment Standards or a safety net contractual entitlement; or
- (d) a determination under the *Public Service Act 1999* includes a term that provides a procedure for dealing with disputes arising under the determination or in relation to the National Employment Standards.

739 Disputes dealt with by the FWC

- (1) This section applies if a term referred to in section 738 requires or allows the FWC to deal with a dispute.
- (2) The FWC must not deal with a dispute to the extent that the dispute is about whether an employer had reasonable business grounds under subsection 65(5) or 76(4), unless:

Section 740

- (a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to the FWC dealing with the matter; or
- (b) a determination under the *Public Service Act 1999* authorises the FWC to deal with the matter.

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

- (3) In dealing with a dispute, the FWC must not exercise any powers limited by the term.
- (4) If, in accordance with the term, the parties have agreed that the FWC may arbitrate (however described) the dispute, the FWC may do so.

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

- (5) Despite subsection (4), the FWC must not make a decision that is inconsistent with this Act, or a fair work instrument that applies to the parties.
- (6) The FWC may deal with a dispute only on application by a party to the dispute.

740 Dispute dealt with by persons other than the FWC

- (1) This section applies if a term referred to in section 738 requires or allows a person other than the FWC to deal with a dispute.
- (2) The person must not deal with a dispute to the extent that the dispute is about whether an employer had reasonable business grounds under subsection 65(5) or 76(4), unless:
 - (a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to the person dealing with the matter; or
 - (b) a determination under the *Public Service Act 1999* authorises the person to deal with the matter.

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

- (3) If, in accordance with the term, the parties have agreed that the person may arbitrate (however described) the dispute, the person may do so.
- (4) Despite subsection (3), the person must not make a decision that is inconsistent with this Act, or a fair work instrument that applies to the parties.

Part 6-3—Extension of National Employment Standards entitlements

Division 1—Introduction

741 Guide to this Part

This Part contains Divisions that extend some National Employment Standards entitlements to non-national system employees.

Division 2 extends the entitlements to unpaid parental leave, and related entitlements.

Division 3 extends the entitlements to notice of termination or payment in lieu of notice.

742 Meanings of *employee* and *employer*

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

Division 2—Extension of entitlement to unpaid parental leave and related entitlements

Subdivision A—Main provisions

743 Object of this Division

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

- (a) the ILO Convention (No. 156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, done at Geneva on 23 June 1981 ([1991] ATS 7); and
- (b) the Workers with Family Responsibilities Recommendation, 1981 (Recommendation No. R165) which the General Conference of the ILO adopted on 23 June 1981;

by providing for a system of unpaid parental leave and related entitlements, that will help men and women workers who have responsibilities in relation to their dependent children:

- (c) to prepare for, enter, participate in or advance in economic activity; and
- (d) to reconcile their employment and family responsibilities.

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

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

744 Extending the entitlement to unpaid parental leave and related entitlements

Extension of Division 5 of Part 2-2 and related provisions

- (1) The provisions of Division 5 of Part 2-2, and the related provisions identified in subsection (2), apply in relation to a non-national system employee as if:
 - (a) any reference in the provisions to a national system employee also included a reference to a non-national system employee; and

Section 745

- (b) any reference in the provisions to a national system employer also included a reference to a non-national system employer.

Note 1: Division 5 of Part 2-2 provides for unpaid parental leave and related entitlements.

Note 2: This subsection applies to express references to national system employees and national system employers, and to references that are to national system employees and national system employers because of section 60 or another similar section.

- (2) The related provisions are the following, so far as they apply in relation to Division 5 of Part 2-2 as it applies because of subsection (1):
 - (a) the provisions of Divisions 2 and 13 of Part 2-2;
 - (b) any other provisions of this Act prescribed by the regulations;
 - (c) any provisions of this Act that define expressions that are used (directly or indirectly) in provisions of Division 5 of Part 2-2, or in provisions referred to in paragraph (a) or (b) of this subsection.

Modifications are set out in Subdivision B

- (3) The extended parental leave provisions have effect subject to the modifications provided for in Subdivision B. The ***extended parental leave provisions*** are the provisions of Division 5 of Part 2-2, and the related provisions identified in subsection (2) of this section, as they apply because of this section.

Regulations made for the purpose of provisions

- (4) Subsection (1) also applies to any regulations made for the purpose of a provision to which that subsection applies, other than a provision that is modified by Subdivision B.

745 Contravening the extended parental leave provisions

- (1) A non-national system employer must not contravene the extended parental leave provisions.

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

Note 2: The extended parental leave provisions also affect national system employers (including as section 44 applies to them) and their national system employees. This is because the provisions may result in a

national system employee, and a non-national system employee, being an employee couple.

- (2) However, an order cannot be made under Division 2 of Part 4-1 in relation to a contravention (or alleged contravention) of subsection 76(4).

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

746 References to the National Employment Standards include extended parental leave provisions

A reference in this Act, or another law of the Commonwealth, to the National Employment Standards includes a reference to the extended parental leave provisions.

747 State and Territory laws that are not excluded

This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to the birth or adoption of children, to the extent that those laws:

- (a) apply to non-national system employees; and
- (b) provide entitlements for those employees that are more beneficial than the entitlements under the extended parental leave provisions.

Subdivision B—Modifications of the extended parental leave provisions

748 Non-national system employees are not award/agreement free employees

A non-national system employee is not an award/agreement free employee for the purpose of the extended parental leave provisions.

749 Modification of meaning of *base rate of pay* for pieceworkers

Section 16 has effect as if the following paragraph were added at the end of subsection 16(2):

- (d) the employee is a non-national system employee, and the regulations prescribe, or provide for the determination of, the

Section 750

employee's base rate of pay for the purposes of the extended parental leave provisions.

750 Modification of meaning of *full rate of pay* for pieceworkers

Section 18 has effect as if the following paragraph were added at the end of subsection 18(2):

- (d) the employee is a non-national system employee, and the regulations prescribe, or provide for the determination of, the employee's full rate of pay for the purposes of the extended parental leave provisions.

751 Modification of meaning of *ordinary hours of work*—if determined by State industrial instrument

Section 20 has effect as if the following subsection were inserted before subsection 20(1):

- (1A) If a State industrial instrument applies to a non-national system employee and specifies, or provides for the determination of, the employee's *ordinary hours of work* are as specified in, or determined in accordance with, that instrument.

752 Modification of meaning of *ordinary hours of work*—if not determined by State industrial instrument

Section 20 has effect as if references in subsections 20(1), (2) and (3) to an award/agreement free employee also included references to a non-national system employee to whom either of the following paragraphs applies:

- (a) a State industrial instrument applies to the employee, but it does not specify, or provide for the determination of, the employee's ordinary hours of work;
- (b) no State industrial instrument applies to the employee.

753 Modification of meaning of *ordinary hours of work*—regulations may prescribe usual weekly hours

Section 20 has effect as if the following subsection were added at the end:

- (5) For a non-national system employee:
- (a) who is not a full-time employee; and
 - (b) who does not have usual weekly hours of work; and
 - (c) to whom either of the following subparagraphs applies:
 - (i) a State industrial instrument applies to the employee, but it does not specify, or provide for the determination of, the employee's ordinary hours of work;
 - (ii) no State industrial instrument applies to the employee; the regulations may prescribe, or provide for the determination of, hours that are taken to be the employee's usual weekly hours of work for the purposes of the extended parental leave provisions.

754 Modification of meaning of *piecemaker*

Section 21 has effect as if the following paragraph were added at the end of subsection 21(1):

- (d) a non-national system employee who is in a class of employees prescribed by the regulations as piecemarkers for the purpose of the extended parental leave provisions.

755 Modification of provision about interaction with paid leave

Section 79 applies as if subsections 79(2) and (3) were omitted.

756 Modification of provision about relationship between National Employment Standards and agreements

Section 128 has effect as if references to an award/agreement free employee also included references to a non-national system employee.

757 Modification of power to make regulations

Section 129 has effect as if the following subsection were added at the end:

- (2) The regulations may:
 - (a) permit non-national system employers and non-national system employees to agree on matters that would or might otherwise be contrary to an extended parental leave provision; and

Chapter 6 Miscellaneous

Part 6-3 Extension of National Employment Standards entitlements

Division 2 Extension of entitlement to unpaid parental leave and related entitlements

Section 757

- (b) prohibit such employers and employees from agreeing on matters, or prohibit such employers from making requirements of such employees, that would or might otherwise be permitted by an extended parental leave provision.

Division 3—Extension of entitlement to notice of termination or payment in lieu of notice

Subdivision A—Main provisions

758 Object of this Division

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

- (a) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and
- (b) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

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

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

759 Extending entitlement to notice of termination or payment in lieu of notice

Extension of Subdivision A of Division 11 of Part 2-2 and related provisions

- (1) The provisions of Subdivision A of Division 11 of Part 2-2, and the related provisions identified in subsection (2), apply in relation to a non-national system employee as if:
 - (a) any reference in the provisions to a national system employee also included a reference to a non-national system employee; and
 - (b) any reference in the provisions to a national system employer also included a reference to a non-national system employer.

Note 1: Subdivision A of Division 11 of Part 2-2 provides for notice of termination or payment in lieu of notice.

Note 2: This subsection applies to express references to national system employees and national system employers, and to references that are

Chapter 6 Miscellaneous

Part 6-3 Extension of National Employment Standards entitlements

Division 3 Extension of entitlement to notice of termination or payment in lieu of notice

Section 760

to national system employees and national system employers because of section 60 or another similar section.

- (2) The related provisions are the following, so far as they apply in relation to Subdivision A of Division 11 of Part 2-2 as it applies because of subsection (1):
- (a) the provisions of Division 2, Subdivision C of Division 11, and Division 13, of Part 2-2;
 - (b) any other provisions of this Act prescribed by the regulations;
 - (c) any provisions of this Act that define expressions that are used (directly or indirectly) in provisions of Subdivision A of Division 11 of Part 2-2, or in provisions referred to in paragraph (a) or (b) of this subsection.

Modifications are set out in Subdivision B

- (3) The extended notice of termination provisions have effect subject to the modifications provided for in Subdivision B. The ***extended notice of termination provisions*** are the provisions of Subdivision A of Division 11 of Part 2-2, and the related provisions identified in subsection (2) of this section, as they apply because of this section.

Regulations made for the purpose of provisions

- (4) Subsection (1) also applies to any regulations made for the purpose of a provision to which that subsection applies, other than a provision that is modified by Subdivision B.

760 Contravening the extended notice of termination provisions

A non-national system employer must not contravene the extended notice of termination provisions.

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

761 References to the National Employment Standards include extended notice of termination provisions

A reference in this Act, or another law of the Commonwealth, to the National Employment Standards includes a reference to the extended notice of termination provisions.

762 State and Territory laws that are not excluded

This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements relating to notice of termination of employment (or payment in lieu of notice), to the extent that those laws:

- (a) apply to non-national system employees; and
- (b) provide entitlements for those employees that are more beneficial than the entitlements under the extended notice of termination provisions.

Subdivision B—Modifications of the extended notice of termination provisions

763 Non-national system employees are not award/agreement free employees

A non-national system employee is not an award/agreement free employee for the purpose of the extended notice of termination provisions.

764 Modification of meaning of *full rate of pay* for pieceworkers

Section 18 has effect as if the following paragraph were added at the end of subsection 18(2):

- (d) the employee is a non-national system employee, and the regulations prescribe, or provide for the determination of, the employee's full rate of pay for the purposes of the extended notice of termination provisions.

765 Modification of meaning of *pieceworker*

Section 21 has effect as if the following paragraph were added at the end of subsection 21(1):

- (d) a non-national system employee who is in a class of employees prescribed by the regulations as pieceworkers for the purpose of the extended notice of termination provisions.

Section 766

766 Modification of provision about notice of termination by employee

Section 118 has effect as if the following subsection were added at the end:

- (2) A State industrial instrument may include terms specifying the period of notice a non-national system employee must give in order to terminate his or her employment.

767 Modification of provision about relationship between National Employment Standards and agreements

Section 128 has effect as if references to an award/agreement free employee also included references to a non-national system employee.

768 Modification of power to make regulations

Section 129 has effect as if the following subsection were added at the end:

- (2) The regulations may:
 - (a) permit non-national system employers and non-national system employees to agree on matters that would or might otherwise be contrary to an extended notice of termination provision; and
 - (b) prohibit such employers and employees from agreeing on matters, or prohibit such employers from making requirements of such employees, that would or might otherwise be permitted by an extended notice of termination provision.

Part 6-3A—Transfer of business from a State public sector employer

Division 1—Introduction

768AA Guide to this Part

This Part provides for the transfer of certain terms and conditions of employment when there is a transfer of business from a non-national system employer that is a State public sector employer (called “the old State employer”) to a national system employer (called “the new employer”).

A transfer of business involves the transfer of employment of one or more employees of the old State employer to the new employer. Each of those employees is a “transferring employee”.

If there is a transfer of business, then this Part provides for certain terms and conditions of employment with the old State employer to be transferred to the employment of the transferring employee with the new employer.

This Part achieves the transfer of those terms and conditions by creating a new instrument—a “copied State instrument”—for each transferring employee. The new instrument is a federal instrument and is enforceable under this Act.

768AB Meanings of *employee* and *employer*

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

Division 2—Copying terms of State instruments when there is a transfer of business

768AC What this Division is about

<p>This Division sets out when there is a transfer of business from the old State employer to the new employer.</p>

768AD When does a transfer of business occur?

When there is a transfer of business

- (1) There is a **transfer of business** from a non-national system employer that is a State public sector employer of a State (the **old State employer**) to a national system employer (the **new employer**) if the following requirements are satisfied:
 - (a) the employment of a person who is a State public sector employee of the old State employer has terminated;
 - (b) within 3 months after the termination, the person becomes employed by the new employer;
 - (c) the work (the **transferring work**) the person performs for the new employer is the same, or substantially the same, as the work the person performed for the old State employer;
 - (d) there is a connection between the old State employer and the new employer as described in subsection (2), (3) or (4).

Transfer of assets from old State employer to new employer

- (2) There is a connection between the old State employer and the new employer if, in accordance with an arrangement between:
 - (a) the old State employer or an associated entity of the old State employer; and
 - (b) the new employer or an associated entity of the new employer;the new employer, or the associated entity of the new employer, owns or has the beneficial use of some or all of the assets (whether tangible or intangible):

- (c) that the old State employer, or the associated entity of the old State employer, owned or had the beneficial use of; and
- (d) that relate to, or are used in connection with, the transferring work.

Old State employer outsources work to new employer

- (3) There is a connection between the old State employer and the new employer if the transferring work is performed by one or more transferring employees, as employees of the new employer, because the old State employer, or an associated entity of the old State employer, has outsourced the transferring work to the new employer or an associated entity of the new employer.

New employer is an associated entity of old employer

- (4) There is a connection between the old State employer and the new employer if the new employer is an associated entity of the old State employer when the transferring employee becomes employed by the new employer.

768AE Meaning of *transferring employee*, *termination time* and *re-employment time*

- (1) The person referred to in paragraph 768AD(1)(a) is a ***transferring employee*** in relation to the transfer of business.
- (2) The ***termination time*** of a transferring employee is the start of the day the employment of the employee is terminated by the old State employer.
- (3) The ***re-employment time*** of a transferring employee is the start of the day the employee becomes employed by the new employer.

Division 3—Copied State instruments

Subdivision A—Guide to this Division

768AF What this Division is about

If there is a transfer of business, then this Division provides for certain terms and conditions of a transferring employee's employment with the old State employer to be transferred to the employment with the new employer.

The transfer of those terms and conditions is achieved by creating a new instrument—called a “copied State instrument”—for the transferring employee. The new instrument is a federal instrument that is enforceable under this Act.

There are 2 types of copied State instruments—a copied State award and a copied State employment agreement.

A copied State award copies the terms of a State award that covered the transferring employee and the old State employer immediately before the termination of the employee's employment with the old State employer.

A copied State employment agreement copies the terms of a State employment agreement that covered the transferring employee and the old State employer immediately before the termination of the employee's employment with the old State employer.

Subdivision B—Copied State instruments

768AG Contravening a copied State instrument

A person must not contravene a term of a copied State instrument for a transferring employee that applies to the person.

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

Note 2: For when a copied State instrument for a transferring employee applies to a person, see section 768AM.

768AH What is a copied State instrument?

A *copied State instrument* for a transferring employee is the following:

- (a) a copied State award for the employee;
- (b) a copied State employment agreement for the employee.

768AI What is a copied State award?

- (1) If, immediately before the termination time of a transferring employee:
 - (a) a State award (the *original State award*) was in operation under the State industrial law of the State; and
 - (b) the original State award covered (however described in the original State award or a relevant law of the State) the old State employer and the transferring employee (whether or not the original State award also covered other persons);

then a *copied State award* for the transferring employee is taken to come into operation immediately after the termination time.

Note 1: Even though a copied State award comes into operation in relation to the transferring employee, it will not be enforceable by the employee or another person (for example, the new employer) unless and until it applies to the employee or other person. In particular, it will not apply to the employee or new employer before the employee becomes employed by the new employer. For when the copied State award applies to a person, see section 768AM.

Note 2: A copied State employment agreement for the transferring employee may also come into operation immediately after the termination time, see subsection 768AK(1). If it does, then the State's interaction rules that were in force immediately before the termination time apply for the purposes of working out the interaction between the copied State award and the copied State employment agreement (see item 11 of Schedule 3A to the Transitional Act as that item applies in a modified way because of section 768BY).

- (2) The copied State award is taken to include the same terms as were in the original State award immediately before the termination time.

Note: The State's instrument content rules that were in force immediately before the termination time apply to the copied State award (see item 10 of Schedule 3A to the Transitional Act as that item applies in a modified way because of section 768BY).

- (3) If the terms of the original State award were affected by an order, a decision or a determination of a State industrial body or a court of

Section 768AJ

the State that was in operation immediately before the termination time, the terms of the copied State award are taken to be similarly affected by the terms of that order, decision or determination.

768AJ What is a State award?

- (1) A *State award* is an instrument in relation to which the following conditions are satisfied:
 - (a) the instrument regulates terms and conditions of employment;
 - (b) the instrument was made under a State industrial law by a State industrial body;
 - (c) the instrument is referred to in that law as an award.
- (2) However, the regulations may provide that an instrument of a specified kind:
 - (a) is a *State award*; or
 - (b) is not a *State award*.

768AK What is a copied State employment agreement?

- (1) If, immediately before the termination time of a transferring employee:
 - (a) a State employment agreement (the *original State agreement*) was in operation under a State industrial law of the State; and
 - (b) the original State agreement covered (however described in the original State agreement or a relevant law of the State) the old State employer and the transferring employee (whether or not the original State agreement also covered other persons);

then a *copied State employment agreement* for the transferring employee is taken to come into operation immediately after the termination time.

Note 1: Even though a copied State employment agreement comes into operation for the transferring employee, it will not be enforceable by the employee or another person (for example, the new employer) unless and until it applies to the employee or other person. In particular, it will not apply to the employee or new employer before the employee becomes employed by the new employer. For when the copied State employment agreement applies to a person, see section 768AM.

Note 2: A copied State award for the transferring employee may also come into operation immediately after the termination time, see subsection 768AI(1). If it does, then the State's interaction rules that were in force immediately before the termination time apply for the purposes of working out the interaction between the copied State employment agreement and the copied State award (see item 11 of Schedule 3A to the Transitional Act as that item applies in a modified way because of section 768BY).

- (2) The copied State employment agreement is taken to include the same terms as were in the original State agreement immediately before the termination time.

Note: The State's instrument content rules that were in force immediately before the termination time apply to the copied State employment agreement (see item 10 of Schedule 3A to the Transitional Act as that item applies in a modified way because of section 768BY).

- (3) If the terms of the original State employment agreement were affected by an order, a decision or a determination of a State industrial body or a court of the State that was in operation immediately before the termination time, the terms of the copied State employment agreement are taken to be similarly affected by the terms of that order, decision or determination.
- (4) If the original State agreement is a collective State employment agreement, the copied State employment agreement is a *copied State collective employment agreement*.
- (5) If the original State agreement is an individual State employment agreement, the copied State employment agreement is a *copied State individual employment agreement*.

768AL What is a State employment agreement?

- (1) A *State employment agreement* is:
- (a) an agreement in relation to which the following conditions are satisfied:
- (i) the agreement is between a non-national system employer and one or more of the employees of the employer, or between a non-national system employer and an association of employees registered under a State industrial law;
 - (ii) the agreement determines terms and conditions of employment of one or more employees of the employer;
 - (iii) the agreement was made under a State industrial law; or

Section 768AM

- (b) a determination in relation to which the following conditions are satisfied:
 - (i) the determination determines terms and conditions of employment;
 - (ii) the determination was made under a State industrial law by a State industrial body;
 - (iii) the determination was made in a situation in which parties who were negotiating for the making of an agreement of a kind described in paragraph (a) had not been able to reach an agreement;
 - (iv) the purpose of the determination was to resolve the matters that were at issue in those negotiations.
- (2) However, the regulations may provide that an instrument of a specified kind:
 - (a) is a *State employment agreement*; or
 - (b) is not a *State employment agreement*.
- (3) A State employment agreement is a *State collective employment agreement* unless:
 - (a) it is an agreement of a kind that, under the relevant State industrial law, could only be entered into by a single employee and a single employer; or
 - (b) the agreement is of a kind prescribed by the regulations.
- (4) A State employment agreement referred to in paragraph (3)(a) or (b) is a *State individual employment agreement*.

768AM When does a copied State instrument apply to a person?

Transferring employee and organisations

- (1) A copied State instrument for a transferring employee *applies* to the transferring employee or an organisation if:
 - (a) the instrument covers the employee or organisation; and
 - (b) the instrument is in operation; and
 - (c) no other provision of this Act provides, or has the effect, that the instrument does not apply to the employee or organisation; and
 - (d) immediately before the employee's termination time, the employee or organisation would have been:

- (i) required by the law of the State to comply with terms of the original State award or original State agreement for the instrument; or
- (ii) entitled under the law of the State to enforce terms of the original State award or original State agreement for the instrument.

New employer and other employers

- (2) A copied State instrument for a transferring employee *applies* to an employer (whether the new employer or another employer) if:
 - (a) the instrument covers the employer; and
 - (b) the instrument is in operation; and
 - (c) no other provision of this Act provides, or has the effect, that the instrument does not apply to the employer; and
 - (d) immediately before the employee's termination time, the old State employer would have been:
 - (i) required by the law of the State to comply with terms of the original State award or original State agreement for the instrument; or
 - (ii) entitled under the law of the State to enforce terms of the original State award or original State agreement for the instrument.

Note: This subsection may operate in relation to an employer that is not the new employer in the situation where there has been a later transfer of business by the new employer (see Part 2-8).

Other circumstances when instrument applies

- (3) A copied State instrument for a transferring employee also *applies* to a person if an FWC order made under a provision of this Act provides, or has the effect, that the instrument applies to the person.

Instrument only applies in relation to transferring work

- (4) A reference in this Act to a copied State instrument for a transferring employee applying to the employee is a reference to the instrument applying to the employee in relation to the transferring work of the employee.

768AN When does a copied State instrument cover a person?

Transferring employee and new employer

- (1) A copied State instrument for a transferring employee **covers** the employee and the new employer in relation to the transferring work from the employee's re-employment time.

Employee organisation

- (2) A copied State instrument for a transferring employee **covers** an employee organisation in relation to the employee if:
- (a) the instrument covers the employee because of subsection (1); and
 - (b) immediately before the employee's termination time, the original State award or original State agreement for the instrument covered (however described in the original State award or original State agreement or in a relevant law of the State) the organisation in relation to the employee.

Employer organisation

- (3) A copied State instrument for a transferring employee **covers** an employer organisation in relation to the new employer if:
- (a) the instrument covers the new employer because of subsection (1); and
 - (b) immediately before the employee's termination time, the original State award or original State agreement for the instrument covered (however described in the original State award or original State agreement or in a relevant law of the State) the organisation in relation to the old State employer.

Other circumstances when a person is covered

- (4) A copied State instrument for a transferring employee also **covers** a person if any of the following provides, or has the effect, that the instrument covers the person:
- (a) a provision of this Act or of the Registered Organisations Act;
 - (b) an FWC order made under a provision of this Act;
 - (c) an order of a court.

Example: The FWC may make a consolidation order specifying that the instrument covers a person specified in the order (see subsections 768BE(1) and 768BH(1)).

Circumstances when a person is not covered

- (5) Despite subsections (1), (2), (3) and (4), a copied State instrument for a transferring employee does not **cover** a person if any of the following provides, or has the effect, that the instrument does not cover the person:
- (a) a provision of this Act;
 - (b) an FWC order made under a provision of this Act;
 - (c) an order of a court.

Example: If, after the transferring employee's re-employment time, an enterprise agreement starts to cover the employee, subsection 768AU(2) provides that a copied State instrument for the employee ceases to cover the employee.

- (6) Despite subsections (1), (2), (3) and (4), a copied State instrument for a transferring employee that has ceased to operate does not **cover** a person.

Covered only in relation to transferring work

- (7) A reference to a copied State instrument for a transferring employee covering the employee is a reference to the instrument covering the employee in relation to the transferring work of the employee.

768AO When is a copied State instrument in operation?

When instrument comes into operation

- (1) A copied State instrument for a transferring employee comes into operation immediately after the employee's termination time.

When copied State award ceases to operate

- (2) A copied State award for a transferring employee ceases to operate at the following time:
- (a) unless paragraph (b) applies—the end of the period (the **default period**) that is 5 years or such longer period as is prescribed by the regulations, starting on the day the employee's termination time occurred;

Section 768AO

- (b) if the regulations allow the FWC to make an order to extend the period of operation of a copied State award for a transferring employee and, in accordance with those regulations, the FWC makes an order that the award operates for a period that is longer than the default period—the end of that period.
- (3) The regulations may:
 - (a) prescribe circumstances in which the FWC may make an order for the purposes of paragraph (2)(b); and
 - (b) prescribe a maximum period that the order may specify; and
 - (c) otherwise make provision in relation to the making of the order.

