



# **Fair Work (Transitional Provisions and Consequential Amendments) Act 2009**

**No. 55, 2009**

**An Act to amend laws, and deal with transitional matters, in connection with the *Fair Work Act 2009*, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Fair Work (Transitional Provisions and Consequential Amendments) Act 2009**

**No. 55, 2009**

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**An Act to amend laws, and deal with transitional matters, in connection with the *Fair Work Act 2009*, and for other purposes**

*[Assented to 25 June 2009]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

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## 2 Commencement

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	25 June 2009
2. Schedules 1 to 5	The day on which Part 2-4 of the <i>Fair Work Act 2009</i> commences.	
3. Schedule 6, Parts 1 and 2	At the same time as the provision(s) covered by table item 2.	
4. Schedule 6, Part 3	Immediately after the commencement of Part 2-3 of the <i>Fair Work Act 2009</i> .	
5. Schedules 7 to 21	At the same time as the provision(s) covered by table item 2.	
6. Schedule 22, items 1 to 90	At the same time as the provision(s) covered by table item 2.	
7. Schedule 22, item 91	Immediately after the commencement of the provisions covered by table item 8.	
8. Schedule 22, items 92 to 627	At the same time as the provision(s) covered by table item 2.	
9. Schedule 23, items 1 to 2E	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
10. Schedule 23, items 3 to 6	Immediately after the commencement of Part 2-2 of the <i>Fair Work Act 2009</i> .	
11. Schedule 23, item 7	Immediately after the commencement of Part 2-3 of the <i>Fair Work Act 2009</i> .	
12. Schedule 23, item 8	Immediately after the commencement of Part 2-8 of the <i>Fair Work Act 2009</i> .	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
13. Schedule 23, item 9	Immediately after the commencement of Division 1 of Part 2-9 of the <i>Fair Work Act 2009</i> .	
13A. Schedule 23, items 9A and 9B	Immediately after the commencement of Part 3-1 of the <i>Fair Work Act 2009</i> .	
14. Schedule 23, items 10 to 12	Immediately after the commencement of Part 3-3 of the <i>Fair Work Act 2009</i> .	
15. Schedule 23, items 13 to 21	Immediately after the commencement of Part 4-1 of the <i>Fair Work Act 2009</i> .	
15A. Schedule 23, item 21A	Immediately after the commencement of Part 6-1 of the <i>Fair Work Act 2009</i> .	
15B. Schedule 23, items 21B and 21C	Immediately after the commencement of Part 6-4 of the <i>Fair Work Act 2009</i> .	
16. Schedule 23, item 22	Immediately after the commencement of section 799 of the <i>Fair Work Act 2009</i> .	

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Schedule(s)

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

### 4 Regulations

The Governor-General may make regulations prescribing matters:

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- (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.

## **Schedule 1—Repeals**

### ***Workplace Relations Act 1996***

#### **1 Sections 3 to 18**

Repeal the sections.

#### **2 Parts 2 to 23**

Repeal the Parts.

#### **3 Schedules 2 to 9**

Repeal the Schedules.

## **Schedule 2—Overarching Schedule about transitional matters**

### **Part 1—Interpretation of the transitional Schedules**

#### **1 What are the transitional Schedules?**

The *transitional Schedules* are the following (including any regulations made for the purposes of any of the following):

- (a) this Schedule; and
- (b) Schedules 2 to 22, other than:
  - (i) Part 3 of Schedule 6; and
  - (ii) Parts 1, 2 and 3 of Schedule 17; and
  - (iii) items 21 to 22 of Schedule 18; and
  - (iv) Parts 1 to 8 of Schedule 22.

#### **2 The dictionary**

In the transitional Schedules:

***AFPCS interaction rules***: see subitem 22(4) of Schedule 3.

***agreement-based transitional instrument***: see subitem 2(5) of Schedule 3.

***applies***, in relation to a transitional instrument: see subitem 3(2) of Schedule 3.

***award-based transitional instrument***: see subitem 2(5) of Schedule 3.

***bridging period*** means the period:

- (a) starting on the WR Act repeal day; and
- (b) ending immediately before the FW (safety net provisions) commencement day.

***collective agreement-based transitional instrument***: see subitem 2(5) of Schedule 3.

***conditional termination***, in relation to an individual agreement-based transitional instrument: see subitem 18(1) of Schedule 3.

***continued AFPCS wages provisions***: see subitem 5(1) of Schedule 9.

***continued Schedule 6***: see subitem 1(1) of Schedule 20.

***continuing Schedule 6 instruments***: see subitem 1(2) of Schedule 20.

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*covers:*

- (a) in relation to a transitional instrument: see subitem 3(1) of Schedule 3; and
- (b) in relation to a transitional minimum wage instrument: see item 6 of Schedule 9.

*enterprise award-based instrument:* see subitem 2(2) of Schedule 6.

*enterprise instrument:* see subitem 2(1) of Schedule 6.

*enterprise instrument modernisation process:* see subitem 4(1) of Schedule 6.

*enterprise preserved collective State agreement:* see subitem 2(3) of Schedule 6.

*FW Act:* see item 3 of this Schedule.

*FW (safety net provisions) commencement day* means the day on which Parts 2-2, 2-3 and 2-6 of the FW Act commence.

*individual agreement-based transitional instrument:* see subitem 2(5) of Schedule 3.

*instrument content rules:* see subitem 4(2) of Schedule 3.

*instrument interaction rules:* see subitem 5(2) of Schedule 3.

*lodged:*

- (a) in relation to a workplace agreement—means lodged with the Workplace Authority Director under section 344 of the WR Act; and
- (b) in relation to a variation of a workplace agreement—means lodged with the Workplace Authority Director under section 346N or 377 of the WR Act, as the case may be; and
- (c) in relation to a termination of a workplace agreement—means lodged with the Workplace Authority Director under section 389 of the WR Act.

*made:*

- (a) in relation to a workplace agreement—has the meaning given by section 333 of the WR Act; and
- (b) in relation to a variation of a workplace agreement—has the meaning given by section 368 of the WR Act.

*modern enterprise award:* see subitem 4(2) of Schedule 6.

*modern enterprise awards objective:* see subitem 6(2) of Schedule 6.

*modernisation-related reduction in take-home pay:*

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- (a) in relation to the Part 10A award modernisation process—see subitems 8(3) and (4) of Schedule 5; and
- (b) in relation to the enterprise instrument modernisation process—see subitem 11(3) of Schedule 6.

*modify* includes make additions, omissions and substitutions.

**Part 10A award modernisation process:** see subitem 2(1) of Schedule 5.

**part of a single enterprise:** see subitem 3(4) of Schedule 6.

**single enterprise:** see item 3 of Schedule 6.

**State and Territory interaction rules:** see subitem 5A(2) of Schedule 3.

**take-home pay:** see subitem 8(2) of Schedule 5 and subitem 11(2) of Schedule 6.

**take-home pay order:** see subitems 9(1) and (2) of Schedule 5 and subitem 12(1) of Schedule 6.

**this Act** includes the regulations.

**transitional APCS:** see subitem 5(3) of Schedule 9.

**transitional default casual loading:** see subitem 5(3) of Schedule 9.

**transitional instrument:** see subitems 2(3) and (4) of Schedule 3.

**transitional minimum wage instrument:** see subitem 5(3) of Schedule 9.

**transitional national minimum wage order:** see subitem 12(2) of Schedule 9.

**transitional Schedules:** see item 1 of this Schedule.

**transitional special FMW:** see subitem 5(3) of Schedule 9.

**transitional standard FMW:** see subitem 5(3) of Schedule 9.

**unlodged collective agreement** means a collective agreement that, as at the WR Act repeal day, has not been lodged.

**unlodged termination**, in relation to a workplace agreement, means a termination of a workplace agreement approved in accordance with section 386 of the WR Act, but not lodged as at the WR Act repeal day.

**unlodged variation**, in relation to a workplace agreement, means a variation of the workplace agreement under Division 8 of Part 8 of the WR Act approved in accordance with section 373 of the WR Act, but not lodged as at the WR Act repeal day.

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***workplace agreement that operates from approval*** means a workplace agreement to which Subdivision C of Division 5A of Part 8 of the WR Act applies (see subsection 346K(1) of that Act).

***WR Act***: see item 3 of this Schedule.

***WR Act instrument***: see subitem 2(2) of Schedule 3.

***WR Act repeal*** means the commencement of Schedule 1.

***WR Act repeal day*** means the day on which the WR Act repeal commences.

### **3 Meaning of *WR Act* and *FW Act***

#### *Meaning of WR Act*

- (1) ***WR Act*** means the *Workplace Relations Act 1996* and, unless the contrary intention appears, means that Act as in force immediately before the WR Act repeal day.
- (2) Unless a contrary intention appears, a reference to the WR Act, or to a provision or provisions of the WR Act, includes a reference to regulations made for the purposes of the WR Act, or for the purposes of the provision or provisions of the WR Act.
- (3) If an item of the transitional Schedules provides for the WR Act, or a provision or provisions of the WR Act, to continue to apply on and after the WR Act repeal day (or during the bridging period), the WR Act, or the provision or provisions, continue to so apply despite the WR Act repeal.

#### *Meaning of FW Act*

- (4) ***FW Act*** means the *Fair Work Act 2009*.
- (5) Unless a contrary intention appears, a reference to the FW Act, or to a provision or provisions of the FW Act, includes a reference to regulations made for the purposes of the FW Act, or for the purposes of the provision or provisions of the FW Act.

### **4 Expressions defined in the WR Act or the FW Act**

- (1) Unless a contrary intention appears:
  - (a) expressions used in a transitional Schedule that were defined in the WR Act (other than Schedule 1 to that Act) have the

same meanings in that transitional Schedule as they had in that Act; and

- (b) expressions used in a transitional Schedule that are defined in the FW Act have the same meanings in that transitional Schedule as they have in that Act.

(2) If:

- (a) a provision of a transitional Schedule uses an expression defined in both the WR Act and the FW Act; and
- (b) it is clear from the context of the provision which of those meanings is intended to apply in that provision;

the expression has that meaning.

(3) The regulations may define, or clarify the meaning of, an expression used in a transitional Schedule.

(4) This item does not apply to expressions defined in item 2.

## **5 Provisions that apply repealed provisions of the WR Act**

(1) If a provision of a transitional Schedule provides for provisions (the *applied WR Act provisions*) of the WR Act to apply on and after the WR Act repeal day, any other provisions of the WR Act, and any regulations or other instruments made under that Act, that are necessary for the effectual operation of the applied WR Act provisions also apply on and after that day.

(2) This item has effect:

- (a) subject to a contrary intention in a provision of a transitional Schedule; and
- (b) subject to the regulations.

## **6 Effect of Part 21 of the WR Act to be taken into account**

(1) To avoid doubt, in interpreting provisions of the transitional Schedules, the effect on the WR Act of Part 21 of that Act (which deals with matters referred by Victoria) before the WR Act repeal day is to be taken into account.

Note: For example, a reference in Schedule 3 to a workplace agreement includes a reference to a workplace agreement made under Part 8 of the WR Act, as that Part had effect because of Part 21.

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(2) If a provision of the transitional Schedules provides for the application or continued application of provisions of the WR Act on and after the WR Act repeal day, those provisions also have the effect they would have if Part 21 of that Act were still in force.

Note: For example, item 2 of Schedule 4 provides for the continued application during the bridging period of Divisions 3, 4, 5 and 6 of Part 7 of the WR Act. The continued application of those Divisions also includes the extended effect those Divisions would have if Part 21 were still in force.

(3) This item has effect:

- (a) subject to a contrary intention; and
- (b) subject to the regulations.

## **Part 2—Regulations about transitional matters**

### **7 General power for regulations to deal with transitional matters**

- (1) The regulations may make provisions of a transitional, application or saving nature in relation to any of the following:
  - (a) the transition from the regime provided for by the WR Act (and any Acts that amended that Act) to the regime provided for by the FW Act;
  - (b) the amendments and repeals made by the Schedules to this Act.
- (2) Without limiting subitem (1), regulations made for the purpose of that subitem may do any of the following:
  - (a) modify provisions of the FW Act, or provide for the application (with or without modifications) of provisions of the FW Act to matters to which they would otherwise not apply;
  - (b) provide for the application (with or without modifications) of provisions of the WR Act on and after the WR Act repeal day.

### **8 Regulations relating to matters dealt with in the transitional Schedules**

- (1) The regulations may modify provisions of the transitional Schedules.
- (2) If a provision of a transitional Schedule provides for repealed provisions of the WR Act to apply on and after the WR Act repeal day, the regulations may:
  - (a) modify the provisions; or
  - (b) make other provision relating to the application of the provisions.
- (3) If a provision of a transitional Schedule provides for provisions of the FW Act to apply in relation to matters to which they would otherwise not apply, the regulations may:
  - (a) modify the provisions; or

- (b) make other provision relating to the application of the provisions.
- (4) The regulations may make other provision in relation to the matters dealt with in the transitional Schedules.
- (5) The transitional Schedules have effect subject to regulations made for any of the purposes of this item.

## **9 Limitation on power to make regulations**

- (1) The regulations must not:
  - (a) modify provisions of Part 3-4 of the FW Act (which deals with right of entry); or
  - (b) modify provisions of the transitional Schedules that deal with right of entry.
- (2) The regulations must not confer compliance powers on an inspector that are additional to the compliance powers under Part 5-2 of the FW Act.
- (3) This item has effect despite items 7 and 8.

## **10 Other general provisions about regulations**

- (1) This item applies to regulations made for the purpose of any of the provisions of the transitional Schedules (including this Part).
- (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003* and subject to subitem (3), regulations may be expressed to take effect from a date before the regulations are registered under that Act.
- (3) If:
  - (a) regulations are expressed to take effect from a date (the **registration date**) before the 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:
    - (i) the WR Act (as it continues to apply because of this Act); or
    - (ii) this Act; or
    - (iii) the FW Act;

**Schedule 2** Overarching Schedule about transitional matters

**Part 2** Regulations about transitional matters

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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 any of those Acts.

(4) The provisions of the transitional Schedules (including this Part) that provide for regulations to deal with matters do not limit each other.

## **Part 3—Conduct before WR Act repeal day etc.**

### **11 Conduct before repeal—WR Act continues to apply**

#### *Conduct before repeal*

(1) The WR Act continues to apply, on and after the WR Act repeal day, in relation to conduct that occurred before the WR Act repeal day.

Note: For continuation and cessation of WR Act bodies and offices on and after the WR Act repeal day, see item 7 of Schedule 18.

#### *Processes begun before repeal to vary or terminate WR Act instruments*

(1A) If:

- (a) a process to vary or terminate a WR Act instrument is begun under the WR Act before the WR Act repeal day; and
- (b) the WR Act instrument becomes a transitional instrument because of the operation of Part 2 of Schedule 3;

the WR Act continues to apply, on and after the WR Act repeal day, for the purposes of completing the process.

#### *Orders made before repeal*

(2) To avoid doubt, the WR Act continues to apply, on and after the WR Act repeal day, in relation to orders made under that Act, including as it continues to apply under subitem (1).

#### *Item subject to this Act*

(3) This item applies subject to this Act.

Note: For the purposes of transition from the WR Act to the FW Act, other provisions of this Act:

- (a) modify or exclude the operation of the WR Act as it continues to apply under subitem (1); and
- (b) provide for the continued operation of the WR Act (including in modified form) in relation to conduct that occurs on or after the WR Act repeal day.

### **12 FWA to take over some processes**

(1) On and after the WR Act repeal day:

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- (a) an application, other than an interim application, that could have been made to any of the following because of item 11 may be made only to FWA:
  - (i) the Commission;
  - (ii) the President;
  - (iii) a member of the Commission;
  - (iv) a Registrar; and
- (b) an appeal to the Commission that could have been instituted because of item 11 may be instituted only as an appeal to FWA; and
- (c) a process (however described), other than an interim process, that could have been initiated by the Commission on its own motion because of item 11 may be initiated only by FWA; and
- (d) a matter that could have been referred to the Commission under section 46PW of the *Human Rights and Equal Opportunity Commission Act 1986* because of item 11 is to be referred only to FWA.

(2) For the purposes of subitem (1), a law of the Commonwealth that relates to an application, appeal, process or matter referred to in that subitem is to be read:

- (a) as if a reference to a WR Act body or WR Act office were a reference to FWA, as necessary; and
- (b) with any other necessary modifications.

Note: For **WR Act body** and **WR Act office**: see subitem 7(1) of Schedule 18.

(3) Subitems (1) and (2) apply subject to this Act.

(4) In this item:

**interim application** means an application that relates to a matter that is already before, or being dealt with by, the Commission, the President, a member of the Commission or a Registrar before the WR Act repeal day.

**interim process** means a process (however described) that relates to a matter that is already before, or being dealt with by, the Commission, the President, a member of the Commission or a Registrar before the WR Act repeal day.

## **13 Regulations—conduct before repeal**

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The regulations may do one or more of the following:

- (a) modify the operation of the WR Act as it applies under item 11;
- (aa) provide that subitem 11(1A) does not apply in relation to specified processes;
- (b) provide for any other matter that, because of item 11, could have been dealt with by a WR Act body or a person holding a WR Act office to be dealt with by FWA, or by FWA only.

## **Schedule 3—Continued existence of awards, workplace agreements and certain other WR Act instruments**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

## **Part 2—Continued existence of WR Act instruments as transitional instruments**

### **2 WR Act instruments that continue in existence as transitional instruments**

(1) Each WR Act instrument (see subitem (2)) that becomes a transitional instrument (see subitems (3) and (4)) continues in existence in accordance with this Schedule from when it becomes a transitional instrument, despite the WR Act repeal.

Note: In addition to provisions of this Schedule, the following other provisions affect the continued existence of transitional instruments:

- (a) Part 2 of Schedule 5 (which deals with the WR Act award modernisation process);
- (b) Division 2 of Part 2 of Schedule 6 (which deals with the enterprise instrument modernisation process);
- (c) Schedule 8 (which deals with workplace agreements and workplace determinations made under the WR Act, including the making of ITEAs during the bridging period);
- (d) Schedule 11 (which deals with transfer of business);
- (e) Part 3 of Schedule 2 (which deals with conduct before the WR Act repeal day).

(2) Each of the following instruments is a **WR Act instrument**:

- (a) an award;
- (b) a notional agreement preserving State awards;
- (c) a workplace agreement;
- (d) a workplace determination;
- (e) a preserved State agreement;
- (f) an AWA;
- (g) a pre-reform certified agreement;
- (h) a pre-reform AWA;
- (i) an old IR agreement;
- (j) a section 170MX award.

Note 1: Workplace agreements are either collective agreements or ITEAs.

Note 2: Preserved State agreements are either preserved collective State agreements or preserved individual State agreements.

Note 3: For transitional provisions relating to Division 2 of Part 7 of the WR Act (which deals with wages), see Schedule 9.

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Note 4: For transitional provisions relating to Schedule 6 to the WR Act (which deals with transitional awards etc.), see Schedule 20.

- (3) The following WR Act instruments become *transitional instruments* on the WR Act repeal day:
  - (a) each WR Act instrument that was in operation immediately before the WR Act repeal day;
  - (b) each workplace agreement or workplace determination made before the WR Act repeal day but that had not yet come into operation by that day;
  - (c) any other WR Act instrument that, although not in operation immediately before the WR Act repeal day, could come into operation after that day because of an instrument interaction rule.
- (4) If an ITEA is made during the bridging period under Division 7 of Part 2 of Schedule 8, the ITEA becomes a *transitional instrument* when it is made.
- (5) Transitional instruments are classified as follows:
  - (a) awards, and notional agreements preserving State awards, are *award-based transitional instruments*;
  - (b) all other kinds of transitional instruments are *agreement-based transitional instruments*;
  - (c) agreement-based transitional instruments of the following kinds are *collective agreement-based transitional instruments*:
    - (i) collective agreements;
    - (ii) workplace determinations;
    - (iii) preserved collective State agreements;
    - (iv) pre-reform certified agreements;
    - (v) old IR agreements;
    - (vi) section 170MX awards;
  - (d) agreement-based transitional instruments of the following kinds are *individual agreement-based transitional instruments*:
    - (i) ITEAs;
    - (ii) preserved individual State agreements;
    - (iii) AWAs;
    - (iv) pre-reform AWAs.

### **3 The employees, employers etc. who are *covered* by a transitional instrument and to whom it *applies***

(1) A transitional instrument *covers* the same employees, employers and any other persons that it would have covered (however described in the instrument or WR Act) if the WR Act had continued in operation.

Note 1: The expression *covers* is used to indicate the range of employees, employers etc. to whom the instrument potentially *applies* (see subitem (2)). The employees, employers etc. who are within this range will depend on terms of the instrument, and on any relevant provisions of the WR Act.

Note 2: Depending on the terms of a transitional instrument and any relevant provisions of the WR Act, the instrument's coverage may extend to people who become employees after the instrument becomes a transitional instrument.

(2) A transitional instrument *applies* to the same employees, employers and any other persons the instrument covers as would, if the WR Act had continued in operation, have been:

- (a) required by the WR Act to comply with terms of the instrument; or
- (b) entitled under the WR Act to enforce terms of the instrument.

Note: The expression *applies* is used to indicate the range of employees, employers etc. who are required to comply with, or can enforce, the terms of a transitional instrument.

(3) However, an award-based transitional instrument does not apply to an employee (or to an employer, or an employee organisation, in relation to the employee) at a time when the employee is a high income employee (see section 329 of the FW Act).

Note: Item 35 deals with the application of section 329 of the FW Act to award-based transitional instruments.

(4) This item has effect subject to:

- (a) the instrument interaction rules (see item 5); and
- (b) the variation or termination of transitional instruments as referred to in item 9;
- (c) Division 2 of Part 5 (which deals with interaction between transitional instruments and FW Act modern awards, workplace determinations and enterprise agreements); and
- (d) Schedule 11 (which deals with transfer of business); and
- (e) Part 3 of Schedule 2 (which deals with conduct before the WR Act repeal day).

**Schedule 3** Continued existence of awards, workplace agreements and certain other WR Act instruments

**Part 2** Continued existence of WR Act instruments as transitional instruments

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#### **4 Transitional instruments continue to be subject to the same instrument content rules**

(1) The same instrument content rules that applied in relation to WR Act instruments of a particular kind immediately before the WR Act repeal day continue to apply in relation to instruments of that kind that become transitional instruments.

Note: Certain instrument content rules relating to the standing down of employees do not continue to apply in relation to WR Act instruments that become transitional instruments (see item 3 of Schedule 15).

(2) ***Instrument content rules*** are provisions of a law of the Commonwealth, as in force immediately before the WR Act repeal day, of any of the following kinds:

- (a) provisions about what may, must or must not be included in an instrument;
- (b) provisions to the effect that a particular term of an instrument is of no effect (however described):
  - (i) either completely or to a limited extent; and
  - (ii) either permanently or for a limited period;
- (c) provisions to the effect that a particular term is taken to be included in an instrument.

Note: Most of the instrument content rules were in the WR Act.

#### **5 Transitional instruments continue to be subject to the same instrument interaction rules**

(1) The same instrument interaction rules that applied in relation to WR Act instruments of a particular kind immediately before the WR Act repeal day continue to apply in relation to instruments of that kind that become transitional instruments.

(2) ***Instrument interaction rules*** are provisions of a law of the Commonwealth, as in force immediately before the WR Act repeal day, the effect of which is that:

- (a) one instrument has priority over, or excludes, another instrument:
  - (i) either completely or to a particular extent; and
  - (ii) either permanently or for a particular period; or
- (b) one instrument ceases to operate because of another instrument:

- (i) either completely or to a particular extent; and
- (ii) either permanently or for a particular period.

Note: Most of the instrument interaction rules were in the WR Act.

## **5A Transitional instruments continue to be subject to the same State and Territory interaction rules**

- (1) The same State and Territory interaction rules that applied in relation to WR Act instruments of a particular kind immediately before the WR Act repeal day continue to apply in relation to instruments of that kind that become transitional instruments.
- (2) ***State and Territory interaction rules*** are provisions of a law of the Commonwealth, as in force immediately before the WR Act repeal day, the effect of which is that:
  - (a) an instrument prevails over, or excludes, a law of a State or Territory; or
  - (b) an instrument has effect subject to a law of a State or Territory.

Note: Most of the State and Territory interaction rules were in the WR Act.

## **6 References in transitional instruments to the Australian Industrial Relations Commission etc.**

- (1) If a provision of a transitional instrument confers a power or function on the Australian Industrial Relations Commission, that provision has effect on and after the WR Act repeal day as if references in it to the Commission were instead references to FWA.
- (2) If a provision of a transitional instrument confers a power or function on the Industrial Registrar or a Deputy Industrial Registrar, that provision has effect on and after the WR Act repeal day as if references in it to the Industrial Registrar or a Deputy Industrial Registrar were instead references to the General Manager of FWA.
- (3) This item has effect subject to:
  - (a) a contrary intention in this Act; and
  - (b) the regulations.

## **7 No loss of accrued rights or liabilities when transitional instrument terminates or ceases to apply**

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- (1) If a transitional instrument terminates, or ceases to apply in relation to a person, that does not affect:
  - (a) any right or liability that a person acquired, accrued or incurred before the transitional instrument terminated or ceased to apply; or
  - (b) any investigation, legal proceeding or remedy in respect of any such right or liability.
- (2) Any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the transitional instrument had not terminated or ceased to apply.
- (3) This item has effect subject to a contrary intention in this Act or in the FW Act.

## **8 Certain transitional instruments displace certain Commonwealth laws**

- (1) To the extent of any inconsistency, the following transitional instruments displace prescribed conditions of employment specified in a Commonwealth law that is prescribed by the regulations:
  - (a) a workplace agreement;
  - (b) a pre-reform certified agreement;
  - (c) an AWA;
  - (d) a pre-reform AWA.
- (2) In subitem (1):

***Commonwealth law*** means an Act or any regulations or other instrument made under an Act.

***prescribed conditions*** means conditions that are identified by the regulations.

- (3) If, immediately before the WR Act repeal day, regulations made under section 350 of the WR Act, or that continued to apply under subclause 2(2) or 17(2) of Schedule 7 to the WR Act:
  - (a) identified a condition as a prescribed condition in relation to an instrument referred to in paragraph (1)(a), (b), (c) or (d); or
  - (b) prescribed an Act or any regulations or other instrument made under an Act as a Commonwealth law in relation to such an instrument;

Continued existence of awards, workplace agreements and certain other WR Act

instruments **Schedule 3**

Continued existence of WR Act instruments as transitional instruments **Part 2**

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those regulations continue to have effect on and after that day as if made for the purposes of this item.

- (4) Subitem (3) has effect subject to any regulations made for the purposes of subitem (1) or (2).

## **Part 3—Variation and termination of transitional instruments**

### **9 Transitional instruments can only be varied or terminated in limited circumstances**

- (1) A transitional instrument cannot be varied except under:
  - (a) a provision of this Part or the regulations; or
  - (b) item 26 (which deals with resolving difficulties with the interaction between transitional instruments and the National Employment Standards); or
  - (c) Part 2 of Schedule 5 (which deals with the WR Act award modernisation process); or
  - (d) Division 2 of Part 2 of Schedule 6 (which deals with the enterprise instrument modernisation process); or
  - (e) Schedule 8 (which deals with workplace agreements and workplace determinations made under the WR Act); or
  - (f) Schedule 11 (which deals with transfer of business); or
  - (g) Part 3 of Schedule 2 (which deals with conduct before the WR Act repeal day).
- (2) A transitional instrument cannot be terminated (or otherwise brought to an end) except under:
  - (a) a provision of this Part or the regulations; or
  - (b) Part 2 of Schedule 5; or
  - (c) Division 2 of Part 2 of Schedule 6; or
  - (d) Schedule 8; or
  - (e) Schedule 11; or
  - (f) Part 3 of Schedule 2.

Note: The references in paragraphs (1)(a) and (2)(a) to a provision of this Part or the regulations includes a reference to a provision of the WR Act or the FW Act as it applies because of a provision of this Part.

### **10 All kinds of transitional instrument: variation to remove ambiguities etc.**

- (1) On application by a person covered by a transitional instrument, FWA may make a determination varying the instrument:

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- (a) to remove an ambiguity or uncertainty in the instrument; or
- (b) to resolve an uncertainty or difficulty relating to the interaction between the instrument and a modern award; or
- (c) to remove terms that are inconsistent with Part 3-1 of the FW Act (which deals with general protections), or to vary terms to make them consistent with that Part.

Note: For variation of a transitional instrument to resolve an uncertainty or difficulty relating to the interaction between the instrument and the National Employment Standards, see item 26.

- (2) A variation of a transitional instrument operates from the day specified in the determination, which may be a day before the determination is made.

## **11 All kinds of transitional instrument: variation on referral by HREOC**

- (1) This item applies if a transitional instrument is referred to FWA under section 46PW of the *Human Rights and Equal Opportunity Commission Act 1986* (which deals with discriminatory industrial instruments).
- (2) If the instrument is an award-based transitional instrument, section 161 of the FW Act applies in relation to the referral of the instrument as if the instrument were a modern award.
- (3) If the transitional instrument is an agreement-based transitional instrument, section 218 of the FW Act applies in relation to the referral of the instrument as if the instrument were an enterprise agreement.

## **12 Awards: continued application of WR Act provisions about variation and revocation**

- (1) Subject to this item, Divisions 5 (other than subsections 554(1) to (4)) and 6 of Part 10 of the WR Act continue to apply on and after the WR Act repeal day in relation to transitional instruments that are awards as if references to the Commission were instead references to FWA.

Note: Items 10 and 11 apply instead of subsections 554(1) to (4) of the WR Act.

- (2) FWA must perform its powers and functions under Divisions 5 and 6 in a way that furthers the objects of Part 10 of the WR Act.
- (3) An award cannot be varied or revoked under Division 5 or 6 after the end of the bridging period, except as follows:

**Part 3** Variation and termination of transitional instruments

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- (a) an award can be varied after the end of the bridging period under section 553 of the WR Act;
- (b) an award can be varied or revoked after the end of the bridging period as a result of FWA continuing to deal with a matter that it was dealing with before the end of the bridging period.

**13 Pre-reform certified agreements: continued application of WR Act provisions about variation**

(1) Subject to this item, clause 2A of Schedule 7 to the WR Act continues to apply on and after the WR Act repeal day in relation to transitional instruments that are pre-reform certified agreements as if references to the Commission were instead references to FWA.

Note: This subitem has effect subject to Part 3 of Schedule 2 (which deals with conduct before the WR Act repeal day).

(2) An application under clause 2A cannot be made after the end of the bridging period.

**14 Preserved collective State agreements: continued application of WR Act provisions about variation**

(1) Subject to this item, clause 16A of Schedule 8 to the WR Act continues to apply on and after the WR Act repeal day in relation to transitional instruments that are preserved State agreements as if references to the Commission were instead references to FWA.

Note: This subitem has effect subject to Part 3 of Schedule 2 (which deals with conduct before the WR Act repeal day).

(2) An application under clause 16A cannot be made after the end of the bridging period.

**15 Collective agreement-based transitional instruments: termination by agreement**

Subdivision C of Division 7 of Part 2-4 of the FW Act (which deals with termination of enterprise agreements by employers and employees) applies in relation to a collective agreement-based transitional instrument as if a reference to an enterprise agreement included a reference to a collective agreement-based transitional instrument.

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## **16 Collective agreement-based transitional instruments: termination by FWA**

- (1) Subdivision D of Division 7 of Part 2-4 of the FW Act (which deals with termination of enterprise agreements after their nominal expiry date) applies in relation to a collective agreement-based transitional instrument as if a reference to an enterprise agreement included a reference to a collective agreement-based transitional instrument.
- (2) For the purpose of the application of Subdivision D to an old IR agreement, the agreement's nominal expiry date is taken to be the end of the period of the agreement.

## **17 Individual agreement-based transitional instruments: termination by agreement**

- (1) The employee and employer covered by an individual agreement-based transitional instrument may make a written agreement (a *termination agreement*) to terminate the agreement in accordance with the following requirements:
  - (a) the termination agreement must be signed by the employee and the employer;
  - (b) if the employee is under 18, it must also be signed by a parent or guardian of the employee;
  - (c) the signatures must be witnessed.
- (2) The termination has no effect unless it has been approved by FWA.
- (3) The employer or employee may apply to FWA for approval of the termination agreement. The application must be made:
  - (a) within 14 days after the termination agreement was made; or
  - (b) if in all the circumstances FWA considers it fair to extend that period—within such further period as FWA allows.
- (4) If an application for FWA to approve the termination agreement is made under subitem (3), FWA must approve the termination of the instrument if:
  - (a) FWA is satisfied that the requirements of subitem (1) have been complied with; and
  - (b) FWA is satisfied that there are no other reasonable grounds for believing that the employee has not agreed to the termination.

**Part 3** Variation and termination of transitional instruments

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(5) If the termination is approved under subitem (4), the termination operates from the day specified in the decision to approve the termination.

**18 Individual agreement-based transitional instruments: termination conditional on enterprise agreement**

(1) This item provides for the making of an instrument (a *conditional termination*) that will have the effect of terminating an individual agreement-based transitional instrument if:

- (a) an enterprise agreement (the *proposed enterprise agreement*) is made that covers the employee and the employer; and
- (b) the proposed enterprise agreement comes into operation.

(2) If the transitional instrument has not passed its nominal expiry date, the conditional termination must be a written agreement signed by the employer and the employee. The signatures must be witnessed.

(3) If the transitional instrument has passed its nominal expiry date, the conditional termination must be in writing and signed either by the employee or the employer. The signature must be witnessed.

(4) If the conditional termination is signed by the employee, and the employee is under 18, it must also be signed by a parent or guardian of the employee.

(5) Any other requirements of the regulations relating to the form, content or making of the conditional termination must also be complied with.

(6) The employer must give the employee a copy of the conditional termination if:

- (a) the conditional termination is an agreement signed by the employee and the employer in the circumstances covered by subitem (2); or
- (b) the conditional termination is signed by the employer in the circumstances covered by subitem (3).

Note 1: For compliance with this obligation, see subitem 3(1) of Schedule 16.

Note 2: Failure to comply with this obligation does not affect the operation of subitem (8).

(7) The conditional termination must accompany any application to FWA for approval of the proposed enterprise agreement under section 185 of the FW Act.

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Note 1: For compliance with this obligation, see subitem 3(2) of Schedule 16.

Note 2: Failure to comply with this obligation does not affect the operation of subitem (8), or the validity of an approval by FWA of the proposed enterprise agreement.

(8) If the requirements of subitems (2) to (5) have been complied with in relation to the conditional termination, the transitional instrument terminates when the proposed enterprise agreement comes into operation.

## **19 Individual agreement-based transitional instruments: unilateral termination with FWA's approval**

(1) This item applies to an employer or employee:

- (a) to whom an individual agreement-based transitional instrument that has passed its nominal expiry date applies; and
- (b) who wants to terminate the transitional instrument.

(2) The employer or employee may:

- (a) make a written declaration that identifies the transitional instrument and that states that the employer or employee wants to terminate the transitional instrument; and
- (b) apply to FWA for the approval of the termination.

(3) The employer or employee cannot make an application as mentioned in paragraph (2)(b) unless, at least 14 days before the day on which the application is made, the employer or employee gives the other of them a notice complying with the following requirements:

- (a) the notice must identify the transitional instrument;
- (b) the notice must state that the employer or employee intends to apply to FWA for approval of the termination of the instrument;
- (c) the notice must state that, if FWA approves the termination, the transitional instrument will terminate on the 90th day after the day on which FWA makes the approval decision;
- (d) if the notice is given by the employer:
  - (i) the notice must state whether, if the instrument terminates during the bridging period, one or more redundancy provisions in the instrument will continue to apply to the employee as provided for by item 38; and
  - (ii) if one or more redundancy provisions in the instrument will so continue to apply to the employee—the notice

must include or be accompanied by a copy of the provision or provisions;

- (e) the notice must comply with any other requirements of the regulations.
- (4) FWA must approve the termination if FWA is satisfied that:
  - (a) the transitional instrument applies to the employer and the employee; and
  - (b) the requirements of subitems (2) and (3) have been complied with.
- (5) If FWA approves the termination, the transitional instrument terminates on the 90th day after the day on which FWA makes the approval decision.

## **20 Sunsetting rules for various transitional instruments**

### *Notional agreements preserving State awards*

- (1) A notional agreement preserving State awards (other than a notional agreement that is an enterprise instrument) terminates:
  - (a) on the 4th anniversary of the FW (safety net provisions) commencement day; or
  - (b) if the regulations prescribe a later day—on that later day.