When copied State agreement ceases to operate

- (4) A copied State employment agreement for a transferring employee ceases to operate when it is terminated, which may happen before or after the nominal expiry date of the agreement.

Note 1: See section 768AY for how the copied State employment agreement can be terminated.

Note 2: If, after the transferring employee's re-employment time with the new employer, an enterprise agreement is made that covers the employee and the new employer, then the copied State employment agreement will cease to cover the employee and the new employer and will never cover them again, see section 768AU.

- (5) The ***nominal expiry date*** of a copied State employment agreement for a transferring employee is:
 - (a) the day the original State agreement would nominally have expired under the State industrial law of the State; or
 - (b) if that day falls after the end of 4 years beginning on the day the employee's termination time occurs—the last day of that 4-year period.

Once instrument ceases operation, can never operate again

- (6) A copied State instrument for a transferring employee that has ceased to operate can never operate again.

Division 4—Interaction between copied State instruments and the NES, modern awards and enterprise agreements

Subdivision A—Guide to this Division

768AP What this Division is about

This Division provides for how copied State instruments interact with the National Employment Standards, modern awards and enterprise agreements.

Subdivision B—Interaction with the NES

768AQ Interaction between the NES and a copied State instrument

To the extent that a term of a copied State instrument for a transferring employee is detrimental to the employee, in any respect, when compared to an entitlement of the employee under the National Employment Standards, the term of the instrument is of no effect.

768AR Provisions of the NES that allow instruments to contain particular kinds of terms

Application of particular provisions of the NES

- (1) The following provisions have effect, on and after the re-employment time of a transferring employee, as if a reference to a modern award or an enterprise agreement included a reference to a copied State instrument for the transferring employee:
 - (a) section 63 (which allows terms dealing with averaging of hours of work);
 - (b) section 93 (which allows terms dealing with cashing out and taking paid annual leave);
 - (c) section 101 (which allows terms dealing with cashing out paid personal/carer's leave);

Chapter 6 Miscellaneous

Part 6-3A Transfer of business from a State public sector employer

Division 4 Interaction between copied State instruments and the NES, modern awards and enterprise agreements

Section 768AS

- (d) subsection 107(5) (which allows terms dealing with evidence requirements for paid personal/carer's leave etc.);
- (e) subsection 115(3) (which allows terms dealing with substitution of public holidays);
- (f) section 118 (which allows terms dealing with an employee giving notice to terminate his or her employment);
- (g) subsections 121(2) and (3) (which allow terms specifying situations in which the redundancy pay entitlement under section 119 does not apply);
- (h) section 126 (which allows terms providing for school-based apprentices and trainees to be paid loadings in lieu).

Terms about paid annual leave and personal/carer's leave

- (2) If a copied State instrument for a transferring employee:
 - (a) includes terms referred to in subsection 93(1) but the terms do not include the requirements referred to in subsection 93(2); or
 - (b) includes terms referred to in subsection 101(1) but the terms do not include the requirements referred to in subsection 101(2);

then the instrument is taken to include terms that include the requirements.

Shiftworker annual leave entitlement

- (3) If a copied State instrument for a transferring employee applies to the employee, then subsections 87(3) to (5) have effect, on and after the employee's re-employment time, in the same way as they apply to an award/agreement free employee.

Note: If the transferring employee qualifies for the shiftworker annual leave entitlement under those subsections, the employee will be entitled to 5 (rather than 4) weeks of paid annual leave.

Subdivision C—Interaction with modern awards

768AS Modern awards and copied State awards

- (1) While a copied State award for a transferring employee:

- (a) covers the employee, or an employer (whether the new employer or another national system employer) or other person in relation to the employee; and
 - (b) is in operation;
- a modern award does not cover the employee, or the employer or other person in relation to the employee.
- Note 1: When the copied State award for a transferring employee ceases to cover the employee, a modern award will start to cover the employee, or an employer or other person in relation to the employee.
- Note 2: This subsection may operate in relation to an employer that is not the new employer in the situation where there has been a later transfer of business by the new employer (see Part 2-8).
- (2) Subsection (1) does not apply for the purposes of section 193 (which is about the better off overall test for enterprise agreements).
- Note: For the purposes of determining whether an enterprise agreement that covers a transferring employee passes the better off overall test, subsection (2) allows the enterprise agreement to be compared against a modern award that covers the employee.
- (3) This section has effect subject to any FWC order about coverage under subsection 768BA(1).

768AT Modern awards and copied State employment agreements

Copied State collective employment agreements

- (1) If a copied State collective employment agreement for a transferring employee and a modern award both apply:
- (a) to the employee; or
 - (b) to an employer (whether the new employer or another national system employer) or another person in relation to the employee;
- then the copied State collective employment agreement for the employee prevails over the modern award, to the extent of any inconsistency.

Note 1: This subsection has effect subject to item 17 of Schedule 9 to the Transitional Act as that item applies in a modified way because of section 768BY. That item, as modified, requires that the base rate of pay under the copied State employment agreement must not be less than the modern award rate.

Chapter 6 Miscellaneous

Part 6-3A Transfer of business from a State public sector employer

Division 4 Interaction between copied State instruments and the NES, modern awards and enterprise agreements

Section 768AU

Note 2: This subsection may operate in relation to an employer that is not the new employer in the situation where there has been a later transfer of business by the new employer (see Part 2-8).

Copied State individual employment agreements

- (2) While a copied State individual employment agreement for a transferring employee applies:
- (a) to the employee; or
 - (b) to an employer (whether the new employer or another national system employer) or another person in relation to the employee;
- a modern award does not apply to the employee, or to the employer or other person in relation to the employee.

Note 1: However, a modern award can cover the transferring employee while the copied State individual employment agreement applies.

Note 2: This subsection has effect subject to item 17 of Schedule 9 to the Transitional Act as that item applies in a modified way because of section 768BY. That item, as modified, requires that the base rate of pay under the copied State employment agreement must not be less than the modern award rate.

Note 3: This subsection may operate in relation to an employer that is not the new employer in the situation where there has been a later transfer of business by the new employer (see Part 2-8).

FWC coverage orders

- (3) This section has effect subject to any FWC order about coverage under subsection 768BA(1).

Subdivision D—Interaction with enterprise agreements

768AU Enterprise agreements and copied State instruments

- (1) While a copied State instrument for a transferring employee covers the employee and the new employer in relation to the transferring work, an enterprise agreement that covers the new employer at the employee's re-employment time does not cover the employee in relation to that work.

Note 1: The fact that a copied State collective employment agreement for a transferring employee covers the employee does not prevent the employee and the new employer from replacing that agreement at any time with an enterprise agreement, regardless of whether the

Section 768AU

employee's copied State collective employment agreement has passed its nominal expiry date.

Note 2: Industrial action must not be taken before the nominal expiry date of a copied State collective employment agreement for a transferring employee (see item 4 of Schedule 13 to the Transitional Act as that item applies in a modified way because of section 768BY).

- (2) However, if after the re-employment time, another enterprise agreement starts to cover the employee and the new employer in relation to the transferring work, then the copied State instrument for the employee ceases to cover the employee and the new employer and can never cover them again.
- (3) This section has effect subject to any FWC order about coverage under subsection 768BA(1).

Division 5—Variation and termination of copied State instruments

Subdivision A—Guide to this Division

768AV What this Division is about

This Division sets out when a copied State instrument may be varied or terminated.

Subdivision B—Variation of copied State instruments

768AW Variation in limited circumstances

A copied State instrument for a transferring employee cannot be varied except under:

- (a) section 768AX; or
- (b) item 20 of Schedule 3A to the Transitional Act (which deals with variation of discriminatory instruments) as that item has effect because of section 768BY; or
- (c) item 20 of Schedule 9 to the Transitional Act (which deals with variation of instruments in annual wage reviews) as that item has effect because of section 768BY; or
- (d) Division 4 of Part 3 of Schedule 11 to the Transitional Act (which deals with transfer of business) as that Division has effect because of section 768BY.

768AX Variation of copied State instruments

Application of this section

- (1A) This section applies if there is, or is likely to be, a transfer of business.

Variations that may be made

- (1) The FWC may vary a copied State instrument for a transferring employee:

- (a) to remove terms that the FWC is satisfied are not, or will not be, capable of meaningful operation or to vary those terms so that they are capable of meaningful operation; or
- (b) to remove an ambiguity or uncertainty in the instrument; or
- (c) to enable the instrument to operate in a way that is better aligned to the working arrangements of the new employer's enterprise; or
- (d) to resolve an uncertainty or difficulty relating to the interaction between the instrument and the National Employment Standards, or to make the instrument operate effectively with the National Employment Standards; or
- (e) if the instrument is a copied State employment agreement—to resolve an uncertainty or difficulty relating to the interaction between the instrument and a modern award; or
- (f) to remove terms that are inconsistent with Part 3-1 (which deals with general protections), or to vary terms to make them consistent with that Part.

Note: Paragraph (d) does not affect a term of the copied State instrument that is permitted by a provision of the National Employment Standards as the provision has effect under section 768AR.

Who may apply for a variation

- (2) The FWC may make a variation under subsection (1):
 - (a) on its own initiative; or
 - (b) on application by a person who is, or is likely to be, covered by the copied State instrument; or
 - (c) on application by an employee organisation that is entitled to represent the industrial interests of an employee who is, or is likely to be, covered by the copied State instrument.

Note: The copied State instrument for the transferring employee may also cover another transferring employee or a non-transferring employee if a consolidation order is made.

Matters that the FWC must take into account

- (3) In deciding whether to make a variation under subsection (1), the FWC must take into account the following:
 - (a) the views of:
 - (i) the employees who would be affected by the copied State instrument as varied; and

Section 768AX

- (ii) the new employer or a person who is likely to be the new employer;
- (b) whether any employees would be disadvantaged by the copied State instrument as varied in relation to their terms and conditions of employment;
- (c) if the copied State instrument is a copied State employment agreement—the nominal expiry date of the agreement;
- (d) whether the copied State instrument, without the variation, would have a negative impact on the productivity of the new employer’s workplace;
- (e) whether the new employer would incur significant economic disadvantage as a result of the copied State instrument, without the variation;
- (f) the degree of business synergy between the copied State instrument, without the variation, and any workplace instrument that already covers the new employer;
- (g) the public interest.

Variation relating to the NES

- (4) If there is a dispute about the making of a variation for the purposes of paragraph (1)(d), the FWC may compare the entitlements that are in dispute:
 - (a) on a “line-by-line” basis, comparing individual terms; or
 - (b) on a “like-by-like” basis, comparing entitlements according to particular subject areas; or
 - (c) using any combination of the above approaches the FWC sees fit.
- (5) The regulations may make provisions that apply to determining, for the purposes of paragraph (1)(d), whether terms of a copied State instrument for a transferring employee are, or are not, detrimental in any respect when compared to entitlements under the National Employment Standards.

When variation may be made

- (6) A variation may be made under subsection (1) in relation to a copied State instrument of a transferring employee:
 - (a) before the copied State instrument comes into operation, if it is likely that the instrument will come into operation; and

- (b) before the employee is a transferring employee, if it is likely that the employee will become a transferring employee.

Restriction on when variation may come into operation

- (7) A variation under subsection (1) operates from the day specified in the variation, which may be a day before the variation is made.

Subdivision C—Termination of copied State instruments

768AY Termination in limited circumstances

- (1) A copied State instrument for a transferring employee cannot be terminated except under items 22, 23, 24, 25 and 26 of Schedule 3A to the Transitional Act (which deal with termination of State employment agreements) as those items have effect because of section 768BY.
- (2) A copied State instrument for a transferring employee that has been terminated ceases to operate and can never operate again.

Note: A copied State instrument that does not operate cannot cover a person (see subsection 768AN(6)).

Chapter 6 Miscellaneous

Part 6-3A Transfer of business from a State public sector employer

Division 6 FWC orders about coverage of copied State instruments and other instruments

Section 768AZ

Division 6—FWC orders about coverage of copied State instruments and other instruments

Subdivision A—Guide to this Division

768AZ What this Division is about

This Division allows the FWC to make an order that a copied State instrument for a transferring employee does not, or will not, cover the employee and that an enterprise agreement or named employer award that covers the new employer covers, or will cover, the employee instead.

It also allows the FWC to make an order that a copied State instrument for a transferring employee does not, or will not, cover an employee organisation but instead covers, or will cover, another employee organisation.

768AZA Orders in relation to a transfer of business

- (1) This Division provides for orders to be made if there is, or is likely to be, a transfer of business.
- (2) An order may be made under this Division in relation to a copied State instrument of a transferring employee:
 - (a) before the copied State instrument comes into operation, if it is likely that the instrument will come into operation; and
 - (b) before the employee is a transferring employee, if it is likely that the employee will become a transferring employee.

Subdivision B—Coverage orders

768BA FWC orders about coverage for transferring employees

Orders that the FWC may make

- (1) The FWC may make the following orders:
 - (a) an order that a copied State instrument for a transferring employee that would, or would be likely to, cover the
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transferring employee and the new employer because of subsection 768AN(1) does not, or will not, cover the transferring employee and the new employer;

- (b) an order that an enterprise agreement or named employer award that covers the new employer at the transferring employee's re-employment time covers, or will cover, the transferring employee.

Who may apply for an order

- (2) The FWC may make an order under subsection (1):
 - (a) on its own initiative; or
 - (b) on application by any of the following:
 - (i) a transferring employee or an employee who is likely to be a transferring employee;
 - (ii) the new employer or a person who is likely to be the new employer;
 - (iii) an employee organisation that is entitled to represent the industrial interests of an employee referred to in subparagraph (i);
 - (iv) if the application relates to an enterprise agreement—an employee organisation that is, or is likely to be, covered by the agreement.

Matters that the FWC must take into account

- (3) In deciding whether to make an order under subsection (1), the FWC must take into account the following:
 - (a) the views of:
 - (i) the employees who would be affected by the order; and
 - (ii) the new employer or a person who is likely to be the new employer;
 - (b) whether any employees would be disadvantaged by the order in relation to their terms and conditions of employment;
 - (c) if the order relates to a copied State employment agreement or an enterprise agreement—the nominal expiry date of the agreement;
 - (d) whether the copied State instrument would have a negative impact on the productivity of the new employer's workplace;

Chapter 6 Miscellaneous

Part 6-3A Transfer of business from a State public sector employer

Division 6 FWC orders about coverage of copied State instruments and other instruments

Section 768BB

- (e) whether the new employer would incur significant economic disadvantage as a result of the copied State instrument covering the new employer;
- (f) the degree of business synergy between the copied State instrument and any workplace instrument that already covers the new employer;
- (g) the public interest.

Restriction on when order may come into operation

- (4) An order under subsection (1) must not come into operation in relation to a particular transferring employee before the later of the following:
 - (a) the transferring employee's re-employment time;
 - (b) the day on which the order is made.

768BB FWC orders about coverage for employee organisations

- (1) The FWC may make an order that:
 - (a) a copied State instrument for a transferring employee that would, or would be likely to, cover an employee organisation (the *first employee organisation*) in relation to the transferring employee because of subsection 768AN(2) does not, or will not, cover the organisation; and
 - (b) another employee organisation (the *second employee organisation*) is, or will be, covered by the copied State instrument in relation to the employee.
- (2) When making an order under subsection (1), the FWC must consider whether the second employee organisation is a federal counterpart (within the meaning of section 9A of the Registered Organisations Act) of the first employee organisation.
- (3) The regulations may:
 - (a) prescribe circumstances in which the FWC may make an order for the purposes of subsection (1); and
 - (b) otherwise make provision in relation to the making of the order.
- (4) An order under subsection (1) must be made in accordance with any regulations that are made for the purposes of subsection (3).

Division 7—FWC orders about consolidating copied State instruments etc.

Subdivision A—Guide to this Division

768BC What this Division is about

This Division allows the FWC to consolidate the various workplace instruments that may apply in the new employer's workplace. It achieves this by allowing the FWC to make an order that a copied State instrument for a particular transferring employee is also a copied State instrument for one or more other transferring employees or non-transferring employees.

Subdivision B deals with consolidating copied State instruments for transferring employees. Under that Subdivision, the FWC may make an order that the copied State instrument for a transferring employee ("employee A") is also the copied State instrument for one or more other transferring employees. If the FWC makes a consolidation order for those other transferring employees, then this Act is modified so that the copied State instrument for employee A is also the copied State instrument for those other transferring employees (see section 768BF).

Subdivision C deals with non-transferring employees. Under that Subdivision, the FWC may make an order that the copied State instrument for employee A (who is a transferring employee) is also the copied State instrument for one or more non-transferring employees. If the FWC makes a consolidation order for those non-transferring employees, then this Act is modified so that the copied State instrument for employee A is also the copied State instrument for those non-transferring employees (see section 768BI).

768BCA Orders in relation to a transfer of business

- (1) This Division provides for orders to be made if there is, or is likely to be, a transfer of business.

Chapter 6 Miscellaneous

Part 6-3A Transfer of business from a State public sector employer

Division 7 FWC orders about consolidating copied State instruments etc.

Section 768BD

- (2) An order may be made under this Division in relation to a copied State instrument of a transferring employee:
 - (a) before the copied State instrument comes into operation, if it is likely that the instrument will come into operation; and
 - (b) before the employee is a transferring employee, if it is likely that the employee will become a transferring employee.

Subdivision B—Consolidation orders in relation to transferring employees

768BD Consolidation orders in relation to transferring employees

[see Note 4]

Consolidation order

- (1) The FWC may make an order (a **consolidation order**) that a copied State instrument for a transferring employee (**employee A**) is also a copied State instrument for one or more other transferring employees.

Who may apply for order

- (2) The FWC may make a consolidation order under subsection (1):
 - (a) on its own initiative; or
 - (b) on application by any of the following:
 - (i) a transferring employee, or an employee who is likely to be a transferring employee;
 - (ii) the new employer or a person who is likely to be the new employer;
 - (iii) an employee organisation that is entitled to represent the industrial interests of an employee referred to in subparagraph (i).

Matters that the FWC must take into account

- (3) In deciding whether to make a consolidation order under subsection (1), the FWC must take into account the following:
 - (a) the views of:
 - (i) the employees who would be affected by the order; and
 - (ii) the new employer or a person who is likely to be the new employer;

- (b) whether any employees would be disadvantaged by the order in relation to their terms and conditions of employment;
- (c) if the order relates to a copied State employment agreement—the nominal expiry date of the agreement;
- (d) whether the copied State instrument for employee A would have a negative impact on the productivity of the new employer's workplace;
- (e) whether the new employer would incur significant economic disadvantage if the order were not made;
- (f) the degree of business synergy between the copied State instrument for employee A and any workplace instrument that already covers the new employer;
- (g) the public interest.

Restriction on when order may come into operation

- (4) A consolidation order under subsection (1) must not come into operation in relation to a particular transferring employee (other than employee A) before the later of the following:
 - (a) the transferring employee's re-employment time;
 - (b) the day on which the order is made.

768BE Consolidation order to deal with application and coverage

- (1) A consolidation order under subsection 768BD(1) must specify when the copied State instrument for employee A applies to, and covers:
 - (a) another transferring employee; and
 - (b) the new employer in relation to the other transferring employee; and
 - (c) an employee organisation in relation to the other transferring employee;which must not be before the other transferring employee's re-employment time.
- (2) Once the consolidation order comes into operation in relation to the other transferring employee, the copied State instrument for the other transferring employee ceases to operate.

768BF Effect of this Act after a consolidation order is made

If the FWC makes a consolidation order under subsection 768BD(1), then this Act has effect in relation to a particular transferring employee (other than employee A), from the time the order comes into operation in relation to that employee, as if a reference in relation to that employee to the copied State instrument for that employee were a reference to the copied State instrument for employee A.

Subdivision C—Consolidation orders in relation to non-transferring employees

768BG Consolidation orders in relation to non-transferring employees

Consolidation order

- (1) The FWC may make an order (a *consolidation order*) that a copied State instrument for a transferring employee (*employee A*) also is, or will be, a copied State instrument for one or more non-transferring employees who perform, or are likely to perform, the transferring work.

Non-transferring employees

- (2) A *non-transferring employee* of a new employer is a national system employee of the new employer who is not a transferring employee.

Who may apply for order

- (3) The FWC may make a consolidation order under subsection (1):
 - (a) on its own initiative; or
 - (b) on application by any of the following:
 - (i) a non-transferring employee who performs, or is likely to perform, the transferring work;
 - (ii) the new employer or a person who is likely to be the new employer;
 - (iii) an employee organisation that is entitled to represent the industrial interests of an employee referred to in subparagraph (i);

- (iv) if the application relates to an enterprise agreement—an employee organisation that is, or is likely to be, covered by the agreement.

Matters that the FWC must take into account

- (4) In deciding whether to make a consolidation order under subsection (1), the FWC must take into account the following:
 - (a) the views of:
 - (i) the employees who would be affected by the order; and
 - (ii) the new employer or a person who is likely to be the new employer;
 - (b) whether any employees would be disadvantaged by the order in relation to their terms and conditions of employment;
 - (c) if the order relates to a copied State employment agreement or an enterprise agreement—the nominal expiry date of the agreement;
 - (d) whether the copied State instrument for employee A would have a negative impact on the productivity of the new employer's workplace;
 - (e) whether the new employer would incur significant economic disadvantage if the order were not made;
 - (f) the degree of business synergy between the copied State instrument for employee A and any workplace instrument that already covers the new employer;
 - (g) the public interest.

Restriction on when order may come into operation

- (5) A consolidation order under subsection (1) must not come into operation in relation to a particular non-transferring employee before the later of the following:
 - (a) the time when the non-transferring employee starts to perform the transferring work for the new employer;
 - (b) the day on which the order is made.

768BH Consolidation order to deal with application and coverage

- (1) A consolidation order under subsection 768BG(1) must specify when the copied State instrument for employee A applies to, and covers:

Chapter 6 Miscellaneous

Part 6-3A Transfer of business from a State public sector employer

Division 7 FWC orders about consolidating copied State instruments etc.

Section 768BI

- (a) a non-transferring employee; and
 - (b) the new employer in relation to the non-transferring employee; and
 - (c) an employee organisation in relation to the non-transferring employee;
- in relation to the transferring work.
- (2) If an enterprise agreement covers the non-transferring employee and the new employer, the order must also specify that the agreement does not cover:
- (a) the non-transferring employee; or
 - (b) the new employer in relation to the non-transferring employee; or
 - (c) an employee organisation in relation to the non-transferring employee;
- in relation to that work.

768BI Effect of this Act after a consolidation order is made

If the FWC makes a consolidation order under subsection 768BG(1), then this Act has effect in relation to a particular non-transferring employee, from the time the order comes into operation in relation to that employee, as if:

- (a) the copied State instrument for employee A were also the copied State instrument for that employee; and
- (b) that employee were a transferring employee in relation to that copied State instrument.

Division 8—Special rules for copied State instruments

Subdivision A—Guide to this Division

768BJ What this Division is about

This Division has a collection of special rules for copied State instruments for transferring employees.

Subdivision B deals with the case where a copied State instrument for a transferring employee does not have a term about settling disputes about matters arising under the instrument. In that case, the model term prescribed by the regulations is taken to be a term of the instrument.

Subdivision C is about working out service and entitlements of a transferring employee. This is particularly relevant for working out the employee's entitlements under the National Employment Standards and the copied State instrument for the employee.

Subdivision D deals with the case where a copied State award for a transferring employee ceases to operate and the employee suffers a reduction in take home pay. That Subdivision allows the FWC to make a take-home pay order to compensate the employee.

Subdivision E modifies particular provisions of this Act in relation to copied State instruments.

Subdivision F modifies particular provisions of the Transitional Act in relation to copied State instruments.

Subdivision G modifies particular provisions of the Registered Organisations Act in relation to copied State instruments.

Subdivision B—Terms about disputes

768BK Where no term dealing with disputes

- (1) If a copied State instrument for a transferring employee does not include a term that provides a procedure for settling disputes about

Section 768BL

matters arising under the instrument, then the instrument is taken to include the model term that is prescribed by the regulations for settling disputes about matters arising under a copied State instrument for a transferring employee.

Note: This section deals with the situation where the original State award or original State agreement for the copied State instrument did not include a term about settling disputes about matters arising under the award or agreement.

- (2) For the purposes of subsection (1), the model term prescribed for a copied State award for a transferring employee may be the same or different from the model term prescribed for a copied State employment agreement for a transferring employee.

Subdivision C—Service and entitlements of a transferring employee

768BL Service for the purposes of this Act

General rule

- (1) Service of a transferring employee with the old State employer that occurred before the employee's termination time also counts as service of the employee with the new employer for the purposes of this Act (including for the purposes of determining the employee's entitlements under the National Employment Standards) after the employee's re-employment time.

Gap between termination time and re-employment time

- (2) If there is a period of time between the employee's termination time with the old State employer and the employee's re-employment time with the new employer, then that period:
 - (a) does not break the employee's continuous service with the new employer (taking account of the effect of subsection (1)); but
 - (b) does not count towards the length of the employee's continuous service with the new employer.

768BM NES—working out non-accruing entitlements

Application of this section

- (1) This section applies for the purposes of determining the entitlements of a transferring employee under the National Employment Standards, other than entitlements to:
 - (a) paid annual leave; or
 - (b) paid personal/carer's leave.

Note: For entitlements to paid annual leave and paid personal/carer's leave under the National Employment Standards, see section 768BN.

No double entitlement

- (2) If, before or after the employee's termination time, the employee has the benefit of an entitlement, the amount of which is calculated by reference to a period of service, then subsection 768BL(1) does not result in that period of service with the old State employer being counted again when calculating the employee's entitlements of that kind under the National Employment Standards.
- (3) To avoid doubt, subsection (2) does not require the employee to serve any initial qualifying period of service for long service leave again.

Limitation on application of general rule to redundancy pay

- (4) If the terms and conditions of employment that applied to the employee's employment by the old State employer immediately before the employee's termination time did not provide for an entitlement to redundancy pay, then subsection 768BL(1) does not apply in relation to the employee and the new employer for the purposes of Subdivision B of Division 11 of Part 2-2 (which deals with redundancy pay).
- (5) If a State industrial body could have made an order giving the employee an entitlement to redundancy pay (however described), had the employee's employment been terminated for redundancy (however described) before the employee's termination time, then:
 - (a) the terms and conditions of the employee's employment referred to in subsection (4) are taken to have provided for an entitlement to redundancy pay; and

Section 768BN

- (b) paragraph 121(1)(b) does not apply in relation to the employee during the 12 months starting at the employee's re-employment time.

Note: Because of paragraph (b), the employee may therefore be entitled to redundancy pay under section 119 if the employee's employment is terminated by the new employer during the 12-month period starting at the employee's termination time, even if the new employer is a small business employer.

768BN NES—working out accruing entitlements

Application of this section

- (1) This section applies for the purposes of determining the entitlements of a transferring employee under the National Employment Standards to:
- (a) paid annual leave; or
 - (b) paid personal/carer's leave;
- if the employee had, immediately before the employee's termination time, an accrued entitlement to an amount of:
- (c) paid annual leave (however described); or
 - (d) paid personal or carer's leave (however described).

Note: For other entitlements under the National Employment Standards, see section 768BM.

Leave accrued for purposes of the NES

- (2) The provisions of the National Employment Standards relating to:
- (a) taking that kind of leave (including rates of pay while taking leave); or
 - (b) cashing-out that kind of leave;
- apply as a minimum standard to the accrued leave, after the employee's re-employment time, as if it had accrued under the National Employment Standards.

No double entitlement

- (3) However, if before or after the employee's termination time, the old State employer paid the employee an amount in relation to some or all of the accrued leave, then for the purposes of subsection (2), the amount of accrued leave is reduced accordingly.

Working out whether leave accrued

- (4) For the purposes of subsection (1), it does not matter whether the entitlement to leave accrued under:
- (a) the original State award or original State agreement for the copied State instrument for the employee; or
 - (b) a State industrial law of the State.

768BO Copied State instrument—service

General rule

- (1) Service of a transferring employee with the old State employer that:
- (a) occurred before the employee's termination time; and
 - (b) counted for the purposes of the application to the employee of the original State award or original State agreement for the copied State instrument for the employee;
- also counts as service of the employee with the new employer for the purposes of the application to the employee of the copied State instrument after the employee's re-employment time.

Gap between termination time and re-employment time

- (2) If there is a period of time between the employee's termination time with the old State employer and the employee's re-employment time with the new employer, then that period:
- (a) does not break the employee's continuous service with the new employer (taking account of the effect of subsection (1)); but
 - (b) does not count towards the length of the employee's continuous service with the new employer.

Effect of consolidation order

- (3) If the FWC makes a consolidation order under subsection 768BD(1), then, despite section 768BF, the original State award or original State agreement referred to in paragraph (1)(b) of this section is the original State award or original State agreement for the copied State instrument for the employee before the consolidation order was made.

Section 768BP

768BP Copied State instrument—working out non-accruing entitlements

Application of this section

- (1) This section applies for the purposes of determining the entitlements of a transferring employee under a copied State instrument for the employee, other than entitlements to:
 - (a) annual leave (however described); or
 - (b) personal leave or carer's leave (however described).

Note: For entitlements to annual leave or personal leave or carer's leave under the copied State instrument, see section 768BQ.

No double entitlement

- (2) If, before or after the employee's termination time, the employee has the benefit of an entitlement, the amount of which is calculated by reference to a period of service, then subsection 768BO(1) does not result in that period of service with the old State employer being counted again when calculating the employee's entitlements of that kind under the copied State instrument for the employee.
- (3) To avoid doubt, subsection (2) does not require the employee to serve any initial qualifying period of service for long service leave again.

768BQ Copied State instrument—working out accruing entitlements

Application of this section

- (1) This section applies for the purposes of determining the entitlements of a transferring employee under the copied State instrument for the employee to:
 - (a) annual leave (however described); or
 - (b) personal leave or carer's leave (however described).

Note: For other entitlements under the copied State instrument, see section 768BP.

Leave accrued for purposes of the instrument

- (2) If the employee had, immediately before the employee's termination time, an accrued entitlement to an amount of:
- (a) annual leave (however described); or
 - (b) personal leave or carer's leave (however described);
- then the accrued leave is taken to have accrued under the copied State instrument for the employee.

No double entitlement

- (3) However, if before or after the employee's termination time, the old State employer paid the employee an amount in relation to some or all of the accrued leave, then for the purposes of subsection (2), the amount of accrued leave is reduced accordingly.

Working out whether leave accrued

- (4) For the purposes of subsection (2), it does not matter whether the leave accrued under:
- (a) the original State award or original State agreement for the copied State instrument; or
 - (b) a State industrial law of the State.

Subdivision D—Cessation of copied State awards: avoiding reductions in take-home pay

768BR Cessation not intended to result in reduction in take-home pay

- (1) If a copied State award for a transferring employee ceases to operate because of subsection 768AO(2), the cessation is not intended to result in a reduction in the take-home pay of the employee.
- (2) A transferring employee's *take-home pay* is the pay the employee actually receives:
- (a) including wages and incentive-based payments, and additional amounts such as allowances and overtime; but
 - (b) disregarding the effect of any deductions that are made as permitted by section 324.

Chapter 6 Miscellaneous

Part 6-3A Transfer of business from a State public sector employer

Division 8 Special rules for copied State instruments

Section 768BS

Note: Deductions permitted by section 324 may (for example) include deductions under salary sacrificing arrangements.

- (3) A transferring employee suffers a **reduction in take-home pay** if, and only if:
- (a) when the copied State award for the employee ceases to operate because of subsection 768AO(2), the employee becomes a person to whom a modern award applies; and
 - (b) the employee is employed in the same position as (or a position that is comparable to) the position he or she was employed in immediately before the cessation of the copied State award; and
 - (c) the amount of the employee's take-home pay for working particular hours or for a particular quantity of work after the cessation of the copied State award is less than what would have been the employee's take-home pay for those hours or that quantity of work immediately before the cessation; and
 - (d) that reduction in the employee's take-home pay is attributable to the cessation of the copied State award.

768BS Orders remedying reductions in take-home pay

- (1) If the FWC is satisfied that a transferring employee to whom a modern award applies has suffered a reduction in take-home pay, the FWC may make any order (a **take-home pay order**) requiring, or relating to, the payment of an amount or amounts to the employee that the FWC considers appropriate to remedy the situation.
- (2) The FWC may make a take-home pay order:
- (a) on its own initiative; or
 - (b) on application by either of the following:
 - (i) a transferring employee who has suffered a reduction in take-home pay;
 - (ii) an organisation that is entitled to represent the industrial interests of the employee.
- (3) The FWC must not make a take-home pay order if:
- (a) the FWC considers that the reduction in take-home pay is minor or insignificant; or
 - (b) the FWC is satisfied that the employee has been adequately compensated in other ways for the reduction.

- (4) The FWC must ensure that a take-home pay order is expressed so that:
- (a) it does not apply to a transferring employee unless the employee has actually suffered a reduction in take-home pay; and
 - (b) if the take-home pay payable to the employee under the modern award increases after the order is made, there is a corresponding reduction in any amount payable to the employee under the order.
- (5) If the FWC is satisfied that an application for a take-home pay order has already been made in relation to a transferring employee, the FWC may dismiss any later application that is made under these provisions in relation to the same employee.

768BT Contravening a take-home pay order

A person must not contravene a term of a take-home pay order that applies to the person.

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

768BU How long a take-home pay order continues to apply

A take-home pay order made in relation to a transferring employee to whom a particular modern award applies continues to apply in relation to the employee (subject to the terms of the order) for so long as the modern award continues to cover the employee.

Note: It does not matter if the modern award stops applying to the employee because an enterprise agreement starts to apply.

768BV Interaction of take-home pay orders with modern awards and enterprise agreements

A term of a modern award or an enterprise agreement has no effect in relation to a transferring employee to the extent that it is less beneficial to the employee than a term of a take-home pay order that applies to the employee.

768BW Application of this Act to take-home pay orders

This Act applies as if the following provisions included a reference to a take-home pay order:

Chapter 6 Miscellaneous

Part 6-3A Transfer of business from a State public sector employer

Division 8 Special rules for copied State instruments

Section 768BX

- (a) subsection 675(2) (which is about FWC orders);
- (b) subsection 706(2) (which is about powers of inspectors).

Subdivision E—Modification of this Act

768BX Modification of this Act for copied State instruments

This Act has effect in relation to a transferring employee on and after the employee's re-employment time as if a reference in a provision referred to in column 1 to a term referred to in column 2 included a reference to the term referred to in column 3.

Modification of this Act for copied State instruments

Item	Column 1 Provision of this Act	Column 2 Current term	Column 3 New term
1	Division 2 of Part 2-9 (payment of wages)	modern award	copied State award for the transferring employee
2	Division 2 of Part 2-9 (payment of wages)	enterprise agreement	copied State employment agreement for the transferring employee
3	Division 3 of Part 2-9 (guarantee of annual earnings)	modern award	copied State award for the transferring employee
4	Division 3 of Part 2-9 (guarantee of annual earnings)	enterprise agreement	copied State employment agreement for the transferring employee
5	Part 3-2 (unfair dismissal)	modern award	copied State award for the transferring employee
6	Part 3-2 (unfair dismissal)	enterprise agreement	copied State employment agreement for the transferring employee
7	Division 9 of Part 3-3 (payments relating to periods of industrial action)	modern award	copied State award for the transferring employee
8	Division 9 of Part 3-3 (payments relating to periods of industrial action)	enterprise agreement	copied State employment agreement for the transferring employee

Modification of this Act for copied State instruments

Item	Column 1 Provision of this Act	Column 2 Current term	Column 3 New term
9	subsection 481(1) (right of entry)	fair work instrument	copied State instrument for the transferring employee
10	subsection 524(2) (stand down)	enterprise agreement	copied State instrument for the transferring employee
11	Part 4-1 (compliance)	fair work instrument	copied State instrument for the transferring employee
12	section 657 (General Manager)	fair work instrument	copied State instrument for the transferring employee
13	Part 5-2 (Fair Work Ombudsman)	fair work instrument	copied State instrument for the transferring employee
14	Part 5-2 (Fair Work Ombudsman)	modern award	copied State award for the transferring employee
15	Part 5-2 (Fair Work Ombudsman)	enterprise agreement	copied State employment agreement for the transferring employee
16	Part 6-2 (dealing with disputes)	modern award	copied State award for the transferring employee
17	Part 6-2 (dealing with disputes)	enterprise agreement	copied State employment agreement for the transferring employee
18	Part 6-2 (dealing with disputes)	fair work instrument	copied State instrument for the transferring employee

Subdivision F—Modification of the Transitional Act

768BY Modification of the Transitional Act for copied State instruments

- (1) Each relevant transitional provision (see subsection (2)) has effect in relation to a transferring employee as if a reference to a term referred to in column 1 were a reference to the term referred to in column 2. The provision has effect from the time specified in column 3 of the table in subsection (2).

Chapter 6 Miscellaneous

Part 6-3A Transfer of business from a State public sector employer

Division 8 Special rules for copied State instruments

Section 768BY

Modification of the Transitional Act and regulations for copied State instruments

Item	Column 1 Current term	Column 2 New term
1	Division 2B State instrument	copied State instrument for the transferring employee
2	Division 2B State award	copied State award for the transferring employee
3	Division 2B State award applying (within the meaning of the Transitional Act) to a person	copied State award for the transferring employee applying (within the meaning of this Act) to a person
4	Division 2B State award covering (within the meaning of the Transitional Act) a person	copied State award for the transferring employee covering (within the meaning of this Act) a person
5	Division 2B State employment agreement	copied State employment agreement for the transferring employee
6	collective Division 2B State employment agreement	copied State collective employment agreement for the transferring employee
7	individual Division 2B State employment agreement	copied State individual employment agreement for the transferring employee
8	Division 2B State employment agreement applying (within the meaning of the Transitional Act) to a person	copied State employment agreement for the transferring employee applying (within the meaning of this Act) to a person
9	Division 2B State employment agreement covering (within the meaning of the Transitional Act) a person	copied State employment agreement for the transferring employee covering (within the meaning of this Act) a person
10	nominal expiry date of a Division 2B State employment agreement	nominal expiry date of a copied State employment agreement for the transferring employee
11	Division 2B referral commencement	transferring employee's termination time
12	Division 2B State reference employee	transferring employee
13	Division 2B referring State	the State of the old State employer
14	source State	the State of the old State employer

- (2) For the purposes of subsection (1), the *relevant transitional provisions* are:
- (a) the provisions of the Transitional Act that are listed in column 1; and
 - (b) the regulations made for the purposes of those provisions.

Modification of the Transitional Act and regulations for copied State instruments

Item	Column 1 Relevant transitional provision	Column 2 Which is about	Column 3 Relevant time
1	item 10 of Schedule 3A	instrument content rules	the transferring employee's termination time
2	item 11 of Schedule 3A	instrument interaction rules	the transferring employee's termination time
3	item 13 (other than note 1 and note 2) of Schedule 3A	references to State industrial bodies	the transferring employee's termination time
4	item 17 of Schedule 3A	no loss of accrued rights etc. when instrument terminates	the transferring employee's re-employment time
5	item 20 of Schedule 3A	variation of discriminatory instruments	the transferring employee's termination time
6	item 22 of Schedule 3A	collective agreements—termination by agreement	the transferring employee's re-employment time
7	item 23 of Schedule 3A	collective agreements—termination by the FWC	the transferring employee's re-employment time
8	item 24 of Schedule 3A	individual agreements—termination by agreement	the transferring employee's re-employment time
9	item 25 of Schedule 3A	individual agreements—termination conditional on enterprise agreement	the transferring employee's re-employment time

Chapter 6 Miscellaneous

Part 6-3A Transfer of business from a State public sector employer

Division 8 Special rules for copied State instruments

Section 768BY

Modification of the Transitional Act and regulations for copied State instruments

Item	Column 1 Relevant transitional provision	Column 2 Which is about	Column 3 Relevant time
10	item 26 of Schedule 3A	individual agreements— unilateral termination by the FWC	the transferring employee's re-employment time
11	item 47 of Schedule 3A	employee not award/agreement free	the transferring employee's re-employment time
12	item 48 of Schedule 3A	calculating an employee's ordinary hours of work	the transferring employee's re-employment time
13	items 19, 20 and 21 of Schedule 4	interaction with the NES	the transferring employee's re-employment time
14	Part 5 of Schedule 9	base rates of pay	the transferring employee's re-employment time
15	Division 4 of Part 3 of Schedule 11	transfer of business	the transferring employee's re-employment time
16	item 4 of Schedule 12	general protections	the transferring employee's termination time
17	items 2, 3, 4 and 17 of Schedule 13	industrial action	the transferring employee's re-employment time
18	item 4B of Schedule 16 (as that item relates to subitems 25(6) and (7) of Schedule 3A) and item 16 of Schedule 16 (as that item relates to item 4B of Schedule 16)	compliance relating to conditional terminations of individual employment agreements	the transferring employee's re-employment time

Modification of the Transitional Act and regulations for copied State instruments

Item	Column 1 Relevant transitional provision	Column 2 Which is about	Column 3 Relevant time
19	items 12 and 13 of Schedule 16 and item 16 of Schedule 16 (as that item relates to those items)	compliance relating to non-disclosure obligations	the transferring employee's re-employment time

Subdivision G—Modification of the Registered Organisations Act

768BZ Modification of the Registered Organisations Act for copied State instruments

- (1) The Registered Organisations Act has effect in relation to a transferring employee on and after the employee's termination time as if:
 - (a) a reference in that Act to a modern award included a reference to a copied State award for the employee; and
 - (b) a reference in that Act to an enterprise agreement included a reference to a copied State employment agreement for the employee.
- (2) The regulations may deal with other matters relating to how the Registered Organisations Act applies in relation to a transferring employee.

Division 9—Regulations

768CA Regulations

- (1) The regulations may:
 - (a) make provision in relation to the transition from State awards and State employment agreements to copied State instruments; and
 - (b) make provision in relation to the transition from copied State instruments to modern awards and enterprise agreements; and
 - (c) deal with how this Act applies in relation to copied State instruments for transferring employees; and
 - (d) provide that provisions of this Act or the Transitional Act apply in relation to transferring employees or new employers with specified modifications; and
 - (e) otherwise make provision relating to how provisions of this Act or the Transitional Act apply in relation to transferring employees or new employers; and
 - (f) make provision in relation to non-transferring employees of the new employer; and
 - (g) provide that provisions of this Act or the Transitional Act apply in relation to the non-transferring employees with specified modifications; and
 - (h) make other provision in relation to the matters dealt with in this Part.
- (2) Without limiting subsection (1), the regulations may:
 - (a) modify provisions of this Act or the Transitional Act, or provide for the application (with or without modifications) of provisions of this Act or the Transitional Act to matters to which they would otherwise not apply; and
 - (b) provide differently for the purposes of different provisions, or in relation to different situations.
- (3) However, this section does not allow regulations to:
 - (a) modify a provision so as to impose an obligation which, if contravened, constitutes an offence; or
 - (b) include new provisions that create offences.

- (4) The provisions of this Part (including this section) that provide for regulations to deal with matters do not limit each other.

Part 6-4—Additional provisions relating to termination of employment

Division 1—Introduction

769 Guide to this Part

This Part contains provisions to give effect, or further effect, to certain international agreements relating to discrimination and termination of employment.

Division 2 makes it unlawful for an employer to terminate an employee's employment for certain reasons. Division 2 also deals with compliance. In most cases, a dispute that involves the termination of an employee's employment will be dealt with by a court only if the dispute has not been resolved by the FWC.

Division 3 sets out notification and consultation requirements in relation to certain terminations of employment.

770 Meanings of *employee* and *employer*

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

Division 2—Termination of employment

771 Object of this Division

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

- (a) the ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation, done at Geneva on 25 June 1958 ([1974] ATS 12); and
- (b) the ILO Convention (No. 156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, done at Geneva on 23 June 1981 ([1991] ATS 7); and
- (c) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and
- (d) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

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

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

772 Employment not to be terminated on certain grounds

- (1) An employer must not terminate an employee's employment for one or more of the following reasons, or for reasons including one or more of the following reasons:
 - (a) temporary absence from work because of illness or injury of a kind prescribed by the regulations;
 - (b) trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours;
 - (c) non-membership of a trade union;
 - (d) seeking office as, or acting or having acted in the capacity of, a representative of employees;

Section 772

- (e) the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- (f) race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (g) absence from work during maternity leave or other parental leave;
- (h) temporary absence from work for the purpose of engaging in a voluntary emergency management activity, where the absence is reasonable having regard to all the circumstances.

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

- (2) However, subsection (1) does not prevent a matter referred to in paragraph (1)(f) from being a reason for terminating a person's employment if:
 - (a) the reason is based on the inherent requirements of the particular position concerned; or
 - (b) if the person is a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed—the employment is terminated:
 - (i) in good faith; and
 - (ii) to avoid injury to the religious susceptibilities of adherents of that religion or creed.
- (3) To avoid doubt, if:
 - (a) an employer terminates an employee's employment; and
 - (b) the reason, or a reason, for the termination is that the position held by the employee no longer exists, or will no longer exist; and
 - (c) the reason, or a reason, that the position held by the employee no longer exists, or will no longer exist, is the employee's absence, or proposed or probable absence, during maternity leave or other parental leave;the employee's employment is taken, for the purposes of paragraph (1)(g), to have been terminated for the reason, or for reasons including the reason, of absence from work during maternity leave or other parental leave.

- (4) For the purposes of subsection (1), subsection 109(2) (which deals with the meaning of *voluntary emergency management activity*) has effect as if the word employee had its ordinary meaning.

773 Application for the FWC to deal with a dispute

If:

- (a) an employer has terminated an employee's employment; and
- (b) the employee, or an industrial association that is entitled to represent the industrial interests of the employee, alleges that the employee's employment was terminated in contravention of subsection 772(1);

the employee, or the industrial association, may apply to the FWC for the FWC to deal with the dispute.

774 Time for application

- (1) An application under section 773 must be made:
 - (a) within 60 days after the employment was terminated; or
 - (b) within such further period as the FWC allows under subsection (2).
- (2) The FWC may allow a further period if the FWC is satisfied that there are exceptional circumstances, taking into account:
 - (a) the reason for the delay; and
 - (b) any action taken by the employee to dispute the termination; and
 - (c) prejudice to the employer (including prejudice caused by the delay); and
 - (d) the merits of the application; and
 - (e) fairness as between the person and other persons in a like position.

775 Application fees

- (1) The application must be accompanied by any fee prescribed by the regulations.
- (2) The regulations may prescribe:
 - (a) a fee for making an application to the FWC under section 773; and

Section 776

- (b) a method for indexing the fee; and
- (c) the circumstances in which all or part of the fee may be waived or refunded.

776 Conferences

- (1) If an application is made under section 773, the FWC must conduct a conference to deal with the dispute.

Note 1: For conferences, see section 592.

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

- (2) Despite subsection 592(3), the FWC must conduct the conference in private.

777 Certificate if dispute not resolved

If the FWC is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful, the FWC must issue a certificate to that effect.

778 Advice on unlawful termination court application

- (1) If the FWC considers, taking into account all the materials before it, that an unlawful termination court application in relation to the dispute would not have a reasonable prospect of success, it must advise the parties accordingly.
- (2) An *unlawful termination court application* is an application to a court under Division 2 of Part 4-1 for orders in relation to a contravention of subsection 772(1).

779 Unlawful termination court applications

FWC conference to be held before application

- (1) A person who is entitled to apply under section 773, to the FWC for the FWC to deal with a dispute must not make an unlawful termination court application in relation to the dispute unless:
 - (a) the FWC has issued a certificate under section 777 in relation to the dispute; or

- (b) the unlawful termination court application includes an application for an interim injunction.

Time for application

- (2) Despite section 544, an unlawful termination court application that requires a certificate under section 777 must be made within 14 days after the certificate is issued, or within such period as a court allows on an application made during or after those 14 days.

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

780 Costs orders against lawyers and paid agents

- (1) If the FWC has granted permission in accordance with section 596 for a person to be represented by a lawyer or paid agent in relation to an application under section 773, the FWC may make an order for costs against the lawyer or paid agent if the FWC is satisfied:
 - (a) that:
 - (i) the lawyer or paid agent caused costs to be incurred by the other party to the dispute because the lawyer or paid agent encouraged the person to make the application; and
 - (ii) it should have been reasonably apparent that the application would have no reasonable prospect of success; or
 - (b) that the lawyer or paid agent caused costs to be incurred by the other party to the dispute because of an unreasonable act or omission of the lawyer or paid agent in connection with the conduct or continuation of the dispute.
- (2) The FWC may make an order under this section only if the other party to the dispute has applied for it under section 781.
- (3) This section does not limit the FWC's power to order costs under section 611.

781 Applications for costs orders

An application for an order for costs in relation to an application under section 773 must be made within 14 days after the FWC finishes dealing with the dispute.

782 Contravening costs orders

A person to whom an order for costs made under section 780 applies must not contravene a term of the order.

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

783 Reason for action to be presumed unless proved otherwise

- (1) If:
 - (a) in an application in relation to a contravention of subsection 772(1), it is alleged that a person took, or is taking, action for a particular reason; and
 - (b) taking that action for that reason would constitute a contravention of subsection 772(1);it is presumed, in proceedings arising from the application, that the action was, or is being, taken for that reason, unless the person proves otherwise.
- (2) Subsection (1) does not apply in relation to orders for an interim injunction.

Division 3—Notification and consultation requirements relating to certain terminations of employment

Subdivision A—Object of this Division

784 Object of this Division

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

- (a) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and
- (b) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

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

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

Subdivision B—Requirement to notify Centrelink

785 Employer to notify Centrelink of certain proposed terminations

- (1) If an employer decides to terminate the employment of 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons, the employer must give a written notice about the proposed terminations to the Chief Executive Officer of the Commonwealth Services Delivery Agency (Centrelink).
- (2) The notice must be in the form (if any) prescribed by the regulations and set out:
 - (a) the reasons for the terminations; and
 - (b) the number and categories of employees likely to be affected; and
 - (c) the time when, or the period over which, the employer intends to carry out the terminations.

Chapter 6 Miscellaneous

Part 6-4 Additional provisions relating to termination of employment

Division 3 Notification and consultation requirements relating to certain terminations of employment

Section 786

- (3) The notice must be given:
 - (a) as soon as practicable after making the decision; and
 - (b) before terminating an employee's employment in accordance with the decision.
- (4) The employer must not terminate an employee's employment in accordance with the decision unless the employer has complied with this section.

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

- (5) The orders that may be made under subsection 545(1) in relation to a contravention of subsection (4) of this section:
 - (a) include an order requiring the employer not to terminate the employment of employees in accordance with the decision, except as permitted by the order; but
 - (b) do not include an order granting an injunction.

Subdivision C—Failure to notify or consult registered employee associations

786 FWC may make orders where failure to notify or consult registered employee associations about terminations

- (1) The FWC may make an order under subsection 787(1) if it is satisfied that:
 - (a) an employer has decided to terminate the employment of 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons; and
 - (b) the employer has not complied with subsection (2) (which deals with notifying relevant registered employee associations) or subsection (3) (which deals with consulting relevant registered employee associations); and
 - (c) the employer could reasonably be expected to have known, when he or she made the decision, that one or more of the employees were members of a registered employee association.

Notifying relevant registered employee associations

- (2) An employer complies with this subsection if:
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- (a) the employer notifies each registered employee association of which any of the employees was a member, and that was entitled to represent the industrial interests of that member, of the following:
 - (i) the proposed terminations and the reasons for them;
 - (ii) the number and categories of employees likely to be affected;
 - (iii) the time when, or the period over which, the employer intends to carry out the terminations; and
- (b) the notice is given:
 - (i) as soon as practicable after making the decision; and
 - (ii) before terminating an employee's employment in accordance with the decision.