### *Division 3 pre-reform certified agreements*

- (2) If the employer in relation to a Division 3 pre-reform certified agreement is not a national system employer, the agreement terminates on the earlier of the following:
  - (a) 27 March 2011;
  - (b) when both of the following conditions are satisfied:
    - (i) the agreement has passed its nominal expiry date;
    - (ii) it has been replaced by a State employment agreement.
- (3) However, if the employer becomes a national system employer before 27 March 2011, subitem (2) does not apply after that time.

### *Old IR agreements*

- (4) If the employer in relation to an old IR agreement is not a national system employer, the agreement terminates on the earlier of the following:

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- (a) 27 March 2011;
- (b) when it has been replaced by a State employment agreement.

(5) However, if the employer becomes a national system employer before 27 March 2011, subitem (4) does not apply after that time.

*Section 170MX awards*

- (6) If:
  - (a) the employer in relation to a section 170MX award is not a national system employer; and
  - (b) the section 170MX award:
    - (i) was in force just before 27 March 2006; or
    - (ii) was made on or after that day because of Part 8 of Schedule 7 to the WR Act;
- the award terminates on the earlier of the following:
  - (c) 27 March 2011;
  - (d) when it has been replaced by a State employment agreement.

(7) However, if the employer becomes a national system employer before 27 March 2011, subitem (6) does not apply after that time.

**21 Effect of termination**

If a transitional instrument terminates, it ceases to cover (and can never again cover) any employees, employers or other persons.

## **Part 4—Transitional instruments and the Australian Fair Pay and Conditions Standard**

### **22 Same AFPCS interaction rules continue to apply**

(1) Subject to this item, the same AFPCS interaction rules that applied in relation to WR Act instruments of a particular kind immediately before the WR Act repeal day continue to apply in relation to instruments of that kind that become transitional instruments.

Note 1: Schedule 4 provides for the continued application of the Australian Fair Pay and Conditions Standard (other than minimum wages provisions) during the bridging period.

Note 2: Schedule 9 provides for the continued application of the minimum wages provisions of the Australian Fair Pay and Conditions Standard on and after the WR Act repeal day.

(2) AFPCS interaction rules of the kind referred to in paragraph (4)(b) do not continue to apply after the end of the bridging period.

Note: This may result in an employee becoming entitled to a rate of pay under a transitional APSC that is higher than was required to be paid to the employee under a transitional instrument during the bridging period. If that occurs, the employer may apply to FWA for a determination to phase-in the effect of the increase (see item 14 of Schedule 9).

(3) If, immediately before the end of the bridging period, an AFPCS interaction rule of the kind referred to in paragraph (4)(b) produced the result that an employee to whom a transitional instrument applied was not covered by the obligation in subsection 182(1) or (2) of the WR Act in relation to a transitional APSC, the employee becomes covered by that obligation in relation to that transitional APSC from the end of the bridging period.

(4) **AFPCS interaction rules** are provisions of a law of the Commonwealth, as in force immediately before the WR Act repeal day, the effect of which is that:

- (a) the Australian Fair Pay and Conditions Standard prevails over an instrument (or an instrument is of no effect because of the Standard) either completely or to a particular extent; or
- (b) an instrument prevails over the Australian Fair Pay and Conditions Standard (or the Standard does not apply because of the instrument) either completely or to a particular extent.

Note: Most of the AFPCS interaction rules were in the WR Act.

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## **Part 5—Transitional instruments and the FW Act**

### **Division 1—Interaction between transitional instruments and the National Employment Standards**

#### **23 The no detriment rule**

(1) To the extent that a term of a transitional instrument is detrimental to an employee, in any respect, when compared to an entitlement of the employee under the National Employment Standards, the term of the transitional instrument is of no effect.

Note 1: A term of a transitional instrument that provides an entitlement that is at least as beneficial to an employee as a corresponding entitlement of the employee under the National Employment Standards will continue to have effect.

Note 2: Division 3 (which contains other general provisions about how the FW Act applies in relation to transitional instruments) is also relevant to how the National Employment Standards apply in relation to employees to whom transitional instruments apply.

Note 3: References to the National Employment Standards include a reference to the extended parental leave provisions and the extended notice of termination provisions (see sections 746 and 761 of the FW Act).

(1A) If there is a dispute about the application of this item which must be resolved by FWA in accordance with item 26, FWA may compare the entitlements which 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 FWA sees fit.

(2) Subitem (1) does not affect a term of a transitional instrument that is permitted by a provision of the National Employment Standards as it has effect under item 24.

(3) The regulations may make provisions that apply to determining, for the purpose of this item, whether terms of a transitional instrument are, or are not, detrimental in any respect when compared to entitlements under the National Employment Standards.

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## **24 Provisions of the NES that allow instruments to contain particular kinds of terms**

(1) The following provisions of the National Employment Standards have effect, on and after the FW (safety net provisions) commencement day, as if a reference to a modern award or an enterprise agreement included a reference to a transitional instrument:

- (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);
- (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).

(2) If:

- (a) a transitional instrument includes terms referred to in subsection (1) of section 93 or 101 of the National Employment Standards; but
- (b) the terms do not include the requirements referred to in subsection (2) of that section;

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

## **25 Shiftworker annual leave entitlement**

(1) If:

- (a) a transitional instrument applies to an employee; and
- (b) the employee is a shift worker as defined in section 228 of the WR Act;

the employee is taken to qualify for the shiftworker annual leave entitlement for the purposes of section 87 of the FW Act.

(2) This item has effect subject to subsection 87(4) of the FW Act.

## **26 Resolving difficulties about application of this Division**

(1) On application by a person covered by a transitional instrument, FWA may make a determination varying the transitional instrument:

- (a) to resolve an uncertainty or difficulty relating to the interaction between the instrument and the National Employment Standards; or
- (b) to make the instrument operate effectively with the National Employment Standards.

(2) A variation of a transitional instrument operates from the day specified in the determination, which may be a day before the determination is made.

## **27 Division does not affect transitional instruments before NES commencement**

This Division (including determinations under item 26) does not affect the operation of a transitional instrument at any time before the FW (safety net provisions) commencement day.

## **Division 2—Interaction between transitional instruments and FW Act modern awards, enterprise agreements and workplace determinations**

### **28 Modern awards and agreement-based transitional instruments**

(1) While an agreement-based transitional instrument of any of the following kinds applies to an employee, or to an employer or other person in relation to the employee:

- (a) a workplace agreement;
- (b) a workplace determination;
- (c) a preserved State agreement;
- (d) an AWA;
- (e) a pre-reform AWA;

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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 continue to cover the employee while the agreement-based transitional instrument continues to apply.

Note 2: This subitem has effect subject to item 13 of Schedule 9 (which requires that the base rate of pay under an agreement-based transitional instrument must not be less than the relevant modern award rate).

(2) If:

- (a) an agreement-based transitional instrument of any of the following kinds:
  - (i) a pre-reform certified agreement;
  - (ii) an old IR agreement;
  - (iii) a section 170MX award; and
- (b) a modern award;

both apply to an employee, or to an employer or other person in relation to the employee, the agreement-based transitional instrument prevails over the modern award, to the extent of any inconsistency.

Note: This subitem has effect subject to item 13 of Schedule 9 (which requires that the base rate of pay under an agreement-based transitional instrument must not be less than the relevant modern award rate).

## **28A Terms of modern awards about outworker conditions continue to apply**

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

- (a) an agreement-based transitional instrument applies to an employee; and
- (b) outworker terms (within the meaning of the FW Act) in a modern award would, but for the transitional instrument, apply to the employee.

(2) Despite item 28 and despite any terms of the agreement-based transitional instrument that are detrimental to the employee in any respect when compared to the terms of the modern award, the outworker terms apply at that time to the following persons:

- (a) the employee;
- (b) the employer;
- (c) each employee organisation to which the modern award applies.

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- (3) To avoid doubt, to the extent to which terms of a modern award apply to an employee, an employer or an employee organisation because of subitem (2), the modern award applies to the employee, employer or organisation.

## **29 Modern awards and award-based transitional instruments**

### *Modern awards other than the miscellaneous modern award*

- (1) If a modern award (other than the miscellaneous modern award) that covers an employee, or an employer or other person in relation to the employee, comes into operation, then an award-based transitional instrument ceases to cover (and can never again cover) the employee, or the employer or other person in relation to the employee.

Note: A modern award cannot be expressed to cover an employee who is covered by a transitional instrument that is an enterprise instrument (see subsection 143(8) of the FW Act).

### *The miscellaneous modern award*

- (2) While an award-based transitional instrument that covers an employee, or an employer or other person in relation to the employee, is in operation, the miscellaneous modern award does not cover the employee, or the employer or other person in relation to the employee.

### *Outworker entities*

- (3) If a modern award (other than the miscellaneous modern award) that contains outworker terms that cover an outworker entity comes into operation, then outworker terms in an award-based transitional instrument cease to cover (and can never again cover) the outworker entity.
- (4) While outworker terms in an award-based transitional instrument that is in operation cover an outworker entity, any outworker terms in the miscellaneous modern award do not cover the outworker entity.
- (5) ***Outworker terms*** in an award-based transitional instrument are terms that would be outworker terms as defined in the FW Act if they were in a modern award.

## **30 FW Act enterprise agreements and workplace determinations, and agreement-based transitional instruments**

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*Individual agreement-based transitional instruments*

- (1) While an individual agreement-based transitional instrument applies to an employee, or to an employer in relation to the employee, an enterprise agreement or workplace determination (under the FW Act) does not apply to the employee, or the employer in relation to the employee.

*Collective agreement-based transitional instruments*

- (2) If an enterprise agreement or workplace determination (under the FW Act) starts to apply to an employee, or an employer or other person in relation to the employee, then a collective agreement-based transitional instrument ceases to cover (and can never again cover) the employee, or the employer or other person in relation to the employee.

Note 1: The fact that a collective agreement-based transitional instrument applies to employees does not prevent those employees and their employer from replacing that transitional instrument at any time with an enterprise agreement, regardless of whether the transitional instrument has passed its nominal expiry date.

Note 2: Industrial action must not be taken before the nominal expiry date of an agreement-based transitional instrument, even if it is being replaced by an enterprise agreement (see item 4 of Schedule 13).

### **31 FW Act enterprise agreements and workplace determinations, and award-based transitional instruments**

If an enterprise agreement or workplace determination (under the FW Act) applies to an employee, or an employer or other person in relation to the employee, then:

- (a) an award-based transitional instrument ceases to apply to the employee, and the employer or other person in relation to the employee; but
- (b) the award-based transitional instrument can (subject to the other provisions of this Part) continue to cover the employee, and the employer or other person in relation to the employee.

Note: Subject to the other provisions of this Part, the award-based transitional instrument can again start to apply to the employee, and the employer or other person in relation to the employee, if the enterprise agreement or workplace determination (under the FW Act) ceases to apply to the employee.

### **31A Designated outworker terms of award-based transitional instrument continue to apply**

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- (1) This item applies if, at a particular time:
  - (a) an enterprise agreement or workplace determination (under the FW Act) applies to an employer; and
  - (b) an award-based transitional instrument covers the employer (whether the transitional instrument covers the employer in the employer's capacity as an employer or an outworker entity); and
  - (c) the transitional instrument includes one or more designated outworker terms.
- (2) Despite item 31, the designated outworker terms of the award-based transitional instrument apply at that time to the following:
  - (a) the employer;
  - (b) each employee who is both:
    - (i) a person to whom the enterprise agreement or workplace determination applies; and
    - (ii) a person who is covered by the transitional instrument;
  - (c) each employee organisation that is covered by the transitional instrument.
- (3) To avoid doubt:
  - (a) award-based transitional instruments are taken to be instruments to which the definition of ***designated outworker term*** in section 12 of the FW Act applies; and
  - (b) designated outworker terms of an award-based transitional instrument can apply to an employer under subitem (2) even if none of the employees of the employer is an outworker; and
  - (c) to the extent to which designated outworker terms of an award-based transitional instrument apply to an employer, an employee or an employee organisation because of subitem (2), the transitional instrument applies to the employer, employee or organisation.

### **Division 3—Other general provisions about how the FW Act applies in relation to transitional instruments**

#### **32 Employee not award/agreement free if transitional instrument applies**

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- (1) An employee is not an award/agreement free employee for the purposes of the FW Act if a transitional instrument applies to the employee.
- (2) The regulations may make provision in relation to any of the following in relation to employees to whom transitional instruments apply:
  - (a) what is the base rate of pay of such an employee for the purposes of the FW Act (either generally or for the purposes of entitlements under the National Employment Standards);
  - (b) what is the full rate of pay of such an employee for the purposes of the FW Act (either generally or for the purposes of entitlements under the National Employment Standards);
  - (c) whether such an employee is a pieceworker for the purposes of the FW Act.

### **33 Employee's ordinary hours of work**

*Item applies for purpose of determining employee's ordinary hours of work for the FW Act*

- (1) For the purposes of the FW Act, the ordinary hours of work of an employee to whom a transitional instrument applies are to be determined in accordance with this item.

*Ordinary hours as specified in transitional instrument*

- (2) If a transitional instrument that applies to the employee specifies, or provides for the determination of, the employee's ordinary hours of work, the employee's **ordinary hours of work** are as specified in, or determined in accordance with, that instrument.

*If subitem (2) does not apply and there is agreement*

- (3) If subitem (2) does not apply, the employee's **ordinary hours of work** are the hours agreed by the employee and his or her employer as the employee's ordinary hours of work.

*If subitem (2) does not apply and there is no agreement*

- (4) If subitem (2) does not apply but there is no agreement under subitem (3), the **ordinary hours of work** of the employee in a week are:
  - (a) if the employee is a full time employee—38 hours; or
  - (b) if the employee is not a full-time employee—the lesser of:
    - (i) 38 hours; and

(ii) the employee's usual weekly hours of work.

*If subitem (2) does not apply: agreed hours are less than usual weekly hours*

(5) If:

- (a) subitem (2) does not apply; and
- (b) the employee is not a full-time employee; and
- (c) there is an agreement under subitem (3) between the employee and his or her employer, but the agreed ordinary hours of work are less than the employee's usual weekly hours of work;

the **ordinary hours of work** of the employee in a week are the lesser of:

- (d) 38 hours; and
- (e) the employee's usual weekly hours of work.

*Regulations may prescribe usual weekly hours*

(6) For an employee who is not a full-time employee and who does not have usual weekly hours of work, 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 subitems (4) and (5).

### **34 Payment of wages**

Division 2 of Part 2-9 of the FW Act (which deals with payment of wages) applies, on and after the WR Act repeal day, in relation to a transitional instrument as if:

- (a) a reference to an enterprise agreement included a reference to an agreement-based transitional instrument; and
- (b) a reference to a modern award included a reference to an award-based transitional instrument.

### **35 Guarantee of annual earnings**

Division 3 of Part 2-9 of the FW Act (which deals with the guarantee of annual earnings) applies, on and after the FW (safety net provisions) commencement day, as if:

- (a) a reference to an enterprise agreement included a reference to an agreement-based transitional instrument; and

**Schedule 3** Continued existence of awards, workplace agreements and certain other WR Act instruments

**Part 5** Transitional instruments and the FW Act

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- (b) a reference to a modern award included a reference to an award-based transitional instrument and a transitional APCS.

Note: For provisions about transitional APCSs, see Schedule 9.

## **36 Application of unfair dismissal provisions**

Part 3-2 of the FW Act (which deals with unfair dismissal) applies, on and after the WR Act repeal day, as if:

- (a) the reference in subparagraph 382(b)(i) and paragraph 389(1)(b) of that Act to a modern award included a reference to an award-based transitional instrument; and
- (b) the reference in subparagraph 382(b)(ii) and paragraph 389(1)(b) of that Act to an enterprise agreement included a reference to an agreement-based transitional instrument.

## **37 Regulations may deal with other matters**

The regulations may deal with other matters relating to how the FW Act applies in relation to transitional instruments.

## **Part 6—Preservation of redundancy provisions in agreements etc.**

### **38 Preservation of redundancy provisions when agreement-based transitional instrument terminates**

*When this item applies*

- (1) This item applies if a termination of an agreement-based transitional instrument (the *terminated instrument*) takes effect during the bridging period in either of the following circumstances:
  - (a) the instrument is a preserved collective State agreement or a pre-reform certified agreement that is terminated by FWA as provided for by item 16 because of an application made by an employer covered by the agreement;
  - (b) the instrument is an individual agreement-based transitional instrument that terminates under item 19 because FWA approves a termination of the instrument by an employer covered by the instrument.

*Continuation of redundancy provisions*

- (2) Any redundancy provision that was in the terminated instrument continues to apply to any person to whom the terminated instrument applied immediately before the termination took effect, as if the terminated instrument had continued operating.

Note: For how long the redundancy provision continues to apply, see subitem (6).

- (3) A redundancy provision that continues to apply to a person under subitem (2) is taken, for the purpose of this Act, to be a transitional instrument of the same kind as the terminated instrument. However, this does not apply for the purpose of:
  - (a) the provisions of Parts 2, 3, 4 and 5 of this Schedule, other than subitem 20(2) and item 23; or
  - (b) any other provisions prescribed by the regulations.

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*Continued redundancy provisions generally prevail over other instruments*

(4) Subject to subitem (5), a redundancy provision that continues to apply to a person under subitem (2) prevails over any other redundancy provision included in any other instrument that would otherwise apply (even if the provisions in that other instrument might be more beneficial to the employee).

Note: For how long the redundancy provision continues to apply, see subitem (6).

(5) However, if:

- (a) an industry-specific redundancy scheme in a modern award applies to an employee; and
- (b) a redundancy provision that continues to apply to an employee under subitem (2) is detrimental to the employee, in any respect, when compared to the scheme in the modern award;

then the scheme in the modern award prevails over the redundancy provision, to the extent that the redundancy provision is detrimental to the employee.

*Period for which redundancy provisions are continued*

(6) A redundancy provision continues under subitem (2) to apply to a person, in relation to an employee to whom the provision applies, until the earliest of the following:

- (a) the end of the period of 24 months from the time the termination took effect;
- (b) the time when the employee ceases to be employed by the employer (otherwise than in circumstances covered by the provision);
- (c) the time when an enterprise agreement, workplace determination or ITEA starts to apply to the employee.

*Definitions*

(7) In this item:

**instrument** means:

- (a) an award-based transitional instrument; or
- (b) a collective agreement; or
- (c) a collective preserved State agreement; or

- (d) a pre-reform certified agreement; or
- (e) an old IR agreement.

***redundancy provision*** means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

### **39 Notification of preservation of redundancy provisions**

*When this item applies*

(1) This item applies if:

- (a) FWA makes a decision (a ***termination decision***) of either of the following kinds:
  - (i) a decision to terminate a transitional instrument as referred to in paragraph 38(1)(a);
  - (ii) a decision to approve a termination of a transitional instrument as referred to in paragraph 38(1)(b); and
- (b) when the termination takes effect, one or more redundancy provisions in the instrument will continue to apply to persons (***affected persons***) in accordance with item 38.

*Notification requirements if the transitional instrument is a preserved collective State agreement or a pre-reform certified agreement*

(2) If the transitional instrument is a preserved collective State agreement or a pre-reform certified agreement:

- (a) the termination decision must:
  - (i) identify the redundancy provision or the redundancy provisions; and
  - (ii) state that the provision or provisions will continue to apply to the affected persons; and

**Part 6** Preservation of redundancy provisions in agreements etc.

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- (iii) specify the date that is 24 months after the time when the termination takes effect; and
- (iv) state that the provision or provisions will continue to apply until that date, or an earlier date, in accordance with subitem 38(6); and

(b) FWA must give a copy of the termination decision to each affected person that is:

- (i) an employer; or
- (ii) an employee organisation.

(3) An employer that has, under subitem (2), received a copy of a termination decision must take reasonable steps to ensure that all employees to whom the instrument applied immediately before the termination takes effect are given a copy of the decision within 21 days of the employer receiving a copy of the decision.

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

*Notification requirements if the transitional instrument is an individual agreement-based transitional instrument*

(4) If the transitional instrument is an individual agreement-based transitional instrument, the termination decision must:

- (a) identify the redundancy provision or the redundancy provisions; and
- (b) state that the provision or provisions will continue to apply to the affected persons; and
- (c) specify the date that is 24 months after the time when the termination takes effect; and
- (d) state that the provision or provisions will continue to apply until that date, or an earlier date, in accordance with subitem 38(6).

**40 Redundancy provisions that were already preserved as at the WR Act repeal day**

(1) This item applies if, immediately before the WR Act repeal day, redundancy provisions that were in a WR Act instrument (the *terminated instrument*) that was terminated before that day (the *actual termination*) were continuing to bind persons under any of the following provisions:

- (a) section 399A of the WR Act;

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- (b) section 399A of the pre-transition Act (within the meaning of Schedule 7A to the WR Act);
- (c) clause 6A of Schedule 7 to the WR Act;
- (d) clause 20A of Schedule 7 to the WR Act;
- (e) clause 21A of Schedule 8 to the WR Act;
- (f) clause 21D of Schedule 8 to the WR Act.

(2) Item 38 applies as if:

- (a) the redundancy provisions were a transitional instrument of the same kind as the terminated instrument; and
- (b) a termination of that transitional instrument took effect on the WR Act repeal day as referred to in subitem 38(1); and
- (c) the reference in paragraph 38(6)(a) to 24 months were instead a reference to the unexpired part of the period of 24 months that started on the actual termination.

(3) Item 39 does not apply to the termination referred to in paragraph (2)(b).

## **Schedule 4—National Employment Standards**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

## **Part 2—Continued application of WR Act minimum entitlements provisions (other than wages) during bridging period**

### **2 Continued application of the Australian Fair Pay and Conditions Standard leave and work hours provisions**

Divisions 3, 4, 5 and 6 of Part 7 of the WR Act continue to apply during the bridging period.

Note 1: Part 7 of the WR Act contains the Australian Fair Pay and Conditions Standard. Part 3 of Schedule 9 to this Act provides for the continued application of Division 2 of Part 7 (which deals with wages).

Note 2: Part 4 of Schedule 3 to this Act provides for the continued application of the rules about the interaction between transitional instruments and the Australian Fair Pay and Conditions Standard.

### **3 Continued application of entitlements to meal breaks, public holidays and parental leave**

Divisions 1, 2 (other than sections 615 to 618) and 6 of Part 12 of the WR Act continue to apply during the bridging period.

### **4 Continued application of notice of termination provisions**

The following provisions of the WR Act continue to apply in relation to terminations of employment that occur during the bridging period, or notice of which is given during the bridging period:

- (a) section 661;
- (b) the following other provisions, as they relate to section 661:
  - (i) subsections 637(3), (4) and (5);
  - (ii) section 638;
  - (iii) section 640;
  - (iv) section 642;
  - (v) section 662.

### **4A References to workplace agreements include references to enterprise agreements**

**Schedule 4** National Employment Standards

**Part 2** Continued application of WR Act minimum entitlements provisions (other than wages) during bridging period

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- (1) The provisions of the WR Act that continue to apply because of this Part have effect as if a reference in the provisions to a workplace agreement included a reference to an enterprise agreement.
- (2) Subitem (1) has effect unless the context otherwise requires and subject to the regulations.

## **Part 3—Operation of the National Employment Standards**

### **5 Non-accruing entitlements: counting service before the FW (safety net provisions) commencement day**

#### *General rule*

- (1) An employee's service with an employer before the FW (safety net provisions) commencement day counts as service of the employee with the employer for the purpose of determining the employee's entitlements under the National Employment Standards, other than entitlements to:
  - (a) paid annual leave; and
  - (b) paid personal/carer's leave.

Note 1: References to the National Employment Standards include a reference to the extended parental leave provisions and the extended notice of termination provisions (see sections 746 and 761 of the FW Act).

Note 2: Interaction between the National Employment Standards and transitional instruments is dealt with in Division 1 of Part 5 of Schedule 3.

#### *No double entitlement*

- (2) If, before the FW (safety net provisions) commencement day, the employee has already had the benefit of an entitlement, the amount of which was calculated by reference to a period of service, subitem (1) does not result in that period of service with the employer being counted again when calculating the employee's entitlements of that kind under the National Employment Standards.
- (3) To avoid doubt, subitem (2) does not require an employee to serve any initial qualifying period of service for long service leave again.

#### *Limitation on application of general rule to redundancy pay*

- (4) Subitem (1) does not apply in relation to an employee and an employer for the purposes of Subdivision B of Division 11 of the National Employment Standards (which deals with redundancy pay) if the terms and conditions of employment that applied to the employee's employment by the employer immediately before the FW (safety net

provisions) commencement day did not provide for an entitlement to redundancy pay.

**6 Accruing entitlements: leave accrued immediately before the FW (safety net provisions) commencement day**

- (1) This item applies if, immediately before the FW (safety net provisions) commencement day, an employee has an accrued entitlement to an amount of paid annual leave or paid personal/carer's leave, whether the leave accrued under Part 7 of the WR Act, a transitional instrument or otherwise.
- (2) The provisions of the National Employment Standards relating to taking that kind of leave (including rates of pay while taking leave), or cashing-out that kind of leave, apply, as a minimum standard, to the accrued leave as if it had accrued under the National Employment Standards.

**7 Leave that, immediately before the FW (safety net provisions) commencement day, is being, or is to be, taken under Part 7 of the WR Act**

- (1) If:
  - (a) immediately before the FW (safety net provisions) commencement day, an employee is taking a period of a type of leave under Part 7 of the WR Act; and
  - (b) there is an equivalent type of leave under the National Employment Standards;

the employee is entitled to continue on leave of the equivalent type under the National Employment Standards for the remainder of the period.

Note: For example, if an employee is taking paid annual leave under Part 7 of the WR Act immediately before the FW (safety net provisions) commencement day, the employee is entitled to continue on paid annual leave under the National Employment Standards.

- (2) If an employee, or his or her spouse or de facto partner (if the spouse or de facto partner is also an employee), continues on leave under the National Employment Standards in accordance with subitem (1), the employee is entitled to adjust any of the following consistently with the provisions of the National Employment Standards in relation to that type of leave:
  - (a) the amount of leave the employee is taking or will take;

- (b) the time at which the leave is taken;
- (c) the arrangements for taking the leave.

Note: If the employee's spouse or de facto partner is also an employee, the employees will be an employee couple for the purposes of the parental leave provisions of the National Employment Standards.

(3) If, before the FW (safety net provisions) commencement day:

- (a) an employee has taken a step that the employee is required to take so that the employee can, on or after the FW (safety net provisions) commencement day, take a type of leave referred to in subitem (1); and

- (b) an equivalent step is required under the National Employment Standards;

the employee is taken to have taken the step under the National Employment Standards.

Note: For example, if an employee has given the employer an application under section 271 of the WR Act so that the employee can take ordinary maternity leave, the employee is taken to have given the employer notice under section 74 of the FW Act of the taking of unpaid parental leave.

(4) If an employee is taken, by subitem (3), to have taken a step, in relation to leave, under the National Employment Standards, the employee is entitled to adjust the step consistently with the provisions of the National Employment Standards in relation to that type of leave.

Note: For example, an employee could vary the content of a notice given to the employer in relation to the leave, or vary the amount of leave the employee has notified the employer that the employee intends to take.

(5) The regulations may deal with other matters relating to how the National Employment Standards apply to leave that, immediately before the FW (safety net provisions) commencement day, is being, or is to be, taken under Part 7 of the WR Act.

## 8 Community service leave

- (1) An employee may, on or after the FW (safety net provisions) commencement day, be absent from his or her employment under Division 8 of the National Employment Standards even if the period of absence began before that day.
- (2) If an employee is absent from his or her employment in accordance with subitem (1), subsection 111(5) of the National Employment Standards applies as if a reference to the first 10 days of absence were a reference

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to the first 10 days of absence occurring on or after the FW (safety net provisions) commencement day.

## **9 Notice of termination**

- (1) Subdivision A of Division 11 of the National Employment Standards applies only to terminations of employment occurring on or after the FW (safety net provisions) commencement day.
- (2) However, that Subdivision does not apply to a termination if notice of the termination was given before the FW (safety net provisions) commencement day.

## **10 Redundancy pay**

Subdivision B of Division 11 of the National Employment Standards applies only to terminations of employment occurring on or after the FW (safety net provisions) commencement day, even if notice of the termination was given before that day.

## **11 References to transfers of employment**

References to a transfer of employment in:

- (a) provisions of the National Employment Standards; and
- (b) subsections 22(5) and (6) of the FW Act, as those provisions apply for the purposes of the National Employment Standards;

do not cover a situation where the employee became employed by the second employer (within the meaning of subsection 22(7) of the FW Act) at a time before the FW (safety net provisions) commencement day.

## **12 Recognised emergency management bodies**

A body that was established, or continued in existence, for the purpose, or for purposes that include the purpose, of enabling one or more employees to obtain the protection of subsection 659(2) of the WR Act (which dealt with unlawful termination) is not a recognised emergency management body for the purposes of the FW Act.

## **13 Fair Work Information Statement**

The obligation in section 125 of the National Employment Standards for an employer to give an employee the Fair Work Information Statement only applies to an employee who starts employment with the employer on or after the FW (safety net provisions) commencement day.

## **14 Regulations**

The regulations may make provision in relation to how the National Employment Standards apply to, or are affected by, things done or matters occurring before the FW (safety net provisions) commencement day.

## **Schedule 5—Modern awards (other than enterprise awards)**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

## **Part 2—The WR Act award modernisation process**

### **2 AIRC to continue and complete the award modernisation process**

(1) The Australian Industrial Relations Commission is to continue and complete the award modernisation process provided for by Part 10A of the WR Act (the **Part 10A award modernisation process**).

Note: Enterprise award etc. modernisation is provided for in Schedule 6.

(2) For that purpose, Part 10A of the WR Act continues to apply on and after the WR Act repeal day in accordance with this Part.

(3) Without limiting subitem (2), the request under section 576C of the WR Act continues to apply on and after the WR Act repeal day, and may be varied in accordance with that section.

(4) The Australian Industrial Relations Commission's power under section 576H of the WR Act to vary a modern award cannot be exercised after the modern award has come into operation.

(5) In continuing and completing the Part 10A award modernisation process, the Australian Industrial Relations Commission must have regard to:

- (a) the state of the national economy; and
- (b) the likely effects on the national economy of any modern award that the Commission is considering, or is proposing to make, with special reference to likely effects on the level of employment and on inflation; and
- (c) the likely effects on the relevant industry or industry sector of any modern award that the Commission is considering, or is proposing to make, including on productivity, labour costs and the regulatory burden on businesses.

### **3 Variation and termination of certain transitional instruments etc. to take account of Part 10A award modernisation process**

(1) FWA must, as soon as practicable after a modern award (other than the miscellaneous modern award) made in the Part 10A award

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**Schedule 5** Modern awards (other than enterprise awards)

**Part 2** The WR Act award modernisation process

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modernisation process comes into operation (and subject to subitem (3)):

- (a) terminate any of the following (*modernisable instruments*) that FWA considers are completely replaced by the modern award:
  - (i) award-based transitional instruments;
  - (ii) transitional APCSs; and
- (b) if FWA considers that the modern award only partly replaces a modernisable instrument—vary the coverage terms of the modernisable instrument accordingly.

Note 1: The main provisions about transitional instruments are in Schedule 3, and the main provisions about transitional APCSs are in Schedule 9.

Note 2: This item does not limit the effect of any other provision of this Act under which a modernisable instrument ceases to cover a person from a time earlier than when the instrument is terminated or varied under this item.

- (2) As soon as practicable after all modern awards made in the Part 10A modernisation process have come into operation, FWA must (subject to subitem (3)) terminate any remaining modernisable instruments.
- (3) However, FWA must not, under this item:
  - (a) terminate a modernisable instrument that is an enterprise instrument, or that covers employees who are also covered by an enterprise instrument; or
  - (b) vary a modernisable instrument that is an enterprise instrument; or
  - (c) vary a modernisable instrument so that it ceases to cover employees who are also covered by an enterprise instrument.

Note: Item 9 of Schedule 6 deals with termination and variation of modernisable instruments to take account of the enterprise instrument modification process.

- (4) FWA may establish a process for making decisions under this item to terminate or vary one or more modernisable instruments.
- (5) FWA may advise persons or bodies about that process in any way FWA considers appropriate.
- (6) Section 625 of the FW Act (which deals with delegation by the President of functions and powers of FWA) has effect as if subsection (2) of that section included a reference to FWA's powers under subitem (5).

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#### **4 How the FW Act applies to modern awards made in the Part 10A award modernisation process**

- (1) A modern award made in the Part 10A award modernisation process is, for the purposes of the FW Act (and any other law), taken to be a modern award within the meaning of that Act from the later of the following days:
  - (a) the day on which the award is made;
  - (b) the FW (safety net provisions) commencement day.
- (2) Section 49 of the FW Act does not apply for the purpose of determining when the modern award comes into operation. Instead, the modern award comes into operation on the day on which it is expressed to commence (in accordance with section 576Y of the WR Act).
- (3) The regulations may deal with other matters relating to how the FW Act applies in relation to modern awards made in the Part 10A award modernisation process.

#### **5 Variations to deal with minor problems attributable to award modernisation starting before enactment of FW Act**

- (1) If FWA considers that there is a minor or technical problem with a modern award that is attributable to the fact that the Part 10A award modernisation process started before the enactment of the FW Act, FWA may make a determination varying the modern award to resolve the problem.

Note: Certain modern awards may, for example, contain references to concepts or provisions that are not consistent with the FW Act as enacted. This variation power allows FWA to fix such references.

- (2) FWA may make the determination:
  - (a) on its own initiative; or
  - (b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or
  - (c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or
  - (d) if the variation is of outworker terms in the modern award—on application by an organisation that is entitled to represent

the industrial interests of one or more outworkers to whom the terms relate.

## **6 Review of all modern awards (other than modern enterprise awards) after first 2 years**

(1) As soon as practicable after the second anniversary of the FW (safety net provisions) commencement day, FWA must conduct a review of all modern awards, other than modern enterprise awards.

Note: The review required by this item is in addition to the annual wage reviews and 4 yearly reviews of modern awards that FWA is required to conduct under the FW Act.

(2) In the review, FWA must consider whether the modern awards:

- (a) achieve the modern awards objective; and
- (b) are operating effectively, without anomalies or technical problems arising from the Part 10A award modernisation process.

(2A) The review must be such that each modern award is reviewed in its own right. However, this does not prevent FWA from reviewing 2 or more modern awards at the same time.

(3) FWA may make a determination varying any of the modern awards in any way that FWA considers appropriate to remedy any issues identified in the review.

Note: Any variation of a modern award must comply with the requirements of the FW Act relating to the content of modern awards (see Subdivision A of Division 3 of Part 2-3 of the FW Act).

(4) The modern awards objective applies to FWA making a variation under this item, and the minimum wages objective also applies if the variation relates to modern award minimum wages.

(5) FWA may advise persons or bodies about the review in any way FWA considers appropriate.

(6) Section 625 of the FW Act (which deals with delegation by the President of functions and powers of FWA) has effect as if subsection (2) of that section included a reference to FWA's powers under subitem (5).

## **7 Review of transitional arrangements included in modern awards**

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(1) If:

- (a) a modern award includes terms (*review terms*) under which FWA may review transitional arrangements included in the award; and
- (b) the review terms, and the transitional arrangements, were included in the award in the Part 10A award modernisation process;

FWA may:

- (c) review the award in accordance with the review terms; and
- (d) make a determination varying the award in any way it considers necessary, having regard to that review.

Note: Any variation of the modern award must comply with the requirements of the FW Act relating to the content of modern awards (see Subdivision A of Division 3 of Part 2-3 of the FW Act).

(2) The review terms are taken to be terms that are permitted to be included in the modern award by Subdivision B of Division 3 of Part 2-3 of the FW Act.

## **Part 3—Avoiding reductions in take-home pay**

### **8 Part 10A award modernisation process is not intended to result in reduction in take-home pay**

(1) The Part 10A award modernisation process is not intended to result in a reduction in the take-home pay of employees or outworkers.

(2) An employee's or outworker's *take-home pay* is the pay an employee or outworker 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 of the FW Act.

Note: Deductions permitted by section 324 of the FW Act may (for example) include deductions under salary sacrificing arrangements.

(3) An employee suffers a *modernisation-related reduction in take-home pay* if, and only if:

(a) a modern award made in the Part 10A award modernisation process starts to apply to the employee when the award comes into operation; 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 modern award came into operation; and

(c) the amount of the employee's take-home pay for working particular hours or for a particular quantity of work after the modern award comes into operation is less than what would have been the employee's take-home pay for those hours or that quantity of work immediately before the award came into operation; and

(d) that reduction in the employee's take-home pay is attributable to the Part 10A award modernisation process.