Consulting relevant registered employee associations

- (3) An employer complies with this subsection if:
 - (a) the employer gives each registered employee association of which any of the employees was a member, and that was entitled to represent the industrial interests of that member, an opportunity to consult the employer on:
 - (i) measures to avert or minimise the proposed terminations; and
 - (ii) measures (such as finding alternative employment) to mitigate the adverse effects of the proposed terminations; and
 - (b) the opportunity is given:
 - (i) as soon as practicable after making the decision; and
 - (ii) before terminating an employee's employment in accordance with the decision.

787 Orders that the FWC may make

- (1) The FWC may make whatever orders it considers appropriate, in the public interest, to put:
 - (a) the employees; and
 - (b) each registered employee association referred to in paragraph 786(2)(a) or (3)(a);in the same position (as nearly as can be done) as if the employer had complied with subsections 786(2) and (3).

Chapter 6 Miscellaneous

Part 6-4 Additional provisions relating to termination of employment

Division 3 Notification and consultation requirements relating to certain terminations of employment

Section 788

- (2) The FWC must not, under subsection (1), make orders for any of the following:
- (a) reinstatement of an employee;
 - (b) withdrawal of a notice of termination if the notice period has not expired;
 - (c) payment of an amount in lieu of reinstatement;
 - (d) payment of severance pay;
 - (e) disclosure of confidential information or commercially sensitive information relating to the employer, unless the recipient of such information gives an enforceable undertaking not to disclose the information to any other person;
 - (f) disclosure of personal information relating to a particular employee, unless the employee has given written consent to the disclosure of the information and the disclosure is in accordance with that consent.

788 Application to the FWC for order

The FWC may make the order only on application by:

- (a) one of the employees; or
- (b) a registered employee association referred to in paragraph 786(2)(a) or (3)(a); or
- (c) any other registered employee association that is entitled to represent the industrial interests of one of the employees.

Subdivision D—Limits on scope of this Division

789 Limits on scope of this Division

- (1) This Division does not apply in relation to any of the following employees:
- (a) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season;
 - (b) an employee whose employment is terminated because of serious misconduct;
 - (c) a casual employee;
 - (d) an employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified

- period of time or is, for any reason, limited to the duration of the training arrangement;
- (e) a daily hire employee working in the building and construction industry (including working in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures);
 - (f) a daily hire employee working in the meat industry in connection with the slaughter of livestock;
 - (g) a weekly hire employee working in connection with the meat industry and whose termination of employment is determined solely by seasonal factors;
 - (h) an employee prescribed by the regulations as an employee in relation to whom this Division does not apply.
- (2) Paragraph (1)(a) does not prevent this Division from applying in relation to an employee if a substantial reason for employing the employee as described in that paragraph was to avoid the application of this Division.

Part 6-4A—Special provisions about TCF outworkers

Division 1—Introduction

789AA Guide to this Part

This Part contains special provisions about TCF outworkers.

Division 2 provides for TCF contract outworkers to be taken to be employees in certain circumstances for the purposes of most of the provisions of this Act.

Division 3 provides for TCF outworkers (whether employees or contractors) to recover unpaid remuneration from entities that are indirectly responsible for work done by the outworkers.

Division 4 allows the regulations to prescribe a code dealing with standards of conduct and practice relating to TCF outwork.

Division 5 contains miscellaneous provisions.

789AB Meanings of *employee* and *employer*

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

789AC Objects of this Part

The objects of this Part are to eliminate exploitation of outworkers in the textile, clothing and footwear industry, and to ensure that those outworkers are employed or engaged under secure, safe and fair systems of work, by:

- (a) providing nationally consistent rights and protections for those outworkers, regardless of whether they are employees or contractors; and
- (b) establishing an effective mechanism by which those outworkers can recover amounts owing to them in relation to their work from other parties in a supply chain; and

- (c) providing for a code dealing with standards of conduct and practice to be complied with by parties in a supply chain.

Division 2—TCF contract outworkers taken to be employees in certain circumstances

789BA Provisions covered by this Division

- (1) This Division covers the provisions of this Act, other than the following provisions (and other than regulations made for the purposes of the following provisions):
 - (a) Division 1, and this Division, of this Part;
 - (b) Divisions 2A and 2B of Part 1-3 (application of this Act in referring States);
 - (c) Part 3-4 (right of entry);
 - (d) Part 3-5 (stand down);
 - (e) Part 6-3 (extension of National Employment Standards entitlements);
 - (ea) Part 6-3A (transfer of business from a State public sector employer);
 - (f) Part 6-4 (additional provisions relating to termination of employment);
 - (g) Part 1 of Schedule 1.

- (2) Provisions of this Act that are not covered by this Division are to be interpreted disregarding the effect of this Division in relation to other provisions of this Act.

Note: For example, references to national system employees and national system employers, in provisions of this Act that are not covered by this Division, are to be interpreted disregarding the effect of this Division in relation to the definitions of those expressions in sections 13 and 14.

- (3) References in provisions that are covered by this Division to matters dealt with in, or occurring under, provisions of this Act that are not covered by this Division (the *excluded provisions*) are to be interpreted having regard to the fact that this Division does not apply for the purposes of the excluded provisions.

789BB TCF contract outworkers taken to be employees in certain circumstances

- (1) For the purposes of the provisions covered by this Division:
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- (a) a TCF contract outworker is taken to be an employee (within the ordinary meaning of that expression), and to be a national system employee, in relation to particular TCF work performed by the outworker, if:
 - (i) the work is performed directly or indirectly for a Commonwealth outworker entity; and
 - (ii) if the entity is a constitutional corporation—the work is performed for the purposes of a business undertaking of the corporation; and
- (b) the person (whether a Commonwealth outworker entity referred to in subparagraph (a)(i) or another person) that engages the outworker is taken to be the employer (within the ordinary meaning of that expression), and to be a national system employer, of the outworker in relation to the TCF work.

Note 1: See section 17A for when TCF work is performed *directly* or *indirectly* for a person.

Note 2: See also section 789BC, which allows regulations to deal with matters relating to TCF contract outworkers who are taken by this section to be employees.

- (2) A **TCF contract outworker** is a TCF outworker who performs work other than as an employee.
- (3) In interpreting any of the following for the purposes of the provisions covered by this Division:
 - (a) provisions of this Act;
 - (b) any instrument that is relevant to the relationship between the TCF contract outworker and the person referred to in paragraph (1)(b);an interpretation that is consistent with the objective stated in subsection (4) is to be preferred to an interpretation that is not consistent with that objective.
- (4) The objective is that a TCF contract outworker who is taken to be an employee in relation to TCF work should have the same rights and obligations in relation to the work as an employee would have if he or she were employed by the person referred to in paragraph (1)(b) to do the work.
- (5) This section has effect subject to regulations made for the purposes of section 789BC.

789BC Regulations relating to TCF outworkers who are taken to be employees

- (1) For the purpose of furthering the objective stated in subsection 789BB(4), the regulations may do either or both of the following in relation to TCF outworkers (*deemed employees*) who are taken by section 789BB to be employees of other persons (*deemed employers*) in relation to TCF work:
 - (a) provide that provisions covered by this Division apply in relation to deemed employees and deemed employers with specified modifications;
 - (b) otherwise make provision relating to how provisions covered by this Division apply in relation to deemed employees and deemed employers.
- (2) Regulations made for the purposes of subsection (1) may provide differently:
 - (a) for the purposes of different provisions; or
 - (b) in relation to different situations.
- (3) This section does not allow regulations to:
 - (a) modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence; or
 - (b) include new provisions that create offences.

Division 3—Recovery of unpaid amounts

789CA When this Division applies

Outworker not paid for TCF work in certain circumstances

- (1) This Division applies if:
- (a) a TCF outworker performs TCF work for a person (the **responsible person**):
 - (i) as an employee of the responsible person; or
 - (ii) under a contract for the provision of services to the responsible person; and
 - (b) the responsible person does not pay an amount (the **unpaid amount**) that is payable, in relation to the TCF work, by the responsible person:
 - (i) to the outworker; or
 - (ii) to another person, for the benefit of the outworker; on or before the day when the amount is due for payment; and
 - (c) the unpaid amount is payable under:
 - (i) a contract; or
 - (ii) this Act, or an instrument made under or in accordance with this Act; or
 - (iii) another law of the Commonwealth; or
 - (iv) a transitional instrument as continued in existence by Schedule 3 to the Transitional Act; or
 - (v) a State or Territory industrial law, or a State industrial instrument.
- Note: For the purpose of this Division, the effect of Division 2 must be taken into account in determining whether a TCF outworker performs work as a national system employee of a national system employer.
- (2) Without limiting paragraph (1)(b), the unpaid amount may (subject to paragraph (1)(c)) be an amount of any of the following kinds that relates to (or is attributable to) the TCF work:
- (a) an amount payable by way of remuneration or commission;
 - (b) an amount payable in respect of leave;

Section 789CA

- (c) an amount payable by way of contributions to a superannuation fund;
- (d) an amount payable by way of reimbursement for expenses incurred.

Meaning of indirectly responsible entity

- (3) Subject to subsections (4) and (5), a person is an **indirectly responsible entity** in relation to the TCF work if:
 - (a) the person is a Commonwealth outworker entity; and
 - (b) the TCF work was performed indirectly:
 - (i) for the entity; and
 - (ii) if the entity is a constitutional corporation—for the purposes of a business undertaking of the corporation.

Note: See section 17A for when TCF work is performed **indirectly** for a person.

Extent of liability of indirectly responsible entity

- (4) If subsection (3) is satisfied in relation to a Commonwealth outworker entity and part only of the TCF work:
 - (a) the entity is an **indirectly responsible entity** in relation to that part of the TCF work; and
 - (b) for the purposes of applying this Division in relation to the entity and that part of the TCF work, the **unpaid amount** is so much only of the amount referred to in paragraph (1)(b) as is attributable to that part of the TCF work.

Retailer of goods not an indirectly responsible entity in certain circumstances

- (5) If:
 - (a) a Commonwealth outworker entity, as a retailer, sells goods produced by the TCF work; and
 - (b) the entity does not have any right to supervise or otherwise control the performance of the work before the goods are delivered to the entity;the entity is not an **indirectly responsible entity** in relation to the TCF work.

789CB Liability of indirectly responsible entity for unpaid amount

- (1) Each indirectly responsible entity (or the indirectly responsible entity, if there is only one) is liable to pay the unpaid amount.
- (3) If there are 2 or more indirectly responsible entities, those entities are jointly and severally liable for the payment of the unpaid amount.
- (4) Subject to subsection 789CE(1A), this section does not affect the liability of the responsible person to pay the unpaid amount.

789CC Demand for payment from an apparent indirectly responsible entity

- (1) The TCF outworker, or a person acting on behalf of the outworker, may give an apparent indirectly responsible entity a written demand for payment of the amount that the outworker reasonably believes the entity is liable for under section 789CB.
- (2) An entity is an *apparent indirectly responsible entity* in relation to the TCF work if the TCF outworker reasonably believes that the entity is an indirectly responsible entity in relation to the TCF work.
- (3) The demand must:
 - (a) specify the amount, and identify the responsible person; and
 - (b) include particulars of the TCF work to which the amount relates, and why the amount is payable by the entity to which the demand is given; and
 - (c) state that if the specified amount is not paid by a specified time, proceedings may be commenced against the entity under section 789CD.
- (4) The time specified for the purpose of paragraph (3)(c) must not be less than 14 days after the demand is given to the entity.

789CD Court order for entity to pay amount demanded

- (1) If:
 - (a) in accordance with section 789CC, an apparent indirectly responsible entity has been given a demand for payment of a specified amount; and

Section 789CD

- (b) the amount has not been paid in full by the time specified in the demand;
- a person or organisation specified in subsection (2) (the *applicant*) may commence proceedings for an order requiring the entity to pay the specified amount.
- (2) The proceedings may be commenced:
- (a) by the TCF outworker; or
 - (b) on the TCF outworker's behalf, by:
 - (i) an organisation that is entitled to represent the industrial interests of the outworker; or
 - (ii) an inspector.
- (3) The proceedings may be commenced in:
- (a) the Federal Court; or
 - (b) the Federal Magistrates Court; or
 - (c) an eligible State or Territory court.
- (4) Subject only to subsections (5) and (6), the court may make an order requiring the entity to pay, to the outworker or to another person on the outworker's behalf, the specified amount (or so much of that amount as the applicant alleges is still owing).
- (5) The court must not make an order under subsection (4) if the entity satisfies the court that the entity is not liable under section 789CB to pay any of the specified amount.
- (6) If the entity satisfies the court that the amount of the entity's liability under section 789CB is less than the specified amount (or is less than so much of that amount as the applicant alleges is still owing), the court must not make an order under subsection (4) requiring the entity to pay more than that lesser amount.
- (7) In making the order, the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.
- (8) Without limiting subsection (7), in determining the amount of interest, the court must take into account the period between the day when the unpaid amount was due for payment by the responsible person and the day when the order is made.

- (9) Proceedings cannot be commenced under this section more than 6 years after the time when the unpaid amount became due for payment by the responsible person.

789CE Effect of payment by entity (including entity's right to recover from responsible person)

- (1) This section applies if an entity pays an amount in discharge of a liability of the entity under section 789CB, or pursuant to an order under section 789CD.
- (1A) The payment discharges the liability of the responsible person for the unpaid amount, to the extent of the payment. This does not affect any right that the entity has to recover an equivalent amount from the responsible person (under this section or otherwise) or from another person, or to be otherwise indemnified in relation to the making of the payment.
- (2) The entity may, in accordance with this section, recover from the responsible person an amount (the *recoverable amount*) equal to the sum of:
- (a) the amount paid by the entity as mentioned in subsection (1); and
 - (b) any interest paid by the entity in relation to that amount pursuant to an order under section 789CD.
- (3) The entity may recover the recoverable amount:
- (a) by offsetting it against any amount that the entity owes to the responsible person; or
 - (b) by action against the responsible person under subsection (4).
- (4) The entity may commence proceedings against the responsible person for payment to the entity of the recoverable amount. The proceedings may be commenced in:
- (a) the Federal Court; or
 - (b) the Federal Magistrates Court; or
 - (c) an eligible State or Territory court.
- (5) The court may make an order requiring the responsible person to pay the entity the recoverable amount (or so much of it as is still owing) if the court is satisfied that:
- (a) this section applies as mentioned in subsection (1); and

Chapter 6 Miscellaneous

Part 6-4A Special provisions about TCF outworkers

Division 3 Recovery of unpaid amounts

Section 789CF

- (b) the entity has not otherwise recovered the recoverable amount in full from the responsible person.
- (6) In making the order the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.
- (7) Without limiting subsection (6), in determining the amount of interest, the court must take into account the period between the day when the recoverable amount was paid by the entity and the day when the order is made.
- (8) Proceedings cannot be commenced under this section more than 6 years after the time when the entity paid the recoverable amount.

789CF Division does not limit other liabilities or rights

Nothing in this Division limits any other liability or right in respect of the entitlement of the TCF outworker to the unpaid amount (or to have the unpaid amount paid to another person for the outworker's benefit).

Division 4—Code of practice relating to TCF outwork

789DA Regulations may provide for a code

For the purpose of furthering the objects of this Part, the regulations may prescribe a code (the *TCF outwork code*) dealing with standards of conduct and practice to be complied with in relation to any of the following:

- (a) the employment or engagement of TCF outworkers;
- (b) arranging for TCF work to be performed, if the work:
 - (i) is to be performed by TCF outworkers; or
 - (ii) is of a kind that is often performed by TCF outworkers;
- (c) the sale of goods produced by TCF work.

Note 1: In situations where there is a chain or series of arrangements for the supply or production of goods, the TCF outwork code may (subject to section 789DC) impose obligations on any persons that are parties to arrangements in that chain or series.

Note 2: References in other provisions to “this Act” include the code, because the code is in the regulations and is therefore within the definition of *this Act* in section 12.

789DB Matters that may be dealt with in TCF outwork code

- (1) The matters that may be dealt with in the TCF outwork code include (but are not limited to) the following:
 - (a) record keeping requirements;
 - (b) reporting on compliance with record keeping requirements, or with other requirements of the code;
 - (c) general matters relating to the operation and administration of the code.
- (2) The TCF outwork code must not specify wages or other entitlements for TCF outworkers.

789DC Persons on whom obligations may be imposed by TCF outwork code

- (1) The TCF outwork code may only impose obligations on a person if one or more of subsections (2) to (5) applies to the person.

Chapter 6 Miscellaneous

Part 6-4A Special provisions about TCF outworkers

Division 4 Code of practice relating to TCF outwork

Section 789DC

Note: See also subsection (6), which limits the matters in relation to which obligations may be imposed.

- (2) This subsection applies to a person if the person is a national system employer that employs TCF outworkers.

Note: For the purpose of this Division, the effect of Division 2 must be taken into account in determining whether a person is a national system employer that employs TCF outworkers.

- (3) This subsection applies to a person if:

- (a) the person is a Commonwealth outworker entity; and
- (b) the person arranges for TCF work to be performed (directly or indirectly):
 - (i) for the person; and
 - (ii) if the person is a constitutional corporation—for the purposes of a business undertaking of the corporation; and
- (c) the work:
 - (i) is to be performed by TCF outworkers; or
 - (ii) is of a kind often performed by TCF outworkers.

Note: See section 17A for when a person arranges for TCF work to be performed *directly* or *indirectly* for the person.

- (4) This subsection applies to a person if:

- (a) the person arranges for TCF work to be performed; and
- (b) the work:
 - (i) is to be performed by TCF outworkers; or
 - (ii) is of a kind often performed by TCF outworkers; and
- (c) the work is to be performed indirectly:
 - (i) for another person, being a Commonwealth outworker entity; and
 - (ii) if that Commonwealth outworker entity is a constitutional corporation—for the purposes of a business undertaking of that corporation.

- (5) This subsection applies to a person if the person is a constitutional corporation that sells goods produced by TCF work.

- (6) The capacity for the TCF outwork code to impose obligations on a person is subject to the following limitations:

- (a) the obligations that may be imposed on a person because subsection (2) applies to the person are limited to obligations relating to the person's employment of TCF outworkers;
- (b) the obligations that may be imposed on a person because subsection (3) applies to the person are limited to obligations relating to TCF work (or an arrangement for TCF work) because of which that subsection applies to the person;
- (c) the obligations that may be imposed on a person because subsection (4) applies to the person are limited to obligations relating to TCF work (or an arrangement for TCF work) because of which that subsection applies to the person;
- (d) the obligations that may be imposed on a person because subsection (5) applies to the person are limited to obligations relating to the person being a seller of goods as referred to in that subsection.

789DD Other general matters relating to content of TCF outwork code

- (1) The TCF outwork code may be expressed to apply in relation to:
 - (a) all persons covered by section 789DC, or specified classes of those persons; and
 - (b) all TCF work, or specified classes of TCF work.

Note: A class of person or TCF work may (for example) be identified by reference to a particular sector of the textile, clothing or footwear industry.

- (2) The TCF outwork code may provide differently for:
 - (a) different classes of persons covered by section 789DC; or
 - (b) different classes of TCF work; or
 - (c) different situations.

789DE Relationship between the TCF outwork code and other instruments

- (1) A TCF award prevails over the TCF outwork code, to the extent of any inconsistency.
- (2) The TCF outwork code prevails over any of the following, to the extent of any inconsistency:
 - (a) an enterprise agreement;

Chapter 6 Miscellaneous

Part 6-4A Special provisions about TCF outworkers

Division 4 Code of practice relating to TCF outwork

Section 789DE

- (b) a workplace determination;
 - (c) an agreement-based transitional instrument, as continued in existence by Schedule 3 to the Transitional Act.
- (3) Subject to subsection (5), the TCF outwork code may:
 - (a) make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time; or
 - (b) make provision to the effect that compliance with a specified term of an instrument or other writing as in force or existing from time to time is taken to satisfy a particular requirement of the code.
- (4) The kinds of instrument or other writing by reference to which the TCF outwork code may make provision as mentioned in subsection (3) include (but are not limited to) the following:
 - (a) a TCF award;
 - (b) a code (however described), dealing with matters relating to outworkers, that is made under a law of a State or Territory.
- (5) The TCF outwork code cannot make provision as mentioned in subsection (3) by reference to any of the following:
 - (a) an enterprise agreement;
 - (b) a workplace determination;
 - (c) an agreement-based transitional instrument, as continued in existence by Schedule 3 to the Transitional Act.
- (6) Subsections (3) and (4) have effect despite subsection 14(2) of the *Legislative Instruments Act 2003*.

Division 5—Miscellaneous

789EA Part not intended to exclude or limit State or Territory laws relating to outworkers

- (1) This Part is not intended to exclude or limit the operation of a law of a State or Territory (or an instrument made under a law of a State or Territory), to the extent that the law (or instrument) relates to outworkers and is capable of operating concurrently with this Part.
- (2) A reference in subsection (1) to this Part includes a reference to any regulations made for the purposes of this Part.

Part 6-5—Miscellaneous

Division 1—Introduction

790 Guide to this Part

This Part deals with miscellaneous matters such as delegations and regulations.

791 Meanings of *employee* and *employer*

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

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

Division 2—Miscellaneous

792 Delegation by Minister

- (1) The Minister may, in writing, delegate all or any of his or her functions or powers under this Act to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Minister.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

793 Liability of bodies corporate

Conduct of a body corporate

- (1) Any conduct engaged in on behalf of a body corporate:
 - (a) by an officer, employee or agent (an **official**) of the body within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an official of the body, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the official;

is taken, for the purposes of this Act and the procedural rules, to have been engaged in also by the body.

State of mind of a body corporate

- (2) If, for the purposes of this Act or the procedural rules, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is enough to show:
 - (a) that the conduct was engaged in by a person referred to in paragraph (1)(a) or (b); and
 - (b) that the person had that state of mind.

Meaning of state of mind

- (3) The *state of mind* of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

Disapplication of Part 2.5 of the Criminal Code

- (4) Part 2.5 of Chapter 2 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

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

794 Signature on behalf of body corporate

For the purposes of this Act, a document may be signed on behalf of a body corporate by an authorised officer of the body and need not be made under the body's seal.

795 Public sector employer to act through employing authority

Employer to act through employing authority

- (1) For the purposes of this Act and the procedural rules, the employer of an employee (a *public sector employee*) employed in public sector employment must act only through the employee's employing authority acting on behalf of the employer.

Acts done by or to employing authority

- (2) For the purposes of this Act and the procedural rules, anything done by or to a public sector employee's employing authority acting on behalf of the employee's employer is taken to have been done by or to the employer (as the case may be).

Application of subsections (1) and (2)

- (3) Subsections (1) and (2) apply despite any other law of the Commonwealth, a State or a Territory.

Meaning of public sector employment

- (4) **Public sector employment** means employment of, or service by, a person in any capacity (whether permanently or temporarily, and whether full-time or part-time):
- (a) under the *Public Service Act 1999* or the *Parliamentary Service Act 1999*; or
 - (b) by or in the service of a Commonwealth authority; or
 - (c) under a law of the Australian Capital Territory relating to employment by that Territory, including a law relating to the Australian Capital Territory Government Service; or
 - (d) by or in the service of:
 - (i) an enactment authority as defined by section 3 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*; or
 - (ii) a body corporate incorporated by or under a law of the Australian Capital Territory and in which the Australian Capital Territory has a controlling interest;
other than an authority or body prescribed by the regulations;
or
 - (e) under a law of the Northern Territory relating to the Public Service of the Northern Territory; or
 - (f) by or in the service of a Northern Territory authority; or
 - (g) by or in the service of a person prescribed by the regulations;
or
 - (h) under a law prescribed by the regulations.
- (5) However, **public sector employment** does not include:
- (a) employment of, or service by, a person prescribed by the regulations; or
 - (b) employment or service under a law prescribed by the regulations.

This subsection does not apply for the purposes of section 40.

Note: Section 40 deals with the interaction between fair work instruments and public sector employment laws.

Meaning of employing authority

- (6) An **employing authority** of an employee is the person prescribed by the regulations as the employee's employing authority.

795A The Schedules

The Schedules have effect.

Note: The Schedules contain application, transitional and saving provisions relating to amendments of this Act.

796 Regulations—general

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations made under this Act prevail over procedural rules made under this Act, to the extent of any inconsistency.

796A Regulations conferring functions

The regulations may confer functions on the following:

- (a) the FWC;
- (b) the General Manager.

797 Regulations dealing with offences

- (1) The regulations may provide for offences against the regulations.
- (2) The penalties for offences must not be more than 20 penalty units.

798 Regulations dealing with civil penalties

- (1) The regulations may provide for civil penalties for contravention of the regulations.
- (2) The penalties for contravention must not be more than:
 - (a) 20 penalty units for an individual; or
 - (b) 100 penalty units for a body corporate.

799 Regulations dealing with infringement notices

Infringement notices for offences

- (1) The regulations may provide for a person who is alleged to have committed an offence against the regulations to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed one-fifth of the maximum penalty prescribed by the regulations for that offence.

800 Regulations dealing with exhibiting fair work instruments

The regulations may provide for the exhibiting, on the premises of an employer, of a fair work instrument or a term of a fair work instrument.

Schedule 1 Application, saving and transitional provisions relating to amendments of this Act

Part 1 Amendments made by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012

Clause 1

Schedule 1—Application, saving and transitional provisions relating to amendments of this Act

Note: See section 795A.

Part 1—Amendments made by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012

1 Definitions

In this Part:

amended Act means this Act as amended by the amending Act.

amending Act means the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*.

commencement means the commencement of this Part.

deemed employee means a TCF contract outworker who is taken by section 789BB of the amended Act to be an employee.

deemed employer means a person who is taken by section 789BB of the amended Act to be the employer of a deemed employee.

2 Section 789BB of amended Act applies to contracts entered into after commencement

- (1) Section 789BB of the amended Act applies in relation to particular TCF work performed by a TCF contract outworker only if the contract for the provision of services, for the purpose of which the outworker performs the work, is entered into after commencement.
- (2) Subclause (1) does not prevent regulations made for the purposes of section 789BC of the amended Act, or clause 7 of this Part, from dealing with the effect, in relation to a person who is taken by

section 789BB of the amended Act to be an employee, of matters that occurred before commencement.

3 Effect on TCF contract outworker's entitlements

Accrued entitlements not affected

- (1) The amendments made by the amending Act do not affect any entitlement that a TCF contract outworker had accrued before commencement.

Effect of modern award term requiring National Employment Standards to be applied to TCF contract outworker

- (2) To avoid doubt, if:
 - (a) a term of a modern award requires the principal of a TCF contract outworker to apply the National Employment Standards to the outworker as if the outworker were an employee; and
 - (b) because of Division 2 of Part 6-4A of the amended Act, the outworker is taken to be an employee (being a national system employee) of the principal for the purposes of Part 2-2 of the amended Act (the National Employment Standards);

then, to the extent that the term gives the outworker an entitlement that is the same as an entitlement (the *NES entitlement*) of the outworker (as a national system employee) under the National Employment Standards, the term operates in parallel with the outworker's NES entitlement, but not so as to give the outworker a double benefit.

4 Fair work instruments etc. made before commencement

- (1) This clause applies in relation to:
 - (a) a fair work instrument made before commencement; or
 - (b) a transitional instrument as continued in existence by Schedule 3 to the Transitional Act.
- (2) A reference in the instrument to an employee or an employer does not include a deemed employee or a deemed employer, unless the instrument is, after commencement, varied to make it clear that the

Schedule 1 Application, saving and transitional provisions relating to amendments of this Act

Part 1 Amendments made by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012

Clause 5

reference is intended to include a deemed employee or deemed employer.

- (3) This clause is not to be taken to confer a power to vary the instrument.

5 Application of Division 3 of Part 6-4A of amended Act

For the purposes of Division 3 of Part 6-4A of the amended Act, an entity is not an indirectly responsible entity in relation to particular TCF work if the arrangement to which the entity is a party, being the arrangement because of which the work can be regarded as being performed indirectly for the entity, was entered into before commencement.

6 Application of subsection 203(2A) of amended Act

Subsection 203(2A) of the amended Act applies in relation to enterprise agreements made after commencement.

7 Regulations dealing with various matters

Application, saving and transitional

- (1) The regulations may make provisions dealing with matters of an application, saving or transitional nature relating to the amendments made by the amending Act.
- (2) The provisions of this Part have effect subject to any regulations that are made for the purpose of subclause (1).

Application to TCF outworkers of provisions of the Transitional Act

- (3) The regulations may make provisions dealing with how the Transitional Act applies in relation to TCF outworkers.
- (4) Without limiting subclause (3), regulations made for the purposes of that subclause may:
- (a) provide that the Transitional Act applies with specified modifications; or

- (b) otherwise make provision relating to how provisions of that Act apply.

Regulations may be expressed to take effect before registration

- (5) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made for the purposes of subclause (1) or (3) of this clause may be expressed to take effect from a date before the regulations are registered under that Act.

Schedule 1 Application, saving and transitional provisions relating to amendments of this Act

Part 2 Amendments made by the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012

Clause 8

Part 2—Amendments made by the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012

8 Definitions

In this Part:

amended Act means this Act as amended by the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*.

9 Application of sections 149A and 155A of amended Act

Sections 149A and 155A of the amended Act apply in relation to a modern award that is in operation on or after 1 January 2014, whether or not the award was made before that day.

10 FWA to vary certain modern awards

- (1) This clause applies in relation to a modern award if the award:
 - (a) is made before 1 January 2014; and
 - (b) is in operation on that day; and
 - (c) immediately before that day, does not include a term (the *relevant term*) of the kind mentioned in section 149A of the amended Act.
- (2) FWA must, by 31 December 2013, make a determination varying the modern award to include the relevant term.
- (3) A determination made under subclause (2) comes into operation on (and takes effect from) 1 January 2014.
- (4) Section 168 applies to a determination made under subclause (2) as if it were a determination made under Part 2-3.

11 FWA to update text of certain modern awards

- (1) This clause applies in relation to a modern award if the award:
 - (a) is made before 1 January 2014; and
 - (b) is in operation on that day; and
 - (c) immediately before that day, includes a term (the *relevant term*) of the kind mentioned in section 155A of the amended Act that specifies a fund or scheme (a *non-complying fund or scheme*) that does not satisfy paragraph (1)(a) or (b) of that section.
- (2) FWA must ensure that the text of the modern award as published by FWA does not include a non-complying fund or scheme in the relevant term.
- (3) FWA must do so by 1 January 2014 (despite section 155A of the amended Act).

12 Application of paragraph 194(h) of amended Act

Paragraph 194(h) of the amended Act applies in relation to an enterprise agreement that is approved by FWA on or after 1 January 2014.

Schedule 2—Amendments made by the Fair Work Amendment (Transfer of Business) Act 2012

Note: See section 795A.

1 Definitions

In this Schedule:

amending Act means the *Fair Work Amendment (Transfer of Business) Act 2012*.

commencement means the commencement of this Schedule.

2 Application of the amendments made by the amending Act

The amendments made by the amending Act apply in relation to a transfer of business referred to in Part 6-3A (as inserted by item 1 of Schedule 1 to the amending Act), but only if the connection between the old State employer and the new employer referred to in paragraph 768AD(1)(d) (as inserted by that item) occurs on or after commencement.

Schedule 3—Amendments made by the Fair Work Amendment Act 2012

Note: See section 795A.

Part 1—Preliminary

1 Definitions

In this Schedule:

amending Act means the *Fair Work Amendment Act 2012*.

doing a thing includes making an instrument.

FWA (short for Fair Work Australia) means the body referred to in section 575, as in force immediately before the commencement of Part 1 of Schedule 9 to the amending Act.

Part 2—Default superannuation (Schedule 1)

2 Schedule 1 to the amending Act

- (1) Section 149B, subsection 149C(1) and section 149D (as inserted by Schedule 1 to the amending Act) apply in relation to a modern award that:
 - (a) is made on or after 1 January 2014; or
 - (b) is made before 1 January 2014 and that is varied on or after that day under Division 4A of Part 2-3 (as inserted by Schedule 1 to the amending Act).
- (2) Despite the repeal of sections 149A and 155A made by Schedule 1 to the amending Act, those sections continue in force in relation to a modern award that:
 - (a) is made before 1 January 2014; and
 - (b) is not varied on or after that day under Division 4A of Part 2-3 (as inserted by Schedule 1 to the amending Act).
- (3) The amendments made by items 15, 18, 19 and 20 of Schedule 1 to the amending Act apply in relation to a modern award that is in operation on or after 1 January 2014, whether or not the award was made before that day.

Part 3—Modern awards (Schedule 3)

3 Part 1 of Schedule 3 to the amending Act

- (1) This clause applies if, before the commencement of Part 1 of Schedule 3 to the amending Act (which is about variation etc. of modern awards):
 - (a) a determination was made under subsection 160(1) (about varying a modern award); or
 - (b) an application was made under subsection 160(2) (about varying a modern award).
- (2) The determination and the application are as valid, and are taken always to have been as valid, as they would have been if paragraphs 160(2)(c) and (d) (as inserted by Part 1 of Schedule 3 to the amending Act) had been in force at the time the determination or application was made.

Part 4—Enterprise agreements (Schedule 4)

4 Part 1 of Schedule 4 to the amending Act

The amendment made by Part 1 of Schedule 4 to the amending Act (which is about enterprise agreements covering a single employee) applies in relation to enterprise agreements that are purportedly made after the commencement of that Part.

5 Part 2 of Schedule 4 to the amending Act

The amendments made by Part 2 of Schedule 4 to the amending Act (which is about bargaining representatives) apply in relation to appointments of bargaining representatives that are made after the commencement of that Part.

6 Part 3 of Schedule 4 to the amending Act

- (1) The amendment made by Part 3 of Schedule 4 to the amending Act (which is about unlawful terms) applies in relation to enterprise agreements that are made before or after the commencement of that Part.
- (2) However, if:
 - (a) an enterprise agreement that was made before the commencement of that Part included a term referred to in paragraph 194(ba) (as inserted by Part 3 of Schedule 4 to the amending Act); and
 - (b) a person made an election in accordance with that term before the commencement of that Part;then the amendment does not apply in relation to that person.

7 Part 4 of Schedule 4 to the amending Act

The amendment made by Part 4 of Schedule 4 to the amending Act (which is about scope orders) applies in relation to applications for a scope order that are made after the commencement of that Part.

8 Part 5 of Schedule 4 to the amending Act

- (1) The amendments made by Part 5 of Schedule 4 to the amending Act (which is about notice of employee representational rights) apply in relation to notices of employee representational rights that are given after the commencement of that Part.
- (2) Regulations that:
 - (a) were made for the purposes of subsection 174(6) before the commencement of Part 5 of Schedule 4 to the amending Act; and
 - (b) were in force immediately before that commencement;continue in force (and may be dealt with) after that commencement as if they had been made for the purposes of subsection 174(1A) (as inserted by Part 5 of Schedule 4 to the amending Act).

Part 5—General protections (Schedule 5)

9 Part 1 of Schedule 5 to the amending Act

The amendment made by Part 1 of Schedule 5 to the amending Act (which is about time limits for making applications) applies in relation to dismissals that take effect after the commencement of that Part.

Part 6—Unfair dismissal (Schedule 6)

10 Part 1 of Schedule 6 to the amending Act

The amendment made by Part 1 of Schedule 6 to the amending Act (which is about time limits for making applications) applies in relation to dismissals that take effect after the commencement of that Part.

11 Part 2 of Schedule 6 to the amending Act

The amendments made by Part 2 of Schedule 6 to the amending Act (which is about the power to dismiss applications) apply in relation to dismissals that take effect after the commencement of that Part.

12 Part 3 of Schedule 6 to the amending Act

The amendments made by Part 3 of Schedule 6 to the amending Act (which is about costs orders against parties) apply in relation to dismissals that take effect after the commencement of that Part.

13 Part 4 of Schedule 6 to the amending Act

The amendment made by Part 4 of Schedule 6 to the amending Act (which is about costs orders against lawyers and paid agents) applies in relation to dismissals that take effect after the commencement of that Part.

Part 7—Industrial action (Schedule 7)

14 Part 1 of Schedule 7 to the amending Act

The amendments made by Part 1 of Schedule 7 to the amending Act (which is about electronic voting in protected action ballots) apply in relation to applications for protected action ballot orders that are made after the commencement of that Part.

15 Part 2 of Schedule 7 to the amending Act

The amendments made by Part 2 of Schedule 7 to the amending Act (which is about employees to be balloted in protected action ballots) apply in relation to applications for protected action ballot orders that are made after the commencement of that Part.

16 Part 3 of Schedule 7 to the amending Act

The amendments made by Part 3 of Schedule 7 to the amending Act (which is about conducting protected action ballots) apply in relation to protected action ballot orders that are made after the commencement of that Part.

Part 8—The Fair Work Commission (Schedule 8)

17 Part 1 of Schedule 8 to the amending Act

The amendment made by Part 1 of Schedule 8 to the amending Act (which is about stay orders) applies in relation to orders under subsection 606(1) that are made after the commencement of that Part.

18 Part 2 of Schedule 8 to the amending Act

The amendments made by Part 2 of Schedule 8 to the amending Act (which is about conflicts of interest) apply in relation to matters that an FWC member begins to deal with before or after the commencement of that Part.

19 Part 4 of Schedule 8 to the amending Act

The amendments made by Part 4 of Schedule 8 to the amending Act (which is about appointing acting Commissioners) apply in relation to appointments that are made after the commencement of that Part.

20 Part 5 of Schedule 8 to the amending Act

The amendments made by Part 5 of Schedule 8 to the amending Act (which is about appointing the General Manager) apply in relation to appointments and acting appointments that are made after the commencement of that Part.

21 Part 6 of Schedule 8 to the amending Act

The amendments made by Part 6 of Schedule 8 to the amending Act (which is about Vice Presidents) apply in relation to appointments that take effect after the commencement of that Part.

22 Part 7 of Schedule 8 to the amending Act

The amendments made by Part 7 of Schedule 8 to the amending Act (which is about handling complaints) apply after the

Clause 23

commencement of that Part in relation to a complaint about an FWC Member, regardless of whether:

- (a) the complaint is made before or after that commencement; or
- (b) the circumstances that give rise to the complaint occur before or after that commencement.

23 Part 8 of Schedule 8 to the amending Act

The amendments made by Part 8 of Schedule 8 to the amending Act (which is about engaging in outside work) apply in relation to paid work that is engaged in after the commencement of that Part.

Part 9—Changing the name of Fair Work Australia (Schedule 9)

24 Transitional provision—President

- (1) The person holding office as the President of FWA immediately before the commencement of Part 1 of Schedule 9 to the amending Act continues to hold office as the President of the FWC.
- (2) If, before that commencement, a thing was done by, or in relation to, the President of FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, the President of the FWC.
- (3) For the purposes of subclause (2), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (4) The Minister may, by writing, determine that subclause (2):
 - (a) does not apply in relation to a specified thing done by, or in relation to, the President of FWA; or
 - (b) applies as if the reference in that subclause to the President of the FWC were a reference to the FWC; or
 - (c) applies as if the reference in that subclause to the President of the FWC were a reference to another FWC member.A determination under this subclause has effect accordingly.
- (5) A determination made under subclause (4) is not a legislative instrument.

25 Transitional provision—Deputy President

- (1) Subject to subclause (2), a person holding office as a Deputy President of FWA immediately before the commencement of Part 1 of Schedule 9 to the amending Act continues to hold office as a Deputy President of the FWC.

Clause 26

- (2) If, immediately before that commencement, a person:
 - (a) is a member of a prescribed State industrial authority; and
 - (b) holds office as a Deputy President of FWA;the person continues to hold office as a Deputy President of the FWC for the balance of the person's term of appointment that remains immediately before that commencement.
- (3) If, before that commencement, a thing was done by, or in relation to, a Deputy President of FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, a Deputy President of the FWC.
- (4) For the purposes of subclause (3), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (5) The Minister may, by writing, determine that subclause (3):
 - (a) does not apply in relation to a specified thing done by, or in relation to, a Deputy President of FWA; or
 - (b) applies as if the reference in that subclause to the Deputy President of the FWC were a reference to the FWC; or
 - (c) applies as if the reference in that subclause to the Deputy President of the FWC were a reference to another FWC member.A determination under this subclause has effect accordingly.
- (6) A determination made under subclause (5) is not a legislative instrument.

26 Transitional provision—Commissioner

- (1) Subject to subclause (2), a person holding office as a Commissioner of FWA immediately before the commencement of Part 1 of Schedule 9 to the amending Act continues to hold office as a Commissioner of the FWC.
 - (2) If, immediately before that commencement, a person:
 - (a) is a member of a prescribed State industrial authority; and
-

- (b) holds office as a Commissioner of FWA;
the person continues to hold office as a Commissioner of the FWC for the balance of the person's term of appointment that remains immediately before that commencement.
- (3) If, before that commencement, a thing was done by, or in relation to, a Commissioner of FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, a Commissioner of the FWC.
- (4) For the purposes of subclause (3), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (5) The Minister may, by writing, determine that subclause (3):
- (a) does not apply in relation to a specified thing done by, or in relation to, a Commissioner of FWA; or
 - (b) applies as if the reference in that subclause to a Commissioner of the FWC were a reference to the FWC; or
 - (c) applies as if the reference in that subclause to a Commissioner of the FWC were a reference to another FWC member.
- A determination under this subclause has effect accordingly.
- (6) A determination made under subclause (5) is not a legislative instrument.

27 Transitional provision—Minimum Wage Panel Member

- (1) A person holding office as a Minimum Wage Panel Member of FWA immediately before the commencement of Part 1 of Schedule 9 to the amending Act continues to hold office:
- (a) as a Minimum Wage Panel Member of the FWC; and
 - (b) for the balance of the person's term of appointment that remains immediately before that commencement.
- (2) If, before that commencement, a thing was done by, or in relation to, a Minimum Wage Panel Member of FWA, then, for the

Clause 28

purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, a Minimum Wage Panel Member of the FWC.

- (3) For the purposes of subclause (2), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (4) The Minister may, by writing, determine that subclause (2):
- (a) does not apply in relation to a specified thing done by, or in relation to, a Minimum Wage Panel Member of FWA; or
 - (b) applies as if the reference in that subclause to a Minimum Wage Panel Member of the FWC were a reference to the FWC; or
 - (c) applies as if the reference in that subclause to a Minimum Wage Panel Member of the FWC were a reference to another FWC member.

A determination under this subclause has effect accordingly.

- (5) A determination made under subclause (4) is not a legislative instrument.

28 Operation of laws—things done by, or in relation to, FWA

- (1) If, before the commencement of Part 1 of Schedule 9 to the amending Act, a thing was done by, or in relation to, FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, the FWC.
- (2) For the purposes of subclause (1), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (3) The Minister may, by writing, determine that subclause (1):
- (a) does not apply in relation to a specified thing done by, or in relation to, FWA; or

- (b) applies as if the reference in that subclause to the FWC were a reference to the President of the FWC; or
 - (c) applies as if the reference in that subclause to the FWC were a reference to another FWC member.
- A determination under this subclause has effect accordingly.
- (4) A determination made under subclause (3) is not a legislative instrument.

29 Transitional provision—General Manager and staff of FWA

General Manager

- (1) The person holding office as the General Manager of FWA immediately before the commencement of Part 1 of Schedule 9 to the amending Act continues to hold office:
 - (a) as the General Manager of the FWC; and
 - (b) for the balance of the person's term of appointment that remains immediately before that commencement.
- (2) If, before that commencement, a thing was done by, or in relation to, the General Manager of FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, the General Manager of the FWC.
- (3) For the purposes of subclause (2), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (4) The Minister may, by writing, determine that subclause (2):
 - (a) does not apply in relation to a specified thing done by, or in relation to, the General Manager of FWA; or
 - (b) applies as if the reference in that subclause to the General Manager of the FWC were a reference to the Commonwealth.

A determination under this subclause has effect accordingly.

Clause 30

- (5) A determination made under subclause (4) is not a legislative instrument.

Staff

- (6) A person who, immediately before that commencement, was a member of the staff of FWA, continues, on and after that commencement, as a member of the staff of the FWC.

30 Operation of section 7 and subsection 25B(1) of the *Acts Interpretation Act 1901* not limited

This Part and Schedule 9 to the amending Act do not limit the operation of section 7 or subsection 25B(1) of the *Acts Interpretation Act 1901*.

Part 10—Other amendments (Schedule 10)

31 Part 1 of Schedule 10 to the amending Act

The amendment made by Part 1 of Schedule 10 to the amending Act (which is about costs orders in court proceedings) applies in relation to proceedings commenced after the commencement of that Part.

Part 11—Regulations

32 Regulations about application, transitional and saving matters

- (1) The regulations may prescribe matters of an application, transitional or saving nature relating to the amendments and repeals made by the amending Act.
- (2) Without limiting subclause (1), the regulations may:
 - (a) provide that Part 9 of this Schedule or Part 4 of Schedule 9 to the amending Act applies with specified modifications; or
 - (b) provide that the Transitional Act applies with specified modifications.
- (3) The provisions referred to in subclause (2) have effect subject to regulations made for the purposes of this clause.
- (4) Despite subsection 12(2) of the *Legislative Instruments Act 2003*:
 - (a) regulations relating to the amendments and repeals made by Schedule 9 to the amending Act; and
 - (b) regulations made for the purposes of subclause (2);may be expressed to take effect from a day before the regulations are registered under that Act.

Table of Acts**Notes to the *Fair Work Act 2009*****Note 1**

The *Fair Work Act 2009* as shown in this compilation comprises Act No. 28, 2009 amended as indicated in the Tables below.

For application, saving or transitional provisions and modifications made by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, see Act No. 55, 2009 (as amended).

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Fair Work Act 2009</i>	28, 2009	7 Apr 2009	Ss. 3–40: 26 May 2009 (see F2009L01818) Ss. 41–43, 50–54, 58, 169–281A, 300–327, 332, 333, 334–572, 719–740 and 769–800: 1 July 2009 (see F2009L02563) Ss. 44–49, 55–57A, 59–168, 282–299, 328–331, 333A and 741–768: 1 Jan 2010 (see F2009L02563) Ss. 573–718 and Schedule 1: 26 May 2009 Remainder: Royal Assent	

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i>	54, 2009	25 June 2009	Schedule 1 (items 1–10, 12) and Schedule 3: (a) Schedule 1 (item 11) and Schedule 20: Royal Assent Schedule 2 (items 52–63) and Schedule 5 (items 68, 69, 80): (a) Schedule 5 (items 67, 70–72) and Schedule 12 (items 1–3): (a) Schedule 5 (items 81, 82): 5 Aug 2009 (see s. 2(1))	Sch. 20
as amended by <i>Statute Law Revision Act 2012</i>	136, 2012	22 Sept 2012	Schedule 2 (item 14): (see 136, 2012 below)	—
<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>	55, 2009	25 June 2009	Schedule 6 (items 18–28) and Schedule 23 (items 3–7): (b) Schedule 18 (items 21, 21A–21G, 22) and Schedule 22 (items 92–95, 405, 583, 584): 1 July 2009 Schedule 23 (items 1–2E, 8–22): (b)	[see Note 1]
<i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009</i>	70, 2009	8 July 2009	Schedule 3 (items 111–114): (c)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Fair Work Amendment (State Referrals and Other Measures) Act 2009</i>	124, 2009	9 Dec 2009	Schedule 1 (items 1–6, 8–12, 14, 15, 17–41) and Schedule 3 (items 1A, 4–17): 1 Jan 2010 (see F2009L04605) Schedule 1 (item 7): (d) Schedule 1 (items 13, 16): (d) Schedule 1 (item 42): Royal Assent Schedule 2 (items 125–128): 1 Jan 2010 Schedule 2 (items 129–132): (d) Schedule 3 (items 1–3): 15 Dec 2009 (see F2009L04605)	Sch. 1 (item 42)
<i>Freedom of Information Amendment (Reform) Act 2010</i>	51, 2010	31 May 2010	Schedule 5 (item 34): (e)	—
<i>Sex and Age Discrimination Legislation Amendment Act 2011</i>	40, 2011	20 June 2011	Schedule 2 (items 11–13): 29 July 2011 (see F2011L01552)	—
<i>Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012</i>	33, 2012	15 Apr 2012	Schedule 1: 1 July 2012 (see F2012L01396) Remainder: Royal Assent	—
<i>Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012</i>	109, 2012	22 July 2012	Schedule 2 (items 9–21): 23 July 2012	—
<i>Navigation (Consequential Amendments) Act 2012</i>	129, 2012	13 Sept 2012	Schedule 2 (item 13): [see s. 2(1) and Note 2]	—
<i>Statute Law Revision Act 2012</i>	136, 2012	22 Sept 2012	Schedule 1 (items 122, 123): 1 Aug 2011 Schedule 1 (item 124): (f) Schedule 2 (item 14): (f)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012</i>	171, 2012	3 Dec 2012	Schedule 4 (items 1–8): (g)	—
<i>Fair Work Amendment Act 2012</i>	174, 2012	4 Dec 2012	Schedule 1: [see Note 3] Schedule 2 (items 1–61): [see Note 3] Schedules 3–7 and Schedule 8 (items 1–45, 57–76): 1 Jan 2013 (see F2012L02450) Schedule 9 (items 1–886, 1339–1383) and Schedule 10: 1 Jan 2013 Schedule 11: Royal Assent	—
<i>Fair Work Amendment (Transfer of Business) Act 2012</i>	175, 2012	4 Dec 2012	Schedule 1 (items 1–13, 16–67): 5 Dec 2012	—

Act Notes

(a) Subsection 2(1) (items 2–4, 8, 9, 15–18 and 34) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

- (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
Provision(s)	Commencement	Date/Details
2. Schedule 1, items 1 to 10	Immediately after the commencement of the provision(s) covered by table item 3.	25 June 2009
3. Schedule 1, item 11	The day on which this Act receives the Royal Assent.	25 June 2009
4. Schedule 1, item 12	Immediately after the commencement of the provision(s) covered by table item 3.	25 June 2009
8. Schedule 2, Part 2, Division 2	Immediately after the commencement of Part 3 of Schedule 6 to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> .	1 January 2010
9. Schedule 3	Immediately after the commencement of the provision(s) covered by table item 3.	25 June 2009
15. Schedule 5, item 67	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009
16. Schedule 5, items 68 and 69	Immediately after the commencement of Part 2-3 of the <i>Fair Work Act 2009</i> .	1 January 2010
17. Schedule 5, items 70 to 79	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009
18. Schedule 5, item 80	The later of: (a) immediately after the commencement of item 68 of Schedule 5; and (b) the commencement of item 38 of Schedule 3 to the <i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 January 2010 (paragraph (a) applies)
34. Schedule 12, items 1 to 3	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009

(b) Subsection 2(1) (items 4 and 9–16) of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* provides as follows:

- (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.

Act Notes

Provision(s)	Commencement	Date/Details
4. Schedule 6, Part 3	Immediately after the commencement of Part 2-3 of the <i>Fair Work Act 2009</i> .	1 January 2010
9. Schedule 23, items 1 to 2E	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009
10. Schedule 23, items 3 to 6	Immediately after the commencement of Part 2-2 of the <i>Fair Work Act 2009</i> .	1 January 2010
11. Schedule 23, item 7	Immediately after the commencement of Part 2-3 of the <i>Fair Work Act 2009</i> .	1 January 2010
12. Schedule 23, item 8	Immediately after the commencement of Part 2-8 of the <i>Fair Work Act 2009</i> .	1 July 2009
13. Schedule 23, item 9	Immediately after the commencement of Division 1 of Part 2-9 of the <i>Fair Work Act 2009</i> .	1 July 2009
13A. Schedule 23, items 9A and 9B	Immediately after the commencement of Part 3-1 of the <i>Fair Work Act 2009</i> .	1 July 2009
14. Schedule 23, items 10 to 12	Immediately after the commencement of Part 3-3 of the <i>Fair Work Act 2009</i> .	1 July 2009
15. Schedule 23, items 13 to 21	Immediately after the commencement of Part 4-1 of the <i>Fair Work Act 2009</i> .	1 July 2009
15A. Schedule 23, item 21A	Immediately after the commencement of Part 6-1 of the <i>Fair Work Act 2009</i> .	1 July 2009
15B. Schedule 23, items 21B and 21C	Immediately after the commencement of Part 6-4 of the <i>Fair Work Act 2009</i> .	1 July 2009
16. Schedule 23, item 22	Immediately after the commencement of section 799 of the <i>Fair Work Act 2009</i> .	1 July 2009

(c) Subsection 2(1) (item 8) of the *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009* provides as follows:

- (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.