(4) An outworker who is not an employee suffers a *modernisation-related reduction in take-home pay* if, and only if:

(a) when a modern award that contains outworker terms comes into operation, the outworker is a person to whom outworker terms in the modern award relate; and

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- (b) the outworker is performing the same work as (or work that is similar to) the work he or she was performing immediately before the modern award came into operation; and
- (c) the amount of the outworker's take-home pay for working particular hours or for a particular quantity of work after the modern award comes into operation is less than what would have been the outworker's take-home pay for those hours or that quantity of work immediately before the award came into operation; and
- (d) that reduction in the outworker's take-home pay is attributable to the Part 10A award modernisation process.

## **9 Orders remedying reductions in take-home pay**

### *Employees*

- (1) If FWA is satisfied that an employee, or a class of employees, to whom a modern award applies has suffered a modernisation-related reduction in take-home pay, FWA may make any order (a ***take-home pay order***) requiring, or relating to, the payment of an amount or amounts to the employee or employees that FWA considers appropriate to remedy the situation.

### *Outworkers*

- (2) If FWA is satisfied that an outworker, or a class of outworkers, to whom outworker terms in a modern award relate has suffered a modernisation-related reduction in take-home pay, FWA may make any order (a ***take-home pay order***) requiring, or relating to, the payment of an amount or amounts to the outworker or outworkers that FWA considers appropriate to remedy the situation.

### *General provisions*

- (3) FWA may make a take-home pay order only on application by:
  - (a) an employee or outworker who has suffered a modernisation-related reduction in take-home pay; or
  - (b) an organisation that is entitled to represent the industrial interests of such an employee or outworker; or
  - (c) a person acting on behalf of a class of such employees or outworkers.

(4) If FWA is satisfied that an application for a take-home pay order has already been made in relation to an employee or a class of employees, or an outworker or a class of outworkers, FWA may dismiss any later application that is made under these provisions in relation to the same employee or employees, or the same outworker or outworkers.

**10 Ensuring that take-home pay orders are confined to the circumstances for which they are needed**

(1) FWA must not make a take-home pay order in relation to an employee or class of employees, or an outworker or a class of outworkers, if:

- (a) FWA considers that the modernisation-related reduction in take-home pay is minor or insignificant; or
- (b) FWA is satisfied that the employee or employees, or outworker or outworkers, have been adequately compensated in other ways for the reduction.

(2) FWA must ensure that a take-home pay order is expressed so that:

- (a) it does not apply to an employee or outworker unless the employee or outworker has actually suffered a modernisation-related reduction in take-home pay; and
- (b) if the take-home pay payable to the employee or outworker under the modern award increases after the order is made, there is a corresponding reduction in any amount payable to the employee or outworker under the order.

**11 Take-home pay order continues to have effect so long as modern award continues to cover the employee or employees**

A take-home pay order made in relation to an employee or class of employees to whom a particular modern award applies continues to have effect in relation to those employees (subject to the terms of the order) for so long as the modern award continues to cover the employee or employees, even if it stops applying to the employee or employees because an enterprise agreement starts to apply.

**12 Inconsistency with modern awards and enterprise agreements**

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A term of a modern award or an enterprise agreement has no effect in relation to an employee or outworker to the extent that it is less beneficial to the employee or outworker than a term of a take-home pay order that applies to the employee or outworker.

### **13 Application of provisions of FW Act to take-home pay orders**

The FW Act applies as if the following provisions of that Act included a reference to a take-home pay order:

- (a) subsection 675(2);
- (b) subsection 706(2).

Note: For compliance with take-home pay orders, see item 7 of Schedule 16.

## **Schedule 6—Modern enterprise awards**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

## **Part 2—The enterprise instrument modernisation process**

### **Division 1—Enterprise instruments**

#### **2 Enterprise instruments**

- (1) Each of the following is an *enterprise instrument*:
  - (a) an enterprise award-based instrument;
  - (b) an enterprise preserved collective State agreement.
- (2) An *enterprise award-based instrument* is an award-based transitional instrument to which subitem (2A) or (2B) applies.
- (2A) This subitem applies to an award-based transitional instrument that is an award, if the award covers employees in:
  - (a) a single enterprise (or a part of a single enterprise) only; or
  - (b) one or more enterprises, if the employers all carry on similar business activities under the same franchise and are:
    - (i) franchisees of the same franchisor; or
    - (ii) related bodies corporate of the same franchisor; or
    - (iii) any combination of the above.
- (2B) This subitem applies to an award-based transitional instrument that is a notional agreement preserving State awards, if the notional agreement includes terms and conditions from a State award that covered employees in:
  - (a) a single enterprise (or a part of a single enterprise) only; or
  - (b) one or more enterprises, if the employers all carried on similar business activities under the same franchise and were:
    - (i) franchisees of the same franchisor; or
    - (ii) related bodies corporate of the same franchisor; or
    - (iii) any combination of the above.
- (3) An *enterprise preserved collective State agreement* is a transitional instrument that is a preserved collective State agreement in relation to which the following paragraphs are satisfied:
  - (a) a State or Territory law had, on the day before the commencement of Part 2 of Schedule 4 to the *Workplace*

*Relations Amendment (Work Choices) Act 2005*, the effect (however described) of converting a State award into the relevant State employment agreement;

(b) if the State award had continued to have effect in relation to employees, a notional agreement preserving State awards to which subitem (2B) applies would have been taken to come into operation in relation to those employees.

### **3 Meaning of *single enterprise* and *part of a single enterprise***

(1) A *single enterprise* is:

- (a) a business, project or undertaking that is carried on by an employer; or
- (b) the activities carried on by:
  - (i) the Commonwealth, a State or a Territory; or
  - (ii) a body, association, office or other entity established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
  - (iii) any other body in which the Commonwealth, a State or a Territory has a controlling interest.

(2) For the purposes of subitem (1), if 2 or more employers carry on a business, project or undertaking as a joint venture or common enterprise, the employers are taken to be one employer.

(3) For the purposes of subitem (1), if 2 or more related bodies corporate each carry on a single enterprise:

- (a) the bodies corporate are taken to be one employer; and
- (b) the single enterprises are taken to be one single enterprise.

Note: However, an enterprise instrument or a modern enterprise award could just relate to a part of that single enterprise.

(4) A *part of a single enterprise* includes, for example:

- (a) a geographically distinct part of the single enterprise; or
- (b) a distinct operational or organisational unit within the single enterprise.

## **Division 2—The enterprise instrument modernisation process**

### **4 The enterprise instrument modernisation process**

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- (1) The ***enterprise instrument modernisation process*** is the process of making modern awards under this Division to replace enterprise instruments.
- (2) On application, FWA may make a modern award (a ***modern enterprise award***) to replace an enterprise instrument.
- (3) The application may be made only:
  - (a) by a person covered by the enterprise instrument; and
  - (b) during the period starting on the WR Act repeal day and ending at the end of 31 December 2013.
- (4) A modern enterprise award must be made by a Full Bench.
- (5) In deciding whether or not to make a modern enterprise award, and in determining the content of that award, FWA must take into account the following:
  - (a) the circumstances that led to the making of the enterprise instrument rather than an instrument of more general application;
  - (b) whether there is a modern award (other than the miscellaneous modern award) that would, but for the enterprise instrument, cover the persons who are covered by the instrument, or whether such a modern award is likely to be made in the Part 10A award modernisation process;
  - (c) the content, or likely content, of the modern award referred to in paragraph (b) (taking account of any variations of the modern award that are likely to be made in the Part 10A award modernisation process);
  - (d) the terms and conditions of employment applying in the industry in which the persons covered by the enterprise instrument operate, and the extent to which those terms and conditions are reflected in the instrument;
  - (e) the extent to which the enterprise instrument provides enterprise-specific terms and conditions of employment;
  - (f) the likely impact on the persons covered by the enterprise instrument, and the persons covered by the modern award referred to in paragraph (b), of a decision to make, or not make, the modern enterprise award, including any impact on the ongoing viability or competitiveness of any enterprise carried on by those persons;

- (g) the views of the persons covered by the enterprise instrument;
- (h) any other matter prescribed by the regulations.

Note: A variation referred to in paragraph (c) may, for example, be a variation to reflect the outcome of the AFPC's final wage review under the WR Act, or to include transitional arrangements in the modern award.

(5A) If FWA makes a modern enterprise award before the FW (safety net provisions) commencement day, the modern enterprise award must not be expressed to commence on a day earlier than the FW (safety net provisions) commencement day.

Note: For when a modern enterprise award is in operation, see item 17.

(6) The regulations may deal with other matters relating to the enterprise instrument modernisation process.

## **5 Enterprise instruments: termination by FWA**

- (1) A person covered by an enterprise instrument may apply to FWA for FWA to terminate the instrument.
- (2) The application may be made only during the period starting on the WR Act repeal day and ending at the end of 31 December 2013.
- (3) If an application for FWA to terminate the enterprise instrument is made under subitem (1), FWA may:
  - (a) terminate the enterprise instrument; or
  - (b) decide that the enterprise instrument should not be terminated; or
  - (c) decide to treat the application as if it were an application under item 4.
- (4) In making a decision under subitem (3), FWA must take into account the following:
  - (a) the circumstances that led to the making of the enterprise instrument rather than an instrument of more general application;
  - (b) whether there is a modern award (other than the miscellaneous modern award) that would, but for the enterprise instrument, cover the persons who are covered by the instrument, or whether such a modern award is likely to be made in the Part 10A award modernisation process;

- (c) the content, or likely content, of the modern award referred to in paragraph (b) (taking account of any variations of the modern award that are likely to be made in the Part 10A award modernisation process);
- (d) the terms and conditions of employment applying in the industry in which the persons covered by the enterprise instrument operate, and the extent to which those terms and conditions are reflected in the instrument;
- (e) the extent to which the enterprise instrument provides enterprise-specific terms and conditions of employment;
- (f) the likely impact on the persons covered by the enterprise instrument, and the persons covered by the modern award referred to in paragraph (b), of a decision to terminate, or not terminate, the enterprise instrument, including any impact on the ongoing viability or competitiveness of any enterprise carried on by those persons;
- (g) the views of the persons covered by the enterprise instrument;
- (h) any other matter prescribed by the regulations.

Note: A variation referred to in paragraph (c) may, for example, be a variation to reflect the outcome of the AFPC's final wage review under the WR Act, or to include transitional arrangements in the modern award.

- (5) If FWA terminates the enterprise instrument, the termination operates from the day specified in the decision to terminate the instrument, being a day that is not earlier than the FW (safety net provisions) commencement day.

## 6 The modern enterprise awards objective

- (1) The modern awards objective and the minimum wages objective apply to FWA making a modern enterprise award under this Division.
- (2) However, in applying the modern awards objective and the minimum wages objective, FWA must recognise that modern enterprise awards may provide terms and conditions tailored to reflect employment arrangements that have been developed in relation to the relevant enterprises. This is the ***modern enterprise awards objective***.

Note 1: See also item 11 (enterprise instrument modernisation process is not intended to result in reduction in take-home pay).

Note 2: See also item 16A (how the FW Act applies to the enterprise instrument modernisation process before the FW (safety net provisions) commencement day).

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## **7 Terms of modern enterprise awards**

(1) Subject to this item and item 8, Division 3 of Part 2-3 of the FW Act (which deals with terms of modern awards) applies in relation to a modern enterprise award made under this Division.

Note: See also item 16A (how the FW Act applies to the enterprise instrument modernisation process before the FW (safety net provisions) commencement day).

### *Increases in entitlements*

(2) If the making of a modern enterprise award results in an increase in an employee's entitlements, the modern enterprise award may provide for the increases to take effect in stages.

### *Industry-specific redundancy schemes*

(3) If a modern award includes an industry-specific redundancy scheme in relation to a particular industry, and FWA makes a modern enterprise award that covers persons who operate in that industry, FWA may include the industry-specific redundancy scheme in the modern enterprise award.

## **8 Coverage terms**

### *Coverage terms must be included*

(1) A modern enterprise award must include terms (*coverage terms*) setting out, in accordance with this item:

- (a) the enterprise or enterprises to which the modern enterprise award relates; and
- (b) the employer or employers, employees and organisations that are covered by the modern enterprise award.

### *Enterprises*

(2) A modern enterprise award must be expressed to relate:

- (a) to a single enterprise (or a part of a single enterprise) only; or
- (b) to one or more enterprises, but only if the employers all carry on similar business activities under the same franchise and are:
  - (i) franchisees of the same franchisor; or
  - (ii) related bodies corporate of the same franchisor; or
  - (iii) any combination of the above.

*Employers and employees*

(3) A modern enterprise award must be expressed to cover:

- (a) a specified employer that carries on, or specified employers that carry on, the enterprise or enterprises referred to in subitem (2); and
- (b) specified employees of the employer or employers covered by the modern enterprise award.

*Organisations*

(4) A modern enterprise award may be expressed to cover one or more specified organisations, in relation to:

- (a) all or specified employees covered by the award; or
- (b) the employer, or all or specified employers, covered by the award.

*Outworker entities*

(5) A modern enterprise award must not be expressed to cover outworker entities.

*How coverage etc. is expressed*

(6) For the purposes of subitem (2), an enterprise must be specified:

- (a) if paragraph (2)(a) applies to the enterprise—by name; or
- (b) if paragraph (2)(b) applies to the enterprise—by name, or by the name of the franchise.

(7) For the purposes of subitems (3) and (4):

- (a) an employer or employers may be specified by name or by inclusion in a specified class or specified classes; and
- (b) employees must be specified by inclusion in a specified class or specified classes; and
- (c) organisations must be specified by name.

*Employees not traditionally covered by awards etc.*

(8) A modern enterprise award must not be expressed to cover classes of employees:

- (a) who, because of the nature or seniority of their role, have traditionally not been covered by awards (whether made under laws of the Commonwealth or the States); or

- (b) who perform work that is not of a similar nature to work that has traditionally been regulated by such awards.

Note: For example, in some industries, managerial employees have traditionally not been covered by awards.

## **9 Variation and termination of certain transitional instruments etc. to take account of enterprise instrument modernisation process**

- (1) If FWA makes a modern enterprise award to replace an enterprise preserved collective State agreement, the agreement terminates when the modern award comes into operation.
- (2) FWA must, as soon as practicable after a modern enterprise award that is made to replace an enterprise instrument comes into operation:
  - (a) terminate the enterprise instrument (if it has not already terminated under subitem (1)); and
  - (b) vary or terminate (as appropriate) any of the following (*modernisable instruments*):
    - (i) other award-based transitional instruments;
    - (ii) transitional APCSs;so that employees who were covered by the enterprise instrument are no longer covered by those modernisable instruments.

Note 1: The main provisions about transitional instruments are in Schedule 3, and the main provisions about transitional APCSs are in Schedule 9.

Note 2: This item does not limit the effect of any other provision of this Act under which a modernisable instrument ceases to cover a person from a time earlier than when the instrument is terminated or varied under this item.

- (3) If FWA decides not to make a modern enterprise award to replace an enterprise instrument, the instrument terminates when that decision comes into operation.
- (3A) Despite subitem (3), if, before the FW (safety net provisions) commencement day, FWA makes a decision not to make a modern enterprise award to replace an enterprise instrument, the decision must not come into operation before the FW (safety net provisions) commencement day.

- (4) If, by the end of the period specified in paragraph 4(3)(b), no application under item 4 or 5 has been made in relation to an enterprise instrument, the instrument terminates at the end of that period.
- (5) As soon as practicable after all modern enterprise awards made in the enterprise instrument modernisation process have come into operation, FWA must terminate any remaining modernisable instruments.

## **10 Notification of the cut-off for the enterprise instrument modernisation process**

- (1) FWA must, at least 6 months before the end of the period specified in paragraph 4(3)(b), advise any persons still covered by an enterprise instrument:
  - (a) that the period for making applications under items 4 and 5 ends on 31 December 2013; and
  - (b) of the consequences for the enterprise instrument if an application in relation to the instrument is not made.
- (2) FWA may give that advice by any means it considers appropriate.
- (3) Section 625 of the FW Act (which deals with delegation by the President of functions and powers of FWA) has effect as if subsection (2) of that section included a reference to FWA's functions and powers under this item.

## **Division 3—Avoiding reductions in take-home pay**

### **11 Enterprise instrument modernisation process is not intended to result in reduction in take-home pay**

- (1) The enterprise instrument modernisation process is not intended to result in a reduction in the take-home pay of employees.
- (2) An employee's *take-home pay* is the pay an 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 of the FW Act.

Note: Deductions permitted by section 324 of the FW Act may (for example) include deductions under salary sacrificing arrangements.

(3) An employee suffers a ***modernisation-related reduction in take-home pay*** if, and only if:

- (a) a modern enterprise award made in the enterprise instrument modernisation process starts to apply to the employee when the award comes into operation; 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 modern enterprise award came into operation; and
- (c) the amount of the employee's take-home pay for working particular hours or for a particular quantity of work after the modern enterprise award comes into operation is less than what would have been the employee's take-home pay for those hours or that quantity of work immediately before the award came into operation; and
- (d) that reduction in the employee's take-home pay is attributable to the enterprise instrument modernisation process.

## **12 Orders remedying reductions in take-home pay**

- (1) If FWA is satisfied that an employee, or a class of employees, to whom a modern enterprise award applies has suffered a modernisation-related reduction in take-home pay, FWA may make any order (a ***take-home pay order***) requiring, or relating to, the payment of an amount or amounts to the employee or employees that FWA considers appropriate to remedy the situation.
- (2) FWA may make a take-home pay order only on application by:
  - (a) an employee who has suffered a modernisation-related reduction in take-home pay; or
  - (b) an organisation that is entitled to represent the industrial interests of such an employee; or
  - (c) a person acting on behalf of a class of such employees.
- (3) If FWA is satisfied that an application for a take-home pay order has already been made in relation to an employee or a class of employees, FWA may dismiss any later application that is made under these provisions in relation to the same employee or employees.

## **13 Ensuring that take-home pay orders are confined to the circumstances for which they are needed**

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- (1) FWA must not make a take-home pay order in relation to an employee or class of employees if:
  - (a) FWA considers that the modernisation-related reduction in take-home pay is minor or insignificant; or
  - (b) FWA is satisfied that the employee or employees have been adequately compensated in other ways for the reduction.
- (2) FWA must ensure that a take-home pay order is expressed so that:
  - (a) it does not apply to an employee unless the employee has actually suffered a modernisation-related reduction in take-home pay; and
  - (b) if the take-home pay payable to the employee under the modern enterprise award increases after the order is made, there is a corresponding reduction in any amount payable to the employee under the order.

#### **14 Take-home pay order continues to have effect so long as modern enterprise award continues to cover the employee or employees**

A take-home pay order made in relation to an employee or class of employees to whom a particular modern enterprise award applies continues to have effect in relation to those employees (subject to the terms of the order) for so long as the modern enterprise award continues to cover the employee or employees, even if it stops applying to the employee or employees because an enterprise agreement starts to apply.

#### **15 Inconsistency with modern enterprise awards and enterprise agreements**

A term of a modern enterprise award or an enterprise agreement has no effect in relation to an 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.

#### **16 Application of provisions of FW Act to take-home pay orders**

The FW Act applies as if the following provisions of that Act included a reference to a take-home pay order:

- (a) subsection 675(2);
- (b) subsection 706(2).

Note: For compliance with take-home pay orders, see item 7 of Schedule 16.

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## **Division 4—Application of the FW Act**

### **16A How the FW Act applies to the modernisation process before the FW (safety net provisions) commencement day**

For the purposes of making a modern enterprise award before the FW (safety net provisions) commencement day, the following provisions of the FW Act apply as if they had already commenced:

- (a) Part 2-2 (which deals with the National Employment Standards);
- (b) section 134 (which deals with the modern awards objective);
- (c) Division 3 of Part 2-3 (which deals with terms of modern awards);
- (d) section 284 (which deals with the minimum wages objective);
- (e) any provisions that are necessary for the effectual operation of the provisions referred to in paragraphs (a) to (d).

### **17 How the FW Act applies to modern awards made in the enterprise instrument modernisation process**

- (1) A modern enterprise award made under Division 2 is, for the purposes of the FW Act (and any other law), taken to be a modern award (being a modern enterprise award) within the meaning of that Act from the day on which the modern enterprise award is made.
- (2) Section 49 of the FW Act does not apply for the purpose of determining when the modern enterprise award comes into operation. Instead, the modern enterprise award comes into operation on the day on which it is expressed to commence, being a day that is not earlier than the day on which the modern enterprise award is made.
- (3) The regulations may deal with other matters relating to how the FW Act applies in relation to modern enterprise awards.

## Part 3—Amendments

### ***Fair Work Act 2009***

#### **18 Section 12 (definition of award modernisation process)**

Repeal the definition, substitute:

***award modernisation process*** means:

- (a) the process of making modern awards under Part 10A of the *Workplace Relations Act 1996*, as continued by Part 2 of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; and
- (b) the enterprise instrument modernisation process provided for by Part 2 of Schedule 6 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

#### **19 Section 12 (definition of coverage terms)**

Repeal the definition, substitute:

***coverage terms***:

- (a) in relation to a modern award (other than a modern enterprise award): see section 143; and
- (b) in relation to a modern enterprise award: see section 143A.

#### **20 Section 12**

Insert:

***modern enterprise award***: see subsection 168A(2).

#### **21 Section 12**

Insert:

***modern enterprise awards objective***: see subsection 168B(1).

#### **22 Section 12**

Insert:

***part of a single enterprise***: see subsection 168A(6).

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## **23 Section 12**

Insert:

*single enterprise*: see section 168A.

## **24 Section 132 (after the paragraph relating to Division 6)**

Insert:

Division 7 contains additional provisions relating to modern enterprise awards.

## **25 At the end of section 143**

Add:

*Modern enterprise awards*

- (8) A modern award (other than a modern enterprise award) must be expressed not to cover employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*), or employers in relation to those employees.
- (9) This section does not apply to modern enterprise awards.

Note: The heading to section 143 is altered by adding at the end “**of modern awards other than modern enterprise awards**”.

## **26 After section 143**

Insert:

### **143A Coverage terms of modern enterprise awards**

*Coverage terms must be included*

- (1) A modern enterprise award must include terms (***coverage terms***) setting out, in accordance with this section:
  - (a) the enterprise or enterprises to which the modern enterprise award relates; and
  - (b) the employers, employees and organisations that are covered by the modern enterprise award.

*Enterprises*

(2) A modern enterprise award must be expressed to relate:

- (a) to a single enterprise (or a part of a single enterprise) only; or
- (b) to one or more enterprises, but only if the employers all carry on similar business activities under the same franchise and are:
  - (i) franchisees of the same franchisor; or
  - (ii) related bodies corporate of the same franchisor; or
  - (iii) any combination of the above.

*Employers and employees*

(3) A modern enterprise award must be expressed to cover:

- (a) a specified employer that carries on, or specified employers that carry on, the enterprise or enterprises referred to in subsection (2); and
- (b) specified employees of employers covered by the modern enterprise award.

*Organisations*

(4) A modern enterprise award may be expressed to cover one or more specified organisations, in relation to:

- (a) all or specified employees covered by the award; or
- (b) the employer, or all or specified employers, covered by the award.

*Outworker entities*

(5) A modern enterprise award must not be expressed to cover outworker entities.

*How coverage etc. is expressed*

(6) For the purposes of subsection (2), an enterprise must be specified:

- (a) if paragraph (2)(a) applies to the enterprise—by name; or
- (b) if paragraph (2)(b) applies to the enterprise—by name, or by the name of the franchise.

(7) For the purposes of subsections (3) and (4):

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- (a) an employer or employers may be specified by name or by inclusion in a specified class or specified classes; and
- (b) employees must be specified by inclusion in a specified class or specified classes; and
- (c) organisations must be specified by name.

*Employees not traditionally covered by awards etc.*

- (8) A modern enterprise award must not be expressed to cover classes of employees:
  - (a) who, because of the nature or seniority of their role, have traditionally not been covered by awards (whether made under laws of the Commonwealth or the States); or
  - (b) who perform work that is not of a similar nature to work that has traditionally been regulated by such awards.

Note: For example, in some industries, managerial employees have traditionally not been covered by awards.

## **27 At the end of Part 2-3**

Add:

## **Division 7—Additional provisions relating to modern enterprise awards**

### **168A Modern enterprise awards**

- (1) This Division contains additional provisions that relate to modern enterprise awards. The provisions in this Division have effect despite anything else in this Part.
- (2) A ***modern enterprise award*** is a modern award that is expressed to relate to:
  - (a) a single enterprise (or a part of a single enterprise) only; or
  - (b) one or more enterprises, if the employers all carry on similar business activities under the same franchise and are:
    - (i) franchisees of the same franchisor; or
    - (ii) related bodies corporate of the same franchisor; or
    - (iii) any combination of the above.
- (3) A ***single enterprise*** is:

- (a) a business, project or undertaking that is carried on by an employer; or
- (b) the activities carried on by:
  - (i) the Commonwealth, a State or a Territory; or
  - (ii) a body, association, office or other entity established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
  - (iii) any other body in which the Commonwealth, a State or a Territory has a controlling interest.

(4) For the purposes of subsection (3), if 2 or more employers carry on a business, project or undertaking as a joint venture or common enterprise, the employers are taken to be one employer.

(5) For the purposes of subsection (3), if 2 or more related bodies corporate each carry on a single enterprise:

- (a) the bodies corporate are taken to be one employer; and
- (b) the single enterprises are taken to be one single enterprise.

Note: However, a modern enterprise award could just relate to a part of that single enterprise.

(6) A *part of a single enterprise* includes, for example:

- (a) a geographically distinct part of the single enterprise; or
- (b) a distinct operational or organisational unit within the single enterprise.

## 168B The modern enterprise awards objective

*What is the modern enterprise awards objective?*

(1) FWA must recognise that modern enterprise awards may provide terms and conditions tailored to reflect employment arrangements that have been developed in relation to the relevant enterprises. This is the **modern enterprise awards objective**.

*When does the modern enterprise awards objective apply?*

(2) The modern enterprise awards objective applies to the performance of FWA's functions or powers under this Act, so far as they relate to modern enterprise awards.

*References to the modern awards objective*

(3) A reference to the modern awards objective in this Act, other than section 134, is taken to include a reference to the modern enterprise awards objective.

**168C Rules about making and revoking modern enterprise awards**

*Making modern enterprise awards*

(1) FWA must not, under this Part:

- (a) make a modern enterprise award; or
- (b) make a determination varying a modern award so that it becomes a modern enterprise award.

Note: Modern enterprise awards can be made only in accordance with the enterprise instrument modernisation process provided for by Part 2 of Schedule 6 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

*Revoking modern enterprise awards*

(2) FWA may make a determination revoking a modern enterprise award only on application under section 158.

(3) FWA must not make a determination revoking a modern enterprise award unless FWA is satisfied that:

- (a) the award is obsolete or no longer capable of operating; or
- (b) all the employees covered by the award will, when the revocation comes into operation, be covered by a different modern award (other than the miscellaneous modern award or a modern enterprise award) that is appropriate for them.

(4) In deciding whether to make a determination revoking a modern enterprise award FWA must take into account the following:

- (a) the circumstances that led to the making of the modern enterprise award;
- (b) the content of the modern award referred to in paragraph (3)(b);
- (c) the terms and conditions of employment applying in the industry in which the persons covered by the modern enterprise award operate, and the extent to which those terms and conditions are reflected in the modern enterprise award;

- (d) the extent to which the modern enterprise award provides enterprise-specific terms and conditions of employment;
- (e) the likely impact on the persons covered by the modern enterprise award, and the persons covered by the modern award referred to in paragraph (3)(b), of a decision to revoke, or not revoke, the modern enterprise award, including any impact on the ongoing viability or competitiveness of any enterprise carried on by those persons;
- (f) the views of the persons covered by the modern enterprise award;
- (g) any other matter prescribed by the regulations.

#### **168D Rules about changing coverage of modern enterprise awards**

- (1) FWA must not make a determination varying a modern enterprise award so as to extend the coverage of the modern enterprise award so that it ceases to be a modern enterprise award.
- (2) In deciding whether to make a determination varying the coverage of a modern enterprise award in some other way, FWA must take into account the following:
  - (a) the circumstances that led to the making of the modern enterprise award;
  - (b) whether there is a modern award (other than the miscellaneous modern award or a modern enterprise award) that would, but for the modern enterprise award, cover the persons covered, or proposed to be covered, by the modern enterprise award;
  - (c) the content of the modern award referred to in paragraph (b);
  - (d) the terms and conditions of employment applying in the industry in which the persons covered, or proposed to be covered, by the modern award operate, and the extent to which those terms and conditions are reflected in the modern enterprise award;
  - (e) the extent to which the modern enterprise award provides enterprise-specific terms and conditions of employment;
  - (f) the likely impact on the persons covered, or proposed to be covered, by the modern enterprise award, and the persons covered by the modern award referred to in paragraph (b), of a decision to make, or not make, the variation, including any

impact on the ongoing viability or competitiveness of any enterprise carried on by those persons;

- (g) the views of the persons covered, or proposed to be covered, by the modern enterprise award;
- (h) any other matter prescribed by the regulations.

## **28 Subsection 292(1)**

Repeal the subsection, substitute:

- (1) If FWA makes one or more determinations varying modern award minimum wages in an annual wage review, FWA must publish the rates of those wages as so varied:
  - (a) for wages in a modern award (other than a modern enterprise award)—before 1 July in the next financial year; and
  - (b) for wages in a modern enterprise award—as soon as practicable.

Note: FWA must also publish the modern award as varied (see section 168).

Note: The heading to section 292 is altered by omitting “**by 1 July**”.

## **Schedule 7—Enterprise agreements and workplace determinations made under the FW Act**

### **Part 1—Preliminary**

#### **1 Meanings of *employer* and *employee***

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

**Part 2—Transitional provisions relating to the application of the no-disadvantage test to enterprise agreements made and varied during bridging period**

**Division 1—Enterprise agreements and variations made during bridging period must pass no-disadvantage test**

**2 Approval of agreement or variation by FWA—passing the no-disadvantage test**

- (1) Paragraph 186(2)(d) of the FW Act (including as that paragraph has effect under subsection 211(3) of that Act) and subsection 211(5) of that Act apply in relation to:
  - (a) an enterprise agreement made during the bridging period; and
  - (b) a variation of an enterprise agreement, if the variation was made during the bridging period;as if the words “better off overall test” were omitted and the words “no-disadvantage test as set out in Division 2 of Part 2 of Schedule 7 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*” were substituted.
- (2) Paragraph 189(1)(b) of the FW Act applies in relation to an enterprise agreement made during the bridging period as if the words “better off overall test” were omitted and the words “no-disadvantage test as set out in Division 2 of Part 2 of Schedule 7 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*” were substituted.

**Note:** This means that section 193 (which deals with passing the better off overall test) and subsections 211(4) and (5) (which deal with applying the better off overall test to agreements as proposed to be varied) of the FW Act will have no effect in relation to the approval by FWA of agreements and variations during the bridging period.

**Division 2—The no-disadvantage test**

**3 Definitions**

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Transitional provisions relating to the application of the no-disadvantage test to enterprise agreements made and varied during bridging period **Part 2**

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(1) In this Division:

**designated award**, for an employee or employees who are or may be covered by an enterprise agreement, means an award determined by the FWA under item 8, and includes an award taken to be so designated in relation to the employee or employees under item 7 (unless a different award has been designated in relation to the employee or employees under item 8).

**industrial instrument** means any of the following:

- (a) an AWA;
- (b) a workplace agreement;
- (c) a pre-reform AWA;
- (d) a pre-reform certified agreement;
- (e) a workplace determination (within the meaning of the WR Act);
- (f) a section 170MX award;
- (g) an old IR agreement;
- (h) a preserved State agreement.

**reference instrument** has the meaning given by subitem 5(1).

**relevant general instrument** has the meaning given by subitem 5(2).

*Application of this Division to variations*

(2) Unless the contrary intention appears, this Division applies to an enterprise agreement as proposed to be varied in a corresponding way to the way in which it applies to an enterprise agreement.

(3) For the purposes of subitem (2):

- (a) a reference in a provision of this Division to an employee who is covered by the agreement is taken to be a reference to an employee who is one of the affected employees for the variation of the agreement (within the meaning of the FW Act); and
- (b) a reference in a provision of this Division to the employees who are covered by the agreement is taken to be a reference to the affected employees for the variation; and
- (c) a reference in a provision of this Division to an application for approval of the agreement under section 185 of the FW Act is taken to be a reference to an application for approval of a variation of the agreement under section 210 of that Act.

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*Application of this Division to prospective employees*

(4) For the purposes of applying this Division to an enterprise agreement, a reference to an employee who is covered by the enterprise agreement is, so far as the context permits, taken to include a reference to a person who may at a future time be covered by the enterprise agreement.

#### **4 When does an agreement pass the no-disadvantage test?**

(1) An enterprise agreement passes the no-disadvantage test if FWA is satisfied that the agreement does not, or would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees who are covered by the agreement under any reference instrument relating to one or more of the employees.

(2) For the purposes of subitem (1):

- (a) a law of a State or Territory that:
  - (i) relates to long service leave; and
  - (ii) applied, immediately before the application was made for approval of the agreement under section 185 of the FW Act, to an employee referred to in that subitem, or would have applied to such an employee if he or she had been employed by the employer at that time;is taken, to the extent that it provides for long service leave, to be a reference instrument relating to the employee; and
- (b) if, apart from this subitem, the only reference instrument relating to the employee is a designated award for the employee—the designated award is to be disregarded to the extent (if any) that it provides for long service leave.

Note: An enterprise agreement made during the bridging period will prevail over a law of a State or Territory, to the extent of any inconsistency, so far as that law deals with long service leave (see item 17).

(3) An enterprise agreement or a variation of an enterprise agreement is taken to pass the no-disadvantage test if there is no reference instrument in relation to any of the employees who are covered by the agreement.

(4) To avoid doubt, if there is a reference instrument in relation to one or more, but not all, of the employees referred to in subitem (1):

- (a) if the agreement passes the no-disadvantage test under subitem (1)—it passes the test in relation to all employees who are covered by the agreement; or

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Transitional provisions relating to the application of the no-disadvantage test to enterprise agreements made and varied during bridging period **Part 2**

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(b) if the agreement does not pass the no-disadvantage test under subitem (1)—it does not pass the test in relation to any employees who are covered by the agreement.

Note 1: In addition to the no-disadvantage test, during the bridging period, the Australian Fair Pay and Conditions Standard prevails over an enterprise agreement to the extent to which the Australian Fair Pay and Conditions Standard provides a more favourable outcome for the employee or employees—see subitem 27(1).

Note 2: From the FW (safety net provisions) commencement day, a term of an enterprise agreement has no effect to the extent it excludes the National Employment Standards or any provision of the National Employment Standards (see sections 55 and 56 of the FW Act).

Note 3: This item applies to an enterprise agreement as proposed to be varied in a corresponding way to the way in which it applies to an enterprise agreement—see subitems 3(2) and (3).

Note 4: See item 10 for how FWA makes decisions under this item.

(5) For the purposes of determining whether an enterprise agreement as proposed to be varied passes the no-disadvantage test, FWA must disregard any individual flexibility arrangement that has been agreed to by an affected employee and his or her employer under the flexibility term in the agreement.

## 5 Reference instruments etc.

(1) A **reference instrument**, in relation to employees who are covered by an enterprise agreement, is:

- (a) any relevant general instrument; or
- (b) if there is no relevant general instrument—any designated award;

for one or more of the employees.

(2) A **relevant general instrument**, for an employee who is covered by an enterprise agreement, is an award-based transitional instrument:

- (a) that regulates, or would but for an enterprise agreement or another industrial instrument having come into operation regulate, any term or condition of employment of persons engaged in the same kind of work as that performed or to be performed by the employee under the enterprise agreement; and
- (b) that applied, or would but for an enterprise agreement or another industrial instrument having come into operation have applied, to the employee's employer immediately

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before the day on which the application for approval of the agreement was made under section 185 of the FW Act.

## **6 Enterprise agreement to be tested as at test time**

- (1) In deciding whether an enterprise agreement passes, or does not pass, the no-disadvantage test, FWA must consider it as in existence at the test time.
- (2) The *test time* is the time when the application for approval of the agreement was made under section 185 of the FW Act.

## **7 Designated awards—before application for FWA approval**

- (1) FWA may, on application by an employer, determine that an award is a designated award for an employee or class of employees of the employer.
- (2) FWA may make a determination under this item only if it is satisfied that:
  - (a) the employee or employees are or may be employed in an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by the employee or employees:
    - (i) are usually regulated by an award; or
    - (ii) would, but for an enterprise agreement or another industrial instrument having come into operation, usually be regulated by an award; and
  - (b) unless there is a designated award for the employee or employees, there would be no reference instrument relating to the employee or employees; and
  - (c) there is an award that satisfies the requirements specified in subitem (3).
- (3) An award or awards determined by FWA under this item:
  - (a) must be an award or awards regulating, or that would, but for an enterprise agreement or another industrial instrument having come into operation, regulate, terms or conditions of employment of employees engaged in the same kind of work as the work performed or to be performed by the employee or employees; and

Transitional provisions relating to the application of the no-disadvantage test to enterprise agreements made and varied during bridging period **Part 2**

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- (b) must, in the opinion of FWA, be an award or awards that would be appropriate for the purpose referred to in paragraph 8(3)(b) if an application were made for approval of an enterprise agreement under section 185 of the FW Act; and
- (c) must not be an award that regulates the terms and conditions of employment in a single business only (being the single business specified in the award).

(4) An award determined under this item in relation to an employee or employees is taken to be the designated award determined by FWA under item 8 in relation to the employee or employees if, later, an application is made for approval of an enterprise agreement under section 185 of the FW Act, in relation to the employee or the employees.

(5) Despite subitem (4), FWA may determine under item 8 that another award is a designated award in relation to the employee, or in relation to some or all of the employees, if:

- (a) FWA becomes aware of information that was not available to it at the time of the determination under subitem (1); and
- (b) FWA is satisfied that, had that information been available to it at that time, FWA would have determined under subitem (1) the other award to be the designated award.

(6) FWA may determine different awards under subitem (1) in relation to different employees.

(7) In this item, a reference to an employee or employees of an employer includes a reference to a person or persons who may become an employee or employees of the employer.

(8) A determination made under this item is not a legislative instrument.

## **8 Designated awards—after application for FWA approval**

- (1) This item applies to an enterprise agreement if there is no relevant general instrument in relation to an employee who is, or a class of employees who are, covered by the agreement.
- (2) FWA must determine that an award is a designated award for the employee or employees referred to in subitem (1), if it is satisfied that:
  - (a) on the date on which the application for approval of the enterprise agreement was made under section 185 of the FW

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Act, the employee or employees are or would be employed in an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by the employee or employees:

- (i) are usually regulated by an award; or
- (ii) would, but for an enterprise agreement or another industrial instrument having come into operation, usually be regulated by an award; and

(b) there is an award that satisfies the requirements specified in subitem (3).

(3) An award or awards determined by FWA under this item:

- (a) must be an award or awards regulating, or that would, but for an enterprise agreement or another industrial instrument having come into operation, regulate, terms or conditions of employment of employees engaged in the same kind of work as the work performed by the employee or employees under the enterprise agreement concerned; and
- (b) must, in the opinion of FWA, be appropriate for the purpose of deciding whether an enterprise agreement passes the no-disadvantage test; and
- (c) must not be an award that regulates the terms and conditions of employment in a single business only (being the single business specified in the award).

(4) FWA may determine different awards under subitem (2) in relation to different employees.

(5) A determination made under this item is not a legislative instrument.

**9 Effect of State awards etc.**

For the purposes of paragraphs 7(2)(a) and 8(2)(a), an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by an employee are usually regulated by an award is taken to include an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by the employee:

- (a) were, immediately before the reform commencement, usually regulated by a State award; or

Transitional provisions relating to the application of the no-disadvantage test to enterprise agreements made and varied during bridging period **Part 2**

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- (b) would, but for an industrial instrument or a State employment agreement having come into operation, usually have been so regulated immediately before the reform commencement.

## **10 Matters taken into account when testing agreement etc.**

- (1) In deciding whether an enterprise agreement passes, or does not pass, the no-disadvantage test, FWA:
  - (a) must have regard to the work obligations of the employee or employees under the enterprise agreement; and
  - (b) may inform itself in any way it considers appropriate including (but not limited to) contacting any of the following:
    - (i) the employer;
    - (ii) the employee, or some or all of the employees, who are covered by the enterprise agreement;
    - (iii) a bargaining representative in relation to the agreement.
- (2) In deciding whether to determine that an award is a designated award in relation to an employee or employees of an employer, FWA may inform itself in any way it considers appropriate including (but not limited to) contacting any of the following:
  - (a) the employer;
  - (b) the employee or employees;
  - (c) if the determination would be made under item 8—a bargaining representative in relation to the agreement.

**Part 3—Other requirements and modifications applying to making and varying enterprise agreements during the bridging period**

**Division 1—Requirements relating to approval**

**11 Approval of agreement by FWA—interaction with the National Employment Standards**

Paragraph 186(2)(c) of the FW Act (which deals with terms that contravene section 55 of that Act) does not apply in relation to:

- (a) an enterprise agreement made during the bridging period; or
- (b) a variation of an enterprise agreement, if the variation is made during the bridging period.

Note: Section 55 of the FW Act (which deals with the interaction between the National Employment Standards and enterprise agreements etc.) will apply after the end of the bridging period. Section 56 of that Act provides that a term of an enterprise agreement has no effect to the extent that it contravenes section 55.

**12 Approval of agreement by FWA—term about settling disputes**

Subparagraph 186(6)(a)(ii) of the FW Act (which deals with a requirement for an enterprise agreement to have a term about settling disputes in relation to the National Employment Standards) applies in relation to:

- (a) an enterprise agreement made during the bridging period; or
- (b) a variation of an enterprise agreement, if the variation is made during the bridging period;

as if the words “as those provisions apply after the end of the bridging period” were added after “National Employment Standards”.

Note: For disputes relating to the Australian Fair Pay and Conditions Standard as it applies during the bridging period, see item 27.

**13 Approval of agreement by FWA—requirements relating to particular kinds of employees**

- (1) Subsection 187(4) of the FW Act (which deals with requirements relating to particular kinds of employees) does not apply in relation to:

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- (a) an enterprise agreement made during the bridging period; or
- (b) a variation of an enterprise agreement, if the variation is made during the bridging period;

except in so far as that subsection requires FWA to be satisfied as referred to in section 200 of the FW Act.

- (2) Section 200 of the FW Act (which deals with requirements relating to outworkers) applies in relation to the agreement or variation as if:
  - (a) references in that section to a modern award were references to an award or a notional agreement preserving State awards; and
  - (b) references in that section to outworker terms were references to terms that are (or that would be, if the terms were in an award) outworker terms as defined in section 564 of the WR Act.

## **Division 2—Base rate of pay**

### **14 Base rate of pay under enterprise agreements**

The FW Act applies during the bridging period as if section 206 (which deals with base rate of pay under enterprise agreements) were omitted.

## **Division 3—No extensions of time**

### **15 No extension of time to apply for approval of agreement made in final 14 days of bridging period**

Paragraph 185(3)(b) of the FW Act (which deals with extending the period within which an application must be made to FWA for approval of an enterprise agreement) does not apply in relation to an enterprise agreement made during the period of 14 days ending at the end of the bridging period.

Note: If an application for approval of an enterprise agreement referred to in this item is not made to FWA within 14 days of it being made:

- (a) FWA cannot approve the enterprise agreement; but
- (b) another enterprise agreement may be made in accordance with Part 2-4 of the FW Act.

### **16 No extension of time to apply for approval of variation of agreement made in final 14 days of bridging period**

**Schedule 7** Enterprise agreements and workplace determinations made under the FW Act

**Part 3** Other requirements and modifications applying to making and varying enterprise agreements during the bridging period

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Paragraph 210(3)(b) of the FW Act (which deals with extending the period within which an application must be made to FWA for approval of a variation of an enterprise agreement) does not apply in relation to a variation of an enterprise agreement, if that variation was made during the period of 14 days ending at the end of the bridging period.

Note: If an application for approval of a variation referred to in this item is not made to FWA within 14 days of it being made:

- (a) FWA cannot approve the variation; but
- (b) another variation may be made in accordance with Part 2-4 of the FW Act.

**Division 4—State and Territory laws dealing with long service leave**

**17 Enterprise agreement made during the bridging period prevails over State and Territory laws dealing with long service leave**

Despite subsection 29(2) of the FW Act, an enterprise agreement made during the bridging period prevails over a law of a State or Territory, to the extent of any inconsistency, so far as that law deals with long service leave.

Note: A term of such an enterprise agreement will still apply subject to a law of a State or Territory so far as that law is otherwise covered by paragraph 29(2)(a) or (b) of the FW Act.

## **Part 4—Transitional provisions to apply the better off overall test after end of bridging period if award modernisation not yet completed**

### **18 Application of better off overall test to making of enterprise agreements that cover unmodernised award covered employees**

(1) This item applies in relation to an enterprise agreement made after the end of the bridging period if one or more of the employees covered by the agreement is an unmodernised award covered employee.

#### *Non-greenfields agreements*

(2) Despite section 193 of the FW Act, if the enterprise agreement is not a greenfields agreement, the agreement passes the better off overall test under that section only if:

- (a) FWA is satisfied as referred to in subsection (1) of that section in relation to the agreement; and
- (b) FWA is satisfied, as at the test time, that each unmodernised award covered employee, and each prospective unmodernised award covered employee, for the agreement would be better off overall if the agreement applied to the employee than if the relevant award-based transitional instrument and transitional APSC applied to the employee.

#### *Greenfields agreements*

(3) Despite section 193 of the FW Act, if the enterprise agreement is a greenfields agreement, the agreement passes the better off overall test under that section only if:

- (a) FWA is satisfied as referred to in subsection (3) of that section in relation to the agreement; and
- (b) FWA is satisfied, as at the test time, that each prospective unmodernised award covered employee for the agreement would be better off overall if the agreement applied to the employee than if the relevant award-based transitional instrument and transitional APSC applied to the employee.

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

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

## **19 Application of better off overall test to variation of enterprise agreements that cover unmodernised award covered employees**

(1) This item applies in relation to a variation of an enterprise agreement if:

- the variation is made after the end of the bridging period; and
- one or more of the employees who are covered by the agreement is an unmodernised award covered employee.

(2) Despite subsections 211(4) and (5) of the FW Act, subitems (3) and (4) apply in relation to the variation for the purposes of FWA being satisfied that the agreement as proposed to be varied passes the better off overall test.

*Modification of the better off overall test*

(3) An enterprise agreement as proposed to be varied passes the better off overall test if FWA is satisfied, as at the test time, that:

- each award covered employee, and each prospective award covered employee, for the agreement would be better off overall if the agreement applied to the employee than if the relevant modern award applied to the employee; and
- each unmodernised award covered employee, and each prospective unmodernised award covered employee, for the agreement would be better off overall if the agreement applied to the employee than if the relevant award-based transitional instrument and transitional APSC applied to the employee.

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

(4) For the purposes of determining whether the enterprise agreement as proposed to be varied passes the better off overall test, if a class of employees to which a particular employee belongs would be better off if the agreement applied to that class than if the relevant modern award or relevant award-based transitional instrument and transitional APCS applied to that class, FWA is entitled to assume, in the absence of evidence to the contrary, that the employee would be better off overall if the agreement applied to the employee.

*FWA must disregard individual flexibility arrangement*

(5) For the purposes of determining whether an enterprise agreement as proposed to be varied passes the better off overall test, FWA must disregard any individual flexibility arrangement that has been agreed to by an award covered employee and his or her employer under the flexibility term in the agreement.

## 20 Definitions

In this Part:

***prospective unmodernised award covered employee***, for an enterprise agreement, means a person who, if he or she were an employee at the test time of an employer covered by the agreement:

- (a) would be covered by the agreement; and
- (b) would be covered by an award-based transitional instrument (the ***relevant award-based transitional instrument***) that:
  - (i) is in operation; and
  - (ii) would cover the person in relation to the work that he or she would perform under the agreement; and
  - (iii) covers the employer.

***test time***:

- (a) for the purposes of item 18—means the time the application for approval of the agreement by FWA was made under section 185 of the FW Act; and
- (b) for the purposes of item 19—means the time the application for approval of the variation of the enterprise agreement by FWA was made under section 210 of that Act.

**Schedule 7** Enterprise agreements and workplace determinations made under the FW Act

**Part 4** Transitional provisions to apply the better off overall test after end of bridging period if award modernisation not yet completed

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***unmodernised award covered employee***, for an enterprise agreement, means an employee who:

- (a) is covered by the agreement; and
- (b) at the test time, is covered by an award-based transitional instrument (the ***relevant award-based transitional instrument***) that:
  - (i) is in operation; and
  - (ii) covers the employee in relation to the work that he or she is to perform under the agreement; and
  - (iii) covers his or her employer.

## **Part 5—Transitional provisions relating to workplace determinations made under the FW Act**

### **21 Application made during bridging period for special low-paid workplace determination—general requirement relating to minimum safety net**

Subsection 262(3) of the FW Act (which deals with a general requirement relating to the minimum safety net) applies in relation to an application for a special low-paid workplace determination made during the bridging period as if the words “modern awards together with the National Employment Standards” were omitted and the words “awards together with the Australian Fair Pay and Conditions Standard” were substituted.

### **22 Special low-paid workplace determination—employer must not previously have been covered by agreement-based transitional instrument**

- (1) Subsection 263(3) of the FW Act (which deals with additional requirements for making a special low-paid workplace determination) applies in relation to a workplace determination, whether made during or after the bridging period, as if the reference in that subsection to an enterprise agreement included a reference to a collective agreement-based transitional instrument.
- (2) However, subitem (1) does not apply in relation to a workplace determination if:
  - (a) the collective agreement-based transitional instrument has ceased to operate; and
  - (b) FWA considers that it is appropriate in the circumstances to make the workplace determination.
- (3) In making a decision for the purposes of paragraph (2)(b) of this item, FWA must take into account the objects set out in section 241 of the FW Act.

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**23 Core terms of workplace determinations—assessment of determination made during bridging period against the no disadvantage test**

Subsection 272(4) of the FW Act (which deals with workplace determinations passing the better off overall test) applies in relation to a workplace determination made during the bridging period as if the words “better off overall test under section 193” were omitted and the words “no-disadvantage test as set out in Division 2 of Part 2 of Schedule 7 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*” were substituted.

**24 Core terms of workplace determinations—assessment of determination made after bridging period that covers unmodernised award covered employees against the better off overall test**

- (1) This item applies in relation to a workplace determination made after the end of the bridging period if one or more of the employees who will be covered by the determination is an unmodernised award covered employee (within the meaning of Part 4).
- (2) Subsection 272(4) of the FW Act (which deals with workplace determinations passing the better off overall test) applies in relation to the workplace determination as if the words “under section 193” were omitted and the words “under item 18 of Schedule 7 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*” were substituted.

**25 Core terms of workplace determinations—safety net requirements**

- (1) This item applies in relation to a workplace determination made during the bridging period.
- (2) Subsection 272(5) of the FW Act (which deals with terms relating to safety net requirements) does not apply in relation to the workplace determination, except in so far as that subsection prevents a workplace determination from including a term that would, if the determination were an enterprise agreement, mean that FWA could not approve the agreement because of the operation of section 200 of that Act (which deals with requirements relating to outworkers).

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Note: Section 55 of the FW Act (which deals with the interaction between the National Employment Standards and workplace determinations etc.) will apply after the end of the bridging period. Section 56 of that Act provides that a term of a workplace determination has no effect to the extent that it contravenes section 55.

(3) Section 200 of the FW Act (which deals with requirements relating to outworkers) applies in relation to the workplace determination as if:

- (a) references in that section to a modern award were references to an award; and
- (b) references in that section to outworker terms were references to outworker terms as defined in section 564 of the WR Act.

## **26 Mandatory terms of workplace determinations—term about settling disputes**

(1) This item applies in relation to a workplace determination made during the bridging period.

(2) Paragraph 273(2)(b) of the FW Act (which deals with a requirement for a workplace determination to have a term about settling disputes in relation to the National Employment Standards) applies in relation to the workplace determination as if the words “as the National Employment Standards apply after the end of the bridging period” were added after “National Employment Standards”.

(3) Subsection 273(3) of the FW Act (which deals with a requirement for a workplace determination to have a term about settling disputes) applies in relation to the workplace determination as if the reference to paragraph 186(6)(a) of the FW Act were a reference to that paragraph in its application to an enterprise agreement made during the bridging period (see item 12).

Note: For disputes relating to the Australian Fair Pay and Conditions Standard as it applies during the bridging period, see item 27.

## **Part 6—Interaction with Australian Fair Pay and Conditions Standard during bridging period**

### **27 Interaction with Australian Fair Pay and Conditions Standard during bridging period**

*Continued application of Australian Fair Pay and Conditions Standard*

- (1) The Australian Fair Pay and Conditions Standard, in its application during the bridging period under item 2 of Schedule 4 and item 5 of Schedule 9 prevails over an enterprise agreement or a workplace determination that applies to an employee to the extent to which, in a particular respect, the Australian Fair Pay and Conditions Standard provides a more favourable outcome for the employee.

*Disputes about Australian Fair Pay and Conditions Standard to be resolved using the model dispute resolution process*

- (2) A dispute about:
  - (a) whether the Australian Fair Pay and Conditions Standard provides a more favourable outcome for an employee in a particular respect than an enterprise agreement or workplace determination that applies to that employee; or
  - (b) what the outcome is for an employee in a particular respect under the Australian Fair Pay and Conditions Standard, where an enterprise agreement or a workplace determination applies to that employee;is to be resolved using the model dispute resolution process referred to in Part 13 of the WR Act.
- (3) For the purposes of subitem (2), Divisions 2 and 3 of Part 13 of the WR Act apply as if a reference in those Divisions to the Commission or the Industrial Registrar were a reference to FWA.
- (4) The fact that the model dispute resolution process applies in relation to the dispute does not affect any right of a party to the dispute to take court action to resolve it.
- (5) To avoid doubt, subitems (2) and (3) apply despite:

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- (a) subsection 694(2) of the WR Act (which deals with when the model dispute resolution process applies); and
- (b) subsection 595(1) of the FW Act (which deals with when FWA may deal with a dispute).

*Continued application of regulations*

- (6) Despite the WR Act repeal, regulations made for the purposes of subsection 172(4) of the WR Act continue to apply during the bridging period as if a reference in those regulations to a workplace agreement were a reference to an enterprise agreement and a workplace determination.

*Australian Fair Pay and Conditions Standard cannot be excluded*

- (7) A term of an enterprise agreement or a workplace determination has no effect to the extent to which it purports to exclude the Australian Fair Pay and Conditions Standard or any part of it.

*Meaning of **workplace determination***

- (8) In this item:  
**workplace determination** means a workplace determination made under the FW Act.

## **Schedule 8—Workplace agreements and workplace determinations made under the WR Act**

### **Part 1—Preliminary**

#### **1 Meanings of *employer* and *employee***

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

## **Part 2—Transitional provisions relating to workplace agreements**

### **Division 1—Transitional provisions relating to collective agreements made before the WR Act repeal day**

#### **2 Division applies to collective agreements made before WR Act repeal day**

This Division applies to a collective agreement made before the WR Act repeal day.

Note: Schedule 3 (which deals with transitional instruments) also contains rules that apply to such agreements.

#### **3 General rule—continued application of lodgment provisions, no-disadvantage test and prohibited content rules, etc.**

The following provisions of Part 8 of the WR Act continue to apply in relation to the collective agreement on and after the WR Act repeal day:

- (a) subsections 337(8), (9), (10) and (11) (which deal with non-compliance with access and information requirements);
- (b) section 341 (which deals with lodging unapproved agreements);
- (c) Division 5 of Part 8 (which deals with lodgment);
- (d) Division 5A of Part 8 (which deals with the no-disadvantage test);
- (e) subsections 347(1) and (3) (which deal with when a workplace agreement comes into operation);
- (f) section 347A (which deals with the operation of workplace agreements);
- (g) Division 7 of Part 8 (which deals with content rules), other than sections 353 (which deals with dispute settlement) and 358 (which deals with prohibited content being void);
- (h) subsection 401(1) and section 412A.

Note 1: The general effect of this provision is to preserve the Part 8 rules about lodgment, the no-disadvantage test and prohibited content for collective agreements made before the WR Act repeal day, subject to the modifications set out in this Division. The rules about

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variation and termination of such collective agreements, and certain other rules, are contained in Schedule 3 (which deals with transitional instruments).

Note 2: The rules requiring a collective agreement to include dispute settlement procedures and about prohibited content being void continue to apply under subitem 4(1) of Schedule 3 (which deals with instrument content rules for transitional instruments).

#### **4 Modification—unlodged collective agreements must be lodged within 14 days**

(1) Despite item 3, if the collective agreement is an unlodged collective agreement:

- (a) the Workplace Authority Director must not consider whether the agreement passes the no-disadvantage test under section 346D of the WR Act, as that section continues to apply because of item 3, unless:
  - (i) the agreement is lodged before the end of the period (the *cut-off period*) of 14 days referred to in subsection 342(1) or (2) of that Act; and
  - (ii) for a union collective agreement—the agreement was approved before the WR Act repeal day; and
- (b) if the agreement is not lodged before the end of the cut-off period, it does not come into operation; and
- (c) subsection 342(3) of the WR Act (which deals with a civil remedy for late lodgment), as that subsection continues to apply because of item 3, does not apply to the lodgment of the agreement.

Note: The general effect of this provision is that unlodged collective agreements (other than union collective agreements) must be lodged within 14 days of being made in order to come into operation. Unlodged union collective agreements must have been approved before the WR Act repeal day and be lodged within 14 days of that approval in order to come into operation. However, late lodgment will not give rise to a civil remedy.

(2) If the collective agreement is lodged after the end of the cut-off period, the Workplace Authority Director must give a written notice, stating that the agreement cannot come into operation because it was lodged after the end of the cut-off period, to the following:

- (a) the employer to which the agreement would have applied if it had come into operation;
- (b) if the agreement is a union collective agreement or a multiple-business agreement that would be a union collective agreement but for subsection 331(1) of the WR Act—the

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organisation or organisations that would have been covered by the agreement if it had come into operation.

## **5 Modification—limits on variation of a collective agreement that operates from approval for the purpose of passing the no-disadvantage test**

(1) Despite item 3, if the collective agreement is a workplace agreement that operates from approval, the rules in this item also apply.

Note: The general effect of this item is that a collective agreement that operates from approval can only be varied for the purpose of passing the no-disadvantage test if a variation for that purpose is lodged within a specified period.

(2) If, as at the WR Act repeal day:

- (a) a notice under section 346M of the WR Act about whether the agreement passes the no-disadvantage test has not been given; or
- (b) a notice under subsection 346M(2) of the WR Act stating that the agreement does not pass the no-disadvantage test has been given but a variation of the agreement, for the purposes of passing that test, has not been made; or
- (c) a notice under subsection 346M(2) of the WR Act stating that the agreement does not pass the no-disadvantage test has been given and a variation of the agreement, for the purposes of passing that test, has been made but has not been lodged;

then Division 5A of Part 8 of the WR Act, as that Division continues to apply because of item 3, has effect in relation to the collective agreement subject to subitems (3) and (5).

(3) Section 346N of the WR Act, as that section continues to apply because of item 3, has effect in relation to the agreement, on and after the WR Act repeal day, as if it provided that a variation for the purposes of passing the no-disadvantage test set out in section 346D of that Act must be lodged under section 346N of that Act before the end of:

- (a) the period of 37 days beginning on whichever of the following days is later:
  - (i) the WR Act repeal day;
  - (ii) the date of issue specified in the notice under subsection 346M(2) of that Act in relation to the agreement; or
- (b) if the period is extended under subitem (4)—the period as extended.

- (4) The Workplace Authority Director may extend the period referred to in paragraph (3)(b) in relation to a particular agreement in circumstances prescribed by the regulations.
- (5) Section 346Q of the WR Act, as that section continues to apply because of item 3, has effect in relation to the agreement, on and after the WR Act repeal day, as if it provided that the Workplace Authority Director must not consider under that section whether the agreement as varied passes the no-disadvantage test unless the variation is lodged within the period referred to in paragraph (3)(a) or (b).

## **Division 2—Transitional provisions relating to variations of collective agreements made before the WR Act repeal day**

### **6 Division applies to variations of collective agreements made before WR Act repeal day**

This Division applies to a variation of a collective agreement under Division 8 of Part 8 of the WR Act, if the variation is made before the WR Act repeal day.

### **7 General rule—continued application of lodgment provisions and no-disadvantage test to ordinary variations**

The following provisions of Part 8 of the WR Act continue to apply in relation to the variation on and after the WR Act repeal day:

- (a) Division 5A of Part 8 (which deals with the no-disadvantage test);
- (b) subsections 370(8), (9), (10) and (11) (which deal with non-compliance with access and information requirements);
- (c) section 374 (which deals with lodgment of unapproved variations);
- (d) Subdivision C of Division 8 of Part 8 (which deals with lodgment);
- (e) Subdivision D of Division 8 of Part 8 (which deals with when a variation comes into operation);
- (f) subsection 401(1) and section 412A.

Note: The general effect of this provision is to preserve the Part 8 rules about lodgment and the no-disadvantage test for variations under Division 8 made before the WR repeal day, subject to the modifications set out in this Division.

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## **8 Modification—unlodged variations must be lodged within 14 days**

(1) Despite item 7, if the variation is an unlodged variation:

- (a) the Workplace Authority Director must not consider whether the varied agreement passes the no-disadvantage test under section 346D of the WR Act, as that section continues to apply because of item 7, unless:
  - (i) the variation is lodged before the end of the period (the *cut-off period*) of 14 days referred to in subsection 375(1) of that Act; and
  - (ii) for a variation of a union collective agreement or a union greenfields agreement—the variation was approved before the WR Act repeal day; and
- (b) subsection 375(2) of the WR Act (which deals with a civil remedy for late lodgment), as that subsection continues to apply because of item 7, does not apply to the variation.

**Note:** The general effect of this provision is that unlodged variations of collective agreements must be lodged within 14 days of being approved in order to come into operation. Unlodged variations of union collective agreements and union greenfields agreements must also have been approved before the WR Act repeal day. However, late lodgment will not give rise to a civil remedy.

(2) If the variation is lodged after the end of the cut-off period, the Workplace Authority Director must give a written notice, stating that the variation cannot come into operation because it was lodged after the end of the cut-off period, to the following:

- (a) the employer to which the agreement applies;
- (b) if the agreement is a union collective agreement or a multiple-business agreement that would be a union collective agreement but for subsection 331(1) of the WR Act—the organisation or organisations covered by the agreement.

## **9 Modification—limits on varying variations for the purpose of passing the no-disadvantage test**

(1) Despite item 7, if, as at the WR Act repeal day:

- (a) a notice under section 346M of the WR Act about whether the agreement as varied passes the no-disadvantage test has not been given in relation to the variation; or
- (b) a notice under subsection 346M(2) of the WR Act stating that the agreement as varied does not pass the no-disadvantage

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test has been given in relation to the variation, but a variation, for the purposes of passing that test, has not been made; or

- (c) a notice under subsection 346M(2) of the WR Act stating that the agreement as varied does not pass the no-disadvantage test has been given in relation to the variation and a variation of the agreement, for the purposes of passing that test, has been made but has not been lodged;

then Division 5A of Part 8 of the WR Act, as that Division continues to apply because of item 7, has effect in relation to the variation, on and after the WR Act repeal day, subject to subitems (2) and (4).

- (2) Section 346N of the WR Act, as that section continues to apply because of item 7, has effect in relation to the variation, on and after the WR Act repeal day, as if it provided that a variation for the purposes of passing the no-disadvantage test set out in section 346D of that Act must be lodged under section 346N of that Act before the end of:
  - (a) the period of 37 days beginning on whichever of the following days is later:
    - (i) the WR Act repeal day;
    - (ii) the date of issue specified in the notice under subsection 346M(2) of that Act in relation to the agreement as varied; or
  - (b) if the period is extended under subitem (3)—the period as extended.
- (3) The Workplace Authority Director may extend the period referred to in paragraph (2)(a) in relation to a particular variation in circumstances prescribed by the regulations.
- (4) Section 346Q of the WR Act, as that section continues to apply because of item 7, has effect in relation to the variation, on and after the WR Act repeal day, as if it provided that the Workplace Authority Director must not consider under that section whether the agreement as varied passes the no-disadvantage test unless the variation for the purposes of passing that test is lodged within the period referred to in paragraph (2)(a) or (b).

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### **Division 3—Transitional provisions relating to pre-WR Act repeal day terminations of collective agreements**

#### **10 Termination by approval general rule—continued application of lodgment provisions**

- (1) This item applies to a termination of a collective agreement, if the termination has been approved in accordance with section 386 of the WR Act (which deals with terminations by approval) before the WR Act repeal day, but not lodged in accordance with section 389 of that Act before that day.
- (2) The following provisions of Part 8 of the WR Act continue to apply in relation to the termination on and after the WR Act repeal day:
  - (a) subsection 381(2) (which deals with when a workplace agreement is terminated);
  - (b) subsections 384(4), (5) and (6) (which deal with non-compliance with information requirements);
  - (c) section 387 (which deals with lodgment of unapproved terminations);
  - (d) Subdivision C of Division 9 of Part 8 (which deals with lodgment);
  - (e) section 398 (which deals with the effect of non-compliance);
  - (f) subsection 401(1) and section 412A.

**Note:** The general effect of this provision is to preserve the Part 8 rules in relation to terminations of workplace agreements approved before the WR Act repeal day, subject to the modifications set out in item 11. Terminations after that day are dealt with in Schedule 3 (which deals with transitional instruments).

#### **11 Modification—unlodged terminations must be lodged within 14 days**

- (1) Despite item 10, if a termination to which that item applies is an unlodged termination:
  - (a) the termination does not come into operation unless it is lodged before the end of the 14 day period (the *cut-off period*) referred to in subsection 388(1) of the WR Act as that subsection continues to apply because of item 10; and

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(b) subsection 388(2) of the WR Act (which deals with a civil remedy for late lodgment), as that subsection continues to apply because of item 10, does not apply to the termination.

Note: The general effect of this provision is that unlodged terminations must be lodged within 14 days of being made in order to come into operation. However, late lodgment will not give rise to a civil remedy.

(2) If the termination is lodged after the end of the cut-off period, the Workplace Authority Director must give a written notice, stating that the termination cannot come into operation because it was lodged after the end of the cut-off period, to the following:

- (a) the employer to which the agreement applies;
- (b) if the agreement is a union collective agreement or a multiple-business agreement that would be a union collective agreement but for subsection 331(1) of the WR Act—the organisation or organisations covered by the agreement.

**12 Unilateral termination of collective agreement in manner provided for in agreement general rule—continued application of lodgment provisions**

(1) This item applies to a termination of a collective agreement if a declaration to terminate the agreement is lodged under subsection 392(2) of the WR Act (which deals with unilateral termination in the manner provided in the agreement) before the WR Act repeal day.

(2) The following provisions of Part 8 of the WR Act continue to apply in relation to the termination on and after the WR Act repeal day:

- (a) subsection 381(2) (which deals with when a workplace agreement is terminated);
- (b) section 396 (which deals with receipts for lodgment of declarations);
- (c) section 397 (which deals with giving notice after lodging notice of termination);
- (d) section 398 (which deals with the effect of non-compliance);
- (e) section 412A.

Note: The general effect of this provision is to preserve the Part 8 rules in relation to unilateral terminations of workplace agreements, if a declaration to terminate the agreement has been lodged before the WR Act repeal day. Terminations after that day are dealt with in Schedule 3 (which deals with transitional instruments).

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**13 Termination by the Commission—Commission may continue to deal with applications made before the WR Act repeal day**

- (1) This item applies to a collective agreement in relation to which an application has been made under subsection 397A(2) of the WR Act (which deals with termination by the Commission) before the WR Act repeal day.
- (2) The following provisions of Part 8 of the WR Act continue to apply in relation to the agreement on and after the WR Act repeal day:
  - (a) subsection 381(2) (which deals with when a collective agreement is terminated);
  - (b) subsections 397A(1) and (3) (which deal with when the Commission may terminate a collective agreement);
  - (c) section 412A.

**Note:** The general effect of this provision is to preserve the Part 8 rules in relation to applications for terminations of workplace agreements by the Commission made before the WR Act repeal day. Terminations after that day are dealt with in Schedule 3 (which deals with transitional instruments).

**Division 4—Transitional provisions relating to ITEAs made before the WR Act repeal day**

**14 Continued application of Part 8 to ITEAs made before the WR Act repeal day**

- (1) This item applies to an ITEA made before the WR Act repeal day.
- (2) The following provisions of Part 8 of the WR Act continue to apply in relation to the ITEA on and after the WR Act repeal day:
  - (a) Divisions 1 to 5A of Part 8 (which deal with the making and lodgment of workplace agreements and the no-disadvantage test);
  - (b) subsection 347(1) (which deals with when a workplace agreement comes into operation);
  - (c) section 347A (which deals with the operation of workplace agreements);
  - (d) Division 7 of Part 8 (which deals with content rules), other than sections 353 (which deals with dispute settlement) and 358 (which deals with prohibited content being void);

(e) subsection 401(1) and section 412A.

Note 1: The general effect of this provision is to preserve the Part 8 rules about lodgment, the no-disadvantage test and prohibited content in relation to ITEAs made before the WR Act repeal day, subject to the modification set out in item 15. The rules about making ITEAs after that day are contained in Division 7 of this Part. The rules about variation and termination of ITEAs after that day, and some other rules, are contained in Schedule 3 (which deals with transitional instruments).

Note 2: The rules requiring an ITEA to include dispute settlement procedures and about prohibited content being void continue to apply under subitem 4(1) of Schedule 3 (which deals with instrument content rules for transitional instruments).

**15 Modification—limits on variation of an ITEA that operates from approval for the purpose of passing the no-disadvantage test**

(1) Despite item 14, if the ITEA is a workplace agreement that operates from approval, the rules in this item also apply.

Note: The general effect of this item is that an ITEA that operates from approval can only be varied for the purpose of passing the no-disadvantage test if a variation for that purpose is lodged within a specified period.

(2) If, as at the WR Act repeal day:

- (a) a notice under section 346M of the WR Act about whether the ITEA passes the no-disadvantage test has not been given; or
- (b) a notice under subsection 346M(2) of the WR Act stating that the ITEA does not pass the no-disadvantage test has been given but a variation of the ITEA, for the purposes of passing that test, has not been made; or
- (c) a notice under subsection 346M(2) of the WR Act stating that the ITEA does not pass the no-disadvantage test has been given and a variation of the ITEA, for the purposes of passing that test, has been made but has not been lodged;

then Division 5A of Part 8 of the WR Act, as that Division continues to apply because of item 14, has effect in relation to the collective agreement subject to subitems (3) and (5).

(3) Section 346N of the WR Act, as that section continues to apply because of item 14, has effect in relation to the ITEA, on and after the WR Act repeal day, as if it provided that a variation for the purposes of passing the no-disadvantage test set out in section 346D of that Act must be lodged under section 346N of that Act before the end of:

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- (a) the period of 37 days beginning on whichever of the following days is later:
  - (i) the WR Act repeal day;
  - (ii) the date of issue specified in the notice under subsection 346M(2) of that Act in relation to the ITEA; or
- (b) if the period is extended under subitem (4)—the period as extended.

(4) The Workplace Authority Director may extend the period referred to in paragraph (3)(a) in relation to a particular ITEA in circumstances prescribed by the regulations.

(5) Section 346Q of the WR Act, as that section continues to apply because of item 14, has effect in relation to the ITEA, on and after the WR Act repeal day, as if it provided that the Workplace Authority Director must not consider under that section whether the ITEA as varied passes the no-disadvantage test unless the variation is lodged within the period referred to in paragraph (3)(a) or (b).

## **Division 5—Transitional provisions relating to variations of ITEAs made before the WR Act repeal day**

### **16 General rule—continued application of lodgment provisions and no-disadvantage test to ordinary variations**

- (1) This item applies to a variation of an ITEA under Division 8 of Part 8 of the WR Act, if the variation is made before the WR Act repeal day.
- (2) The following provisions of Part 8 of the WR Act continue to apply in relation to the variation on and after the WR Act repeal day:
  - (a) Division 5A of Part 8 (which deals with the no-disadvantage test);
  - (b) subsections 370(8), (9), (10) and (11) (which deal with non-compliance with access and information requirements);
  - (c) section 374 (which deals with lodgment of unapproved variations);
  - (d) Subdivision C of Division 8 of Part 8 (which deals with lodgment);
  - (e) Subdivision D of Division 8 of Part 8 (which deal with when a variation comes into operation);

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(f) subsection 401(1) and section 412A.

**Note:** The general effect of this provision is to preserve the Part 8 rules about lodgment and the no-disadvantage test for variations made before the WR Act repeal day of ITEAs, subject to the modification specified in item 17.

## **17 Modification—limits on varying variations for the purpose of passing the no-disadvantage test**

(1) Despite item 16, if, as at the WR Act repeal day:

- (a) a notice under section 346M of the WR Act about whether the ITEA as varied passes the no-disadvantage test has not been given in relation to the variation; or
- (b) a notice under subsection 346M(2) of the WR Act stating that the ITEA as varied does not pass the no-disadvantage test has been given in relation to the variation, but a variation, for the purposes of passing that test, has not been made; or
- (c) a notice under subsection 346M(2) of the WR Act stating that the ITEA as varied does not pass the no-disadvantage test has been given in relation to the variation and a variation of the ITEA, for the purposes of passing that test, has been made but has not been lodged;

then Division 5A of Part 8 of the WR Act, as that Division continues to apply because of item 16, has effect in relation to the variation, on and after the WR Act repeal day, subject to subitems (2) and (4).