Provision(s)	Commencement	Date/Details
8. Schedule 3, items 111 to 114	The later of: (a) the start of the 28th day after the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of paragraph 135(1)(b) of the <i>Fair Work Act 2009</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 January 2010 (paragraph (b) applies)

Act Notes

(d) Subsection 2(1) (items 3, 5, 7, 11 and 13) of the *Fair Work Amendment (State Referrals and Other Measures) Act 2009* provides as follows:

- (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.

Provision(s)	Commencement	Date/Details
3. Schedule 1, item 7	Immediately after the commencement of item 2 of Schedule 3.	15 December 2009
5. Schedule 1, item 13	Immediately after the commencement of item 11 of Schedule 1 to the <i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i> .	25 June 2009
7. Schedule 1, item 16	Immediately after the commencement of item 11 of Schedule 1 to the <i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i> .	25 June 2009
11. Schedule 2, items 129 to 132	Immediately after the commencement of section 168E of the <i>Fair Work Act 2009</i> .	1 January 2010
13. Schedule 3, items 1A to 17	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	Items 1A, 4–17: 1 January 2010 (see F2009L04605) Items 1–3: 15 December 2009 (see F2009L04605)

(e) Subsection 2(1) (item 7) of the *Freedom of Information Amendment (Reform) Act 2010* provides as follows:

- (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.

Provision(s)	Commencement	Date/Details
7. Schedules 4 to 7	Immediately after the commencement of section 3 of the <i>Australian Information Commissioner Act 2010</i> . However, if section 3 of the <i>Australian Information Commissioner Act 2010</i> does not commence, the provision(s) do not commence at all.	1 November 2010

(f) Subsection 2(1) (items 4 and 14) of the *Statute Law Revision Act 2012* provides as follows:

- (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.

Act Notes

Provision(s)	Commencement	Date/Details
4. Schedule 1, item 124	Immediately after the commencement of item 61 of Schedule 1 to the <i>Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012</i> .	1 July 2012
14. Schedule 2, item 14	Immediately after the time specified in the <i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i> for the commencement of item 2 of Schedule 12 to that Act.	1 July 2009
(g) Subsection 2(1) (item 19) of the <i>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012</i> provides as follows:		
(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.		

Provision(s)	Commencement	Date/Details
19. Schedule 4, items 1 to 8	Immediately after the commencement of item 2 of Schedule 1 to the <i>Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012</i> .	1 January 2013