(2) Section 346N of the WR Act, as that section continues to apply because of item 16, has effect in relation to the variation, on and after the WR Act repeal day, as if it provided that a variation for the purposes of passing the no-disadvantage test set out in section 346D of that Act must be lodged under section 346N before the end of:

- (a) the period of 37 days beginning on whichever of the following days is later:
  - (i) the WR Act repeal day;
  - (ii) the date of issue specified in the notice under subsection 346M(2) of that Act in relation to the variation; or
- (b) if the period is extended under subitem (3)—the period as extended.

(3) The Workplace Authority Director may extend the period referred to in paragraph (2)(a) in relation to a particular variation in circumstances prescribed by the regulations.

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(4) Section 346Q of the WR Act, as that section continues to apply because of item 16, has effect in relation to the variation, on and after the WR Act repeal day, as if it provided that the Workplace Authority Director must not consider under that section whether the ITEA as varied passes the no-disadvantage test unless the variation for the purposes of passing that test is lodged within the period referred to in paragraph (2)(a) or (b).

## **Division 6—Transitional provisions relating to pre-WR Act repeal day terminations of ITEAs**

### **18 Termination by approval—continued application of lodgment provisions**

(1) This item applies to a termination of an ITEA, if the termination is approved in accordance with section 386 of the WR Act (which deals with terminations by approval) before the WR Act repeal day, but not lodged in accordance with section 389 of that Act by that time.

(2) The following provisions of Part 8 of the WR Act continue to apply in relation to the termination on and after the WR Act repeal day:

- (a) subsection 381(2) (which deals with when a workplace agreement is terminated);
- (b) subsections 384(4), (5) and (6) (which deal with non-compliance with information requirements);
- (c) section 387 (which deals with lodgment of unapproved terminations);
- (d) Subdivision C of Division 9 of Part 8 (which deals with lodgment);
- (e) section 398 (which deals with the effect of non-compliance);
- (f) subsection 401(1) and section 412A.

Note: The general effect of this provision is to preserve the Part 8 rules in relation to terminations of ITEAs approved before the WR Act repeal day. Terminations after that day are dealt with in Schedule 3 (which deals with transitional instruments).

### **19 Unilateral termination of ITEA in manner provided for in agreement—continued application of lodgment provisions**

(1) This item applies to a termination of an ITEA if a declaration to terminate the ITEA is lodged under subsection 392(2) of the WR Act

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(which deals with unilateral termination in the manner provided in the ITEA) before the WR Act repeal day.

(2) The following provisions of Part 8 of the WR Act continue to apply in relation to the termination on and after the WR Act repeal day:

- (a) subsection 381(2) (which deals with when a workplace agreement is terminated);
- (b) section 396 (which deals with receipts for lodgment of declarations);
- (c) section 397 (which deals with giving notice after lodging notice of termination);
- (d) section 398 (which deals with effect of non-compliance).
- (e) section 412A.

**Note:** The general effect of this provision is to preserve the Part 8 rules in relation to terminations of ITEAs, if a declaration to terminate is lodged before the WR Act repeal day. Terminations after that day are dealt with in Schedule 3 (which deals with transitional instruments).

**20 Continued application of lodgment provisions where termination by written notice is given before the WR Act repeal day and lodged within 120 days**

(1) This item applies to an ITEA, if notice to terminate the ITEA is given in accordance with subsection 393(4) of the WR Act (which deals with unilateral termination by giving written notice) before the WR Act repeal day.

(2) The following provisions of Part 8 of the WR Act continue to apply on and after the WR Act repeal day in relation to the termination of the ITEA:

- (a) subsection 381(2) (which deals with when an ITEA is terminated);
- (b) sections 393, 394, 395, 396, 397, 397A, 398 and 399A (which deal with matters relating to lodgment of terminations, etc.);
- (c) section 412A.

**Note:** The general effect of this provision is to preserve the Part 8 rules in relation to terminations of ITEAs by written notice given before the WR Act repeal day, subject to the modifications set out in subitems (3) to (6). Terminations after that day are dealt with in Schedule 3 (which deals with transitional instruments).

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*Modification—declaration to terminate must be lodged within 120 days of WR Act repeal day*

- (3) A declaration may only be lodged, in relation to the ITEA under subsection 393(2) of the WR Act, as that subsection continues to apply because of subitem (2), before the end of the period (the *cut-off period*) of 120 days beginning on the WR Act repeal day.
- (4) Section 396 of the WR Act, as that section continues to apply because of subitem (2), does not apply in relation to the ITEA if the declaration is not lodged before the end of the cut-off period.
- (5) Despite subsection 381(2) and section 398 of the WR Act, as those provisions continue to apply because of subitem (2), the termination of the ITEA does not take effect if the declaration is not lodged before the end of the cut-off period.
- (6) If the termination is lodged after the end of the cut-off period, the Workplace Authority Director must give a written notice, stating that the termination cannot come into operation because the declaration was lodged after the end of the cut-off period, to the following:
  - (a) the employer to which the agreement applies;
  - (b) the employee to whom the agreement applies.

## **Division 7—Transitional provisions relating to making ITEAs during the bridging period**

### **21 General rule—continued application of Part 8 to making of ITEAs**

- (1) Despite the repeal of Part 8 of the WR Act, an ITEA may, during the bridging period, be made under Division 2 of that Part as if that Part had not been repealed.
- (2) The following provisions of Part 8 of the WR Act continue to apply in relation to the ITEA on and after the WR Act repeal day:
  - (a) Divisions 1 to 5A of Part 8 (which deal with the making and lodgment of workplace agreements and the no-disadvantage test), other than sections 346ZJ and 346ZK (which deal with dismissing an employee if an agreement does not pass that test);
  - (b) subsections 347(1) and (3) (which deal with when a workplace agreement comes into operation);

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- (c) section 347A (which deals with the operation of workplace agreements);
- (d) Division 7 of Part 8 (which deals with content rules), other than sections 353 (which deals with dispute settlement) and 358 (which deals with prohibited content being void);
- (e) subsections 400(3) and (5), subsection 401(1) and section 412A.

Note 1: The general effect of this provision is to permit ITEAs to be made during the bridging period and to preserve the Part 8 rules about lodgment, the no-disadvantage test and prohibited content, subject to the modifications set out in this Division. The rules about variation and termination of ITEAs on and after the WR Act repeal day, and certain other rules, are contained in Schedule 3 (which deals with transitional instruments).

Note 2: The rules requiring an ITEA to include dispute settlement procedures and about prohibited content being void continue to apply under subitem 4(1) of Schedule 3 (which deals with instrument content rules for transitional instruments).

- (3) The provisions referred to in subitem (2) do not apply to an ITEA lodged after the end of the bridging period.
- (4) If the ITEA is lodged after the end of the bridging period, the Workplace Authority Director must give a written notice, stating that the ITEA cannot come into operation because the ITEA was lodged after the end of the bridging period, to the following:
  - (a) the employer to which the ITEA would have applied if it had come into operation;
  - (b) the employee to whom the ITEA would have applied if it had come into operation.

## **22 Modification—enterprise agreements and workplace determinations are taken to be instruments**

- (1) This item applies to an ITEA made during the bridging period as referred to in subitem 21(1).
- (2) For the purposes of the application to the ITEA of section 346E of the WR Act, as that section continues to apply because of item 21, enterprise agreements and workplace determinations are taken to be specified in subsection 346E(3) (in addition to the other instruments so specified).
- (3) For the purposes of the application to the ITEA of section 346ZB of the WR Act, as that section continues to apply because of item 21, enterprise agreements and workplace determinations (within the

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meaning of the FW Act) are taken to be specified in subsection 346ZB(5) (in addition to the other instruments so specified).

**23 Modification—limits on variation of an ITEA that operates from approval for the purpose of passing the no-disadvantage test**

- (1) Despite item 21, if the ITEA is a workplace agreement that operates from approval, the rules in this item also apply.
- (2) Section 346N of the WR Act, as that section continues to apply because of item 21, has effect in relation to the ITEA, on and after the WR Act repeal day, as if it provided that a variation for the purposes of passing the no-disadvantage test set out in section 346D of that Act must be lodged under section 346N of that Act before the end of:
  - (a) the period of 30 days beginning on the seventh day after the date of issue specified in the notice under subsection 346M(2) of that Act in relation to the ITEA; or
  - (b) if the period is extended under subitem (3)—the period as extended
- (3) The Workplace Authority Director may extend the period referred to in paragraph (2)(a) in relation to a particular ITEA in circumstances prescribed by the regulations.
- (4) Section 346Q of the WR Act, as that section continues to apply because of item 21, has effect in relation to the ITEA, on and after the WR Act repeal day, as if it provided that the Workplace Authority Director must not consider under that section whether the ITEA as varied passes the no-disadvantage test unless the variation is lodged within the period referred to in paragraph (2)(a) or (b).

**24 Modification—subsection 400(5)**

- (1) This item applies to an ITEA made during the bridging period as referred to in subitem 21(1).
- (2) For the purposes of the application to the ITEA of subsection 400(5) of the WR Act, as that subsection continues to apply because of item 21, the circumstance referred to in subsection 400(6) of that Act is taken to include a reference to the circumstance referred to in subitem 25(2).

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## **25 Effect of section 342 of the FW Act during the bridging period**

- (1) Despite section 342 of the FW Act, a prospective employer does not contravene subsection 340(1) of that Act if, during the bridging period, the person refuses to employ a person merely because the person requires another person to make an ITEA as a condition of engagement, other than in the circumstance referred to in subitem (2).
- (2) The circumstance referred to in subitem (1) is that:
  - (a) the first person mentioned in subitem (1) is a new employer; and
  - (b) the new employer requires another person to make an ITEA; and
  - (c) the other person would, if employed by the new employer, be a transferring employee; and
  - (d) the requirement to make the ITEA is a condition of the other person becoming employed by the new employer.

## **Division 8—Applying the no-disadvantage test where there is a transmission or transfer of business**

### **26 Applying the no-disadvantage test where there is a transmission or a transfer of business**

- (1) This item applies if the Workplace Authority Director is required, because of the application of this Schedule to a workplace agreement, to decide, on or after the WR Act repeal day, whether the workplace agreement passes the no-disadvantage test.
- (2) Division 7A of Part 11 of the WR Act continues to apply, in relation to the workplace agreement, as if that Division had not been repealed, with the following modifications:
  - (a) references to a workplace agreement binding an employer or an employee are taken to include references to a workplace agreement that is a transitional instrument covering an employer or employee;
  - (b) references to sections 583 and 585 of the WR Act (other than in section 601D) are taken to include references to section 313 of the FW Act;

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- (c) enterprise agreements and workplace determinations (within the meaning of the FW Act) are taken to be specified in the definition of **instrument** in subsection 601D(5) (in addition to the other instruments so specified);
- (d) the reference in subparagraph 601G(1)(b)(i) to the instrument described in paragraph 601D(2)(a) is taken to include a reference to the instrument described in paragraph 27(2)(a) of this Schedule;
- (e) the reference in subparagraph 601G(1)(b)(ii) to section 598A or clause 27A of Schedule 9 is taken to include a reference to item 9 of Schedule 11;
- (f) the reference in paragraph 601H(1)(b) to the time of transmission is taken to include a reference to the time when the new employer first employs a transferring employee;
- (g) paragraph 601H(2)(d) does not apply if the workplace agreement applies to the new employer because of the operation of section 313 of the FW Act.

## **27 Employment arrangements if there is a transfer of business and a workplace agreement ceases to operate because it does not pass the no-disadvantage test**

- (1) This item applies if:
  - (a) on a particular day (the **cessation day**), a workplace agreement (the **original agreement**) ceases to operate under section 346W or 346ZA of the WR Act (as those provisions continue to apply because of the operation of this Schedule) because the original agreement does not pass the no-disadvantage test; and
  - (b) during the period beginning when the original agreement was lodged and ending on the cessation day, the original agreement started to cover a new employer and a transferring employee or transferring employees because of the operation of section 313 of the FW Act.
- (2) Despite subsection 346ZB(2) of the WR Act (as that provision continues to apply because of the operation of this Schedule), the new employer and the transferring employee or transferring employees who were covered by the original agreement immediately before the cessation day are taken, on and from the cessation day, to be covered by:

(a) the instrument:

- (i) that, but for the original agreement having come into operation, would have covered the old employer and the transferring employee or transferring employees immediately before the termination of the employment of the transferring employee or transferring employees with the old employer; and
- (ii) that was capable of covering the new employer after the time the transferring employee or transferring employees became employed by the new employer under Schedule 11; or

(b) if there is no instrument of a kind referred to in paragraph (a) in relation to the old employer and one or more of the transferring employees—the designated award (within the meaning of Division 5A of Part 8 of the WR Act) in relation to that employee or those employees.

(3) If, but for the original agreement having come into operation, a redundancy provision would, immediately before the termination of the employment of a transferring employee or transferring employees with the old employer, have applied to the old employer in relation to a transferring employee or transferring employees to whom the original agreement applied because of a preservation item (within the meaning of item 9 of Schedule 11) relating to the agreement, the redundancy provision is taken:

- (a) to apply to the new employer under item 9 of Schedule 11, on and from the cessation day, in relation to the transferring employee or transferring employees; and
- (b) to continue to so apply to the employer, in relation to the transferring employee or transferring employees, until the earliest of the following:
  - (i) the end of the period of 24 months beginning on the first day on which the old employer became covered, under the preservation item, by the redundancy provision;
  - (ii) the time when the transferring employee ceases to be employed by the new employer;
  - (iii) the time when an enterprise agreement, workplace determination or ITEA starts to apply to the transferring employee or transferring employees and the new employer.

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(4) If the original agreement is a workplace agreement as varied under Division 8 of Part 8 of the WR Act, the workplace agreement as in force before the variation was lodged is, despite section 346ZE of that Act (as that section continues to apply because of the operation of this Schedule), capable of being an instrument described in paragraph (2)(a).

(5) In this item:

**instrument** means:

- (a) if the termination of the employment of the transferring employee or transferring employees with the old employer occurred before the WR Act repeal day—any of the following:
  - (i) a workplace agreement;
  - (ii) an award;
  - (iii) a pre-reform certified agreement;
  - (iv) a preserved State agreement;
  - (v) a notional agreement preserving State awards; and
- (b) if the termination of the employment of the transferring employee or transferring employees with the old employer occurred on or after the WR Act repeal day—any of the following:
  - (i) an instrument referred to in subparagraph (a)(i), (ii), (iii), (iv) or (v) that is a transitional instrument;
  - (ii) an enterprise agreement;
  - (iii) a workplace determination made under the FW Act.

**redundancy provision** has the meaning given by subitem 38(7) of Schedule 3.

## **Division 9—Miscellaneous**

### **28 References to variations under Division 8**

To avoid doubt, a reference in this Part to a variation under Division 8 of Part 8 of the WR Act does not include a reference to a variation made for the purposes of passing the no-disadvantage test.

### **28A Variations to pass no-disadvantage test after WR Act repeal day**

Despite any other provision of Division 5A of Part 8 of the WR Act, as that Division continues to apply because of this Schedule in relation to:

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- (a) a workplace agreement; or
- (b) a variation of such an agreement under Division 8 of that Part;

only one variation for the purposes of passing the no-disadvantage test of the agreement or variation may be lodged with the Workplace Authority Director on or after the WR Act repeal day.

**29 Documents taken to be workplace agreements, etc.**

To avoid doubt, sections 324A, 368A and 381A of the WR Act continue to have effect for the purposes of a provision of the WR Act that continues to apply because of this Act.

## **Part 3—Transitional provisions relating to workplace determinations made under the WR Act**

### **30 Continued application of WR Act prohibited content provisions**

- (1) This item applies to a workplace determination made under the WR Act before the WR Act repeal day.
- (2) Despite the repeal of section 506 of the WR Act, Subdivision B of Division 7 of Part 8 of that Act (which deals with prohibited content), other than section 358 (which deals with prohibited content being void), continues to apply in relation to the workplace determination on and after the WR Act repeal day as if that section had not been repealed.

Note 1: The general effect of this provision is to preserve the Part 8 rules about prohibited content for workplace determinations made before the WR Act repeal day. The rules about variation and termination of such workplace determinations, and certain other rules, are contained in Schedule 3 (which deals with transitional instruments).

Note 2: The rules about prohibited content being void continue to apply under subitem 4(1) of Schedule 3 (which deals with instrument content rules for transitional instruments).

### **31 Termination by approval general rule—continued application of lodgment provisions**

- (1) This item applies to a termination of a workplace determination, if the termination has been approved in accordance with section 386 of the WR Act (which deals with terminations by approval) before the WR Act repeal day, but not lodged in accordance with section 389 of that Act before that day.

Note: Under subsection 506(3) of the WR Act, a workplace determination can only be terminated under Subdivision B of Division 9 of Part 8 of that Act after the determination has passed its nominal expiry date.

- (2) Despite the repeal of section 506 of the WR Act, the following provisions of that Act continue to apply in relation to the termination on and after the WR Act repeal day, as if that section had not been repealed:
  - (a) subsection 381(2) (which deals with when a workplace determination is terminated);

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- (b) subsections 384(4), (5) and (6) (which deal with non-compliance with information requirements);
- (c) section 387 (which deals with lodgment of unapproved terminations);
- (d) Subdivision C of Division 9 of Part 8 (which deals with lodgment);
- (e) section 398 (which deals with the effect of non-compliance);
- (f) subsection 401(1) and section 412A.

Note: The general effect of this provision is to preserve the Part 8 rules in relation to terminations of workplace determinations approved before the WR Act repeal day, subject to the modification set out in item 32. Terminations after that day are dealt with in Schedule 3 (which deals with transitional instruments).

**32 Modification—unlodged terminations must be lodged within 14 days**

- (1) Despite item 31, if a termination to which that item applies is an unlodged termination:
  - (a) the termination does not come into operation unless it is lodged before the end of the 14 day period (the *cut-off period*) referred to in subsection 388(1) of the WR Act as that subsection continues to apply because of item 31; and
  - (b) subsection 388(2) of the WR Act (which deals with a civil remedy for late lodgment), as that subsection continues to apply because of item 31, does not apply to the termination.

Note: The general effect of this provision is that unlodged terminations must be lodged within 14 days of being made in order to come into operation. However, late lodgment will not give rise to a civil remedy.

- (2) If the termination is lodged after the end of the cut-off period, the Workplace Authority Director must give a written notice, stating that the termination cannot come into operation because it was lodged after the end of the cut-off period, to the following:
  - (a) the employer to which the workplace determination applies;
  - (b) the employees to which the workplace determination applies.

- (3) In this item:

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***unlodged termination***, in relation to a workplace determination, means a termination of a workplace determination approved in accordance with section 386 of the WR Act, but not lodged with the Workplace Authority Director under section 389 of that Act as at the WR Act repeal day.

**33 Termination by the Commission—Commission may continue to deal with applications made before the WR Act repeal day**

- (1) This item applies to a workplace determination in relation to which an application has been made under subsection 397A(2) of the WR Act (which deals with termination by the Commission) before the WR Act repeal day.
- (2) Despite the repeal of section 506 of the WR Act, the following provisions of that Act continue to apply in relation to the workplace determination on and after the WR Act repeal day as if that section had not been repealed:
  - (a) subsection 381(2) (which deals with when a workplace determination is terminated);
  - (b) subsections 397A(1) and (3) (which deal with when the Commission may terminate a workplace determination).

Note: The general effect of this provision is to preserve the Part 8 rules in relation to applications for terminations of workplace determinations by the Commission made before the WR Act repeal day. Terminations after that day are dealt with in Schedule 3 (which deals with transitional instruments).

**34 Documents taken to be workplace determinations, etc.**

To avoid doubt, section 381A of the WR Act continues to apply for the purposes of a provision of that Act that continues to apply because of this Part.

## **Schedule 9—Minimum wages**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

## **Part 2—Special provisions relating to FWA's first annual wage review**

### **2 Period to which first annual wage review relates**

FWA's first annual wage review is to be conducted and completed in the period:

- (a) starting on the FW (safety net provisions) commencement day; and
- (b) ending at the end of the next 30 June;

even if that period is not a full financial year.

### **3 Exercise of powers in advance of first annual wage review period**

FWA may, before the start of the period referred to in item 2, exercise powers for the purpose of obtaining information to be taken into account in its first annual wage review. Powers that may be exercised include:

- (a) inviting persons or bodies to make written submissions to FWA for consideration in the review; and
- (b) undertaking or commissioning research for the purposes of the review.

### **4 First national minimum wage order does not have to set full range of special national minimum wages**

- (1) In its first annual wage review, FWA does not have to set a full range of special national minimum wages covering all the classes of employees referred to in paragraph 294(1)(b) of the FW Act.
- (2) However, FWA must set a special national minimum wage for a class or subclass of those employees in its first annual wage review if the transitional national minimum wage order sets a special national minimum wage order for those employees.

Note: The transitional national minimum wage order is taken to have been made on the FW (safety net provisions) commencement day: see item 12.

- (3) If FWA does not set a full range of special national minimum wages in its first annual wage review, the President of FWA must establish a

process for the setting of the remaining special national minimum wages in FWA's second annual wage review.

- (4) FWA may advise persons or bodies about that process in any way FWA considers appropriate.
- (5) Section 625 of the FW Act (which deals with delegation by the President of functions and powers of FWA) has effect as if subsection (2) of that section included a reference to FWA's powers under subitem (4).

## **Part 3—Continued application of WR Act provisions about minimum wages**

### **Division 1—General provisions**

#### **5 Continuation of Australian Fair Pay and Conditions Standard wages provisions**

(1) Division 2 (other than as provided in subitem (2)) of Part 7 of the WR Act continues to apply on and after the WR Act repeal day in accordance with this Part. That Division as it continues to apply is the *continued AFPCS wages provisions*.

Note 1: Part 7 of the WR Act contains the Australian Fair Pay and Conditions Standard. Schedule 4 provides for the continued application of the rest of the Standard during the bridging period. The effect of this Division is not limited just to the bridging period.

Note 2: Schedule 3 provides for the continued application of the rules about the interaction between transitional instruments and the Australian Fair Pay and Conditions Standard.

(2) The continued application of Division 2 of Part 7 of the WR Act has effect subject to the following paragraphs:

- (a) subsections 182(1) and (2), and Subdivisions H, I, L and M, cease to apply when there are no longer any employees covered by transitional APCSs (see also item 11);
- (b) subsections 182(3) and (4), section 185 and Subdivision G cease to apply at the end of the bridging period (see also item 12);
- (c) Subdivision D does not continue to apply at all;
- (d) Subdivisions E, F, K and N cease to apply after the AFPC has ceased to exist (see item 7 of Schedule 18).

(3) Without limiting subitem (1) (but subject to subitem (2)), each of the following, as it was under Division 2 of Part 7 of the WR Act immediately before the WR Act repeal day, continues to exist, as a *transitional minimum wage instrument*, in accordance with this Part on and after that day:

- (a) an APSC, which continues as a *transitional APSC*;
- (b) the rate of the standard FMW, which continues as the *transitional standard FMW*;

- (c) a special FMW, which continues as a *transitional special FMW*;
- (d) the rate of the default casual loading, which continues as the *transitional default casual loading*.

Note: APCS is short for Australian Pay and Classification Scale. FMW is short for Federal Minimum Wage.

## **5A References to workplace agreements include references to enterprise agreements**

- (1) The provisions of the WR Act that continue to apply because of item 5 have effect as if a reference in the provisions to a workplace agreement included a reference to an enterprise agreement.
- (2) Subitem (1) has effect unless the context otherwise requires and subject to the regulations.

## **6 The employees who are *covered* by transitional minimum wage instruments**

- (1) Transitional minimum wage instruments *cover* employees as provided in the following paragraphs:
  - (a) a transitional APCS covers an employee if, under sections 204 and 205 of the continued AFPCS wages provisions, the APCS covers the employment of the employee;
  - (b) the transitional standard FMW covers an employee if, under section 194 of the continued AFPCS wages provisions, the FMW for the employee is the standard FMW;
  - (c) a transitional special FMW covers an employee if, under section 194 of the continued AFPCS wages provisions, the FMW for the employee is that special FMW;
  - (d) the transitional default casual loading covers an employee who is described in subsection 185(1) of the continued AFPCS wages provisions.
- (2) However, a transitional APCS does not cover an employee (or an employer, or an employee organisation, in relation to the employee) at a time when the employee is a high income employee (see section 329 of the FW Act).

Note 1: Item 35 of Schedule 3 deals with the application of section 329 of the FW Act to transitional APCSs.

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Note 2: Divisions 2 and 3 of this Part deal with when transitional minimum wage instruments cease to cover employees.

## **7 Transitional minimum wage instruments can only be varied or terminated in limited circumstances**

- (1) Despite anything in the continued AFPCS wages provisions, a transitional minimum wage instrument cannot be varied or terminated (or otherwise brought to an end) except as referred to in one of the following subitems.
- (2) The AFPC can exercise its wage-setting powers to vary a transitional minimum wage instrument as necessary depending on the outcome of the AFPC's final wage review under the WR Act. Those exercises of wage-setting powers take effect at the time determined by the AFPC (which may be a time after the AFPC has ceased to exist).

Note: Schedule 18 provides for when the AFPC ceases to exist.

- (3) A transitional APSC can be varied in an annual wage review under the FW Act as provided for in item 10.
- (4) A transitional APSC can be varied or terminated under:
  - (a) item 3 of Schedule 5 (which deals with variation and termination of transitional APSCs to take account of the Part 10A award modernisation process); or
  - (b) item 9 of Schedule 6 (which deals with variation and termination of transitional APSCs to take account of the enterprise instrument modernisation process).

## **8 Effect of termination**

If a transitional minimum wage instrument terminates, it ceases to cover (and can never again cover) any employees.

## **9 No loss of accrued rights or liabilities when transitional minimum wage instrument terminates or ceases to cover an employee**

- (1) If a transitional minimum wage instrument terminates, or ceases to cover a person, that does not affect:
  - (a) any right or liability that a person acquired, accrued or incurred before the transitional minimum wage instrument terminated or ceased to cover the person; or

- (b) any investigation, legal proceeding or remedy in respect of any such right or liability.
- (2) Any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the transitional minimum wage instrument had not terminated or ceased to cover the person.

## **Division 2—Special provisions about transitional APCSs**

### **10 Variation of transitional APSC in annual wage reviews under the FW Act**

- (1) In an annual wage review, FWA may make a determination varying a transitional APSC.
- (2) For that purpose, Division 3 of Part 2-6 of the FW Act (other than section 292) applies to a transitional APSC in the same way as it applies to a modern award.

### **11 Transitional APSC ceases to cover an employee if a modern award starts to cover the employee**

A transitional APSC ceases to cover an employee when a modern award that covers the employee comes into operation.

## **Division 3—Special provisions about the FMW, special FMWs and the default casual loading**

### **12 Cessation of coverage of transitional standard FMW etc.**

- (1) On the FW (safety net provisions) commencement day, the transitional standard FMW, any transitional special FMWs and the transitional default casual loading cease to cover any employees. Subsections 182(3) and (4), and section 185, of the continued APSC wages provisions also cease to cover any employees.
- (2) On the FW (safety net provisions) commencement day, FWA is taken to have made a national minimum wage order (the *transitional national minimum wage order*) under Part 2-6 of the FW Act:
  - (a) that:
    - (i) sets the national minimum wage at the rate that was the transitional standard FMW immediately before that day; and

- (ii) requires employers to pay employees to whom the national minimum wage applies (see subsection 294(3) of the FW Act) a base rate of pay that at least equals the national minimum wage; and
- (b) if, immediately before that day, there was a transitional special FMW for a class of employees—that:
  - (i) sets a special national minimum wage for that class of employees that is the same as the transitional special FMW immediately before that day; and
  - (ii) requires employers to pay employees to whom that special national minimum wage applies (see subsection 294(4) of the FW Act) a base rate of pay that at least equals that special national minimum wage; and
- (c) that:
  - (i) sets the casual loading for award/agreement free employees at the rate that was the transitional default casual loading immediately before that day; and
  - (ii) requires employers to pay, to award/agreement free employees who are casual employees, a casual loading that at least equals the casual loading for award/agreement free employees (as applied to the employees' base rates of pay).

Note: The requirement in paragraph 294(1)(b) of the FW Act that a national minimum wage order must set special national minimum wages for all award/agreement free employees in the classes referred to in that paragraph does not apply to the transitional national minimum wage order.

- (3) The hours for which a rate set in the transitional national minimum wage order is payable are the same as the hours for which the transitional standard FMW, transitional special FMW or transitional default casual loading (as the case requires) would have been payable under the continued AFPCS wages provisions.

## **Part 4—Universal application of minimum wages to employees**

### **13 Base rate of pay under agreement-based transitional instrument must not be less than the modern award rate or the national minimum wage order rate etc.**

*If employee is covered by a modern award that is in operation*

- (1) If, on or after the FW (safety net provisions) commencement day:
  - (a) an agreement-based transitional instrument applies to an employee; and
  - (b) a modern award that is in operation covers the employee; the base rate of pay payable to the employee under the transitional instrument (the **instrument rate**) must not be less than the base rate of pay that would be payable to the employee under the modern award (the **award rate**) if the modern award applied to the employee.
- (2) If the instrument rate is less than the award rate, the transitional instrument has effect in relation to the employee as if the instrument rate were equal to the award rate.

*If employee is not covered by a modern award that is in operation*

- (3) If, on or after the FW (safety net provisions) commencement day:
  - (a) an agreement-based transitional instrument applies to an employee; and
  - (b) the employee is not covered by a modern award that is in operation; and
  - (c) a national minimum wage order would, if the employee were an award/agreement free employee, require the employee's employer to pay the employee a base rate of pay (the **employee's order rate**) that at least equals the national minimum wage, or a special national minimum wage, set by the order; the base rate of pay payable to the employee under the transitional instrument (the **instrument rate**) must not be less than the employee's order rate.

(4) If the instrument rate is less than the employee's order rate, the transitional instrument has effect in relation to the employee as if the instrument rate were equal to the employee's order rate.

Note: The AFPCS interaction rules may affect the base rate of pay payable to an employee (see item 22 of Schedule 3).

#### **14 FWA may make determinations to phase-in the effect of rate increases resulting from item 13 etc.**

(1) On application by an employer to whom a transitional instrument applies, FWA may make a determination the effect of which is to phase-in the effect of increases in base rates of pay that would otherwise take effect on a particular day because of:

- item 13; or
- subitem 22(2) of Schedule 3.

Note: Under subitem 22(2) of Schedule 3, AFPCS interaction rules that provide for instruments to prevail over the Australian Fair Pay and Conditions Standard stop applying when the bridging period ends. That may result in an employee becoming entitled to a higher rate of pay under a transitional APSC.

(2) FWA must not make a determination under this item in relation to an employer unless it is satisfied that the determination is necessary to ensure the ongoing viability of the employer's enterprise.

(3) Item 13, and subitem 22(2) of Schedule 3, have effect in relation to an employer subject to any determinations FWA makes under this item.

#### **15 Enterprise agreement base rate of pay not to be less than transitional minimum wage instrument rate**

(1) If:

- a transitional minimum wage instrument covers an employee; and
- an enterprise agreement applies to the employee;

the base rate of pay payable to the employee under the enterprise agreement (the *agreement rate*) must not be less than the base rate of pay that is payable to the employee under the transitional minimum wage instrument (the *instrument rate*).

(2) If the agreement rate is less than the instrument rate, the enterprise agreement has effect in relation to the employee as if the agreement rate were equal to the instrument rate.

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**Schedule 9** Minimum wages

**Part 4** Universal application of minimum wages to employees

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Note: If a transitional instrument applies to an employee who is covered by a transitional minimum wage instrument, then (subject to the continued application of the AFPCS interaction rules) the employee must be paid at least the rate required by the continued AFPCS wages provisions.

## **Schedule 10—Equal remuneration**

### **Part 1—Preliminary**

#### **1 Meaning of *employee***

In this Schedule, *employee* means a national system employee.

## **Part 2—Equal remuneration orders under the FW Act**

### **2 FWA must take into account AFPC's final wage review**

- (1) This item applies in relation to a decision whether to make an equal remuneration order under Part 2-7 of the FW Act during the period:
  - (a) starting on the WR Act repeal day; and
  - (b) ending on the day FWA completes its first annual wage review.
- (2) In deciding whether to make the equal remuneration order, FWA must take into account the outcome of the AFPC's final wage review under the WR Act.

### **3 Inconsistency with certain instruments and orders**

- (1) A term of an instrument or order referred to in subitem (2) has no effect in relation to an employee to the extent that it is less beneficial to the employee than a term of an equal remuneration order that:
  - (a) is made under Part 2-7 of the FW Act; and
  - (b) applies to the employee.
- (2) For the purposes of subitem (1), the instruments and orders are as follows:
  - (a) a transitional instrument;
  - (b) an order of the Commission made under the WR Act;
  - (c) a transitional APSCS.

**Note:** A term of a modern award, an enterprise agreement or an FWA order also has no effect in relation to an employee to the extent that it is less beneficial to the employee than a term of an equal remuneration order that is made under Part 2-7 of the FW Act and applies to the employee (see section 306 of the FW Act).

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## **Part 3—Equal remuneration orders under the WR Act**

### **4 Continued effect of equal remuneration orders**

- (1) An order (a *WR Act equal remuneration order*) that was:
  - (a) made under Division 3 of Part 12 of the WR Act (as in force from time to time); and
  - (b) in force immediately before the WR Act repeal day; continues to have effect on and after the WR Act repeal day.
- (2) A WR Act equal remuneration order may be varied or revoked by FWA under subsections 603(1) and (2) of the FW Act as if it were an order made under Part 2-7 of the FW Act.

### **5 Inconsistency with certain instruments and orders**

- (1) A term of an instrument or order referred to in subitem (2) has no effect in relation to an employee to the extent that it is less beneficial to the employee than a term of an order that:
  - (a) was made under Division 3 of Part 12 of the WR Act (as in force from time to time); and
  - (b) was in force immediately before the WR Act repeal day; and
  - (c) applies to the employee.
- (2) For the purposes of subitem (1), the instruments and orders are as follows:
  - (a) a modern award;
  - (b) an enterprise agreement;
  - (c) an FWA order;
  - (d) a transitional instrument that is an award;
  - (e) a transitional instrument that is a workplace agreement;
  - (f) an order of the Commission made under the WR Act.

## **Schedule 11—Transfer of business**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

## **Part 2—Transmissions of business occurring before WR Act repeal day**

### **2 General rule—continued application of WR Act**

(1) This Part applies if:

- (a) at a time (the *time of transmission*), a person (the *new employer*) became the successor, transmittee or assignee of the whole, or a part, of a business of another person (the *old employer*); and
- (b) the time of transmission was before the WR Act repeal day.

(2) The following provisions of Part 11 of the WR Act (as modified by items 5 and 6 of this Schedule) continue to apply in relation to the transmission of business on and after the WR Act repeal day:

- (a) Divisions 1 and 2 (which deal with introductory matters);
- (b) Division 3 (which deals with the transmission of ITEAs) (other than subsection 583(2) and section 584);
- (c) Division 4 (which deals with the transmission of collective agreements) (other than subsections 585(2), (3) and (5) and subsections 588(1) and (2));
- (d) Division 5 (which deals with the transmission of awards) (other than subsections 595(2), (3), (5) and (6));
- (e) Division 6 (which deals with the transmission of APCSs) (other than subsection 598(2));
- (f) Division 6A (which deals with the transmission of preserved redundancy provisions) (other than subsection 598A(3));
- (g) Division 7 (which deals with entitlements under the Australian Fair Pay and Conditions Standard);
- (h) Division 8 (which deals with notice requirements and enforcement) (other than section 605).

(3) The following provisions of Schedule 9 to the WR Act (as modified by items 5 and 6 of this Schedule) continue to apply in relation to the transmission of business on and after the WR Act repeal day:

- (a) Parts 1 and 2 (which deal with introductory matters);
- (b) Part 2A (which deals with the transmission of AWAs) (other than subclauses 6B(2) and (3) and clause 6C);

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- (c) Part 3 (which deals with the transmission of pre-reform AWAs) (other than subclause 7(2) and clause 9);
- (d) Part 4 (which deals with the transmission of pre-reform certified agreements) (other than subclauses 10(4), (5), (6) and (8) and clause 12);
- (e) Part 5 (which deals with the transmission of State transitional instruments) (other than subclauses 19(2), (3) and (5) and clause 21);
- (f) Part 5A (which deals with the transmission of preserved redundancy provisions) (other than subclause 27A(3));
- (g) Part 6 (which deals with notice requirements and enforcement) (other than clause 31).

### **3 Period for which transmitted transitional instrument etc. continues to cover or apply to new employer**

#### *Transitional instrument covers new employer*

- (1) If the new employer is covered by a transitional instrument in relation to a transferring employee because of a provision of Part 11 of the WR Act or Schedule 9 to that Act, the new employer remains covered by the transitional instrument, by force of this subitem, until whichever of the following first occurs:
  - (a) the instrument is terminated;
  - (b) the transmission period ends;
  - (c) the instrument otherwise ceases to cover the new employer in relation to the transferring employee.
- (2) However, paragraph (1)(b) does not apply in relation to a pre-reform certified agreement if:
  - (a) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and
  - (b) the old employer was not an employer within the meaning of subsection 6(1) of the WR Act immediately before the time of transmission; and
  - (c) the new employer was an employer within the meaning of subsection 6(1) of the WR Act at the time of transmission; and
  - (d) the transmission of business occurs as part of the process of the employer in relation to the business being transferred

becoming an employer within the meaning of subsection 6(1) of the WR Act.

*Transitional APSC covers new employer*

(3) If a transferring employee's employment with the new employer is covered by a transitional APSC because of Division 6 of Part 11 of the WR Act, the transferring employee's employment with the new employer remains covered by that APSC until whichever of the following first occurs:

- (a) the transitional APSC is terminated;
- (b) the transitional APSC otherwise ceases to cover the transferring employee.

*Preserved redundancy provisions apply to new employer*

(4) If a redundancy provision applies to the new employer and a transferring employee because of Division 6A of Part 11 of the WR Act or Part 5A of Schedule 9 to that Act, the redundancy provision continues to apply to the new employer and the transferring employee until the earliest of the following:

- (a) the end of the period of 24 months from the time that the agreement that contained the redundancy provision ceased operating;
- (b) the time when the transferring employee ceases to be employed by the new employer;
- (c) the time when an enterprise agreement, workplace determination or ITEA starts to apply to the employee.

#### **4 Effect of industry-specific redundancy scheme in modern award in relation to preserved redundancy provisions**

If:

- (a) a redundancy provision applies to the new employer and a transferring employee because of Division 6A of Part 11 of the WR Act or Part 5A of Schedule 9 to that Act; and
- (b) an industry-specific redundancy scheme in a modern award applies to the transferring employee; and
- (c) the redundancy provision is detrimental to the transferring employee, in any respect, when compared to the scheme in the modern award;

then, despite subsection 598A(2) of the WR Act or subclause 27A(2) of Schedule 9 to that Act (as the case requires), the scheme in the modern award prevails over the redundancy provision, to the extent that the redundancy provision is detrimental to the transferring employee.

## **5 Modification—applications to Commission in relation to transmission of certain transitional instruments**

*Certain provisions have effect subject to orders of the Commission*

- (1) Subsection 585(1) of the WR Act (as it continues to apply because of subitem 2(2) of this Schedule) and subitem 3(1) of this Schedule (to the extent that it applies in relation to a transitional instrument that is a collective agreement) have effect subject to any order of the Commission under section 590 of the WR Act (as that section continues to apply because of subitem 2(2) of this Schedule).
- (2) Subsection 595(1) of the WR Act (as it continues to apply because of subitem 2(2) of this Schedule) and subitem 3(1) of this Schedule (to the extent that it applies in relation to a transitional instrument that is an award) have effect subject to any order of the Commission (other than an order that would have the effect of extending the transmission period).
- (3) Subclauses 10(1), (2) and (3) of Schedule 9 to the WR Act (as they continue to apply because of subitem 2(3) of this Schedule) and subitems 3(1) and (2) of this Schedule (to the extent that they apply in relation to a transitional instrument that is a pre-reform certified agreement) have effect subject to any order of the Commission under clause 14 of Schedule 9 to the WR Act (as that clause continues to apply because of subitem 2(3) of this Schedule).
- (4) Subclause 19(1) of Schedule 9 to the WR Act (as it continues to apply because of subitem 2(3) of this Schedule) and subitem 3(1) of this Schedule (to the extent that it applies in relation to a transitional instrument that is a State transitional instrument) have effect subject to any order of the Commission under clause 23 of Schedule 9 to the WR Act (as that clause continues to apply because of subitem 2(3) of this Schedule).

*Time within which application to Commission may be made*

- (5) The following provisions of the WR Act (as they continue to apply because of item 2 of this Schedule) are modified by omitting “before, at or after the transfer time” and substituting “not later than 90 days after the WR Act repeal day”:
  - (a) section 591 (which deals with collective agreements);
  - (b) clause 15 of Schedule 9 (which deals with pre-reform certified agreements);
  - (c) clause 24 of Schedule 9 (which deals with State transitional instruments).
- (6) An application for an order under subitem (2) may be made not later than 90 days after the WR Act repeal day.

## **6 Modification—civil remedy provisions**

*Modifications of Part 11 of the WR Act*

- (1) The notes to the following provisions of the WR Act (as they continue to apply because of subitem 2(2) of this Schedule) are modified by omitting “section 605” and substituting “item 11 of Schedule 16 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”:
  - (a) subsection 599(4);
  - (b) subsections 602(2) and (4);
  - (c) subsection 603A(2).
- (2) Note 1 to the following provisions of the WR Act (as they continue to apply because of subitem 2(2) of this Schedule) is modified by omitting “section 605” and substituting “item 11 of Schedule 16 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”:
  - (a) subsections 603(1), (2) and (3);
  - (b) subsection 603B(1).

*Modifications of Schedule 9 to the WR Act*

- (3) The notes to the following provisions of the WR Act (as they continue to apply because of subitem 2(3) of this Schedule) are modified by omitting “clause 31” and substituting “item 11 of Schedule 16 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”:

**Schedule 11** Transfer of business

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- (a) subclauses 28(2) and (3A) of Schedule 9;
- (b) subclause 29A(2) of Schedule 9.

(4) Note 1 to the following provisions of the WR Act (as they continue to apply because of subitem 2(3) of this Schedule) is modified by omitting “clause 31” and substituting “item 11 of Schedule 16 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”:

- (a) subclauses 29(1), (2) and (3) of Schedule 9;
- (b) subclause 29B(1) of Schedule 9.

## **Part 3—Transfers of business occurring on or after WR Act repeal day**

### **Division 1—General**

#### **7 Application of FW Act in relation to transferring employees covered by transitional instrument**

- (1) This item applies if:
  - (a) there is a transfer of business from an employer (the *old employer*) to another employer (the *new employer*), as described in subsection 311(1) of the FW Act; and
  - (b) the connection between the old employer and the new employer referred to in paragraph 311(1)(d) of the FW Act occurs on or after the WR Act repeal day.
- (2) This item applies regardless of whether:
  - (a) the termination of a transferring employee’s employment with the old employer occurs before, on or after the WR Act repeal day; or
  - (b) the employment of a transferring employee by the new employer occurs before, on or after the WR Act repeal day.
- (3) Part 2-8 of the FW Act (as modified by item 8 of this Schedule) applies in relation to the transfer of business.

#### **8 Modification—application of FW Act in relation to transitional instruments**

- (1) Subsection 312(1) of the FW Act applies in relation to the transfer of business as if the following paragraph were added at the end:
  - ;(d) a transitional instrument (other than a workplace agreement or a workplace determination that has not yet come into operation).
- (2) Except as provided in subitems (3) to (5), Part 2-8 of the FW Act applies in relation to the transfer of business as if:
  - (a) a reference to an enterprise agreement included a reference to an agreement-based transitional instrument; and

- (b) a reference to a modern award included a reference to an award-based transitional instrument.
- (3) Paragraph (2)(a) does not apply in relation to the reference to an enterprise agreement in paragraph 312(1)(a) of the FW Act.
- (4) Paragraph (2)(b) does not apply in relation to the reference to a modern award in subsection 312(2) of the FW Act.
- (5) The following provisions of Part 2-8 of the FW Act apply in relation to the transfer of business as if a reference to an enterprise agreement included a reference to a collective agreement-based transitional agreement:
  - (a) subsection 315(3);
  - (b) paragraphs 318(1)(b) and (2)(c);
  - (c) paragraphs 319(1)(c) and (2)(c).
- (6) Paragraph 319(1)(b) of the FW Act applies in relation to the transfer of business as if the words “(other than an individual agreement-based transitional instrument)” were inserted after the words “a transferable instrument”.

## **Division 2—Transfer of preserved redundancy provisions during bridging period**

### **9 Transfer of preserved redundancy provisions**

- (1) This item applies if:
  - (a) there is a transfer of business from an employer (the *old employer*) to another employer (the *new employer*) as described in subsection 311(1) of the FW Act; and
  - (b) the connection between the old employer and the new employer referred to in paragraph 311(1)(d) of the FW Act occurs during the bridging period; and
  - (c) immediately before the termination of an employee’s employment with the old employer, a redundancy provision applied to the old employer and the employee because of a preservation item or a previous application of this item; and
  - (d) the employee is a transferring employee in relation to the transfer of business.
- (2) This item applies regardless of whether:

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- (a) the termination of the transferring employee's employment with the old employer occurs before, on or after the WR Act repeal day; or
- (b) the employment of the transferring employee by the new employer occurs before, on or after the WR Act repeal day.

(3) The redundancy provision applies to the new employer and the transferring employee after the time the transferring employee becomes employed by the new employer.

(4) Subject to subitem (5), the redundancy provision prevails over any other redundancy provision included in any other instrument that would otherwise have effect, to the extent of any inconsistency (even if the provisions in that other instrument might be more beneficial to the transferring employee).

(5) However, if:

- (a) an industry-specific redundancy scheme in a modern award applies to the transferring employee; and
- (b) the redundancy provision is detrimental to the transferring employee, in any respect, when compared to the scheme in the modern award;

then the scheme in the modern award prevails over the redundancy provision, to the extent that the redundancy provision is detrimental to the transferring employee.

(6) The redundancy provision continues to apply to the new employer and the transferring employee until the earliest of the following:

- (a) the end of the period of 24 months from the time that the agreement that contained the redundancy provision ceased operating;
- (b) the time when the transferring employee ceases to be employed by the new employer;
- (c) the time when an enterprise agreement, workplace determination or ITEA starts to apply to the transferring employee.

(7) In this item:

*instrument* has the meaning given by subitem 38(7) of Schedule 3.

*preservation item* means any of the following:

- (a) item 38 of Schedule 3;

- (b) item 40 of Schedule 3;
- (c) a provision of Division 6A of Part 11 of the WR Act or Part 5A of Schedule 9 to that Act (as those provisions continue to apply because of item 2 of this Schedule).

***redundancy provision*** has the meaning given by subitem 38(7) of Schedule 3.

## **10 Notification of transfer of preserved redundancy provisions**

- (1) This item applies if one or more redundancy provisions apply to the new employer and a transferring employee under item 9 of this Schedule.
- (2) Within 28 days after the time the transferring employee becomes employed by the new employer, the new employer must take reasonable steps to give the transferring employee a written notice that complies with subitem (3).

Note: This is a civil remedy provision: see subitem 11(3) of Schedule 16.

- (3) The notice must:
  - (a) identify the redundancy provision or the redundancy provisions; and
  - (b) state that the provision or provisions apply to the new employer and the transferring employee; and
  - (c) specify the date on which the period of 24 months, being the period that applies in relation to the provision or provisions under paragraph 9(6)(a) of this Schedule, ends; and
  - (d) state that the provision or provisions will continue to apply to the new employer and the transferring employee until that date, or an earlier date in accordance with subitem 9(6) of this Schedule.
- (4) Subitem (2) does not apply if an enterprise agreement, workplace determination or ITEA starts to apply to the transferring employee within 14 days after the time the transferring employee becomes employed by the new employer.

## **11 Lodging copy of notice about preserved redundancy provisions with FWA**

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(1) If the new employer gives a notice under subitem 10(2) of this Schedule to a transferring employee, the new employer must lodge a copy of the notice with FWA within the period specified in subitem (2). The copy must be lodged in accordance with subitem (3).

Note: This is a civil remedy provision: see subitem 11(4) of Schedule 16.

(2) The notice must be lodged within 14 days after the day specified in paragraph (a) or (b) (as the case requires):

- (a) if the new employer gives a notice to a transferring employee in respect of a redundancy provision that was included in an ITEA, a pre-reform AWA or a preserved individual State agreement—the day on which that notice is given; or
- (b) if the new employer gives one or more notices to one or more transferring employees in respect of a redundancy provision that was included in a collective agreement, a pre-reform certified agreement or a preserved collective State agreement—the earliest day on which a notice was given.

(3) A notice is lodged with FWA in accordance with this item only if it is actually received by FWA.

Note: This means that section 29 of the *Acts Interpretation Act 1901* (to the extent that it deals with the time of service of documents) does not apply to lodgment of a notice.

## **12 FWA must issue receipt for lodgment**

- (1) If a notice is lodged under item 11 of this Schedule, FWA must issue a receipt for the lodgment.
- (2) The receipt must state that the notice was lodged under item 11 of this Schedule on a particular day.
- (3) FWA must give a copy of the receipt to the person who lodged the notice under item 11 of this Schedule.

## **Division 3—Transfer of entitlements under the AFPCS during bridging period**

### **13 Transfer of entitlements under the AFPCS**

(1) This item applies if:

- (a) there is a transfer of business from an employer (the *old employer*) to another employer (the *new employer*) as described in subsection 311(1) of the FW Act; and

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(b) the connection between the old employer and the new employer referred to in paragraph 311(1)(d) of the FW Act occurs during the bridging period.

(2) This item applies regardless of whether:

- (a) the termination of a transferring employee's employment with the old employer occurs before, on or after the WR Act repeal day; or
- (b) the employment of a transferring employee by the new employer occurs before, on or after the WR Act repeal day.

(3) Despite the repeal of Division 7 of Part 11 of the WR Act (which deals with an employee's entitlements under the Australian Fair Pay and Conditions Standard), that Division applies in relation to the transfer of business as if:

- (a) a reference in the following provisions to at the time of transmission were a reference to at the time the transferring employee becomes employed by the new employer:
  - (i) subsection 599(1);
  - (ii) subsection 600(2);
  - (iii) subsection 601(2); and
- (b) a reference in the following provisions to before the time of transmission were a reference to before the termination of the transferring employee's employment with the old employer:
  - (i) subparagraph 599(1)(a)(ii);
  - (ii) paragraphs 599(3)(a) and (b) and (4)(b);
  - (iii) subparagraphs 600(2)(a)(i) and (iii);
  - (iv) subparagraphs 601(2)(a)(i) and (iii); and
- (c) a reference in subparagraph 599(4)(a)(ii) to at the time of transmission were a reference to at the time of termination of the transferring employee's employment with the old employer; and
- (d) a reference in subsection 599(4) to after the time of transmission were a reference to after the time of termination of the transferring employee's employment with the old employer; and
- (e) a reference in subsections 600(1) and 601(1) to before the time of transmission were a reference to before the time the transferring employee becomes employed by the new employer; and

(f) the reference to section 605 in the note to subsection 599(4) were a reference to subitem 11(5) of Schedule 16 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

## **Schedule 12—General protections**

### **1 Meanings of *employee* and *employer***

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

### **2 Application in relation to Australian Fair Pay and Conditions Standard**

For the purposes of the operation of Part 3-1 of the FW Act in relation to the bridging period, a reference in that Part to the National Employment Standards is taken to include a reference to the Australian Fair Pay and Conditions Standard.

Note: References in Part 3-1 of the FW Act to the National Employment Standards are found in paragraph 344(a) and subparagraph 354(1)(a)(i) of that Act.

### **3 Application in relation to award-based transitional instruments and agreement-based transitional instrument**

(1) Part 3-1 of the FW Act has effect as if:

- (a) a reference in that Part to an enterprise agreement included a reference to an agreement-based transitional instrument; and
- (b) a reference in that Part to a modern award included a reference to an award-based transitional instrument.

Note: References in Part 3-1 of the FW Act:

- (a) to an enterprise agreement are found in paragraphs 341(2)(e) and (g), paragraph 344(b), subsection 353(3) and subparagraphs 354(1)(a)(iii) and (b)(ii) of that Act; and
- (b) to a modern award are found in paragraphs 341(2)(g) and 344(b) of Part 3-1 of that Act.

(2) Without limiting subitem (1), paragraph 344(b) of the FW Act has effect in relation to the bridging period as if a term referred to in that paragraph were a term of an agreement-based transitional instrument or an award-based transitional instrument that dealt with:

- (a) averaging of hours of work; or
- (b) cashing out paid annual leave; or
- (c) taking paid annual leave; or
- (d) cashing out paid personal/carer's leave; or

- (e) the kind of evidence that an employee must provide in order to be entitled to paid personal/carer's leave, unpaid carer's leave or compassionate leave; or
- (f) the substitution of a day or part-day for a day or part-day that would otherwise be a public holiday; or
- (g) the period of notice an employee must give in order to terminate his or her employment; or
- (h) paid loadings for school-based apprentices and trainees in lieu of paid annual leave, paid annual leave or paid absence on public holidays.

Note: This means, for example, that an employer is prohibited from exerting undue influence or undue pressure on an employee to have the employee agree to a cashing out of annual leave arrangement under a term of a pre-reform certified agreement.

## **Schedule 12A—Unfair dismissal**

### **1 Meanings of *employee* and *employer***

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

### **2 Meaning of *small business employer*, for unfair dismissal purposes, prior to 1 January 2011**

- (1) For the purposes of the application of Part 3-2 of the FW Act in relation to the dismissal of a person before 1 January 2011, a national system employer is a *small business employer* if, and only if, the employer's number of full-time equivalent employees, worked out under this item, is less than 15 at the earlier of the following times (the *notice or dismissal time*):
  - (a) the time when the person is given notice of the dismissal;
  - (b) immediately before the dismissal.
- (2) The employer's *number of full-time equivalent employees* at the notice or dismissal time is worked out as follows:

*Method statement*

Step 1. For each person who was an employee of the employer at any time during the period of 4 weeks immediately preceding the day on which the notice or dismissal time occurs, work out the number of ordinary hours (including parts of hours) of the person as the employer's employee during the period.

Note: Subitem (3) sets out what are a person's ordinary hours.

<p>Step 2. If, during the period, the person took leave to which subitem (4) applies, work out the number of hours of leave to which that subitem applies that the person took during the period.</p> <p>Step 3. Add together all of the numbers of ordinary hours worked out under step 1, and subtract all of the number of hours of leave worked out under step 2.</p> <p>Step 4. Divide by 152 the number worked out under step 3. The result is the employer's <b>number of full-time equivalent employees</b> at the notice or dismissal time.</p>	<p><b>Note:</b> The number 152 is based on the maximum number of hours that a full-time employee would work in 4 weeks (being 38 hours per week) excluding reasonable additional hours.</p>
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(3) For the purposes of step 1 of the method statement in subitem (2), the ordinary hours of work of a person as the employer's employee are:

- (a) to the extent that a modern award, enterprise agreement or workplace determination applied to the person, and the person was not a casual employee—the ordinary hours of work specified or provided for in that award, agreement or determination; or
- (b) to the extent that a transitional instrument applied to the person, and the person was not a casual employee—the person's ordinary hours of work under item 33 of Schedule 3; or
- (c) to the extent that:
  - (i) a State industrial instrument applied to the person as a non-national system employee; and
  - (ii) the instrument specified, or provided for the determination of, the person's ordinary hours of work; and
  - (iii) the person was not a casual employee; the ordinary hours of work as specified in, or determined in accordance with, that instrument; or
- (d) to the extent that no such award, agreement, determination or instrument applied to the person, and the person was not a casual employee:

- (i) if the person was a national system employee—the person's ordinary hours of work under section 20 of the FW Act; or
- (ii) if the person was a non-national system employee—what would have been the person's ordinary hours of work under that section if the person had been a national system employee; or
- (e) to the extent that the person was a casual employee—the lesser of:
  - (i) 152 hours; and
  - (ii) the number of hours actually worked by the person.

(4) This subitem applies to leave, whether paid or unpaid, that the person took if:

- (a) the person was entitled to the leave in connection with:
  - (i) the birth of a child of the person or the person's spouse or de facto partner; or
  - (ii) the placement of a child with the person for adoption; and
- (b) the duration of the period of leave has been at least 4 weeks; whether or not the person took any other kind of paid leave while taking that leave.

(5) For the purposes of this item, a national system employer and the employer's associated entities are taken to be one entity.

(6) This item has effect despite section 23 of the FW Act.

## **Schedule 13—Bargaining and industrial action**

### **Part 1—Preliminary**

#### **1 Meanings of *employee* and *employer***

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

## **Part 2—Bargaining**

### **2 Employee covered by individual agreement-based transitional instrument is taken not to be an employee who will be, or who is, covered by enterprise agreement in certain circumstances**

- (1) This item applies to an employee at a particular time if, at that time, an individual agreement-based transitional instrument covers the employee.
- (2) The employee is only taken, for the purposes of the FW Act, to be at that time an employee who is or will be covered by an enterprise agreement or a proposed enterprise agreement, if one of the following applies:
  - (a) the nominal expiry date of the individual agreement-based transitional instrument has passed;
  - (b) a conditional termination of the individual agreement-based transitional instrument has been made under subitem 18(2) of Schedule 3.

**Note:** The main effect of this subitem is that an employee who is covered by an individual agreement-based transitional instrument will not be able to do any of the following until the nominal expiry date of the instrument passes or a conditional termination of the instrument is made under subitem 18(2) of Schedule 3:

- (a) be represented in bargaining for an enterprise agreement;
- (b) vote on the agreement;
- (c) be in a group of employees covered by a protected action ballot order in relation to the agreement;
- (d) have the agreement apply to the employee.

- (3) Despite subitem (2), an employer must give a notice of employee representational rights to an employee under section 173 of the FW Act, if the employer would have been required to give such a notice but for subitem (2). However, the notice must explain that a person can only become the employee's bargaining representative for the agreement when one of the following occurs:
  - (a) the nominal expiry date of the individual agreement-based transitional instrument passes;

- (b) a conditional termination of the individual agreement-based transitional instrument is made under subitem 18(2) of Schedule 3.

### **3 Application for bargaining order where certain collective agreement-based transitional instruments have not passed nominal expiry date**

Despite subsection 229(3) of the FW Act, if one or more of the following transitional instruments apply to an employee, or employees, who will be covered by a proposed enterprise agreement:

- (a) a collective agreement;
- (b) a workplace determination;
- (c) a preserved collective State agreement;
- (d) a pre-reform certified agreement;
- (e) a section 170MX award;

an application for a bargaining order may only be made under subsection 229(1) of that Act:

- (f) not more than 90 days before the nominal expiry date of the transitional instrument, or the latest nominal expiry date of those transitional instruments (as the case may be); or
- (g) after an employer that will be covered by the proposed enterprise agreement has requested under subsection 181(1) of that Act that employees approve the agreement, but before the agreement is so approved.

## **Part 3—Industrial action**

### **4 Industrial action must not be taken before the nominal expiry date of transitional instrument**

(1) The following provisions of the FW Act:

- (a) section 417 (which prohibits industrial action before the nominal expiry date of enterprise agreements etc.);
- (b) item 14 of the table in subsection 539(2) of the FW Act (which deals with civil remedies);

apply, on and after the WR Act repeal day, in relation to an agreement-based transitional instrument, in a corresponding way to the way that those provisions apply in relation to an enterprise agreement.

(2) Subitem (1) does not apply to an individual agreement-based transitional instrument if the employee and employer covered by the instrument have made a conditional termination in relation to the instrument under subitem 18(2) of Schedule 3.

Note: The effect of this provision is that an employee who is covered by an agreement-based transitional instrument may not organise or engage in industrial action until after the nominal expiry date of the instrument has passed. However, this does not apply to an individual agreement-based transitional instrument in relation to which a conditional termination has been made.

(3) For the purposes of subitem (1), the reference in subsection 417(1) of the WR Act to the day on which an enterprise agreement was approved by FWA is taken to be a reference to the day on which the agreement-based transitional instrument became such an instrument.

### **5 Applications on foot under sections 496 and 497 of the WR Act**

(1) Despite the repeal of sections 496 and 497 of the WR Act, if:

- (a) before the WR Act repeal day, an application was made to the Commission or the Court under either of those sections; and
- (b) the application had not been finally dealt with as at the WR Act repeal day;

the Commission or the Court, as the case requires, must consider the application on or after that day as if the WR Act had not been repealed.

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(2) To avoid doubt, if the Commission or the Court does not make an order, or grant an injunction, under section 496 or 497 of the WR Act, as those sections continue to apply because of subitem (1), the decision not to make the order or grant the injunction does not affect whether or not the industrial action concerned is protected industrial action under the FW Act.

## **6 Continuation of section 496 and 497 orders and injunctions**

Despite the repeal of sections 496 and 497 of the WR Act:

- (a) an order made, or an injunction granted, under either of those provisions that was in operation immediately before the WR Act repeal day continues to have effect on and after that day; and
- (b) a person who, immediately before the WR Act repeal day, was required to comply with the order or injunction must not breach the order or injunction on or after the WR repeal day.

## **7 Civil remedy provisions of FW Act apply to section 496 orders**

Subsections 421(1), (3) and (4) and item 15 of the table in subsection 539(2) of the FW Act have effect, on and after the WR Act repeal day, as if:

- (a) references in those provisions to an order under section 418 included references to an order under subsection 496(1) of the WR Act as referred to in item 5 or 6 of this Schedule; and
- (b) references in those provisions to an order under section 419 included references to an order under subsection 496(2) of the WR Act as referred to in item 5 or 6 of this Schedule; and
- (c) references in those provisions to an order under section 420 included references to an order under subsection 496(6) of the WR Act as referred to in item 5 or 6 of this Schedule.

## **8 Effect of orders terminating bargaining periods upon industrial action related workplace determinations**

(1) This item applies if one of the following is in force in relation to a proposed collective agreement under the WR Act immediately before the WR Act repeal day:

- (a) an order terminating a bargaining period under subsection 430(1) of the WR Act that was made on the ground, or on

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grounds including the ground, that the Commission was satisfied as mentioned in subsection 430(3) of that Act;

- (b) a declaration by the Minister under section 498 of the WR Act (which deals with industrial action endangering life, etc.).

(2) Divisions 3 and 5 of Part 2-5 of the FW Act have effect, on and after the WR Act repeal day, in relation to the making of an industrial action related workplace determination, as if:

- (a) references to a termination of industrial action instrument included references to the order or declaration referred to in subitem (1); and
- (b) references to a proposed enterprise agreement included references to the proposed collective agreement; and
- (c) references to the bargaining representatives for a proposed enterprise agreement included references to the persons who were, immediately before the WR Act repeal day, negotiating parties for the proposed collective agreement; and
- (d) references to an employer or employee that would have been covered by a proposed enterprise agreement included references to an employer or employee, as the case requires, that would have been bound by the proposed collective agreement; and
- (e) the reference in paragraph 275(g) to bargaining representatives complying with the good faith bargaining requirements included a reference to the negotiating parties genuinely trying to reach agreement in relation to the proposed collective agreement.

Note: The effect of this provision is that FWA may make an industrial action related workplace determination under the FW Act based on conduct, orders and declarations in relation to negotiations for a proposed collective agreement under the WR Act.

## **9 Commission must not deal further with applications, appeals or reviews relating to bargaining periods**

If:

- (a) before the WR Act repeal day, an application was made under Division 2 of Part 9 of the WR Act for the suspension or termination of a bargaining period; and
- (b) the application had not been finally dealt with as at the WR Act repeal day;

the Commission must not, on or after that day, deal with or continue to deal with the application, or any appeal or review relating to the application.

**10 Effect of suspension or termination orders on or after the WR Act repeal day**

An order under Division 2 of Part 9 of the WR Act suspending or terminating a bargaining period is of no effect on or after the WR Act repeal day, other than as referred to in item 8.

**11 Notices of industrial action of no effect on or after WR Act repeal day**

A notice of intention to take industrial action given under section 441 of the WR Act before the WR Act repeal day is of no effect on or after that day.

## **Part 4—Protected action ballots**

### **12 Commission must not deal further with application, appeal or review relating to ballot order**

The Commission must not, on or after the WR Act repeal day, deal with or continue to deal with any application, appeal or review relating to a ballot order.

### **13 Ballot orders and authorisations have no effect on or after WR Act repeal day**

(1) A ballot order under subsection 451(1) of the WR Act, or a ballot or authorisation under such an order, has no effect on or after the WR Act repeal day.

Note: This means that no protected action ballots can be conducted or continued on or after the WR Act repeal day, and any nomination in a ballot order of a person as an authorised ballot agent, or as an authorised independent adviser, will also have no effect.

(2) This item has effect subject to items 14A and 15.

### **14 Continuation of sections 476, 477 and 479 of the WR Act for protected action ballots completed before WR Act repeal day**

The following provisions of Part 9 of the WR Act continue to apply in relation to a ballot completed before the WR Act repeal day as if that Part had not been repealed:

- (a) section 476;
- (b) subsections 477(1) to (6);
- (c) section 479.

Note: A person must not contravene subsection 477(1) or (4) of the WR Act as those sections continue to apply because of this item (see item 14 of Schedule 16).

### **14A FWA may order that industrial action is taken to be authorised by a protected action ballot**

(1) A person who is a bargaining representative for a proposed enterprise agreement may apply to FWA for an order under this item if, before the WR Act repeal day, the person was an applicant specified in an order

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for a protected action ballot in relation to a proposed collective agreement.

- (2) The application must be made within 28 days after the WR Act repeal day.
- (3) FWA may order that industrial action that was authorised under section 478 of the WR Act in relation to the proposed collective agreement is taken to be authorised, in relation to the proposed enterprise agreement, by a protected action ballot under subsection 459(1) of the FW Act, if FWA is satisfied that:
  - (a) on or after 1 March 2009, the person organised or engaged in industrial action, for the purpose of supporting or advancing claims in relation to the proposed collective agreement; and
  - (b) all such industrial action organised or engaged in by the person was:
    - (i) authorised by a protected action ballot under section 478 of the WR Act; and
    - (ii) protected action within the meaning of the WR Act; and
  - (c) the person did not first organise or engage in such industrial action on or after the WR Act repeal day; and
  - (d) no collective agreement covering the employees whose employment would have been subject to the proposed collective agreement was approved by those employees before the WR Act repeal day; and
  - (e) the proposed enterprise agreement will cover those employees; and
  - (f) the person is genuinely trying to reach agreement in relation to the proposed enterprise agreement; and
  - (g) it is reasonable in all the circumstances to make the order.
- (4) Industrial action that is taken to be authorised because of the operation of subitem (3) is only taken to be authorised in relation to employees who:
  - (a) will be covered by the proposed enterprise agreement; and
  - (b) were relevant employees (within the meaning of section 450 of the WR Act) in relation to the proposed collective agreement.

(5) For the purposes of subsection 414(3) of the FW Act, the results of the protected action ballot under that Act are taken to have been declared on the day of the order.

## **15 Continuing liability for cost of protected action ballot**

Sections 482 and 483 of the WR Act continue to apply on and after the WR Act repeal day in relation to a ballot ordered under Division 4 of Part 9 of the WR Act.

## **16 Record-keeping requirements relating to protected action ballot conducted under WR Act**

An authorised ballot agent in relation to a protected action ballot conducted before the WR Act repeal day must keep the following for a period of one year after the day on which the ballot closed:

- (a) the roll of voters;
- (b) all the ballot papers, envelopes and other documents and records relevant to the ballot.

## **17 Restriction on when protected action ballot orders may be made—certain agreement-based transitional instruments cover employees who will be covered by proposed enterprise agreement**

- (1) This item applies if one or more of the following transitional instruments cover the employees who will be covered by a proposed enterprise agreement:
  - (a) a collective agreement;
  - (b) a workplace determination;
  - (c) a preserved collective State agreement;
  - (d) a pre-reform certified agreement;
  - (e) a section 170MX award.
- (2) An application for a protected action ballot order must not be made under subsection 437(1) of the FW Act earlier than 30 days before the nominal expiry date of the transitional instrument, or the latest nominal expiry date of those transitional instruments (as the case may be).
- (3) To avoid doubt, making an application for a protected action ballot order does not constitute organising industrial action.

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## **Part 5—Effect of conduct engaged in while bargaining for WR Act collective agreement**

### **18 FWA may take into account conduct engaged in by bargaining representatives while bargaining for WR Act collective agreement**

(1) This item applies if:

- (a) before the WR Act repeal day, a bargaining representative for a proposed enterprise agreement engaged in conduct in relation to a proposed collective agreement; and
- (b) immediately before that day, the collective agreement had not been made; and
- (c) the employment of the employees who would be covered by the proposed enterprise agreement would have been subject to the proposed collective agreement, had it been made; and
- (d) the employers who would be covered by the proposed enterprise agreement would have been bound by the proposed collective agreement, had it come into operation.

(2) FWA may take into account that conduct:

- (a) in deciding whether it is reasonable in all the circumstances to make a bargaining order or a scope order in relation to the proposed enterprise agreement; and
- (b) in deciding which terms to include in a workplace determination that relates to the proposed enterprise agreement; and
- (c) in deciding under Part 3-3 of the FW Act (which deals with industrial action) whether a bargaining representative is genuinely trying to reach an agreement in relation to the proposed enterprise agreement; and
- (d) in deciding under subsection 423(2) or (3) of that Act whether protected industrial action that relates to the proposed enterprise agreement is causing, or threatening to cause, significant economic harm to a person.

## **Part 6—Payments relating to periods of industrial action**

### **19 Payments relating to pre-commencement periods of industrial action etc.**

(1) If industrial action (whether or not protected action) is engaged in before the commencement of Part 3-3 of the FW Act then:

- (a) Division 9 of Part 9 of the WR Act continues to apply, on and after the WR Act repeal day, in relation to the industrial action; and
- (b) Part 3-1 and Division 9 of Part 3-3 of the FW Act do not apply in relation to the industrial action.

(2) If:

- (a) industrial action (whether or not protected action) is engaged in during a shift or other period of work that is taken to be a day because of subsection 507(3) of the WR Act; and
- (b) Part 3-3 of the FW Act commences during that shift or other period;

then:

- (c) Division 9 of Part 9 of the WR Act continues to apply, on and after the WR Act repeal day, in relation to the industrial action until the end of that shift or other period; and
- (d) Part 3-1 and Division 9 of Part 3-3 of the FW Act do not apply in relation to the industrial action engaged in during that shift or period.

### **20 Application of Division 9 of Part 3-3 of the FW Act**

Division 9 of Part 3-3 of the FW Act applies as if:

- (a) the reference in paragraph 470(4)(c), subsection 471(2) and paragraph 474(2)(c) of that Act to a modern award included a reference to an award-based transitional instrument; and
- (b) the reference in those provisions to an enterprise agreement included a reference to an agreement-based transitional instrument.

## **Schedule 14—Right of entry**

### **1 Entry permits**

A permit that is in force immediately before the WR Act repeal day under Part 15 of the WR Act, or that comes into force on or after that day under that Part, has effect:

- (a) as if it were an entry permit in force under the FW Act; and
- (b) subject to terms and conditions (including expiry date) like those to which it was subject under the WR Act.

### **2 Entry notices and exemption certificates**

(1) An entry notice properly given:

- (a) before the WR Act repeal day; and
- (b) for an entry that has not occurred before that day;

has effect after the repeal as if it were properly given under the FW Act.

(2) An exemption certificate properly issued by a Registrar:

- (a) before the WR Act repeal; and
- (b) for an entry that has not occurred before the repeal;

has effect after the repeal as if it were properly issued by FWA.

### **3 Contravention of Acts etc.**

The reference in subsections 481(1) and 483A(1) of the FW Act to a suspected contravention of this Act or a term of a fair work instrument is taken to include a reference to a suspected contravention of any of the following:

- (a) the WR Act, as in force from time to time;
- (b) a WR Act instrument;
- (c) a transitional instrument.

### **4 Notice to produce documents**

A notice given under subsection 748(5) of the WR Act to produce, or allow access to, records on a day, or days, on or after the WR Act repeal day has effect, on and after the WR Act repeal day, as if it were given under subsection 483(1) of the FW Act.

### **6 Suspending or revoking entry permits**

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The FW Act applies as if:

- (a) the reference in paragraph 510(1)(a) of that Act to the permit holder being found, in proceedings under this Act, to have contravened subsection 503(1) included a reference to the permit holder being found, in proceedings under the WR Act, as in force from time to time, to have contravened section 768 of the WR Act; and
- (b) the reference in paragraph 510(1)(d) of the FW Act to “this Act” (being the FW Act) included a reference to the WR Act as in force from time to time and the reference in that paragraph to “this Part” (being Part 3-4 of the FW Act) included a reference to Part 15 of the WR Act; and
- (c) the reference in paragraph 510(4)(a) of the FW Act to FWA not having previously taken action under subsection (1) against the permit holder included a reference to the Registrar not having taken action against the permit holder under subsection 744(4) of the WR Act, as in force from time to time; and
- (d) the references in paragraphs 510(4)(b) and (c) of the FW Act to FWA having taken action under subsection (1) against the permit holder included a reference to the Registrar having taken action against the permit holder under subsection 744(4) of the WR Act, as in force from time to time.