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 1	
Part 1-1	
Division 2	
S. 3	am. No. 55, 2009
Division 3	
S. 4	am. Nos. 33 and 174, 2012
S. 5	am. No. 174, 2012
S. 8	am. No. 174, 2012
S. 9	am. Nos. 33 and 175, 2012
S. 9A	ad. No. 33, 2012 rs. No. 175, 2012
Part 1-2	
Division 1	
Note to s. 11	ad. No. 33, 2012
Division 2	
S. 12	am. Nos. 54, 55 and 124, 2009; No. 40, 2011; Nos. 33, 109, 171, 174 and 175, 2012
Division 3	
Note to s. 13	ad. No. 54, 2009 am. No. 124, 2009
S. 14	am. No. 124, 2009
Note to s. 14	rep. No. 54, 2009
Note 1 to s. 14(1)	ad. No. 54, 2009
(formerly Note 1 to s. 14)	
Note 2 to s. 14(1)	ad. No. 54, 2009 am. No. 124, 2009
(formerly Note 2 to s. 14)	
S. 14A	ad. No. 124, 2009 am. No. 175, 2012
Note to s. 15(1)	ad. No. 54, 2009 am. No. 124, 2009
Note to s. 15(2)	ad. No. 54, 2009 am. No. 124, 2009
Division 4	
S. 17A	ad. No. 33, 2012
Note to s. 21(1)	am. No. 174, 2012
S. 22	am. No. 55, 2009
Part 1-3	
Division 1	
S. 24	rs. No. 54, 2009 am. No. 124, 2009
Note to s. 25	ad. No. 33, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 2	
S. 27	am. No. 54, 2009; No. 136, 2012
Division 2A	
Heading to Div. 2A of Part 1-3	rs. No. 124, 2009
Div. 2A of Part 1-3.....	ad. No. 54, 2009
S. 30A.....	ad. No. 54, 2009 am. No. 124, 2009
S. 30B.....	ad. No. 54, 2009 am. No. 124, 2009
S. 30C.....	ad. No. 54, 2009 am. No. 124, 2009
S. 30D.....	ad. No. 54, 2009 am. No. 124, 2009
S. 30E.....	ad. No. 54, 2009 am. No. 124, 2009
S. 30F.....	ad. No. 54, 2009 am. No. 124, 2009
S. 30G	ad. No. 54, 2009 am. No. 124, 2009
S. 30H.....	ad. No. 54, 2009 am. No. 124, 2009
S. 30J	ad. No. 54, 2009 rep. No. 124, 2009
Division 2B	
Div. 2B of Part 1-3.....	ad. No. 124, 2009
S. 30K.....	ad. No. 124, 2009
S. 30L	ad. No. 124, 2009
S. 30M	ad. No. 124, 2009
S. 30N.....	ad. No. 124, 2009
S. 30P.....	ad. No. 124, 2009
S. 30Q	ad. No. 124, 2009
S. 30R.....	ad. No. 124, 2009
S. 30S.....	ad. No. 124, 2009
Division 4	
S. 40	am. No. 174, 2012
S. 40A.....	ad. No. 124, 2009
Chapter 2	
Part 2-1	
Division 1	
Note to s. 42.....	ad. No. 33, 2012
Division 2	
Subdivision A	
Note 3 to s. 43(1)	ad. No. 175, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision C	
Subhead. to s. 48(2).....	am. No. 174, 2012
S. 48	am. No. 55, 2009; Nos. 174 and 175, 2012
S. 49	am. No. 174, 2012
Note to s. 49(3)	ad. No. 54, 2009
Subdivision D	
Subhead. to s. 53(3).....	am. No. 174, 2012
S. 53	am. No. 55, 2009; Nos. 174 and 175, 2012
S. 54	am. No. 174, 2012
Part 2-2	
Division 1	
Note to s. 60.....	ad. No. 33, 2012
Division 3	
S. 63	am. No. 55, 2009
Note to s. 63.....	rs. No. 55, 2009
S. 64	am. No. 55, 2009
Note to s. 64.....	rs. No. 55, 2009
Division 5	
Subdivision B	
Note 1 to s. 70.....	rs. No. 109, 2012
S. 71	am. No. 109, 2012
Note to s. 71(2)	rep. No. 109, 2012
Note 1 to s. 71(2)	ad. No. 109, 2012
Note 2 to s. 71(2)	ad. No. 109, 2012
S. 72	am. No. 109, 2012
Note to s. 72(2)	rep. No. 109, 2012
Note 1 to s. 72(2)	ad. No. 109, 2012
Note 2 to s. 72(2)	ad. No. 109, 2012
Note to s. 76(1)	ad. No. 109, 2012
S. 77A.....	ad. No. 109, 2012
S. 78	am. No. 109, 2012
S. 79A.....	ad. No. 109, 2012
S. 79B.....	ad. No. 109, 2012
Subdivision C	
S. 84A.....	ad. No. 109, 2012 am. No. 174, 2012
Division 6	
Note to s. 87(1)	am. No. 174, 2012
Division 9	
S. 113	am. No. 124, 2009; Nos. 174 and 175, 2012
S. 113A.....	am. No. 175, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 11	
Subdivision B	
S. 120	am. No. 174, 2012
S. 122	am. No. 174, 2012
Division 12	
S. 124	am. No. 174, 2012
Division 13	
Note to s. 126.....	am. No. 174, 2012
Part 2-3	
Division 1	
S. 132	am. Nos. 54 and 55, 2009; No. 174, 2012
Note to s. 133.....	ad. No. 33, 2012
Division 2	
S. 134	am. No. 174, 2012
Note to s. 134(2)	am. No. 174, 2012
S. 135	am. No. 70, 2009; No. 174, 2012
Division 3	
Subdivision B	
Note to s. 140(1)	ad. No. 55, 2009
S. 141	am. No. 174, 2012
Subdivision C	
Heading to s. 143.....	am. Nos. 54 and 55, 2009
S. 143	am. Nos. 54 and 55, 2009; No. 175, 2012
S. 143A.....	ad. No. 55, 2009
S. 143B.....	ad. No. 54, 2009
Note to s. 146.....	am. No. 174, 2012
S. 149	am. No. 174, 2012
S. 149A.....	ad. No. 171, 2012
Subdivision D	
S. 154	am. No. 174, 2012
S. 155A.....	ad. No. 171, 2012
Division 4	
S. 156	am. No. 174, 2012
Note 1 to s. 156(1)	am. No. 174, 2012
Division 5	
Subdivision A	
Heading to s. 157.....	am. No. 174, 2012
S. 157	am. No. 174, 2012
Note 1 to s. 157(1)	am. No. 174, 2012
Note 3 to s. 157(1)	am. No. 174, 2012
Note to s. 157(2)	am. No. 174, 2012
Note to s. 158(1)	ad. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision B	
S. 159	am. No. 174, 2012
S. 160	am. No. 174, 2012
Heading to s. 161	am. No. 70, 2009
S. 161	am. Nos. 54 and 70, 2009; No. 40, 2011; No. 174, 2012
Division 6	
S. 162	am. No. 174, 2012
Note to s. 162.....	am. No. 174, 2012
S. 163	am. No. 174, 2012
S. 164	am. No. 174, 2012
S. 165	am. No. 174, 2012
Subhead. to s. 166(2).....	am. No. 174, 2012
S. 166	am. No. 174, 2012
S. 167	am. No. 174, 2012
S. 168	am. No. 174, 2012
Division 7	
Div. 7 of Part 2-3	ad. No. 55, 2009
S. 168A.....	ad. No. 55, 2009
S. 168B.....	ad. No. 55, 2009 am. No. 174, 2012
S. 168C.....	ad. No. 55, 2009 am. No. 174, 2012
Note to s. 168C(1).....	am. No. 175, 2012
S. 168D.....	ad. No. 55, 2009 am. No. 174, 2012
Division 8	
Div. 8 of Part 2-3	ad. No. 54, 2009
S. 168E	ad. No. 54, 2009 am. No. 124, 2009
S. 168F	ad. No. 54, 2009 am. No. 174, 2012
S. 168G.....	ad. No. 54, 2009 am. Nos. 174 and 175, 2012
S. 168H.....	ad. No. 54, 2009
S. 168J.....	ad. No. 54, 2009
S. 168K.....	ad. No. 54, 2009 am. No. 174, 2012
S. 168L	ad. No. 54, 2009 am. No. 174, 2012
Part 2-4	
Division 1	
S. 169	am. No. 174, 2012
Note to s. 170.....	ad. No. 33, 2012
S. 171	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 2	
S. 172	am. No. 174, 2012
Note 2 to s. 172(1)	am. No. 174, 2012
Division 3	
Heading to s. 174	am. No. 174, 2012
S. 174	am. No. 174, 2012
S. 176	am. No. 174, 2012
Division 4	
Subdivision A	
Heading to Subdiv. A of..... Div. 4 of Part 2-4	am. No. 174, 2012
S. 183	am. No. 174, 2012
Note to s. 183(2)	am. No. 174, 2012
Heading to s. 185	am. No. 174, 2012
S. 185	am. No. 174, 2012
Subdivision B	
Heading to Subdiv. B of..... Div. 4 of Part 2-4	am. No. 174, 2012
Heading to s. 186	am. No. 174, 2012
S. 186	am. No. 174, 2012
Note to s. 186(1)	am. No. 174, 2012
Note 2 to s. 186(2)	am. No. 174, 2012
Note 1 to s. 186(6)	am. No. 174, 2012
Note 2 to s. 186(6)	am. No. 174, 2012
Heading to s. 187	am. No. 174, 2012
S. 187	am. No. 174, 2012
S. 188	am. No. 174, 2012
Heading to s. 189	am. No. 174, 2012
S. 189	am. No. 174, 2012
Note to s. 189(2)	am. No. 174, 2012
Heading to s. 190	am. No. 174, 2012
Subhead. to s. 190(4)	am. No. 174, 2012
S. 190	am. No. 174, 2012
S. 191	am. No. 174, 2012
Heading to s. 192	am. No. 174, 2012
S. 192	am. No. 174, 2012
Subdivision C	
Subhead. to s. 193(2)	am. No. 174, 2012
Subhead. to s. 193(7)	am. No. 174, 2012
S. 193	am. No. 174, 2012
Subdivision D	
S. 194	am. Nos. 171 and 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision E	
S. 196	am. No. 174, 2012
S. 197	am. No. 174, 2012
S. 198	am. No. 174, 2012
S. 199	am. No. 174, 2012
S. 200	am. No. 174, 2012
Subdivision F	
S. 201	am. No. 174, 2012
Division 5	
S. 203	am. No. 33, 2012
Division 7	
Subdivision A	
Subhead. to s. 207(3).....	am. No. 174, 2012
S. 207	am. No. 174, 2012
Heading to s. 210.....	am. No. 174, 2012
S. 210	am. No. 174, 2012
Heading to s. 211.....	am. No. 174, 2012
Subhead. to s. 211(1).....	am. No. 174, 2012
S. 211	am. No. 174, 2012
Note to s. 211(1).....	am. No. 174, 2012
Heading to s. 212.....	am. No. 174, 2012
S. 212	am. No. 174, 2012
S. 213	am. No. 174, 2012
Heading to s. 214.....	am. No. 174, 2012
S. 214	am. No. 174, 2012
S. 215	am. No. 174, 2012
Subdivision B	
S. 217	am. No. 174, 2012
Heading to s. 217A.....	am. No. 174, 2012
S. 217A.....	am. No. 174, 2012
Heading to s. 218.....	am. No. 70, 2009
S. 218	am. Nos. 54 and 70, 2009; No. 40, 2011; No. 174, 2012
Subdivision C	
Subhead. to s. 219(2).....	am. No. 174, 2012
S. 219	am. No. 174, 2012
Heading to s. 222.....	am. No. 174, 2012
S. 222	am. No. 174, 2012
Heading to s. 223.....	am. No. 174, 2012
S. 223	am. No. 174, 2012
Subdivision D	
S. 225	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 226	am. No. 174, 2012
S. 226	am. No. 174, 2012
Division 8	
Heading to Div. 8 of..... Part 2-4	am. No. 174, 2012
Subdivision A	
S. 229	am. No. 174, 2012
Heading to s. 230	am. No. 174, 2012
S. 230	am. No. 174, 2012
S. 231	am. No. 174, 2012
S. 232	am. No. 174, 2012
Subdivision B	
S. 234	am. No. 174, 2012
Note to s. 234.....	am. No. 174, 2012
Heading to s. 235.....	am. No. 174, 2012
Subhead. to s. 235(2).....	am. No. 174, 2012
Subhead. to s. 235(3).....	am. No. 174, 2012
S. 235	am. No. 174, 2012
Subdivision C	
S. 236	am. No. 174, 2012
Heading to s. 237.....	am. No. 174, 2012
Subhead. to s. 237(2).....	am. No. 174, 2012
S. 237	am. No. 174, 2012
Subhead. to s. 238(3).....	am. No. 174, 2012
Subhead. to s. 238(4).....	am. No. 174, 2012
Subhead. to s. 238(4A)	am. No. 174, 2012
Subhead. to s. 238(7).....	am. No. 174, 2012
S. 238	am. No. 174, 2012
S. 239	am. No. 174, 2012
Subdivision D	
Heading to Subdiv. D of	am. No. 174, 2012
Div. 8 of Part 2-4	
Heading to s. 240.....	am. No. 174, 2012
Subhead. to s. 240(1).....	am. No. 174, 2012
S. 240	am. No. 174, 2012
Division 9	
S. 241	am. No. 174, 2012
S. 242	am. No. 174, 2012
Heading to s. 243.....	am. No. 174, 2012
Subhead. to s. 243(2).....	am. No. 174, 2012
Subhead. to s. 243(3).....	am. No. 174, 2012
S. 243	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 244	am. No. 174, 2012
S. 245	am. No. 174, 2012
Heading to s. 246	am. No. 174, 2012
Subhead. to s. 246(2)	am. No. 174, 2012
Subhead. to s. 246(3)	am. No. 174, 2012
S. 246	am. No. 174, 2012
Note to s. 246(2)	am. No. 174, 2012
Division 10	
Subdivision B	
S. 248	am. No. 174, 2012
Heading to s. 249	am. No. 174, 2012
S. 249	am. No. 174, 2012
S. 250	am. No. 174, 2012
S. 251	am. No. 174, 2012
S. 252	am. No. 174, 2012
Division 11	
Heading to s. 255	am. No. 174, 2012
S. 255	am. No. 174, 2012
Note to s. 255(2)	am. No. 174, 2012
Part 2-5	
Division 1	
S. 258	am. No. 174, 2012
Note to s. 259	ad. No. 33, 2012
Division 2	
S. 260	am. No. 174, 2012
Heading to s. 261	am. No. 174, 2012
S. 261	am. No. 174, 2012
Note to s. 261	am. No. 174, 2012
Heading to s. 262	am. No. 174, 2012
S. 262	am. No. 174, 2012
Note to s. 262(1)	am. No. 174, 2012
Heading to s. 263	am. No. 174, 2012
S. 263	am. No. 174, 2012
S. 264	am. No. 174, 2012
Note to s. 264(1)	am. No. 174, 2012
Division 3	
Heading to s. 266	am. No. 174, 2012
S. 266	am. No. 174, 2012
Note to s. 266(1)	am. No. 174, 2012
S. 267	am. No. 174, 2012
Note to s. 267(1)	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 4	
Heading to s. 269	am. No. 174, 2012
S. 269	am. No. 174, 2012
Note 2 to s. 269(1)	am. No. 174, 2012
S. 270	am. No. 174, 2012
Note to s. 270(1)	am. No. 174, 2012
Division 5	
S. 272	am. No. 174, 2012
S. 273	am. No. 174, 2012
Heading to s. 275	am. No. 174, 2012
S. 275	am. No. 174, 2012
Division 6	
Subhead. to s. 277(2)	am. No. 174, 2012
S. 277	am. No. 174, 2012
S. 279	am. No. 54, 2009
Part 2-6	
Division 1	
S. 282	am. No. 174, 2012
Note to s. 283	ad. No. 33, 2012
Division 2	
S. 284	am. No. 174, 2012
Note to s. 284(2)	am. No. 174, 2012
Division 3	
Subdivision A	
S. 285	am. No. 174, 2012
Note 1 to s. 285(1)	am. No. 174, 2012
S. 286	am. No. 174, 2012
Note to s. 286(2)	am. No. 174, 2012
S. 287	am. No. 174, 2012
Subdivision B	
S. 288	am. No. 174, 2012
Note to s. 288	am. No. 174, 2012
S. 289	am. No. 174, 2012
S. 291	am. No. 174, 2012
Heading to s. 292	am. No. 55, 2009
S. 292	am. Nos. 54 and 55, 2009; No. 174, 2012
Note to s. 292(1)	am. No. 174, 2012
Division 4	
S. 296	am. No. 174, 2012
Note to s. 296(1)	am. No. 174, 2012
S. 297	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 2-7	
Division 1	
S. 300	am. No. 174, 2012
Note to s. 301.....	ad. No. 33, 2012
Division 2	
Heading to s. 302.....	am. No. 174, 2012
Subhead. to s. 302(4).....	am. No. 174, 2012
S. 302	am. No. 174, 2012
S. 303	am. No. 174, 2012
S. 304	am. No. 174, 2012
Heading to s. 306.....	am. No. 174, 2012
S. 306	am. No. 174, 2012
Part 2-8	
Division 1	
S. 307	am. Nos. 174 and 175, 2012
Note to s. 308.....	ad. No. 33, 2012
Division 2	
S. 312	am. No. 55, 2009; No. 174, 2012
S. 313	am. No. 174, 2012
S. 314	am. No. 174, 2012
S. 315	am. No. 174, 2012
Division 3	
Heading to Div. 3 of..... Part 2-8	am. No. 174, 2012
Heading to s. 317.....	am. No. 174, 2012
S. 317	am. No. 174, 2012
Subhead. to s. 318(1).....	am. No. 174, 2012
Subhead. to s. 318(3).....	am. No. 174, 2012
S. 318	am. No. 174, 2012
Subhead. to s. 319(1).....	am. No. 174, 2012
Subhead. to s. 319(3).....	am. No. 174, 2012
S. 319	am. No. 174, 2012
Subhead. to s. 320(4).....	am. No. 174, 2012
S. 320	am. No. 174, 2012
Part 2-9	
Heading to Part 2-9.....	rs. No. 55, 2009
Division 1	
Note to s. 322.....	ad. No. 33, 2012
Division 2	
S. 324	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 3	
Part 3-1	
Division 1	
S. 334	am. No. 174, 2012
Note to s. 335.....	ad. No. 33, 2012
S. 336	am. No. 174, 2012
Division 2	
Note to s. 337.....	ad. No. 54, 2009 am. No. 124, 2009
Division 3	
S. 341	am. Nos. 174 and 175, 2012
Note to s. 344.....	rep. No. 109, 2012
Note 1 to s. 344.....	ad. No. 109, 2012
Note 2 to s. 344.....	ad. No. 109, 2012
Division 5	
S. 351	am. No. 136, 2012
Division 8	
Subdivision A	
Heading to s. 365.....	am. No. 174, 2012
S. 365	am. No. 174, 2012
S. 366	am. No. 174, 2012
S. 367	am. No. 174, 2012
S. 368	am. No. 174, 2012
Note 2 to s. 368(1)	am. No. 174, 2012
S. 369	am. No. 174, 2012
S. 370	am. No. 174, 2012
Subhead. to s. 371(1).....	am. No. 174, 2012
S. 371	am. No. 55, 2009; No. 174, 2012
Note to s. 371.....	ad. No. 55, 2009
Subdivision B	
Heading to s. 372.....	am. No. 174, 2012
S. 372	am. No. 174, 2012
S. 373	am. No. 174, 2012
S. 374	am. No. 174, 2012
Note 2 to s. 374(1)	am. No. 174, 2012
S. 375	am. No. 174, 2012
Subdivision C	
S. 376	am. No. 174, 2012
S. 377	am. No. 174, 2012
Part 3-2	
Division 1	
S. 379	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 380.....	ad. No. 33, 2012
Division 3	
S. 385	am. No. 174, 2012
S. 387	am. No. 174, 2012
Division 4	
Heading to s. 390.....	am. No. 174, 2012
S. 390	am. No. 174, 2012
S. 391	am. No. 174, 2012
S. 392	am. No. 174, 2012
S. 393	am. No. 174, 2012
Division 5	
S. 394	am. No. 174, 2012
Note 1 to s. 394(1)	am. No. 174, 2012
S. 395	am. No. 174, 2012
S. 396	am. No. 174, 2012
S. 397	am. No. 174, 2012
S. 398	am. No. 174, 2012
S. 399	am. No. 174, 2012
S. 399A.....	ad. No. 174, 2012
S. 400	am. No. 174, 2012
S. 400A.....	ad. No. 174, 2012
S. 401	am. No. 174, 2012
S. 402	am. No. 174, 2012
S. 403	am. No. 174, 2012
Part 3-3	
Division 1	
S. 406	am. No. 174, 2012
Note to s. 407.....	ad. No. 33, 2012
Division 2	
Subdivision A	
S. 409	am. No. 174, 2012
S. 410	am. No. 174, 2012
S. 411	am. No. 55, 2009
Subdivision C	
S. 416A.....	ad. No. 55, 2009
Division 3	
S. 417	am. No. 174, 2012
Division 4	
Heading to Div. 4 of..... Part 3-3	am. No. 174, 2012
Heading to s. 418.....	am. No. 174, 2012
S. 418	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 419	am. No. 174, 2012
S. 419	am. No. 174, 2012
S. 420	am. No. 174, 2012
Division 6	
Heading to Div. 6 of..... Part 3-3	am. No. 174, 2012
Heading to s. 423	am. No. 174, 2012
S. 423	am. No. 124, 2009; No. 174, 2012
Heading to s. 424	am. No. 174, 2012
S. 424	am. No. 124, 2009; No. 174, 2012
Heading to s. 425	am. No. 174, 2012
S. 425	am. No. 174, 2012
Heading to s. 426	am. No. 174, 2012
S. 426	am. No. 124, 2009; No. 174, 2012
Heading to s. 427	am. No. 174, 2012
S. 427	am. No. 174, 2012
S. 428	am. No. 174, 2012
S. 430	am. No. 174, 2012
Division 7	
S. 432	am. No. 174, 2012
Division 8	
Subdivision A	
S. 435	am. No. 174, 2012
Subdivision B	
S. 437	am. No. 174, 2012
Note to s. 437(4)	am. No. 174, 2012
S. 441	am. No. 174, 2012
S. 442	am. No. 174, 2012
Heading to s. 443	am. No. 174, 2012
S. 443	am. No. 174, 2012
Heading to s. 444	am. No. 174, 2012
S. 444	am. No. 174, 2012
S. 445	am. No. 174, 2012
S. 446	am. No. 174, 2012
S. 447	am. No. 174, 2012
S. 448	am. No. 174, 2012
Subdivision C	
S. 449	am. No. 174, 2012
S. 450	am. No. 174, 2012
Note 1 to s. 450(2)	ad. No. 174, 2012
Note to s. 450(2)	am. No. 174, 2012
Renumbered Note 2	No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 451	am. No. 174, 2012
Note to s. 451(1)	am. No. 174, 2012
Note to s. 451(2)	ad. No. 174, 2012
S. 452	am. No. 174, 2012
Note to s. 452(1)	am. No. 174, 2012
S. 453	am. No. 174, 2012
S. 454	am. No. 174, 2012
Note to s. 454(1)	am. No. 174, 2012
S. 455	am. No. 174, 2012
S. 457	am. No. 174, 2012
S. 458	am. No. 174, 2012
Subdivision D	
S. 459	am. No. 174, 2012
S. 460	am. No. 174, 2012
S. 461	am. No. 174, 2012
Subdivision E	
S. 462	am. No. 174, 2012
S. 463	am. No. 174, 2012
Subdivision G	
Note 1 to s. 467(2)	am. No. 174, 2012
Note 2 to s. 467(2)	am. No. 174, 2012
Division 9	
Subdivision A	
S. 471	am. No. 174, 2012
Heading to s. 472	am. No. 174, 2012
S. 472	am. No. 174, 2012
Part 3-4	
Division 1	
S. 478	am. Nos. 33 and 174, 2012
S. 480	am. No. 33, 2012
Division 2	
Subdivision A	
Note 2 to s. 481(1)	am. No. 174, 2012
Heading to s. 483AA	am. No. 174, 2012
S. 483AA	am. No. 174, 2012
Subdivision AA	
Heading to Subdiv. AA of	rs. No. 33, 2012
Div. 2 of Part 3-4	
Heading to s. 483A	rs. No. 33, 2012
S. 483A	am. No. 33, 2012
S. 483B	am. No. 33, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision B	
S. 484	am. No. 33, 2012
Subdivision C	
S. 487	am. No. 174, 2012
S. 489	am. No. 174, 2012
Note to s. 491.....	am. No. 174, 2012
Note to s. 492(1)	am. No. 174, 2012
Division 3	
Note 2 to s. 499.....	am. No. 174, 2012
Division 5	
Heading to Div. 5 of..... Part 3-4	am. No. 174, 2012
Subdivision A	
Heading to s. 505.....	am. No. 174, 2012
S. 505	am. No. 174, 2012
Note to s. 505(2)	am. No. 174, 2012
Subdivision B	
Heading to s. 507.....	am. No. 174, 2012
S. 507	am. No. 174, 2012
Subdivision C	
Heading to s. 508.....	am. No. 174, 2012
S. 508	am. No. 174, 2012
Note to s. 508(1)	am. No. 174, 2012
Subdivision D	
Heading to Subdiv. D of	am. No. 174, 2012
Div. 5 of Part 3-4	
Heading to s. 510.....	am. No. 174, 2012
Subhead. to s. 510(1).....	am. No. 174, 2012
S. 510	am. No. 51, 2010; No. 174, 2012
Subdivision E	
S. 511	am. No. 174, 2012
Division 6	
Subdivision A	
Heading to s. 512.....	am. No. 174, 2012
S. 512	am. No. 174, 2012
S. 513	am. No. 174, 2012
Heading to s. 514.....	am. No. 174, 2012
S. 514	am. No. 174, 2012
S. 515	am. No. 174, 2012
S. 516	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 517	am. No. 174, 2012
Subhead. to s. 517(1).....	am. No. 174, 2012
Subhead. to s. 517(2).....	am. No. 174, 2012
S. 517	am. No. 174, 2012
Subdivision B	
S. 518	am. No. 33, 2012
Subdivision C	
S. 519	am. No. 174, 2012
Subdivision D	
S. 520	am. No. 174, 2012
Part 3-5	
Division 1	
S. 522	am. No. 174, 2012
Division 3	
Heading to s. 526	am. No. 174, 2012
S. 526	am. No. 174, 2012
Note to s. 526(2)	am. No. 174, 2012
Heading to s. 527	am. No. 174, 2012
S. 527	am. No. 174, 2012
Part 3-6	
Division 1	
S. 528	am. No. 174, 2012
Note to s. 529.....	ad. No. 33, 2012
Division 2	
Subdivision B	
Heading to s. 531	am. No. 174, 2012
S. 531	am. No. 174, 2012
Heading to s. 532.....	am. No. 174, 2012
S. 532	am. No. 174, 2012
Heading to s. 533.....	am. No. 174, 2012
S. 533	am. No. 174, 2012
Division 3	
Note to s. 536(1)	rep. No. 109, 2012
Note 1 to s. 536(1)	ad. No. 109, 2012
Note 2 to s. 536(1)	ad. No. 109, 2012
Chapter 4	
Part 4-1	
Division 1	
Note to s. 538.....	ad. No. 33, 2012
Division 2	
Subdivision A	
S. 539	am. No. 55, 2009; Nos. 174 and 175, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 540	am. No. 55, 2009
Division 4	
S. 558	am. No. 55, 2009
Part 4-2	
Division 1	
Note to s. 561.....	ad. No. 33, 2012
Division 2	
Subhead. to s. 565(1).....	ad. No. 124, 2009
Subhead. to s. 565(2).....	ad. No. 124, 2009
S. 565	am. No. 124, 2009
Division 4	
S. 569A.....	ad. No. 124, 2009
S. 570	am. No. 124, 2009; No. 174, 2012
Note to s. 570(1)	am. No. 124, 2009
Chapter 5	
Part 5-1	
Heading to Part 5-1.....	rs. No. 174, 2012
Division 1	
S. 573	am. No. 174, 2012
Note to s. 574.....	ad. No. 33, 2012
S. 574A.....	rep. No. 55, 2009
Division 2	
Heading to Div. 2 of..... Part 5-1	am. No. 174, 2012
Subdivision A	
Heading to Subdiv. A of..... Div. 2 of Part 5-1	am. No. 174, 2012
Heading to s. 575.....	am. No. 174, 2012
S. 575	am. No. 55, 2009; No. 174, 2012
Note to s. 575(2)	am. No. 174, 2012
Heading to s. 576.....	am. No. 174, 2012
S. 576	am. No. 174, 2012
Note to s. 576(2)	ad. No. 55, 2009 am. Nos. 174 and 175, 2012
Heading to s. 577.....	am. No. 174, 2012
S. 577	am. No. 174, 2012
Note to s. 577.....	am. No. 174, 2012
Heading to s. 578.....	am. No. 174, 2012
S. 578	am. No. 174, 2012
Heading to s. 579.....	am. No. 174, 2012
S. 579	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 580.....	am. No. 174, 2012
S. 580.....	am. No. 174, 2012
Note to s. 580.....	ad. No. 174, 2012
Subdivision B	
S. 581.....	am. No. 174, 2012
S. 581A.....	ad. No. 174, 2012
S. 581B.....	ad. No. 174, 2012
S. 582.....	am. No. 174, 2012
S. 584.....	am. No. 174, 2012
Subdivision C	
Subdiv. C of Div. 2 of Part 5-1	ad. No. 174, 2012
S. 584B.....	ad. No. 174, 2012
Division 3	
Heading to Div. 3 of..... Part 5-1	am. No. 174, 2012
Subdivision A	
Heading to Subdiv. A of..... Div. 3 of Part 5-1	am. No. 174, 2012
S. 585.....	am. No. 174, 2012
Note 2 to s. 585.....	am. No. 174, 2012
S. 586.....	am. No. 174, 2012
S. 587.....	am. No. 174, 2012
Note to s. 587(1).....	ad. No. 174, 2012
S. 588.....	am. No. 174, 2012
Subdivision B	
Heading to Subdiv. B of..... Div. 3 of Part 5-1	am. No. 174, 2012
S. 589.....	am. No. 174, 2012
Heading to s. 590.....	am. No. 174, 2012
S. 590.....	am. No. 174, 2012
Heading to s. 591.....	am. No. 174, 2012
S. 591.....	am. No. 174, 2012
S. 592.....	am. No. 174, 2012
S. 593.....	am. No. 174, 2012
S. 594.....	am. No. 174, 2012
Heading to s. 595.....	am. No. 174, 2012
S. 595.....	am. No. 174, 2012
Subdivision C	
S. 596.....	am. Nos. 174 and 175, 2012
Note to s. 596(2).....	am. No. 174, 2012
S. 597.....	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 597A.....	ad. No. 124, 2009 am. No. 174, 2012
Subdivision D	
Heading to Subdiv. D of Div. 3 of Part 5-1	am. No. 174, 2012
Heading to s. 598.....	am. No. 174, 2012
S. 598.....	am. No. 174, 2012
Note to s. 598(1).....	am. No. 174, 2012
Heading to s. 599.....	am. No. 174, 2012
S. 599.....	am. No. 174, 2012
S. 600.....	am. No. 174, 2012
Heading to s. 601.....	am. No. 174, 2012
S. 601.....	am. No. 174, 2012
Heading to s. 602.....	am. No. 174, 2012
S. 602.....	am. No. 174, 2012
Note 1 to s. 602(1).....	am. No. 174, 2012
Note 2 to s. 602(1).....	am. No. 174, 2012
Heading to s. 603.....	am. No. 174, 2012
S. 603.....	am. No. 174, 2012
Note to s. 603(1).....	am. No. 174, 2012
Note to s. 603(3).....	am. No. 174, 2012
Subdivision E	
S. 604.....	am. No. 124, 2009; Nos. 174 and 175, 2012
S. 605.....	am. No. 174, 2012
Note to s. 605(2).....	am. No. 174, 2012
S. 606.....	am. No. 174, 2012
S. 607.....	am. No. 124, 2009; No. 174, 2012
S. 608.....	am. No. 174, 2012
Subdivision F	
S. 609.....	am. No. 174, 2012
Heading to s. 610.....	am. No. 174, 2012
S. 611.....	am. No. 174, 2012
Note to s. 611(2).....	am. No. 174, 2012
Division 4	
Heading to Div. 4 of..... Part 5-1	am. No. 174, 2012
Subdivision A	
Heading to Subdiv. A of..... Div. 4 of Part 5-1	am. No. 174, 2012
Heading to s. 612.....	rs. No. 174, 2012
S. 612.....	am. No. 174, 2012
Heading to s. 613.....	rs. No. 174, 2012
S. 613.....	am. No. 124, 2009; Nos. 174 and 175, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 615.....	rs. No. 174, 2012
S. 615	am. No. 174, 2012
S. 615A.....	ad. No. 174, 2012
S. 615B.....	ad. No. 174, 2012
S. 615C.....	ad. No. 174, 2012
Heading to s. 616.....	am. No. 174, 2012
Note to s. 616(3)	am. No. 174, 2012
Heading to s. 617.....	am. No. 174, 2012
Subdivision B	
Heading to Subdiv. B of..... Div. 4 of Part 5-1	rs. No. 174, 2012
S. 618	am. No. 174, 2012
Heading to s. 619.....	am. No. 174, 2012
S. 619	am. No. 174, 2012
Note to s. 619(2)	am. No. 174, 2012
S. 620	am. No. 174, 2012
Heading to s. 621	rs. No. 174, 2012
S. 621	am. No. 174, 2012
Note to s. 621(2)	am. No. 174, 2012
Heading to s. 622.....	rs. No. 174, 2012
S. 622	am. No. 55, 2009; No. 174, 2012
Note to s. 622(3)	am. No. 174, 2012
Heading to s. 623.....	am. No. 174, 2012
S. 623	am. No. 174, 2012
Heading to s. 624.....	am. No. 174, 2012
S. 624	am. No. 174, 2012
Note to s. 624.....	am. No. 174, 2012
Subdivision C	
Heading to Subdiv. C of	am. No. 174, 2012
Div. 4 of Part 5-1	
Heading to s. 625.....	am. No. 174, 2012
S. 625	am. No. 174, 2012
Division 5	
Heading to Div. 5 of.....	am. No. 174, 2012
Part 5-1	
Subdivision A	
Heading to Subdiv. A of.....	am. No. 174, 2012
Div. 5 of Part 5-1	
Heading to s. 626.....	am. No. 174, 2012
S. 626	am. No. 174, 2012
Heading to s. 627.....	am. No. 174, 2012
Subhead. to s. 627(1).....	rs. No. 174, 2012
S. 627	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 628.....	am. No. 174, 2012
Subhead. to s. 628(1).....	am. No. 174, 2012
S. 628	am. No. 174, 2012
Heading to s. 629.....	am. No. 174, 2012
Subhead. to s. 629(1).....	am. No. 174, 2012
S. 629	am. No. 174, 2012
Subdivision B	
Heading to Subdiv. B of..... Div. 5 of Part 5-1	am. No. 174, 2012
S. 629A.....	ad. No. 55, 2009
S. 630	am. No. 174, 2012
S. 632	am. No. 174, 2012
Heading to s. 633.....	am. No. 174, 2012
Subhead. to s. 633(1).....	am. No. 174, 2012
S. 633	am. No. 174, 2012
S. 634	am. No. 174, 2012
Heading to s. 637.....	am. No. 174, 2012
Subhead. to s. 637(1).....	am. No. 174, 2012
Subhead. to s. 637(5).....	am. No. 174, 2012
S. 637	am. No. 174, 2012
Heading to s. 639.....	am. No. 174, 2012
S. 639	am. No. 174, 2012
Heading to s. 640.....	am. No. 174, 2012
S. 640	am. No. 174, 2012
S. 641	am. No. 174, 2012
S. 641A.....	ad. No. 174, 2012
Subhead. to s. 642(1).....	am. No. 174, 2012
S. 642	am. No. 174, 2012
S. 643	am. No. 174, 2012
Heading to s. 644.....	am. No. 174, 2012
S. 644	am. No. 174, 2012
Heading to s. 645.....	am. No. 174, 2012
S. 645	am. No. 174, 2012
Heading to s. 646.....	am. No. 174, 2012
S. 646	am. No. 174, 2012
Heading to s. 647.....	rs. No. 174, 2012
S. 647	am. No. 174, 2012
Heading to s. 648.....	rs. No. 174, 2012
S. 648	am. No. 174, 2012
Division 6	
S. 649	am. No. 124, 2009; No. 174, 2012
S. 650	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 7	
Subhead. to s. 651(4).....	am. No. 174, 2012
Subhead. to s. 651(5).....	am. No. 174, 2012
S. 651	am. No. 174, 2012
S. 652	am. No. 174, 2012
S. 653A.....	am. No. 174, 2012
S. 654	am. No. 55, 2009; No. 174, 2012
Heading to s. 655.....	am. No. 174, 2012
S. 655	am. No. 174, 2012
Division 8	
Subdivision A	
S. 656	am. No. 174, 2012
S. 657	am. No. 174, 2012
S. 658	am. No. 174, 2012
Subdivision B	
S. 660	am. No. 174, 2012
Heading to s. 663.....	am. No. 174, 2012
S. 663	am. No. 174, 2012
S. 666	am. No. 174, 2012
S. 668	am. No. 174, 2012
S. 669.....	am. No. 174, 2012
Subdivision C	
S. 670	am. No. 174, 2012
S. 671	am. No. 174, 2012
Heading to s. 672.....	am. No. 174, 2012
S. 672	am. No. 174, 2012
S. 673	am. No. 174, 2012
Division 9	
Heading to Div. 9 of..... Part 5-1	am. No. 174, 2012
Heading to s. 674.....	am. No. 174, 2012
Subhead. to s. 674(1).....	am. No. 174, 2012
Subhead. to s. 674(3).....	am. No. 174, 2012
Subhead. to s. 674(5).....	am. No. 174, 2012
Subhead. to s. 674(7).....	am. No. 174, 2012
S. 674	am. No. 174, 2012
Heading to s. 675.....	am. No. 174, 2012
S. 675	am. No. 174, 2012
S. 676	am. No. 174, 2012
Note to s. 676.....	am. No. 174, 2012
Heading to s. 677.....	am. No. 174, 2012
S. 677	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 678	am. No. 174, 2012
Part 5-2	
Division 1	
Note to s. 680.....	ad. No. 33, 2012
Division 2	
Subdivision A	
S. 682	am. No. 174, 2012
Subdivision B	
Heading to s. 690.....	am. No. 174, 2012
S. 690	am. No. 174, 2012
S. 693	am. No. 174, 2012
Division 3	
Subdivision D	
Note to s. 709.....	am. No. 54, 2009
S. 713	am. No. 54, 2009
S. 713A.....	ad. No. 54, 2009
Chapter 6	
Part 6-1	
Division 1	
Note to s. 720.....	ad. No. 33, 2012
Division 2	
S. 721	am. No. 174, 2012
S. 722	am. No. 55, 2009; No. 174, 2012
Division 3	
Subdivision A	
S. 724	am. No. 174, 2012
Subdivision B	
Heading to s. 727	am. No. 174, 2012
S. 727	am. No. 174, 2012
S. 729	am. No. 174, 2012
Heading to s. 730.....	am. No. 174, 2012
S. 730	am. No. 174, 2012
S. 732	am. No. 70, 2009
Part 6-2	
Division 1	
S. 735	am. No. 174, 2012
Note to s. 736.....	ad. No. 33, 2012
Division 2	
Subdivision B	
Heading to s. 739.....	am. No. 174, 2012
S. 739	am. No. 174, 2012
Note to s. 739(2)	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 739(4)	am. No. 174, 2012
Heading to s. 740	am. No. 174, 2012
S. 740	am. No. 174, 2012
Part 6-3A	
Part 6-3A.....	ad. No. 175, 2012
Division 1	
S. 768AA.....	ad. No. 175, 2012
S. 768AB.....	ad. No. 175, 2012
Division 2	
S. 768AC	ad. No. 175, 2012
S. 768AD	ad. No. 175, 2012
S. 768AE.....	ad. No. 175, 2012
Division 3	
Subdivision A	
S. 768AF.....	ad. No. 175, 2012
Subdivision B	
S. 768AG	ad. No. 175, 2012
S. 768AH	ad. No. 175, 2012
S. 768AI.....	ad. No. 175, 2012
S. 768AJ	ad. No. 175, 2012
S. 768AK.....	ad. No. 175, 2012
S. 768AL.....	ad. No. 175, 2012
S. 768AM.....	ad. No. 175, 2012 am. No. 174, 2012
S. 768AN	ad. No. 175, 2012 am. No. 174, 2012
S. 768AO	ad. No. 175, 2012 am. No. 174, 2012
Division 4	
Subdivision A	
S. 768AP.....	ad. No. 175, 2012
Subdivision B	
S. 768AQ	ad. No. 175, 2012
S. 768AR	ad. No. 175, 2012
Subdivision C	
S. 768AS.....	ad. No. 175, 2012 am. No. 174, 2012
Subhead. to s. 768AT(3)	am. No. 174, 2012
S. 768AT.....	ad. No. 175, 2012 am. No. 174, 2012
Subdivision D	
S. 768AU	ad. No. 175, 2012 am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 5	
Subdivision A	
S. 768AV.....	ad. No. 175, 2012
Subdivision B	
S. 768AW.....	ad. No. 175, 2012
Subhead. to s. 768AX(3).....	am. No. 174, 2012
S. 768AX.....	ad. No. 175, 2012 am. No. 174, 2012
Subdivision C	
S. 768AY.....	ad. No. 175, 2012
Division 6	
Heading to Div. 6 of..... Part 6-3A	am. No. 174, 2012
Subdivision A	
S. 768AZ.....	ad. No. 175, 2012 am. No. 174, 2012
S. 768AZA	ad. No. 175, 2012
Subdivision B	
Heading to s. 768BA	am. No. 174, 2012
Subhead. to s. 768BA(1).....	am. No. 174, 2012
Subhead. to s. 768BA(3).....	am. No. 174, 2012
S. 768BA.....	ad. No. 175, 2012 am. No. 174, 2012
Heading to s. 768BB	am. No. 174, 2012
S. 768BB.....	ad. No. 175, 2012 am. No. 174, 2012
Division 7	
Heading to Div. 7 of..... Part 6-3A	am. No. 174, 2012
Subdivision A	
S. 768BC	ad. No. 175, 2012 am. No. 174, 2012
S. 768BCA	ad. No. 175, 2012
Subdivision B	
Subhead. to s. 768BD(3).....	am. No. 174, 2012
S. 768BD	ad. No. 175, 2012 am. No. 174, 2012
S. 768BE.....	ad. No. 175, 2012
S. 768BF.....	ad. No. 175, 2012 am. No. 174, 2012
Subdivision C	
Subhead. to s. 768BG(4).....	am. No. 174, 2012
S. 768BG	ad. No. 175, 2012 am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 768BH	ad. No. 175, 2012
S. 768BI	ad. No. 175, 2012 am. No. 174, 2012
Division 8	
Subdivision A	
S. 768BJ	ad. No. 175, 2012 am. No. 174, 2012
Subdivision B	
S. 768BK	ad. No. 175, 2012
Subdivision C	
S. 768BL	ad. No. 175, 2012
S. 768BM	ad. No. 175, 2012
S. 768BN	ad. No. 175, 2012
S. 768BO	ad. No. 175, 2012 am. No. 174, 2012
S. 768BP	ad. No. 175, 2012
S. 768BQ	ad. No. 175, 2012
Subdivision D	
S. 768BR	ad. No. 175, 2012
S. 768BS	ad. No. 175, 2012 am. No. 174, 2012
S. 768BT	ad. No. 175, 2012
S. 768BU	ad. No. 175, 2012
S. 768BV	ad. No. 175, 2012
S. 768BW	ad. No. 175, 2012 am. No. 174, 2012
Subdivision E	
S. 768BX	ad. No. 175, 2012
Subdivision F	
S. 768BY	ad. No. 175, 2012 am. No. 174, 2012
Subdivision G	
S. 768BZ	ad. No. 175, 2012
Division 9	
S. 768CA	ad. No. 175, 2012
Part 6-4	
Division 1	
S. 769	am. No. 174, 2012
Division 2	
Heading to s. 773	am. No. 174, 2012
S. 773	am. No. 174, 2012
S. 774	am. No. 174, 2012
S. 775	am. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 776	am. No. 174, 2012
Note 2 to s. 776(1)	am. No. 174, 2012
S. 777	am. No. 174, 2012
S. 778	am. No. 174, 2012
Subhead. to s. 779(1).....	am. No. 174, 2012
S. 779	am. No. 55, 2009; No. 174, 2012
Note to s. 779.....	ad. No. 55, 2009
S. 780	am. No. 174, 2012
S. 781	am. No. 174, 2012
Division 3	
Subdivision C	
Heading to s. 786.....	am. No. 174, 2012
S. 786	am. No. 174, 2012
Heading to s. 787.....	am. No. 174, 2012
S. 787	am. No. 174, 2012
Heading to s. 788.....	am. No. 174, 2012
S. 788	am. No. 174, 2012
Part 6-4A	
Part 6-4A.....	ad. No. 33, 2012
Division 1	
S. 789AA.....	ad. No. 33, 2012
S. 789AB.....	ad. No. 33, 2012
S. 789AC	ad. No. 33, 2012
Division 2	
S. 789BA.....	ad. No. 33, 2012 am. No. 175, 2012
S. 789BB.....	ad. No. 33, 2012
S. 789BC	ad. No. 33, 2012
Division 3	
S. 789CA	ad. No. 33, 2012 am. No. 175, 2012
S. 789CB	ad. No. 33, 2012
S. 789CC	ad. No. 33, 2012 am. No. 136, 2012
S. 789CD.....	ad. No. 33, 2012
S. 789CE	ad. No. 33, 2012
S. 789CF.....	ad. No. 33, 2012
Division 4	
S. 789DA	ad. No. 33, 2012
S. 789DB	ad. No. 33, 2012
S. 789DC	ad. No. 33, 2012
S. 789DD.....	ad. No. 33, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 789DE	ad. No. 33, 2012 am. No. 175, 2012
Division 5	
S. 789EA.....	ad. No. 33, 2012
Part 6-5	
Division 1	
Note to s. 791.....	ad. No. 33, 2012
Division 2	
S. 795A.....	ad. No. 33, 2012 rs. No. 175, 2012
S. 796A.....	ad. No. 55, 2009 am. No. 174, 2012
S. 799	am. No. 55, 2009
Schedule 1	
Schedule 1.....	rep. No. 55, 2009 ad. No. 33, 2012
Part 1	
C. 1.....	rep. No. 55, 2009 ad. No. 33, 2012
C. 2.....	rep. No. 55, 2009 ad. No. 33, 2012
C. 3.....	rep. No. 55, 2009 ad. No. 33, 2012
C. 4.....	rep. No. 55, 2009 ad. No. 33, 2012 am. No. 175, 2012
C. 5.....	rep. No. 55, 2009 ad. No. 33, 2012
C. 6.....	rep. No. 55, 2009 ad. No. 33, 2012
Subhead. to c. 7(3).....	rs. No. 175, 2012
C. 7.....	rep. No. 55, 2009 ad. No. 33, 2012 am. No. 175, 2012
Part 2	
Part 2.....	ad. No. 171, 2012
C. 8.....	ad. No. 171, 2012
C. 9.....	ad. No. 171, 2012
C. 10.....	ad. No. 171, 2012
C. 11.....	ad. No. 171, 2012
C. 12.....	ad. No. 171, 2012
Schedule 2	
Schedule 2.....	ad. No. 175, 2012
C. 1.....	ad. No. 175, 2012
C. 2.....	ad. No. 175, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Schedule 3	
Schedule 3.....	ad. No. 174, 2012
Part 1	
C. 1.....	ad. No. 174, 2012
Part 2	
C. 2.....	ad. No. 174, 2012
Part 3	
C. 3.....	ad. No. 174, 2012
Part 4	
C. 4.....	ad. No. 174, 2012
C. 5.....	ad. No. 174, 2012
C. 6.....	ad. No. 174, 2012
C. 7.....	ad. No. 174, 2012
C. 8.....	ad. No. 174, 2012
Part 5	
C. 9.....	ad. No. 174, 2012
Part 6	
C. 10.....	ad. No. 174, 2012
C. 11.....	ad. No. 174, 2012
C. 12.....	ad. No. 174, 2012
C. 13.....	ad. No. 174, 2012
Part 7	
C. 14.....	ad. No. 174, 2012
C. 15.....	ad. No. 174, 2012
C. 16.....	ad. No. 174, 2012
Part 8	
C. 17.....	ad. No. 174, 2012
C. 18.....	ad. No. 174, 2012
C. 19.....	ad. No. 174, 2012
C. 20.....	ad. No. 174, 2012
C. 21.....	ad. No. 174, 2012
C. 22.....	ad. No. 174, 2012
C. 23.....	ad. No. 174, 2012
Part 9	
C. 24.....	ad. No. 174, 2012
C. 25.....	ad. No. 174, 2012
C. 26.....	ad. No. 174, 2012
C. 27.....	ad. No. 174, 2012
C. 28.....	ad. No. 174, 2012
C. 29.....	ad. No. 174, 2012
C. 30.....	ad. No. 174, 2012

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 10	
C. 31	ad. No. 174, 2012
Part 11	
C. 32	ad. No. 174, 2012

Note 2

Note 2

Navigation (Consequential Amendments) Act 2012 (No. 129, 2012)

The following amendment commences at the same time as section 3 of the *Navigation Act 2012*:

Schedule 2

13 Section 12 (definition of *maritime employee*)

Omit all the words after “master”, substitute “as defined in subsection 14(1) of the *Navigation Act 2012*, a seafarer as so defined or a pilot as so defined”.