## **7 Continued application of WR Act**

- (1) An instrument that, because of this Schedule, has effect under the FW Act continues, in addition to that effect, to have effect under the WR Act for the purposes of item 11 of Schedule 2.
- (2) Any suspension or revocation of, or imposition of conditions on, an entry permit under the WR Act (as it continues to apply because of item 11 of Schedule 2) is also taken to have been done under the FW Act.
- (3) Despite item 11 of Schedule 2, disputes about the operation of Part 15 of the WR Act that could, because of that item, have been dealt with under section 772 of that Act, may be dealt with only by FWA under section 505 of the FW Act.
- (4) For the purposes of subitem (3), section 505 of the FW Act applies:

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- (a) as if the reference in subsection (1) of that section to “this Part” (being Part 3-4 of the FW Act) were a reference to Part 15 of the WR Act; and
- (b) in a similar way to the way in which it applies for the purposes of the FW Act.

## **Schedule 15—Stand down**

### **1 Meanings of *employee* and *employer***

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

### **2 Application of FW Act—stand down under transitional instruments**

Subsection 524(2) of the FW Act (which deals with circumstances allowing stand down) applies in relation to a transitional instrument as if a reference to an enterprise agreement included a reference to a transitional instrument.

### **3 Transitional instruments providing for authorisation by third party**

Despite item 4 of Schedule 3, subsection 691A(5) of the WR Act does not continue to apply in relation to WR Act instruments that become transitional instruments.

**Note:** This means that a provision of a transitional instrument that is a provision of the kind described in subparagraph 691A(1)(c)(ii) of the WR Act (being a provision requiring an employer to apply to a third party for authorisation to stand down employees in certain circumstances) has effect on and after the WR Act repeal day.

## Schedule 16—Compliance

### 1 Meanings of *employee* and *employer*

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

### 2 Compliance with transitional instruments

#### *Award-based transitional instruments*

(1) A person must not contravene a term of an award-based transitional instrument that applies to the person.

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

Note 2: An injunction may not be granted in relation to a contravention of an award-based transitional instrument (see item 17).

#### *Agreement-based transitional instruments*

(2) A person must not contravene a term of an agreement-based transitional instrument that applies to the person.

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

Note 2: An injunction may not be granted in relation to a contravention of an agreement-based transitional instrument (see item 17).

### 3 Compliance with obligations relating to conditional terminations of individual agreement-based transitional instruments

(1) An employer must not contravene subitem 18(6) of Schedule 3.

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

(2) A bargaining representative who applies to FWA for approval of an enterprise agreement must not contravene subitem 18(7) of Schedule 3.

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

### 4 Compliance with obligation to notify employees about preserved redundancy provisions

An employer must not contravene subitem 39(3) of Schedule 3.

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

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## **5 Compliance with transitional APCSs, the transitional FMW and transitional special FMWs**

A person must not contravene section 182 or 185 of the WR Act as that section continues to apply under item 5 of Schedule 9.

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

Note 2: An injunction may not be granted in relation to a contravention of section 182 or 185 of the WR Act (see item 17).

## **6 Compliance with minimum entitlements**

### *Minimum entitlements*

- (1) A person must not contravene any of the following provisions:
  - (a) Divisions 3, 4, 5, and 6 of Part 7 of the WR Act as they continue to apply under item 2 of Schedule 4;
  - (b) Divisions 1 and 2 of Part 12 of the WR Act as they continue to apply under item 3 of Schedule 4;
  - (c) section 661 of the WR Act as it continues to apply under item 4 of Schedule 4.

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

Note 2: An injunction may not be granted in relation to a contravention of section 661 of the WR Act (see item 17).

### *Extended operation of parental leave*

- (2) A person must not contravene Division 6 of Part 12 of the WR Act as it continues to apply under item 3 of Schedule 4.

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

## **7 Compliance with take-home pay orders**

A person must not contravene a term of a take-home pay order that applies to the person.

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

## **8 Compliance with continued provisions relating to workplace agreements**

- (1) A person must not contravene any of the following provisions of the WR Act as the provision continues to apply because of Schedule 8:
  - (a) subsection 335(3);

- (b) subsection 337(8) or (9);
- (c) subsection 339(1);
- (d) subsection 342(1);
- (e) subsection 346(1);
- (f) subsection 346A(1);
- (g) subsection 346ZH(1);
- (h) subsection 362(1);
- (i) subsection 364(1);
- (j) subsection 370(8) or (9);
- (k) subsection 372(1);
- (l) subsection 375(1);
- (m) subsection 379(1);
- (n) subsection 385(1);
- (o) subsection 388(1);
- (p) subsection 391(1);
- (q) subsection 394(5);
- (r) subsection 397(1);
- (s) subsection 601H(2).

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

(2) A person must not contravene any of the following provisions of the WR Act as the provision continues to apply because of Schedule 8:

- (a) subsection 341(1);
- (b) subsection 343(1);
- (c) subsection 357(1);
- (d) subsection 365(1);
- (e) subsection 366(1);
- (f) subsection 374(1);
- (g) subsection 376(1);
- (h) subsection 387(1).

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

(3) A person must not contravene subsection 334(2) of the WR Act as that subsection continues to apply because of Schedule 8.

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

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(4) A person must not contravene subsection 365(1), 366(1), 400(3), 400(5) or 401(1) of the WR Act as those subsections continue to apply because of Schedule 8.

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

## **9 Compliance with continued provisions relating to workplace agreements**

(1) This item applies to the following provisions of the WR Act as the provisions continue to apply because of Schedule 8:

- (a) subsection 341(1);
- (b) subsection 374(1);
- (c) subsection 387(1);
- (d) subsection 400(5);
- (e) subsection 401(1).

(2) Subdivision C of Division 11 of Part 8 of the WR Act continues to apply, on and after the WR Act repeal day, in relation to a contravention of the provision.

## **10 Compliance with WR Act equal remuneration orders**

A person must not contravene a term of a WR Act equal remuneration order as it continues to apply because of item 4 of Schedule 10.

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

## **11 Transfer of business—compliance with notice requirements**

(1) A person must not contravene subsection 599(4) of the WR Act as it continues to apply because of subitem 2(2) of Schedule 11.

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

(2) A person must not contravene any of the following provisions of the WR Act as they continue to apply because of subitem 2(2) or (3) of Schedule 11:

- (a) subsections 602(2) and (4);
- (b) subsections 603(1), (2) and (3);
- (c) subsection 603A(2);
- (d) subsection 603B(1);
- (e) subclauses 28(2) and (3A) of Schedule 9;

- (f) subclauses 29(1), (2) and (3) of Schedule 9;
- (g) subclause 29A(2) of Schedule 9;
- (h) subclause 29B(1) of Schedule 9.

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

(3) A person must not contravene subitem 10(2) of Schedule 11.

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

(4) A person must not contravene subitem 11(1) of Schedule 11.

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

(5) A person must not contravene subsection 599(4) of the WR Act as applied by item 13 of Schedule 11.

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

## **12 Non-disclosure obligation—information acquired under FW Act that identifies an employee as an employee to whom an individual agreement-based transitional instrument applies**

(1) A person who:

- (a) is the protected action ballot agent for a protected action ballot (other than the Australian Electoral Commission); or
- (b) is the independent advisor for a protected action ballot; or
- (c) acquires information from, or on behalf of, a person referred to in paragraph (a) or (b) in the course of performing functions or exercising powers for the purposes of the ballot;

must not disclose to any other person information about an employee if the information will identify whether or not the employee is covered by an individual agreement-based transitional instrument.

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

(2) Subitem (1) does not apply if:

- (a) the disclosure is made in the course of performing functions or exercising powers for the purposes of the protected action ballot; or
- (b) the disclosure is required or authorised by or under a law; or
- (c) the employee has consented, in writing, to the disclosure.

Note 1: Personal information given to FWA, the Australian Electoral Commission or another protected action ballot agent under Division 8 of Part 3-3 of the FW Act may be regulated under the *Privacy Act 1988*.

Note 2: The President of FWA may, in certain circumstances, disclose, or authorise the disclosure of, information acquired by FWA or a member of the staff of FWA, in the course of performing functions or exercising powers as FWA (see section 655 of the FW Act).

(3) In this item:

***protected action ballot*** has the same meaning as in the FW Act.

### **13 Non-disclosure obligation—protected ballot information acquired under the WR Act**

(1) A person who acquires protected ballot information in the course of performing functions or exercising powers under this Act, the WR Act or the FW Act must not disclose that information to any other person if the information will identify:

- (a) whether a person is a member of an employee organisation; or
- (b) a person as:
  - (i) an applicant who was represented by an applicant's agent; or
  - (ii) a relevant employee who was one of the prescribed number of employees supporting an application for a ballot order (as required by subsection 451(4) of the WR Act); or
  - (iii) a person whose name appears on the roll of voters for a protected action ballot; or
  - (iv) a person who is covered by an individual agreement-based transitional instrument.

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

(2) Subitem (1) does not apply if:

- (a) the disclosure is made for the purposes of performing functions or exercising powers under this Act, the WR Act (as it continues to apply under this Act) or the FW Act; or
- (b) the disclosure is required or authorised by or under a law; or
- (c) the person referred to in paragraph (1)(a) or (b) has consented, in writing, to the disclosure.

Note 1: If the protected ballot information is personal information, it may be regulated under the *Privacy Act 1988*.

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Note 2: The President of FWA may, in certain circumstances, disclose, or authorise the disclosure of, information acquired by FWA or a member of the staff of FWA, in the course of performing functions or exercising powers as FWA (see section 655 of the FW Act).

(3) In this item:

***protected action ballot*** has the same meaning as in the WR Act.

***protected ballot information*** means information acquired in connection with a protected action ballot.

## **14 Compliance with continued provisions relating to protected action ballots**

A person must not contravene subsection 477(1) or (4) of the WR Act as those subsections continue to apply because of item 14 of Schedule 13.

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

## **15 Continuing Schedule 6 instruments**

(1) A person must not contravene a term of a continuing Schedule 6 instrument that applies to the person.

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

Note 2: An injunction may not be granted in relation to a contravention of a continuing Schedule 6 instrument (see item 17).

(2) A transitional employer must not contravene subclause 72J(2) or 72K(1), (2) or (3) of continued Schedule 6.

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

## **16 Application of FW Act to civil remedy provisions under this Act**

(1) Part 4-1 of the FW Act applies as if:

- (a) items 2 to 8 and 10 to 15 of this Schedule were provisions of the FW Act; and
- (b) the table in subsection 539(2) included the table below (with the references in column 1 of the table below to be read as references to provisions of this Schedule (being Schedule 16 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*)); and

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- (c) a reference to a fair work instrument in that Part included a reference to a transitional instrument, a transitional minimum wage instrument or a continuing Schedule 6 instrument; and
- (d) the reference in subsection 540(3) to items 4, 7 and 14 in the table in subsection 539(2) included a reference to item 40 in the table below; and
- (da) the reference in subsections 540(3) and (4) to a term in an enterprise agreement that would be an outworker term if it were included in a modern award included a reference to a term in a collective agreement-based transitional instrument that would be an outworker term if it were included in an award-based transitional instrument; and
- (e) subsection 541(3) included references to items 2, 5, 7, 10, and 15 of this Schedule; and
- (f) subsection 557(2) included references to items 2 to 8 and 10 to 15 of this Schedule.

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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
38	2(1) (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
39	2(1) (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
40	2(2) (in	(a) an employee;	(a) the Federal Court;	60 penalty

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
	relation to a contravention or proposed contravention of a collective agreement-based transitional instrument other than a contravention or proposed contravention of a term that would be an outworker term if it were included in an award-based transitional instrument)	(b) an employer; (c) an employee organisation to which the collective agreement-based transitional instrument concerned applies; (d) an inspector	(b) the Federal Magistrates Court; (c) an eligible State or Territory court	units
40A	2(2) (in relation to a contravention or proposed contravention of a term in a collective agreement-based transitional instrument that would be an outworker term if it were	(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

**Schedule 16** Compliance

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
included in an award-based transitional instrument)				
41	2(2) (in relation to a contravention of an individual agreement-ba sed transitional instrument)	(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
42	3(1)	(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	30 penalty units
43	3(2)	(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	30 penalty units
44	4	(a) an employee; (b) an employee	(a) the Federal Court; (b) the Federal	60 penalty units

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
		organisation; (c) an inspector	Magistrates Court; (c) an eligible State or Territory court	
45	5	(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
46	6(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
47	6(2)	(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
48	7	(a) an employee; (b) an outworker; (c) an employee organisation; (d) an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the take-home pay order relates; (e) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
49	8(1)	(a) an employee;	(a) the Federal Court;	30 penalty

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
		(b) an employee organisation; (c) an inspector (d) if the agreement is an ITEA—a bargaining agent	(b) the Federal Magistrates Court; (c) an eligible State or Territory court	units
50	8(2)	(a) an employee; (b) an employee organisation; (c) an inspector; (d) if the agreement is an ITEA—a bargaining agent	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
51	8(3)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an inspector; (e) if the agreement is an ITEA—a bargaining agent	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	30 penalty units
52	8(4)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an inspector; (e) if the agreement is an ITEA—a bargaining agent	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	60 penalty units
53	10	(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

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
54	11(1)	(a) a transferring employee; (b) the new 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
55	11(2), (3) and (4)	(a) a transferring 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
56	11(5)	(a) a transferring employee; (b) the new 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
57	12(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
58	13(1)	(a) an employee; (b) an employer; (c) an applicant for the ballot order to which the protected ballot	(a) the Federal Court; (b) the Federal Magistrates Court	30 penalty units

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1 Civil remedy provision</b>	<b>Column 2 Persons</b>	<b>Column 3 Courts</b>	<b>Column 4 Maximum penalty</b>
		information relates; (d) the authorised ballot agent in relation to the ballot to which the protected ballot information relates; (e) an inspector		
59	14	(a) an employee; (b) an employer; (c) an applicant for the ballot order; (d) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court	30 penalty units
60	15(1) (other than in relation to a contravention of an outworker term in a continuing Schedule 6 instrument)	(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
61	15(1) (in relation to a contravention of an outworker term in a continuing Schedule 6 instrument)	(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
62	15(2)	(a) a transferring transitional employee;	(a) the Federal Court; (b) the Federal Magistrates Court	60 penalty units

<b>Standing, jurisdiction and maximum penalties</b>				
<b>Item</b>	<b>Column 1</b> <b>Civil remedy provision</b>	<b>Column 2</b> <b>Persons</b>	<b>Column 3</b> <b>Courts</b>	<b>Column 4</b> <b>Maximum penalty</b>
		(b) an employee organisation; (c) an inspector		

### *Outworkers*

(2) For the purposes of table items 38, 39, 40, 40A 48, 60 and 61 in subitem (1), and the operation of subsections 540(3) and (4) of the FW Act in relation to those table items:

- (a) *outworker* has the meaning given by the FW Act; and
- (b) *outworker term* has the meaning that would be given by section 140 of the FW Act if:
  - (i) references in that section to a “modern award” were references to an “award-based transitional instrument” or a “continuing Schedule 6 instrument”; and
  - (ii) paragraph 140(3)(b) of that Act did not refer to subsection 142(1); and
  - (iii) paragraph 140(3)(c) of that Act did not refer to subsection 142(2).

(3) Section 570 of the FW Act applies in relation to proceedings that relate to any of items 2 to 8 or 10 to 15 of this Schedule as if the reference to this Act (being the FW Act) were a reference to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

(4) Section 571 of the FW Act applies as if the reference to a pecuniary penalty imposed under this Act (being the FW Act) were a reference to a pecuniary penalty imposed in relation to any of items 2 to 8 or 10 to 15 of this Schedule.

### **17 No injunctions in relation to certain contraventions**

The Federal Court and the Federal Magistrates Court may not make an order under Division 2 of Part 4-1 of the FW Act granting an injunction, or an interim injunction, to prevent, stop or remedy the effects of a contravention of:

- (a) a transitional instrument; or
- (b) a continuing Schedule 6 instrument; or

- (c) section 182 or 185 of the WR Act as that section continues to apply under item 5 of Schedule 9; or
- (d) section 661 of the WR Act, as it continues to apply under item 4 of Schedule 4.

## **18 Application of safety net contractual entitlements**

To avoid doubt, the following have no effect before the FW (safety net provisions) commencement day:

- (a) sections 541, 542 and 543 of the FW Act;
- (b) section 706 of the FW Act as it operates because of paragraph 706(1)(b) that Act.

Note: Inspectors may exercise powers for the other compliance purposes set out in subsection 706(1) of the FW Act before the FW (safety net provisions) commencement day.

## **19 Regulations dealing with civil penalties**

- (1) The regulations may provide for civil penalties for contravention of this Act or of the WR Act as the WR Act continues to apply because of this Act.
- (2) The penalties for contravention must not be more than:
  - (a) 20 penalty units for an individual; and
  - (b) 100 penalty units for a body corporate.

## **Schedule 17—Amendments relating to the Fair Work Divisions of the Federal Court and the Federal Magistrates Court**

### **Part 1—Amendments to the Federal Court of Australia Act 1976**

#### *Federal Court of Australia Act 1976*

##### **1 Section 4**

Insert:

**Division** means the General Division or the Fair Work Division of the Court.

##### **2 Section 4 (definition of *Full Court*)**

After “Full Court” (second occurring), insert “in a Division of the Court”.

##### **3 After section 6**

Insert:

#### **6A Assignment of Judges to Divisions**

The Governor-General may:

- (a) assign a Judge (other than the Chief Justice) to one of the Divisions either:
  - (i) in the commission of appointment of the Judge; or
  - (ii) at a later time, with the consent of the Judge; and
- (b) vary any such assignment, with the consent of the Judge.

Note: A Judge (including the Chief Justice) who is not assigned to either Division of the Court may exercise the powers of the Court in either Division (see subsection 15(1C)).

##### **4 Section 7**

Before “Whenever”, insert “(1)”.

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## **5 At the end of section 7**

Add:

- (2) For the purposes of this Act, a person who is performing duties and exercising powers under subsection (1) is taken not to be assigned to either Division of the Court.

Note: A Judge (including the Chief Justice) who is not assigned to either Division of the Court may exercise the powers of the Court in either Division (see subsection 15(1C)).

## **6 After section 12**

Insert:

## **13 General and Fair Work Divisions of the Court**

- (1) For the purpose of the organisation and conduct of the business of the Court, the Court comprises 2 Divisions:
  - (a) the General Division; and
  - (b) the Fair Work Division.
- (2) Every proceeding in the Court must be instituted, heard and determined in a Division.

### *Fair Work Division*

- (3) The following jurisdiction of the Court is to be exercised in the Fair Work Division:
  - (a) jurisdiction that is required by any other Act to be exercised in the Fair Work Division;
  - (b) jurisdiction that is incidental to such jurisdiction.

Note: Under section 562 of the *Fair Work Act 2009*, jurisdiction is required to be exercised in the Fair Work Division of the Court in relation to matters arising under that Act.

### *General Division*

- (4) The following jurisdiction of the Court is to be exercised in the General Division:
  - (a) jurisdiction that is not required by any other Act to be exercised in the Fair Work Division;

(b) jurisdiction that is incidental to such jurisdiction (including jurisdiction that is required by any other Act to be exercised in the Fair Work Division).

*Jurisdiction that is required to be exercised in both Divisions*

(5) If the Court's jurisdiction is required to be exercised in both Divisions in relation to particular proceedings or proceedings of a particular kind, the Chief Justice may, at any time (whether before or after the proceedings are instituted), give a direction about the allocation to one or other Division of those proceedings or proceedings of that kind.

## 7 After subsection 15(1)

Insert:

*Exercise of powers of General and Fair Work Divisions of the Court*

(1A) A Judge who is assigned to a Division of the Court must exercise, or participate in exercising, the powers of the Court only in that Division, except as set out in subsection (1B).

(1B) The Chief Justice may arrange for a Judge who is assigned to a particular Division of the Court to exercise, or participate in exercising, the powers of the Court in the other Division if the Chief Justice considers that circumstances make it desirable to do so.

(1C) To avoid doubt, a Judge who is not assigned to either Division of the Court may exercise, or participate in exercising, the powers of the Court in either Division.

(1D) Subsection (1A) does not affect the validity of any exercise of powers by the Court otherwise than in accordance with that subsection.

Note 1: The following heading to subsection 15(1) is inserted “*Responsibility of Chief Justice*”.

Note 2: The following heading to subsection 15(2) is inserted “*Judges who are also Judges of the Supreme Court of the ACT and the Northern Territory*”.

## 8 At the end of Division 1 of Part IIA

Add:

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### **18BA Arrangements with agencies or organisations**

- (1) The Chief Justice may arrange with the chief executive officer (however described) of:
  - (a) an agency of the Commonwealth, a State or a Territory; or
  - (b) another organisation; for an employee or employees of the agency or organisation to:
    - (c) receive, on behalf of the Court, documents to be lodged with or filed in the Court; or
    - (d) perform, on behalf of the Court, other non-judicial functions of the Court.
- (2) If an arrangement under subsection (1) is in force in relation to the performance by an employee of an agency or organisation of a function on behalf of the Court, the employee may perform that function despite any other provision of this Act or any other law of the Commonwealth.
- (3) A function performed on behalf of the Court in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.

### **9 Subsection 43(1)**

After “subsection (1A)”, insert “and section 570 of the *Fair Work Act 2009*”.

## **Part 2—Amendments to the Federal Magistrates Act 1999**

### ***Federal Magistrates Act 1999***

#### **10 Section 4**

After:

- Jurisdiction is conferred on the Federal Magistrates Court by other laws of the Commonwealth.

Insert:

- Jurisdiction is to be exercised in the General Division or the Fair Work Division of the Federal Magistrates Court.

#### **11 Section 5**

Insert:

**Division** means the General Division or the Fair Work Division of the Federal Magistrates Court.

#### **12 After section 10**

Insert:

#### **10A General and Fair Work Divisions of the Federal Magistrates Court**

- (1) For the purpose of the organisation and conduct of the business of the Federal Magistrates Court, the Federal Magistrates Court comprises 2 Divisions:
  - (a) the General Division; and
  - (b) the Fair Work Division.
- (2) Every proceeding in the Federal Magistrates Court must be instituted, heard and determined in a Division.

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*Fair Work Division*

(3) The following jurisdiction of the Federal Magistrates Court is to be exercised in the Fair Work Division:

- (a) jurisdiction that is required by any other Act to be exercised in the Fair Work Division;
- (b) jurisdiction that is incidental to such jurisdiction.

Note: Under section 566 of the *Fair Work Act 2009*, jurisdiction is required to be exercised in the Fair Work Division of the Federal Magistrates Court in relation to matters arising under that Act.

*General Division*

(4) The following jurisdiction of the Federal Magistrates Court is to be exercised in the General Division:

- (a) jurisdiction that is not required by any other Act to be exercised in the Fair Work Division;
- (b) jurisdiction that is incidental to such jurisdiction (including jurisdiction that is required by any other Act to be exercised in the Fair Work Division).

*Jurisdiction that is required to be exercised in both Divisions*

(5) If the Court's jurisdiction is required to be exercised in both Divisions in relation to particular proceedings or proceedings of a particular kind, the Chief Federal Magistrate may, at any time (whether before or after the proceedings are instituted), give a direction about the allocation to one or other Division of those proceedings or proceedings of that kind.

**13 After subsection 12(3)**

Insert:

*Exercise of powers of General and Fair Work Divisions of the Federal Magistrates Court*

- (3A) A Federal Magistrate who is assigned to a Division of the Federal Magistrates Court must exercise, or participate in exercising, the powers of the Federal Magistrates Court only in that Division, except as set out in subsection (3B).
- (3B) The Chief Federal Magistrate may arrange for a Federal Magistrate who is assigned to a particular Division of the Federal Magistrates

Court to exercise, or participate in exercising, the powers of the Federal Magistrates Court in the other Division if the Chief Federal Magistrate considers that circumstances make it desirable to do so.

- (3C) To avoid doubt, a Federal Magistrate who is not assigned to either Division of the Federal Magistrates Court may exercise, or participate in exercising, the powers of the Federal Magistrates Court in either Division.
- (3D) Subsection (3A) does not affect the validity of any exercise of powers by the Federal Magistrates Court otherwise than in accordance with that subsection.

Note 1: The following heading to subsection 12(1) is inserted “*Responsibility of Chief Federal Magistrate*”.

Note 2: The following heading to subsection 12(4) is inserted “*Assignment of Federal Magistrates to locations or registries*”.

Note 3: The following heading to subsection 12(7) is inserted “*Functions and powers of the Chief Federal Magistrate*”.

## **14 Subsection 79(1)**

After “proceedings”, insert “or proceedings in relation to a matter arising under the *Fair Work Act 2009*”.

## **15 Subsection 79(1) (at the end of the note)**

Add “See section 570 of the *Fair Work Act 2009* for proceedings in relation to matters arising under that Act.”.

## **16 After clause 1 of Schedule 1**

Insert:

### **1A Assignment of Federal Magistrates to Divisions**

The Governor-General may:

- (a) assign a Federal Magistrate (other than the Chief Federal Magistrate) to one of the Divisions either:
  - (i) in the commission of appointment of the Federal Magistrate; or
  - (ii) at a later time, with the consent of the Federal Magistrate; and
- (b) vary any such assignment, with the consent of the Federal Magistrate.

**Schedule 17** Amendments relating to the Fair Work Divisions of the Federal Court and the Federal Magistrates Court

**Part 2** Amendments to the Federal Magistrates Act 1999

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Note: A Federal Magistrate (including the Chief Federal Magistrate) who is not assigned to either Division of the Federal Magistrates Court may exercise the powers of the Federal Magistrates Court in either Division (see subsection 12(3C)).

**17 At the end of clause 10 of Schedule 1**

Add:

(3) For the purposes of this Act, a person who is acting as Chief Federal Magistrate under subclause (1) is taken not to be assigned to either Division of the Federal Magistrates Court.

Note: A Federal Magistrate who is not assigned to either Division of the Federal Magistrates Court may exercise the powers of the Federal Magistrates Court in either Division (see subsection 12(3C)).

## **Part 3—Other amendments**

### ***Administrative Decisions (Judicial Review) Act 1977***

#### **18 Paragraph (a) of Schedule 1**

Omit “*Conciliation and Arbitration Act 1904*,”, substitute “*Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*,”.

## **Part 4—Application and transitional provisions**

### **19 Application of Part 1**

(1) The amendments made by Part 1 of this Schedule (other than item 8) apply:

- (a) in relation to proceedings commenced after that Part commences; and
- (b) in relation to proceedings that are pending in the Federal Court immediately before that Part commences, as if the reference in subsection 13(2) of the *Federal Court of Australia Act 1976* (as inserted by item 6 of this Schedule) to “be instituted, heard and determined” were a reference to “, after item 6 of Schedule 17 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* commences, be heard and determined”.

(2) A person who is a Judge (other than the Chief Justice) of the Federal Court immediately before Part 1 of this Schedule commences, is taken, for all purposes, not to have been assigned under section 6A of the *Federal Court of Australia Act 1976* (as inserted by item 3 of this Schedule) to either Division of the Federal Court.

Note: A Judge (including the Chief Justice) who is not assigned to either Division of the Court may exercise the powers of the Court in either Division (see subsection 15(1C) of the *Federal Court of Australia Act 1976*, as inserted by item 7 of this Schedule).

### **20 Application of Part 2**

(1) The amendments made by Part 2 of this Schedule apply:

- (a) in relation to proceedings commenced after the Part commences; and
- (b) in relation to proceedings that are pending in the Federal Magistrates Court immediately before that Part commences, as if the reference in subsection 10A(2) of the *Federal Magistrates Act 1999* (as inserted by item 12 of this Schedule) to “be instituted, heard and determined” were a reference to “, after item 12 of Schedule 17 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* commences, be heard and determined”.

Amendments relating to the Fair Work Divisions of the Federal Court and the Federal Magistrates Court **Schedule 17**  
Application and transitional provisions **Part 4**

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(2) A person who is a Federal Magistrate (other than the Chief Federal Magistrate) of the Federal Magistrates Court immediately before Part 2 of this Schedule commences, is taken, for all purposes, not to have been assigned under clause 1A of Schedule 1 to the *Federal Magistrates Act 1999* (as inserted by item 16 of this Schedule) to either Division of the Federal Magistrates Court.

Note: A Federal Magistrate (including the Chief Federal Magistrate) who is not assigned to either Division of the Federal Magistrates Court may exercise the powers of the Federal Magistrates Court in either Division (see subsection 12(3C) of the *Federal Magistrates Act 1999*, as inserted by item 13 of this Schedule).

## **Part 5—Jurisdiction of courts**

### **21 Conferring jurisdiction on the Federal Court**

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

- (a) this Act; or
- (b) the WR Act as it continues to apply because of this Act.

### **22 Exercising jurisdiction in the Fair Work Division of the Federal Court**

The jurisdiction conferred on the Federal Court under item 21 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 the WR Act as it continues to apply because of 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 the WR Act as it continues to apply because of 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 the WR Act as it continues to apply because of 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 the WR Act as it continues to apply because of this Act; or
- (e) a prosecution is instituted in the Federal Court under this Act or the WR Act as it continues to apply because of 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 the WR Act as it continues to apply because of this Act; or
- (g) proceedings in relation to a matter arising under this Act, or the WR Act as it continues to apply because of 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 the WR Act as it continues to apply because of this Act; or
- (i) the President refers, under section 608 of the FW Act, a question of law to the Federal Court in relation to a matter arising under this Act or the WR Act as it continues to apply because of this Act; or
- (j) the High Court remits a matter arising under this Act or the WR Act as it continues to apply because of this Act to the Federal Court.

### **23 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*.

### **24 Appeals from 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 or the WR Act as it continues to apply because of this Act.
- (2) It is not necessary to obtain the leave of the Federal Court, or the court appealed from, in relation to an appeal under subitem (1).
- (3) No appeal lies from a decision referred to in subitem (1), except as provided for by this item.

### **25 Conferring jurisdiction on the Federal Magistrates Court**

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

- (a) this Act; or
- (b) the WR Act as it continues to apply because of this Act.

### **26 Exercising jurisdiction in the Fair Work Division of the Federal Magistrates Court**

Jurisdiction conferred on the Federal Magistrates Court under item 25 is to be exercised in the Fair Work Division of the Federal Magistrates Court if:

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- (a) an application is made to the Federal Magistrates Court under this Act or the WR Act as it continues to apply because of 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 the WR Act as it continues to apply because of 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 the WR Act as it continues to apply because of this Act; or
- (d) proceedings in relation to a matter arising under this Act, or the WR Act as it continues to apply because of 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 or the WR Act as it continues to apply because of this Act to the Federal Magistrates Court.

**27 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*.

## **Schedule 18—Institutions**

### **Part 1—Initial appointment of FWA Members**

#### **1 Appointments to Fair Work Australia**

(1) An appointment that is:

- (a) to an office of the Commission mentioned in a table item below; and
- (b) in force immediately before the commencement time for the table item;

is taken, after that time, to be an appointment, under section 626 of the FW Act, to the office of FWA mentioned in the table item.

Note: The person continues to be appointed to the Commission (see subitem (3)).

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#### **Appointments to FWA**

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

(2) Subitem (1) does not apply to a member of the Commission who:

- (a) was appointed as a member of a prescribed State industrial authority (within the meaning of the WR Act) before being appointed as a member of the Commission; and
- (b) still holds that appointment as a member of the prescribed State industrial authority.

*Dual appointments*

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

Note: The terms and conditions of a person who is taken to have been appointed as an FWA Member are the terms and conditions that attach to his or her appointment under the WR Act (see item 2 of this Schedule).

## **2 Terms and conditions**

- (1) A person who is taken to have been appointed as an FWA Member under item 1 of this Schedule:
  - (a) holds office under the FW Act on the same terms and conditions as attach, or attached, to his or her appointment under the WR Act (including under subsections 63(2) and (3) of that Act); and
  - (b) is entitled to the same designation as he or she is, or was, entitled to in relation to his or her appointment under the WR Act (including the designation the person has, or had, because of subsection 80(2) of the *Industrial Relations (Consequential Provisions) Act 1988*).
- (2) To avoid doubt, subitem (1):
  - (a) has effect despite subsections 633(1) and 644(1) of the FW Act; and
  - (b) continues the application of the *Judges' Pensions Act 1968* in relation to a person taken to have been appointed under item 1 of this Schedule and to whom that Act applied as a member of the Commission.
- (3) For the purposes of determining the remuneration of a person who is taken to have been appointed as an FWA Member under item 1 of this Schedule:
  - (a) sections 635 and 637 of the FW Act do not apply; and

(b) sections 79 and 81 of the WR Act apply, and continue to apply on and after the WR Act repeal day, in relation to the person's appointment as both an FWA Member and a member of the Commission.

### **3 Protection of members of the Commission and FWA**

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

### **4 Seniority of FWA Members**

The seniority of persons taken to be appointed as Deputy Presidents of FWA under item 1 of this Schedule is, for the purposes of section 619 of the FW Act, to be determined in accordance with the precedence assigned to them as members of the Commission under section 65 of the WR Act.

### **5 Procedural rules**

Despite the requirement in subsection 609(1) of the FW Act, the President may make rules under that subsection before the WR Act repeal day without consulting other FWA Members.

### **6 Directions by President**

- (1) The President of the Commission may give directions to a person who is taken to be appointed as an FWA Member under item 1 of this Schedule as to the manner in which the person is to perform his or her functions as a member of the Commission.
- (2) The direction must not relate to a decision by the Commission.
- (3) A person to whom a direction is given must comply with the direction.
- (4) If a direction is in writing, the direction is not a legislative instrument.

## **Part 2—WR Act bodies and WR Act offices**

### **7 Continuation and cessation**

(1) Despite the WR Act repeal, a body (the *WR Act body*) or office (the *WR Act office*) set out in an item in the following table continues in existence until the *cessation time* set out in the item.

<b>WR Act bodies and WR Act offices—continuation and cessation</b>			
<b>Item</b>	<b>Column 1</b> <b>WR Act bodies</b>	<b>Column 2</b> <b>WR Act offices</b>	<b>Column 3</b> <b>Cessation time</b>
1	Australian Industrial Relations Commission	Members of the Australian Industrial Relations Commission	31 December 2009
2	Australian Industrial Registry	Industrial Registrar and Deputy Registrars	31 December 2009
3	Australian Fair Pay Commission and AFPC Secretariat	AFPC Chair, AFPC Commissioners and Director of the AFPC Secretariat	31 July 2009
4	Workplace Authority	Workplace Authority Director	31 January 2010

Note: FWA will begin to take over the work of WR Act bodies and WR Act offices before their cessation times: see item 12 of Schedule 2.

(2) To avoid doubt, an appointment to a WR Act body or a WR Act office in effect immediately before the WR Act repeal continues in force on and after the WR Act repeal day:

- according to its terms; but
- subject to this Act.

Note: As an example of the effect of this Act, at the cessation time for a WR Act body or a WR Act office, related appointments will cease.

(3) Despite subitem (1), the Minister may, by writing, determine that a WR body or a WR Act office ceases to exist at a time that is different from the cessation time set out for the body or office in the table.

(4) A determination under subitem (3):

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- (a) has effect accordingly; and
- (b) is not a legislative instrument.

## 8 Transfer of assets and liabilities

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

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

(2) Despite subitem (1), the Minister may, before the WR Act repeal day, determine one or more of the following by writing:

- (a) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred to a different body (as specified in the determination) from the one referred to in column 3 of the table;
- (b) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred on a different day (as specified in the determination) from the one referred to in subitem (1);
- (c) that some or all assets and liabilities of the body (as specified in the determination) are to be transferred in accordance with regulations made, or to be made, for the purposes of this paragraph.

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- (3) A determination under subitem (2):
  - (a) has effect accordingly; and
  - (b) is not a legislative instrument.
- (4) In this item, a reference to an asset of a body includes a reference to a record or any other information that is in the custody of, or under the control of, the body.

## **9 Information acquired under WR Act**

Section 655 of the FW Act has effect as if information acquired, before the WR Act repeal day, by a WR Act body or a person holding a WR Act office in the course of performing functions or exercising powers as such a body or in such an office were information acquired by FWA in the course of performing functions or exercising powers as FWA.

Note: Item 16 makes provision for information acquired by a member of the Office of the Workplace Ombudsman to be treated, for the purposes of section 718 of the FW Act, as if it were acquired by the Fair Work Ombudsman.