As at 16 January 2013 the amendment is not incorporated in this compilation.

Note 3

Fair Work Amendment Act 2012 (No. 174, 2012)

The following amendments commence on 1 January 2014:

Schedule 1

1 Section 12

Insert:

corporate MySuper product: see subsection 23A(3).

2 Section 12

Insert:

default fund term: see subsection 149C(2).

3 Section 12

Insert:

Default Superannuation List: see subsection 156B(1).

4 Section 12

Insert:

first stage criteria: see section 156F.

5 Section 12

Insert:

generic MySuper product: see subsection 23A(1).

6 Section 12

Insert:

second stage test: see subsection 156H(2).

7 Section 12

Insert:

superannuation fund means a superannuation fund or a superannuation scheme.

8 Section 12

Insert:

tailored MySuper product: see subsection 23A(2).

9 At the end of Division 4 of Part 1-2

Add:

23A Terms relating to superannuation

- (1) A *generic MySuper product* is a MySuper product that is not a tailored MySuper product or a corporate MySuper product.
- (2) A *tailored MySuper product* is a MySuper product in relation to which section 29TB of the *Superannuation Industry (Supervision) Act 1993* is satisfied.
- (3) A *corporate MySuper product* is a MySuper product that is offered by a superannuation fund that:
 - (a) is a standard employer-sponsored fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and
 - (b) is not a public offer superannuation fund (within the meaning of that Act); and
 - (c) has:

Note 3

- (i) one standard employer-sponsor (within the meaning of that Act); or
 - (ii) 2 or more standard employer-sponsors (within the meaning of that Act) that are associates of each other for the purposes of that Act.
- (4) A reference in this Act to a superannuation fund doing a thing in relation to a matter (for example, offering a MySuper product or making an application or submission) is a reference to the RSE licensee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the fund doing that thing.

10 Section 132 (paragraph relating to Division 4)

After “reviews of modern awards”, insert “(other than in relation to default fund terms of modern awards)”.

11 Section 132 (after the paragraph relating to Division 4)

Insert:

Division 4A provides for the FWC to conduct 4 yearly reviews of default fund terms of modern awards.
--

12 Section 149A

Repeal the section.

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

Add:

149B Term requiring avoidance of liability to pay superannuation guarantee charge

A modern award must include a term that requires an employer covered by the award to make contributions to a superannuation fund for the benefit of an employee covered by the award so as to avoid liability to pay superannuation guarantee charge under the *Superannuation Guarantee Charge Act 1992* in relation to the employee.

149C Default fund terms

- (1) A modern award must include a default fund term that complies with section 149D.
- (2) A *default fund term* is a term of a modern award that requires, permits or prohibits an employer covered by the award to make contributions to a superannuation fund for the benefit of an employee (a *default fund employee*) who:
 - (a) is covered by the award; and
 - (b) has no chosen fund (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*).

149D Default fund term must provide for contributions to be made to certain funds*Specified superannuation fund offering generic MySuper product*

- (1) A default fund term of a modern award must require an employer covered by the award to make contributions, for the benefit of a default fund employee, to a superannuation fund that:
 - (a) offers a generic MySuper product; and
 - (b) is specified in the default fund term of the award in relation to that product;if:
 - (c) the employer will be liable to pay superannuation guarantee charge under the *Superannuation Guarantee Charge Act 1992* in relation to the employee if the employer does not make contributions to a superannuation fund for the benefit of the employee; and
 - (d) the employer is not making contributions to a superannuation fund referred to in subsection (2), (3), (4) or (5) for the benefit of the employee.

Defined Benefits Scheme

- (2) A default fund term of a modern award must permit an employer covered by the award to make contributions, for the benefit of a default fund employee, to a superannuation fund in relation to which a default fund employee is a defined benefit member.

Note 3

Exempt public sector superannuation scheme

- (3) A default fund term of a modern award must permit an employer covered by the award to make contributions, for the benefit of a default fund employee, to a superannuation fund that is an exempt public sector superannuation scheme.

State public sector superannuation scheme

- (4) A default fund term of a modern award must permit an employer covered by the award to make contributions, for the benefit of a default fund employee, to a superannuation fund that:
- (a) is a public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and
 - (b) a law of a State requires the employer to make contributions to for the benefit of the employee.

Transitionally authorised superannuation fund

- (5) A default fund term of a modern award must permit an employer covered by the award to make contributions, for the benefit of a default fund employee, to a superannuation fund in relation to which a transitional authorisation is in operation under section 156K.

14 Section 155A

Repeal the section.

15 At the end of subsection 156(2)

Add:

; and (c) must not review, or make a determination to vary, a default fund term of a modern award.

16 Subsection 156(2) (note)

Omit “Note”, substitute “Note 1”.

17 At the end of subsection 156(2)

Add:

Note 2: For reviews of default fund terms of modern awards, see Division 4A.

18 After Division 4 of Part 2-3

Insert:

Division 4A—4 yearly reviews of default fund terms of modern awards**Subdivision A—4 yearly reviews of default fund terms****156A 4 yearly reviews of default fund terms***Timing of 4 yearly reviews*

- (1) The FWC must conduct a 4 yearly review of default fund terms of modern awards starting as soon as practicable after each 4th anniversary of the commencement of this Part.

Note: The President may give directions about the conduct of those reviews (see section 582).

Two stages of the 4 yearly reviews

- (2) There are 2 stages of the 4 yearly review.
- (3) In the first stage, the FWC must make the Default Superannuation List for the purposes of the review.

Note: For the first stage, the FWC must be constituted by an Expert Panel (see subsections 617(4) and (5)).

- (4) In the second stage, the FWC:
 - (a) must review the default fund term of each modern award; and
 - (b) must make a determination varying the term in accordance with section 156H; and
 - (c) if section 156J applies—must make a determination varying the term in accordance with that section.

Note: For the second stage, the FWC must be constituted by a Full Bench (see subsections 616(2A) and (3A)).

Note 3

Subdivision B—The first stage of the 4 yearly review

156B Making the Default Superannuation List

- (1) In the 4 yearly review, the FWC must make and publish the *Default Superannuation List*.
- (2) The Default Superannuation List must specify each generic MySuper product that the FWC has determined under section 156E is to be included on the list.
- (3) The Default Superannuation List must not specify any other product.

156C Applications to list a MySuper product

- (1) Before making the Default Superannuation List, the FWC must publish a notice that invites superannuation funds that offer a generic MySuper product to apply to the FWC to have the product included on the list.
- (2) The notice must specify the period in which an application may be made.
- (3) After the notice is published, a superannuation fund that offers a generic MySuper product may make a written application to have the product included on the list.
- (4) The application must:
 - (a) be made in the period specified in the notice; and
 - (b) be accompanied by any fees that are prescribed by the regulations; and
 - (c) provide information relating to the first stage criteria.
- (5) The FWC must publish any application made under subsection (3).
- (6) However, if an application includes information that is claimed by the superannuation fund to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive:
 - (a) the FWC may decide not to publish the information; and
 - (b) if it does so, it must instead publish a summary of the information which contains sufficient detail to allow a

Note 3

reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive).

- (7) A reference in this Act (other than in this section) in relation to an application made under subsection (3) includes a reference to a summary referred to in paragraph (6)(b).

156D Submissions on applications to list a MySuper product

- (1) The FWC must ensure that all persons and bodies have a reasonable opportunity to make written submissions to the FWC in relation to an application made under subsection 156C(3).
- (2) If:
- (a) a person or body makes a written submission in relation to an application made under subsection 156C(3); and
 - (b) the person or body has an interest in relation to:
 - (i) the superannuation fund that made the application; or
 - (ii) if the person or body refers to another superannuation fund in the submission—that superannuation fund;
- then the person or body must disclose that interest in the submission.
- (3) The FWC must publish any submission that is made.

156E Determining applications to list a MySuper product

- (1) If an application is made under subsection 156C(3) to have a generic MySuper product included on the Default Superannuation List, the FWC must make a determination about whether to include the product on the list.
- (2) The FWC must not determine that the product is to be included on the list unless, taking into account:
- (a) the information provided in the application; and
 - (b) the first stage criteria; and
 - (c) any submissions that were made in relation to the application;
- the FWC is satisfied that including the product on the list would be in the best interest of default fund employees to whom modern awards apply or a particular class of those employees.

Note 3

156F First stage criteria

The *first stage criteria* are as follows:

- (a) the appropriateness of the MySuper product's long term investment return target and risk profile;
- (b) the superannuation fund's expected ability to deliver on the MySuper product's long term investment return target, given its risk profile;
- (c) the appropriateness of the fees and costs associated with the MySuper product, given:
 - (i) its stated long term investment return target and risk profile; and
 - (ii) the quality and timeliness of services provided;
- (d) the net returns on contributions invested in the MySuper product;
- (e) whether the superannuation fund's governance practices are consistent with meeting the best interests of members of the fund, including whether there are mechanisms in place to deal with conflict of interest;
- (f) the appropriateness of any insurance offered in relation to the MySuper product;
- (g) the quality of advice given to a member of the superannuation fund relating to the member's existing interest in the fund and products offered by the fund;
- (h) the administrative efficiency of the superannuation fund;
- (i) any other matters the FWC considers relevant.

Subdivision C—Second stage of the 4 yearly review

156G Review of the default fund term of modern awards

- (1) As soon as practicable after the Default Superannuation List is made, the FWC must review the default fund term of each modern award.
- (2) The FWC must ensure that the following persons have a reasonable opportunity to make written submissions (including submissions requesting that a particular superannuation fund be specified in the term in relation to a generic MySuper product) to the FWC in relation to the default fund term of the award:

Note 3

- (a) an employee and employer that are covered by the modern award;
 - (b) an organisation that is entitled to represent the industrial interests of one or more employees or employers that are covered by the award;
 - (c) if the award includes an outworker term—an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the outworker term relates.
- (3) If:
- (a) a person or body (whether or not a person referred to in subsection (2)) makes a written submission in relation to the default fund term of a modern award; and
 - (b) the person or body refers to a particular superannuation fund in the submission; and
 - (c) the person or body has an interest in relation to that superannuation fund;
- then the person or body must disclose that interest in the submission.
- (4) The FWC must publish any submission that is made.

156H Default fund term must specify certain superannuation funds

- (1) After reviewing the default fund term of a modern award, the FWC must make a determination varying the term:
- (a) to remove every superannuation fund that is specified in the term in relation to a generic MySuper product; and
 - (b) to specify at least 2, but no more than 10, superannuation funds in relation to generic MySuper products that satisfy the second stage test.

Note: See subsection (3) for when the default fund term may specify more than 10 superannuation funds.

- (2) A generic MySuper product satisfies the *second stage test* if:
- (a) it is on the Default Superannuation List; and
 - (b) the FWC is satisfied that specifying a superannuation fund in relation to the product in the default fund term of the modern award would be in the best interests of the default fund employees to whom the modern award applies, taking into account:

Note 3

- (i) any submissions that were made in relation to the default fund term of the award; and
 - (ii) any other matter the FWC considers relevant.
- (3) The default fund term may specify more than 10 superannuation funds in relation to generic MySuper products that satisfy the second stage test if, taking into account the range of occupations of employees covered by the modern award, the FWC is satisfied it is warranted.

156J Variation to comply with section 149D

If, at the time of the 4 yearly review, the default fund term of a modern award does not comply with section 149D, the FWC must make a determination varying the term so that it does.

156K Transitional authorisation for certain superannuation funds

- (1) The FWC may make a transitional authorisation in relation to a superannuation fund (other than a superannuation fund referred to in subsection 149D(1), (2), (3) or (4)) if, at the time of the 4 yearly review, the FWC is satisfied that it is appropriate to make the authorisation.
- (2) The transitional authorisation comes into operation on the day it is made and ceases to be in operation on the day specified in the authorisation.

156L Publishing documents under this Division

If the FWC is required by this Division to publish a document, the FWC must publish the document on its website or by any other means that the FWC considers appropriate.

19 Paragraph 157(1)(a)

After “wages”, insert “or to vary a default fund term of the award”.

20 After section 159

Insert:

159A Variation of default fund term of modern award

- (1) The FWC may make a determination varying the default fund term of a modern award in relation to a superannuation fund specified in the term in relation to a generic MySuper product (the *specified product*) in the following circumstances:
 - (a) to reflect a change in the name of the fund or the specified product;
 - (b) if the fund has ceased to exist—to omit the name of the fund and the specified product;
 - (c) if the specified product has ceased to exist and no other MySuper product is specified in relation to the fund—to omit the name of the fund and the specified product;
 - (d) if the specified product has ceased to exist and another MySuper product is specified in relation to the fund—to omit the name of the specified product;
 - (e) if the Australian Prudential Regulation Authority gives the FWC notice under subsection 29U(4) of the *Superannuation Industry (Supervision) Act 1993* that the fund no longer offers the specified product and no other MySuper product is specified in relation to the fund—to omit the name of the fund and the specified product;
 - (f) if the Australian Prudential Regulation Authority gives the FWC notice under subsection 29U(4) of the *Superannuation Industry (Supervision) Act 1993* that the fund no longer offers the specified product and another MySuper product is specified in relation to the fund—to omit the name of the specified product.
- (2) The FWC may make a determination under this section:
 - (a) in any case—on its own initiative; or
 - (b) on application by an employee, employer, organisation or outworker entity covered by the modern award.

The following amendments commence on 1 July 2013:

Schedule 2**1 Section 12**

Insert:

Expert Panel means an Expert Panel constituted under section 620.

Note 3

2 Section 12

Insert:

Expert Panel Member means an Expert Panel Member of the FWC.

3 Section 12 (definition of *FWC member*)

Omit “a Minimum Wage Panel Member”, substitute “an Expert Panel Member”.

4 Section 12 (definition of *Minimum Wage Panel*)

Repeal the definition.

5 Section 12 (definition of *Minimum Wage Panel Member*)

Repeal the definition.

6 Section 282

Omit “the Minimum Wage Panel” (wherever occurring), substitute “an Expert Panel”.

7 Subsection 285(1) (note 1)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

8 Subparagraph 290(2)(a)(i)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

9 Subparagraph 290(2)(a)(ii)

Omit “a Minimum Wage Panel Member”, substitute “an Expert Panel Member”.

10 Subparagraph 290(2)(a)(iii)

Omit “Minimum Wage Panel Members”, substitute “Expert Panel Members”.

11 Paragraph 290(2)(b)

Repeal the paragraph, substitute:

(b) must require the report to be given to the Expert Panel that is constituted to conduct the annual wage review, unless the direction is given to that Expert Panel.

Note 3

12 Subsection 296(1) (note)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

13 Subsection 302(4) (heading)

Omit “*of the Minimum Wage Panel*”, substitute “*made in annual wage reviews*”.

14 Paragraph 302(4)(a)

Omit “the Minimum Wage Panel”, substitute “the FWC”.

15 At the end of subsection 302(4)

Add:

Note: The FWC must be constituted by an Expert Panel in annual wage reviews (see section 617).

16 Section 573 (paragraph relating to Division 2)

Omit “Minimum Wage Panel Members”, substitute “Expert Panel Members”.

17 Section 573 (paragraph relating to Division 4)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

18 Paragraph 575(2)(d)

Repeal the paragraph, substitute:

(d) 6 Expert Panel Members.

19 Paragraph 582(2)(c)

Repeal the paragraph, substitute:

(c) an Expert Panel;

20 Paragraph 582(4)(a)

After “awards”, insert “under Division 4 of Part 2-3”.

21 After paragraph 582(4)(a)

Insert:

(aa) a direction about the conduct of 4 yearly reviews of default fund terms of modern awards under Division 4A of Part 2-3;

Note 3

22 Paragraph 590(2)(e)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

23 Subsection 592(2)

Omit “a Minimum Wage Panel Member”, substitute “an Expert Panel Member”.

24 Paragraph 604(1)(a)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

25 Subsection 605(1)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

26 Paragraph 607(3)(c)

Omit “a Minimum Wage Panel Member”, substitute “an Expert Panel Member”.

27 Subdivision A of Division 4 of Part 5-1 (heading)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

28 Subsection 612(1)

Omit “a Minimum Wage Panel Member”, substitute “an Expert Panel Member”.

29 Subsection 616(2)

After “under”, insert “Division 4 of”.

30 After subsection 616(2)

Insert:

(2A) A 4 yearly review of default fund terms of modern awards must be conducted under Division 4A of Part 2-3 by a Full Bench.

31 Subsection 616(3)

After “awards” (first occurring), insert “conducted under Division 4 of Part 2-3”.

32 Subsection 616(3) (note)

Repeal the note, substitute:

Note 3

Note: A determination that varies or revokes a modern award may be made by a single FWC Member under Division 5 of Part 2-3.

33 After subsection 616(3)

Insert:

(3A) A determination that varies a default fund term of a modern award made in a 4 yearly review conducted under Division 4A of Part 2-3 must be made by a Full Bench.

Note: A determination that varies a default fund term of a modern award may be made by a single FWC Member under Division 5 of Part 2-3.

34 Section 617 (heading)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

35 Before subsection 617(1)

Insert:

Expert Panel for annual wage reviews

36 Subsection 617(1)

Omit “the Minimum Wage Panel” (first occurring), substitute “an Expert Panel constituted for the purposes of the review”.

37 Subsection 617(1) (note)

Repeal the note, substitute:

Note: For the constitution of an Expert Panel for the purposes of an annual wage review, see section 620.

38 Subsections 617(2) and (3)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel constituted for the purposes of the review”.

39 At the end of section 617

Add:

Expert Panel for Default Superannuation List

(4) A Default Superannuation List for a 4 yearly review of default fund terms of modern awards must be made by an Expert Panel constituted for the purposes of the review.

Note 3

Note: For the constitution of an Expert Panel for the purposes of determining the Default Superannuation List for a 4 yearly review, see section 620.

- (5) A determination under section 156E on an application to have a generic MySuper product included on the Default Superannuation List for a 4 yearly review must be made by an Expert Panel constituted for the purposes of the review.

40 Subdivision B of Division 4 of Part 5-1 (heading)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

41 Subsection 618(1) (note)

Omit “A Minimum Wage Panel Member”, substitute “An Expert Panel Member”.

42 Section 620 (heading)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

43 Subsection 620(1)

Repeal the subsection, substitute:

Constitution of an Expert Panel for annual wage reviews

- (1) An Expert Panel constituted under this section for the purpose of an annual wage review conducted under Part 2-6 consists of 7 FWC Members (except as provided by section 622), and must include:
- (a) the President; and
 - (b) 3 Expert Panel Members who have knowledge of, or experience in, one or more of the following fields:
 - (i) workplace relations;
 - (ii) economics;
 - (iii) social policy;
 - (iv) business, industry or commerce.

Constitution of an Expert Panel for Default Superannuation List

- (1A) An Expert Panel constituted under this section for the purpose of determining the Default Superannuation List for a 4 yearly review under Division 4A of Part 2-3 consists of 7 FWC Members (except as provided by section 622), and must include:

Note 3

- (a) the President, or a Vice President or Deputy President appointed by the President to be the Chair of the Panel; and
- (b) 3 Expert Panel Members who have knowledge of, or experience in, one or more of the following fields:
 - (i) finance;
 - (ii) investment management;
 - (iii) superannuation.

44 Subsection 620(2)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

45 Subsection 620(3)

Repeal the subsection, substitute:

- (3) The following person is responsible for managing an Expert Panel in performing the functions and exercising the powers referred to in section 617:
 - (a) if paragraph (b) does not apply—the President;
 - (b) if the President has appointed a person to be the Chair of the Expert Panel under paragraph 620(1A)(a)—the Chair.

46 Subsection 620(4)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

47 Subsection 620(5)

Repeal the subsection, substitute:

- (5) However, if there is no majority, the decision of:
 - (a) if paragraph (b) does not apply—the President; or
 - (b) if the President has appointed a person to be the Chair of the Expert Panel under paragraph 620(1A)(a)—the Chair;prevails.

48 Paragraph 621(1)(a)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

49 Section 622 (heading)

Omit “**the Minimum Wage Panel**”, substitute “**an Expert Panel**”.

Note 3

50 Paragraph 622(1)(a)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

51 Subsection 622(2)

Omit “the Minimum Wage Panel” (first, second and third occurring), substitute “the Expert Panel”.

52 Paragraph 622(2)(a)

Omit “Minimum Wage Panel Members”, substitute “Expert Panel Members”.

53 Subsection 622(3)

Omit “the Minimum Wage Panel” (wherever occurring), substitute “the Expert Panel”.

54 Section 624

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

55 Subsection 626(2)

Omit “a Minimum Wage Panel Member”, substitute “an Expert Panel Member”.

56 Paragraph 626(4)(a)

Omit “a Minimum Wage Panel Member”, substitute “an Expert Panel Member”.

57 Subsection 627(4)

Repeal the subsection, substitute:

Expert Panel Members

- (4) Before the Governor-General appoints a person as an Expert Panel Member, the Minister must be satisfied that the person is qualified for appointment because the person has knowledge of, or experience in, one or more of the following fields:
 - (a) workplace relations;
 - (b) economics;
 - (c) social policy;
 - (d) business, industry or commerce;

- (e) finance;
- (f) investment management;
- (g) superannuation.

58 Subsection 628(3)

Repeal the subsection, substitute:

Expert Panel Members

- (3) An Expert Panel Member holds office on a part-time basis.

59 Subsection 629(4)

Repeal the subsection, substitute:

Expert Panel Members

- (4) An Expert Panel Member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: An Expert Panel Member is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

60 Subsection 633(3)

Repeal the subsection, substitute:

Expert Panel Members

- (3) An Expert Panel Member must not engage in any paid work that, in the President's opinion, conflicts or may conflict with the proper performance of his or her duties.

61 Subsection 644(2)

Repeal the subsection, substitute:

Expert Panel Members

- (2) The Governor-General must terminate the appointment of an Expert Panel Member if the Expert Panel Member engages in paid work that, in the President's opinion, conflicts or may conflict with the proper performance of his or her duties (see subsection 633(3)).

As at 16 January 2013 the amendments are not incorporated in this compilation.

Note 4

Note 4

Sections 644 and 768BD—Schedule 8 (items 40 and 41) and Schedule 9 (item 1364) of the *Fair Work Amendment Act 2012* (No. 174, 2012) provide as follows:

Schedule 8

40 Section 644 (heading)

Before “*Deputy*”, insert “*Vice Presidents*”.

41 Subsection 644(1)

Before “Deputy President,” (wherever occurring), insert “Vice President,”.

Schedule 9

1364 Section 768BD (heading)

Omit “**FWA**”, substitute “**FWC**”.

The proposed amendments were misdescribed and are not incorporated in this compilation.

Table A**Table A****Application, saving or transitional provisions**

Fair Work (State Referral and Consequential and Other Amendments) Act 2009
(No. 54, 2009)

Schedule 20**1 Regulations may deal with transitional etc. matters**

- (1) The Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to amendments made by this Act.
- (2) In this item:
amendments made by this Act includes amendments made by regulations under item 2.

2 Regulations may make consequential amendments of Acts

- (1) The Governor-General may make regulations amending Acts (other than the *Fair Work Act 2009*) being amendments that are consequential on, or that otherwise relate to, the enactment of the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or this Act.
- (2) For the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of this item are to be treated as if they had been made by an Act.

Note: This subitem ensures that the amendments can be incorporated into a reprint of the Act.

3 Regulations may take effect from date before registration

- (1) Despite subsection 12(2) of the *Legislative Instruments Act 2003* and subject to subitem (2), regulations made under item 1 or 2 may be expressed to take effect from a date before the regulations are registered under that Act.
- (2) If:
 - (a) regulations made under item 1 or 2 are expressed to take effect from a date (the *registration date*) before the

Table A

regulations are registered under the *Legislative Instruments Act 2003*; and

- (b) a person engaged in conduct before the registration date; and
- (c) but for the retrospective effect of the regulations, the conduct would not have contravened a provision of an Act;

then a court must not convict the person of an offence, or order the person to pay a pecuniary penalty, in relation to the conduct on the grounds that it contravened a provision of that Act.

Fair Work Amendment (State Referrals and Other Measures) Act 2009
(No. 124, 2009)

Schedule 1

42 Transitional—referring State

Victoria is taken, for the purposes of the *Fair Work Act 2009*:

- (a) to have been a *referring State* at and after the commencement of item 11 of Schedule 1 to the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* until immediately before the commencement of this item; and
- (b) to continue to be a *referring State* at and after the commencement of this item, subject to section 30B (meaning of *referring State*) of the *Fair Work Act 2009*.