## **10 Staffing arrangements**

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

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### **Arrangements between FWA and body**

<b>Item</b>	<b>Column 1</b> <b>Office-holder who enters arrangement with FWA</b>	<b>Column 2</b> <b>Body to which assistance is provided</b>
1	Industrial Registrar	Australian Industrial Registry
2	Workplace Authority Director	Workplace Authority
3	Director of the AFPC Secretariat	AFPC Secretariat

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- (2) The Fair Work Ombudsman may enter into an arrangement with the Workplace Authority Director to provide assistance to the Workplace Authority Director for the purpose of performing functions on and after the WR Act repeal day.

## **11 Transfer of functions to FWA at cessation time**

(1) After the cessation time for a WR Act body or a WR Act office, the powers, functions and duties of the body or office are to be exercised and performed by FWA.

Note: For *WR Act body*, *WR Act office* and *cessation time*, see subitem 7(1).

(2) For the purposes of subitem (1), a law of the Commonwealth that relates to the body or office is, for the purposes of its application after the cessation time, to be read:

- (a) as if a reference to the body or office were a reference to FWA, as necessary; and
- (b) with any other necessary modifications.

(3) Despite subitem (1), the Minister may, by writing, determine that a power, function or duty of a WR Act body or a WR Act office is to be exercised or performed, after the cessation time for the body or office, by a body or person other than FWA.

(4) A determination under subitem (3):

- (a) has effect accordingly; and
- (b) is not a legislative instrument.

(5) If FWA, or another body or person, deals after the cessation time for a WR Act body or a WR Act office with a matter that was being dealt with by the WR Act body or a person holding the WR Act office, FWA or the other body or person, as the case requires, must take into account everything done by, or in relation to, the WR Act body or a person holding the WR Act office, in relation to the matter.

## **11A Workplace inspectors to become Fair Work Inspectors**

(1) An appointment of a person as a workplace inspector that is in force under section 167 of the WR Act immediately before the WR Act repeal day has effect, for the remainder of the term of the appointment, as if it were an appointment of the person as a Fair Work Inspector under section 700 of the FW Act.

(2) An identity card issued under section 168 of the WR Act to a person covered by subitem (1) has effect, for the remainder of the person's term of appointment, as if it were an identity card issued under section 702 of the FW Act.

**Schedule 18** Institutions

**Part 2** WR Act bodies and WR Act offices

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(3) Subitem (2) does not apply if the person is issued with an identity card under section 702 of the FW Act.

## **Part 3—Transitional role for Fair Work Ombudsman and Inspectors**

### **12 No continued application for Parts 5A and 6 of WR Act**

- (1) Parts 5A and 6 of the WR Act (which deal with the Workplace Ombudsman and workplace inspectors) have no application after the WR Act repeal.
- (2) To avoid doubt, subitem (1) applies in relation to:
  - (a) conduct that occurred before the WR Act repeal day; and
  - (b) a provision of the WR Act that continues to apply because of this Act.
- (3) Subitem (2) does not limit subitem (1).

### **13 Conduct before WR Act repeal**

#### *Applications to be made or continued by Fair Work Inspectors*

- (1) For the purposes of the application of the WR Act in relation to conduct that occurred before the WR Act repeal day (including the application of the WR Act because of subitem 11(2) of Schedule 2), an application that could have been made or continued by a workplace inspector (disregarding item 12 of this Schedule) may be made or continued, on and after the WR Act repeal day, by a Fair Work Inspector.

#### *Application of Part 5-2 of FW Act*

- (2) Part 5-2 of the FW Act applies in relation to conduct that occurred before the WR Act repeal day as if:
  - (a) a reference in that Part to a fair work instrument were a reference to a WR Act instrument, a transitional award (including a transitional Victorian reference award) or a common rule; and
  - (b) a reference (other than a reference in a note to a section or subsection, or a reference in section 716) in that Part to a civil remedy provision were a reference to a civil remedy provision or a civil penalty provision within the meaning of the WR Act, as in force from time to time; and

- (c) a reference in that Part to “this Act” (being the FW Act) were a reference to the WR Act, as in force from time to time before the WR Act repeal day; and
- (d) the reference in paragraph 706(1)(c) to the regulations were a reference to regulations, as in force from time to time, under the WR Act, as in force from time to time before the WR Act repeal day; and
- (e) section 716 were omitted.

#### **14 Conduct after WR Act repeal—application of Part 5-2 of FW Act**

Part 5-2 of the FW Act applies in relation to conduct that occurs on or after the WR Act repeal day as if:

- (a) a reference in that Part to a fair work instrument included a reference to a transitional instrument, a transitional minimum wage instrument or a continuing Schedule 6 instrument; and
- (b) a reference in that Part to “this Act” (being the FW Act) included a reference to the WR Act as it continues to apply because of this Act; and
- (c) a reference in that Part to “this Act” (being the FW Act) included a reference to this Act (being the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*); and
- (d) the reference in paragraph 706(1)(c) to the regulations included a reference to:
  - (i) any regulations under the WR Act as they continue to apply because of this Act; or
  - (ii) regulations under this Act; and
- (e) the following were included in paragraphs 706(2)(a) to (f):
  - (i) a term of a transitional instrument;
  - (ii) a term of a continuing Schedule 6 instrument;
  - (iii) subsection 182(1) or (2) of the WR Act, as it continues to apply under item 5 of Schedule 9 (which deals with continuation of Australian Fair Pay and Conditions Standard wages provisions);
  - (iv) a term of a take-home pay order;
  - (v) a term of a WR Act equal remuneration order as it continues to apply because of item 4 of Schedule 10.

## **15 Directions of Workplace Ombudsman**

A direction, given by the Workplace Ombudsman to a workplace inspector under subsection 167(7) of the WR Act, that is in force immediately before the WR Act repeal day is taken, on and after that day, to have been given by the Fair Work Ombudsman to a Fair Work Inspector under section 704 or 705 (as the case requires) of the FW Act.

## **16 Disclosure of information acquired by workplace inspectors**

Section 718 of the FW Act has effect as if information acquired, before the WR Act repeal day, by a member of the Office of the Workplace Ombudsman in the course of performing functions or exercising powers as such a member were information acquired by the Fair Work Ombudsman in the course of performing functions or exercising powers as the Fair Work Ombudsman.

**Note:** The effect of this item is to allow the Fair Work Ombudsman to disclose, under section 718 of the FW Act, information acquired by a member of the Office of the Workplace Ombudsman.

## **Part 4—Miscellaneous**

### **17 FWA annual report—operations of FWA**

If Part 5-1 of the FW Act commences before 1 July 2009:

- (a) the annual report on the operations of FWA prepared for the 2009-2010 financial year under section 652 of the FW Act must include a report on the operations of FWA during the period:
  - (i) beginning on the day Part 5-1 of the FW Act commences; and
  - (ii) ending on 30 June 2009; and
- (b) that section does not apply in relation to the 2008-2009 financial year.

### **18 Annual report—operations of the Office of the Fair Work Ombudsman**

If Part 5-2 of the FW Act commences before 1 July 2009:

- (a) the annual report on the operations of the Office of the Fair Work Ombudsman prepared for the 2009-2010 financial year under section 686 of the FW Act must include a report on the operations of the Office during the period:
  - (i) beginning on the day Part 5-2 of the FW Act commences; and
  - (ii) ending on 30 June 2009; and
- (b) that section does not apply in relation to the 2008-2009 financial year.

### **19 Annual report—operations of the Office of the Workplace Ombudsman**

- (1) The Fair Work Ombudsman (instead of the Workplace Ombudsman) must prepare the annual report on the operations of the Office of the Workplace Ombudsman under section 166S of the WR Act for the 2008-2009 financial year.
- (2) Subitem (1) applies whether or not section 166S of the WR Act is repealed before the end of that year.

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## **20 Report about developments in making agreements**

Section 844 of the WR Act continues to apply, on and after the WR Act repeal day, but only in relation to the period:

- (a) beginning on 1 January 2007; and
- (b) ending on the day the office of the Workplace Authority Director, and the Workplace Authority, cease to exist.

## **20A Report about unfair dismissal**

- (1) The General Manager of FWA must prepare a written report about the first 3 years operation of the unfair dismissal system.
- (2) The report must deal with the experiences employers, and in particular small and medium-sized enterprise employers, and employees have had with the unfair dismissal system.
- (3) To prepare the report, the General Manager of FWA may do the following:
  - (a) seek public submissions;
  - (b) conduct surveys of employers, employees and any other persons affected by, or who have had experience with, the unfair dismissal system;
  - (c) hold public hearings;
  - (d) gather information in any other way he or she thinks fit.
- (4) Where possible, the report should include:
  - (a) the number of unfair dismissal applications made; and
  - (b) the number of persons who were employed by each applicant's employer; and
  - (c) the number of applicants who were employed by a small business employer; and
  - (d) the number of applicants employed by small business employers whose dismissals were not consistent with the Small Business Fair Dismissal Code; and
  - (e) the number of applicants found to have been unfairly dismissed, and of those applicants:
    - (i) the number whose reinstatement was ordered by FWA; and
    - (ii) the number awarded compensation by FWA, and the amounts of that compensation; and

- (iii) the number dismissed by a small business employer; and
- (f) the number of unfair dismissal applications that were made after the period of 14 days specified in paragraph 394(2)(a) of the FW Act and the number of those applications that were allowed by FWA under subsection 394(3) of the FW Act; and
- (g) the number of unfair dismissal applications discontinued, and the stages at which those applications were discontinued; and
- (h) the amounts of compensation paid, or the other remedies provided, when unfair dismissal applications were settled.

(5) The General Manager of FWA must give the Minister the report as soon as practicable and, in any event, within 6 months after the end of the period mentioned in subsection (1).

(6) 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.

(7) Subsections 34C(4) to (7) of the *Acts Interpretation Act 1901* apply to the report as if it were a ***periodic report*** within the meaning of that definition in subsection 34C(1) of that Act.

(8) In this item:

***applicant*** means a person who has made an unfair dismissal application.

***unfair dismissal system*** means Part 3-2 of the FW Act.

## **20B Transferred employees**

### *Existing agreements to continue*

(1) This item applies if:

- (a) an APS employee is moved, under paragraph 72(1)(a) of the *Public Service Act 1999*, from an old Agency to a new Agency; and
- (b) the employee's employment in the old Agency was subject to:
  - (i) a collective agreement; or
  - (ii) an AWA or pre-reform AWA (and therefore also a collective agreement which had no effect while the

AWA or pre-reform AWA operated in relation to the employee).

(2) The collective agreement, AWA or pre-reform AWA, as the case requires, has effect after the move in relation to the employee's employment as if it had been made with the Agency Head of the new Agency on behalf of the Commonwealth.

*Agency Head to determine which agreement applies to new employee*

(3) If:

- (a) a new employee is employed in a new Agency; and
- (b) more than one collective agreement-based transitional instrument applies to the employment of employees in that Agency;

the Agency Head may determine that any one of those instruments applies to the employment of the new employee.

#### *Regulations*

(4) The regulations may provide for other matters of a transitional nature in relation to the transfer of employees from an old Agency to a new Agency.

#### *Definitions*

(5) In this item:

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

**new Agency** means:

- (a) Fair Work Australia; or
- (b) the Office of the Fair Work Ombudsman.

**new employee**, in a new Agency, means an employee who was not moved to the new Agency from an old Agency as mentioned in paragraph (1)(a).

**old Agency** means:

- (a) the Australian Industrial Registry; or
- (b) the AFPC Secretariat; or
- (c) the Workplace Authority; or
- (d) the Office of the Workplace Ombudsman.

***Fair Work Act 2009***

**21 Section 574A**

Repeal the section.

**21A Paragraph 575(2)(d)**

Omit “4”, substitute “3”.

**21B Paragraph 622(2)(a)**

Omit “3”, substitute “2”.

**21C Before section 630**

Insert:

**629A Status of the President**

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

**21D Subparagraph 654(2)(a)(i)**

Omit “that is made under this Act”.

**21E Subparagraph 654(2)(a)(ii)**

Omit “that is made or given to FWA under this Act”, substitute “given or made to FWA”.

**21F Paragraph 654(2)(b)**

Omit “made under this Act and is”.

**21G After section 796**

Insert:

**796A Regulations conferring functions**

The regulations may confer functions on the following:

- (a) FWA;
- (b) the General Manager.

**22 Schedule 1 to the Act**

Repeal the Schedule.

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## **Schedule 19—Dealing with disputes**

### **1 Continued application of WR Act**

- (1) The WR Act continues to apply on and after the WR Act repeal day for the purposes of dealing with the following:
  - (a) disputes in relation to a matter arising under a transitional instrument (including a WR Act instrument that becomes a transitional instrument);
  - (b) disputes in relation to the Australian Fair Pay and Conditions Standard in Part 7 of the WR Act, including as it continues to apply because of Schedule 4 (other than disputes in relation to Division 2 of Part 7 of that Act);
  - (c) disputes in relation to Division 1, 2 or 6 of Part 12 of the WR Act, including as it continues to apply because of Schedule 4.
- (2) The WR Act applies in relation to a dispute mentioned in any of paragraphs (1)(a) to (c) in the way that it applied, before the WR Act repeal day, in relation to a like dispute.

### **2 Disputes to be dealt with by FWA**

- (1) Anything that could, or would, have been done by, or in relation to, the Commission or the Industrial Registrar because of item 1 may only be done by, or in relation to, FWA.
- (2) For the purposes of subitem (1), the WR Act is to be read:
  - (a) as if a reference to the Commission or the Industrial Registrar were a reference to FWA, as necessary; and
  - (b) with any other necessary modifications.
- (3) This item does not apply in relation to a dispute if:
  - (a) an application has been made to the Commission in relation to the dispute before the WR Act repeal day; and
  - (b) the Commission is dealing with or has dealt with the dispute.
- (4) Subitem (1) applies despite subsection 595(1) of the FW Act.

**Note:** That subsection allows FWA to deal with a dispute only if FWA is expressly authorised to do so under the FW Act.

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## **Schedule 20—WR Act transitional awards etc.**

### **1 Schedule 6 to the WR Act**

- (1) Schedule 6 to the WR Act continues to apply on and after the WR Act repeal day in accordance with this Schedule. That Schedule as it continues to apply is ***continued Schedule 6***.
- (2) Without limiting subitem (1), any of the following:
  - (a) transitional awards (including transitional Victorian reference awards);
  - (b) common rules;

that were in operation under Schedule 6 to the WR Act immediately before the WR Act repeal day continue in operation as ***continuing Schedule 6 instruments*** on and after the repeal day in accordance with continued Schedule 6.

Note 1: In addition to provisions of this Schedule, Part 3 of Schedule 2 may also affect continuing Schedule 6 instruments.

Note 2: Compliance with continuing Schedule 6 instruments is dealt with in Schedule 16.

### **2 General modifications of references to the Australian Industrial Relations Commission etc.**

- (1) Continued Schedule 6 applies as if:
  - (a) a reference in that Schedule to the Australian Industrial Relations Commission (or the Commission) were a reference to FWA; and
  - (b) without limiting paragraph (a)—a reference in that Schedule to a member of the Commission (or a Commissioner) were a reference to an FWA member; and
  - (c) a reference in that Schedule to the President were a reference to the President of FWA; and
  - (d) a reference in that Schedule to a Presidential Member were a reference to the President, or a Deputy President, of FWA; and
  - (e) a reference in that Schedule to a Full Bench were a reference to a Full Bench of FWA; and

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- (f) a reference in that Schedule to a Registrar or the Industrial Registrar were a reference to the General Manager of FWA; and
- (g) from the time when FWA completes its first annual wage review:
  - (i) a reference in that Schedule to the AFPC were a reference to FWA; and
  - (ii) without limiting subparagraph (i)—a reference in that Schedule to wage-setting decisions of the AFPC were a reference to determinations made by FWA in annual wage reviews; and
- (h) a reference in that Schedule to the Rules of the Commission were a reference to the procedural rules of FWA; and
- (i) a reference to “this Act” (being the WR Act) in any of the following provisions of that Schedule were a reference to “this Act” as defined in section 12 of the FW Act:
  - (i) subclause 14(2);
  - (ii) paragraph 44(2)(a);
  - (iii) clause 70;
  - (iv) clause 108.

(2) Subitem (1) has effect unless the context otherwise requires and subject to the regulations.

Note: For example, paragraph (1)(a) does not apply if the reference is to something that the Australian Industrial Relations Commission did before the WR Act repeal day (or before the reform commencement).

### **3 Modifications relating to how FWA is to perform functions under continued Schedule 6**

- (1) Section 578 of the FW Act applies to the performance of FWA’s functions under continued Schedule 6 as if the reference in paragraph 578(a) to “the objects of this Act, and any objects of the part of the Act” were a reference to the objects of continued Schedule 6.
- (2) Sections 589 to 597 of the FW Act do not apply to the performance of FWA’s functions under this Schedule.

### **4 Modifications relating to transmission of business**

Continued Schedule 6 applies as if:

- (a) the reference to clause 72M in:

- (i) the note to subclause 72J(2); and
- (ii) note 1 to subclauses 72K(1), (2) and (3);

were a reference to item 15 of Schedule 16 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; and

- (b) clause 72M were omitted; and
- (c) Division 5 of Part 6A were omitted.

## **5 Modifications relating to general protections**

- (1) Continued Schedule 6 applies as if the reference in clause 19 to Part 16 were a reference to Part 3-1 of the FW Act.
- (2) Continued Schedule 6 applies as if clause 107A were omitted.

## **6 Modifications relating to meaning of *industrial action***

Clause 3 of continued Schedule 6 has effect as if:

- (a) note 2 to subclause 3(1) were worded as follows: “In *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v The Age Company Limited*, PR946290, the Full Bench of the Australian Industrial Relations Commission considered the nature of industrial action and noted that action will not be industrial in character if it stands completely outside the area of disputation and bargaining.”; and
- (b) the words in brackets at the end of subclause 3(3) were omitted; and
- (c) subclause 3(4), and note 1 to subclause 3(1), were omitted.

## **7 Modifications relating to secret ballots**

- (1) The new ballots compliance provisions (see subitem (2)) apply in relation to a secret ballot ordered by FWA under continued Schedule 6 as if:
  - (a) the order were a protected action ballot order; and
  - (b) the ballot were a protected action ballot.
- (2) The ***new ballots compliance provisions*** are:
  - (a) Subdivision E of Division 8 of Part 3-3 of the FW Act; and
  - (b) Part 4-1 of the FW Act; and
  - (c) Division 9 of Part 5-1 of the FW Act.

## **8 Modifications relating to right of entry**

- (1) Continued Schedule 6 applies as if clause 105 were omitted.
- (2) Part 3-4 of the FW Act applies in relation to a continuing Schedule 6 instrument as if:
  - (a) a reference in that Part to a fair work instrument were a reference to a continuing Schedule 6 instrument; and
  - (b) Division 3 of Part 3-4 were omitted.

## **9 Modifications relating to employee records etc.**

Continued Schedule 6 applies as if the reference in clause 107C to section 836 of the WR Act were a reference to sections 535 and 536 of the FW Act.

## **10 Modifications relating to compliance**

Continued Schedule 6 applies as if clauses 106 and 107 were omitted.

Note 1: For the obligation to comply with continuing Schedule 6 instruments, see item 15 of Schedule 16.

Note 2: For the role of Fair Work Ombudsman and Inspectors in relation to continuing Schedule 6 instruments, see item 14 of Schedule 18.

## **11 Regulations may deal with other matters**

The regulations may deal with other matters relating to how the FW Act applies in relation to continuing Schedule 6 instruments.

## **Schedule 21—Clothing Trades Award 1999**

### **1 Status of the Clothing Trades Award 1999**

- (1) The Clothing Trades Award 1999, to the extent that it contains terms relating to outworkers, is taken always to have been made in accordance with Part VI of the *Workplace Relations Act 1996*. Any variation of those terms is taken always to have been made in accordance with that Part.
- (2) Without limiting subitem (1), those terms (as varied from time to time) are taken always to have been terms about allowable award matters of the kind described in paragraph 513(1)(o) of the *Workplace Relations Act 1996*.

## **Schedule 22—Registered organisations**

### **Part 1—Main amendments**

#### *Workplace Relations Act 1996*

##### **1 Title**

Omit “workplace relations”, substitute “registered organisations”.

##### **2 Part 1 (heading)**

Repeal the heading, substitute:

## **Chapter 1—Preliminary**

##### **3 Section 1**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work (Registered Organisations) Act 2009*”.

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

##### **4 Schedule 1 (heading)**

Repeal the heading (including the note).

##### **5 Chapter 1 of Schedule 1 (heading)**

Repeal the heading.

##### **6 Section 1 of Schedule 1**

Repeal the section.

##### **7 After section 5A of Schedule 1**

Insert:

##### **5B Schedule 1 has effect**

Schedule 1 has effect.

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Note: Schedule 1 is about transitionally recognised associations.

## **8 Section 6 of Schedule 1**

Insert:

*applies:*

- (a) in relation to a modern award, has the same meaning as in section 47 of the Fair Work Act; and
- (b) in relation to an enterprise agreement, has the same meaning as in section 52 of the Fair Work Act.

## **9 Section 6 of Schedule 1 (definition of award)**

Repeal the definition.

## **10 Section 6 of Schedule 1 (definition of *collective agreement*)**

Repeal the definition.

## **11 Section 6 of Schedule 1 (definition of *Commission*)**

Repeal the definition.

## **11A Section 6 of Schedule 1 (definition of *constitutional trade or commerce*)**

Repeal the definition.

## **12 Section 6 of Schedule 1**

Insert:

*covers:*

- (a) in relation to a modern award, has the same meaning as in section 48 of the Fair Work Act; and
- (b) in relation to an enterprise agreement, has the same meaning as in section 53 of the Fair Work Act.

## **13 Section 6 of Schedule 1 (definition of *Deputy Industrial Registrar*)**

Repeal the definition.

## **14 Section 6 of Schedule 1**

Insert:

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*Deputy President* means a Deputy President of FWA.

**14A Section 6 of Schedule 1 (definition of *designated Commonwealth authority*)**

Repeal the definition.

**14B Section 6 of Schedule 1 (definition of *employee*)**

Repeal the definition, substitute:

*employee* has its ordinary meaning, and includes a person who is usually such an employee, but does not include a person on a vocational placement.

**14C Section 6 of Schedule 1 (definition of *employer*)**

Repeal the definition, substitute:

*employer* has its ordinary meaning, and includes:

- (a) a person who is usually such an employer; and
- (b) an unincorporated club.

**15 Section 6 of Schedule 1**

Insert:

*enterprise agreement* has the same meaning as in the Fair Work Act.

**16 Section 6 of Schedule 1**

Insert:

*Fair Work Act* means the *Fair Work Act 2009* and includes regulations made under that Act.

**16A Section 6 of Schedule 1 (paragraphs (a) and (b) of the definition of *federal system employee*)**

Repeal the paragraphs, substitute:

- (a) a national system employee within the meaning of section 13 of the Fair Work Act; or

**16B Section 6 of Schedule 1 (paragraph (c) of the definition of *federal system employee*)**

---

Omit “either or both of the ways mentioned in paragraphs (a) and (b)”, substitute “the way mentioned in paragraph (a)”.

**16C Section 6 of Schedule 1 (definition of *federal system employer*)**

Repeal the definition, substitute:

*federal system employer* means a national system employer within the meaning of section 14 of the Fair Work Act.

**16D Section 6 of Schedule 1 (definition of *flight crew officer*)**

Repeal the definition.

**17 Section 6 of Schedule 1**

Insert:

*FWA* means the body established by section 575 of the Fair Work Act.

**18 Section 6 of Schedule 1**

Insert:

*FWA Member* has the same meaning as in the Fair Work Act, but does not include a Minimum Wage Panel Member (within the meaning of that Act).

**19 Section 6 of Schedule 1**

Insert:

*General Manager* means the General Manager of FWA.

**20 Section 6 of Schedule 1 (definition of *industrial action*)**

Repeal the definition, substitute:

*industrial action* has the same meaning as in the Fair Work Act.

**21 Section 6 of Schedule 1 (definition of *Industrial Registrar*)**

Repeal the definition.

**22 Section 6 of Schedule 1 (definition of *Industrial Registry*)**

Repeal the definition.

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**22A Section 6 of Schedule 1 (definition of *maritime employee*)**

Repeal the definition.

**23 Section 6 of Schedule 1**

Insert:

*modern award* has the same meaning as in the Fair Work Act.

**24 Section 6 of Schedule 1 (definition of *prescribed*)**

Repeal the definition, substitute:

*prescribed* includes prescribed by procedural rules of FWA made under section 609 of the Fair Work Act.

**25 Section 6 of Schedule 1 (definition of *Presidential member*)**

Repeal the definition.

**26 Section 6 of Schedule 1**

Insert:

*protected industrial action* has the same meaning as in the Fair Work Act.

**27 Section 6 of Schedule 1 (definition of *Registrar*)**

Repeal the definition.

**28 Section 6 of Schedule 1 (definition of *registry*)**

Repeal the definition.

**29 Section 6 of Schedule 1 (definition of *Registry official*)**

Repeal the definition.

**30 Section 6 of Schedule 1 (definition of *State award*)**

Repeal the definition, substitute:

*State award* means an award, order, decision or determination of a State industrial authority.

---

**31 Section 6 of Schedule 1**

Insert:

*this Act* includes regulations made under this Act.

**32 Section 6 of Schedule 1 (definition of *this Schedule*)**

Repeal the definition.

**32A Section 6 of Schedule 1 (definition of *waterside worker*)**

Repeal the definition.

**33 Section 6 of Schedule 1 (definition of *workplace inspector*)**

Repeal the definition.

**34 Section 6 of Schedule 1 (definition of *Workplace Relations Act*)**

Repeal the definition.

**35 Section 6A of Schedule 1**

Repeal the section.

**36 Section 7 of Schedule 1**

Repeal the section.

**37 Section 14 of Schedule 1**

Repeal the section.

**37A Subparagraph 18C(3)(c)(i) of Schedule 1**

Omit “either or both of the ways mentioned in paragraphs (a) and (b)”, substitute “the way mentioned in paragraph (a)”.

**37B Paragraph 18D(1)(a) of Schedule 1**

Omit “paragraphs (a) to (g) of the definition of *federal system employer* in section 6”, substitute “paragraphs (a) to (f) of the definition of *national system employer* in section 14 of the Fair Work Act”.

**37C Paragraph 18D(3)(a) of Schedule 1**

Omit “*federal system employer* in section 6”, substitute “*national system employer* in section 14 of the Fair Work Act”.

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### **37D Paragraph 18D(3A)(a) of Schedule 1**

Omit “paragraph (b) or (c)”, substitute “paragraph (c)”.

### **37E After section 26 of Schedule 1**

Insert:

### **26A Validation of registration**

If:

- (a) an association was purportedly registered as an organisation under this Act before the commencement of this section; and
- (b) the association’s purported registration would, but for this section, have been invalid merely because, at any time, the association’s rules did not have the effect of terminating the membership of, or precluding from membership, persons who were persons of a particular kind or kinds;

that registration is taken, for all purposes, to be valid and to have always been valid.

### **38 Paragraphs 28(1)(b) and (c) of Schedule 1**

After “industrial action”, insert “(other than protected industrial action)”.

### **39 Subparagraph 73(2)(c)(ii) of Schedule 1**

Repeal the subparagraph, substitute:

- (ii) breaches of modern awards or enterprise agreements; or
- (iii) breaches of orders made under this Act, the Fair Work Act or other Commonwealth laws; and

### **40 Paragraph 94(1)(c) of Schedule 1**

Repeal the paragraph, substitute:

- (c) the application is made before the period of 5 years after the amalgamation occurred has elapsed.

### **40A After section 171 of Schedule 1**

Insert:

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**171A Cessation of membership if member is not an employee etc.**

- (1) If a person is a member of an organisation and the person is not, or is no longer:
  - (a) if the organisation is an association of employers—a person of a kind mentioned in paragraph 18A(3)(a), (b), (c) or (d); or
  - (b) if the organisation is an association of employees—a person of a kind mentioned in paragraph 18B(3)(a), (b), (c) or (d); or
  - (c) if the organisation is an enterprise association—a person of a kind mentioned in paragraph 18C(3)(a), (b), (c) or (d);the person's membership of the organisation immediately ceases.
- (2) Subsection (1) has effect despite anything in the rules of the organisation.

**40B Paragraph 230(2)(b) of Schedule 1**

After “under”, insert “section 171A, or under”.

**41 Subparagraph 337A(b)(ii) of Schedule 1**

Repeal the subparagraph, substitute:

- (ii) an FWA Member or a member of the staff of FWA;

**42 Subparagraph 337A(b)(v) of Schedule 1**

Repeal the subparagraph, substitute:

- (v) a member of the staff of the Office of the Fair Work Ombudsman (within the meaning of the Fair Work Act); and

**43 Section 337E of Schedule 1**

Repeal the section.

**44 Subsection 337K(5) of Schedule 1**

Repeal the subsection, substitute:

- (5) If an FWA Member ceases to be an FWA Member:
  - (a) after an order under this Act has been made by FWA constituted by the FWA Member; but
  - (b) before the order has been reduced to writing or before it has been signed by the FWA Member;

the General Manager must reduce the order to writing, sign it and seal it with the seal of FWA, and the order has effect as if it had been signed by the FWA Member.

#### **45 Section 338 of Schedule 1**

Repeal the section, substitute:

#### **338 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.

#### **46 After section 339 of Schedule 1**

Insert:

#### **339A Exercising jurisdiction in the Fair Work Division of the Federal Court**

The jurisdiction conferred on the Federal Court under this Act 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) the High Court remits a matter arising under this Act to the Federal Court.

#### **47 At the end of section 340 of Schedule 1**

Add:

- (5) This section applies in addition to, and does not affect the operation of, section 339A.

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**48 At the end of section 341 of Schedule 1**

Add:

- (3) This section applies in addition to, and does not affect the operation of, section 339A.

**49 After section 343 of Schedule 1**

Insert:

**343A Delegation by General Manager to staff**

- (1) The General Manager may, in writing, delegate to a member of the staff of FWA all or any of the General Manager's functions or powers under this Act.
- (2) Despite subsection (1), the General Manager's functions or powers under the following provisions cannot be delegated:
  - (a) subsection 13(2);
  - (b) any provision of Chapter 2, 3 or 5 (other than subsection 159(1) or (2) or section 161);
  - (c) subsection 183(4);
  - (d) section 197;
  - (e) any provision of Part 3 or 4 of Chapter 7 (other than section 202);
  - (f) any provision of Division 1, 2, 3 or 4 of Part 3 of Chapter 8;
  - (g) subsection 278(2);
  - (h) section 310;
  - (i) section 334;
  - (j) subsection 336(2);
  - (k) subsection 337K(4).
- (3) Despite subsection (1), the General Manager's functions or powers under the following provisions can only be delegated to a member of the staff of FWA who is an SES employee or an acting SES employee, or who is in a class of employees prescribed by the regulations:
  - (a) subsection 159(1) or (2);
  - (b) section 161;
  - (c) section 180;

- (d) any provision of Part 2 of Chapter 7 (other than subsection 183(4) or section 197);
- (e) any provision of Part 2 of Chapter 8;
- (f) any provision of Division 5 or 6 of Part 3 of Chapter 8;
- (g) section 272;
- (h) any provision of Chapter 11 (other than section 334 or subsection 336(2) or 337K(4)).

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

- (4) In exercising powers or functions under a delegation, the delegate must comply with any directions of the General Manager.

## **50 After section 351 of Schedule 1**

Insert:

### **351A 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) 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).

## **50A After section 353 of Schedule 1**

Insert:

**353A Representation in proceedings in the Fair Work Division of the Federal Court and Federal Magistrates Court**

- (1) This section applies in relation to a proceeding in the Fair Work Division of the Federal Court, or of the Federal Magistrates Court, other than:
  - (a) a proceeding in relation to an appeal under section 565 of the Fair Work Act; or
  - (b) a proceeding in relation to an offence against a law of the Commonwealth.
- (2) Subject to subsection (4), a party to the proceeding that is an organisation may be represented by:
  - (a) a member, officer or employee of the organisation; or
  - (b) a member, officer or employee of a peak council to which the organisation is affiliated.
- (3) Subject to subsection (4), a party to the proceeding that is not an organisation may be represented by:
  - (a) a member, officer or employee of an organisation of which the party is a member; or
  - (b) a member, officer or employee of a peak council to which an organisation of which the party is a member is affiliated.
- (4) If the proceeding is a proceeding in relation to a question of law referred to the Federal Court under section 608 of the Fair Work Act, a party to the proceeding may only be represented as permitted by subsection (2) or (3) if the Court grants leave.
- (5) In this section:  
*party* includes an intervener.

**51 Subsection 359(2) of Schedule 1 (note)**

Repeal the note, substitute:

Note:      Regulations made under the Fair Work Act may also be relevant to the operation of this Act. For example, regulations about FWA's practice and procedure may be made for the purposes of section 610 of the Fair Work Act.

**52 Schedule 10**

Renumber as Schedule 1.

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### **53 Schedule 10 (note to heading)**

Omit “section 9”, substitute “section 5B”.

## **Part 2—State and federal organisations**

### ***Workplace Relations Act 1996***

#### **54 Before section 6 of Schedule 1**

Insert:

#### **5C Schedule 2 has effect**

Schedule 2 has effect.

Note: Schedule 2 is about recognised State-registered associations.

#### **55 Section 6 of Schedule 1**

Insert:

*federal counterpart* has the meaning given by section 9A.

#### **56 Section 6 of Schedule 1**

Insert:

*recognised State-registered association* means a State-registered association that is recognised under Schedule 2.

#### **57 Section 6 of Schedule 1**

Insert:

*transitionally recognised association* means a State-registered association that is recognised under Schedule 1.

#### **58 Section 6 of Schedule 1 (definition of *transitionally registered association*)**

Repeal the definition.

#### **58A After section 9 of Schedule 1**

Insert:

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### **9A Meaning of *federal counterpart***

- (1) For the purposes of this Act, a ***federal counterpart*** for a particular association of employers or employees registered under a State or Territory industrial law is an organisation prescribed by the regulations to be a federal counterpart of that association.
- (2) For the purposes of this Act, if subsection (1) does not apply in relation to a particular association of employers or employees registered under a State or Territory industrial law, a ***federal counterpart*** for the association is:
  - (a) an organisation that has a branch (including a division of such a branch or a constituent part of such a branch) in that State or Territory that has or purports to have:
    - (i) substantially the same eligibility rules as the association; and
    - (ii) a history of integrated operation with the association; or
  - (b) if paragraph (a) does not apply—an organisation of which the association has purported to function as a branch (including a division of a branch or a constituent part of a branch).

### **59 At the end of section 19 of Schedule 1**

Add:

- (5) FWA must not, under this section, grant an application for registration of an association of employers or employees registered under a State or Territory industrial law if the association has a federal counterpart.

### **60 Subsection 138A(1) of Schedule 1**

Omit “registered” (first occurring), substitute “recognised”.

### **61 Subsection 138A(1) of Schedule 1**

Omit “registered” (last occurring), substitute “recognised”.

### **62 After Subdivision B of Division 4 of Part 2 of Chapter 5 of Schedule 1**

Insert:

## **Subdivision BA—Branches of organisations**

### **154A Branch autonomy**

The rules of an organisation may provide for the autonomy of a branch in matters affecting members of the branch only and matters concerning the participation of the branch in a State workplace relations system.

### **154B Branch funds**

- (1) The rules of an organisation may provide for a fund of the branch that is to be managed and controlled under rules of the branch, and may make provision in relation to the fund in accordance with subsection (2).
- (2) The branch fund may consist of:
  - (a) real or personal property of which the branch of the organisation, by the rules or by any established practice not inconsistent with the rules, has, or in the absence of a limited term lease, bailment or arrangement, would have, the right of custody, control or management; and
  - (b) the amounts of entrance fees, subscriptions, fines, fees or levies received by a branch, less so much of the amounts as is payable by the branch to the organisation; and
  - (c) interest, rents, dividends or other income derived from the investment or use of the fund; and
  - (d) a superannuation or long service leave or other fund operated or controlled by the branch for the benefit of its officers or employees; and
  - (e) a sick pay fund, accident pay fund, funeral fund, tool benefit fund or similar fund operated or controlled by the branch for the benefit of its members; and
  - (f) property acquired wholly or mainly by expenditure of the money of the fund or derived from other assets of the fund; and
  - (g) the proceeds of a disposal of parts of the fund.

### **62A Subsection 158(1) of Schedule 1**

Repeal the subsection, substitute:

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- (1) A change in the name of an organisation, or an alteration of the eligibility rules of an organisation, does not take effect unless:
  - (a) in the case of a change in the name of the organisation—FWA consents to the change under this section; or
  - (b) in the case of an alteration of the eligibility rules of the organisation:
    - (i) FWA consents to the alteration under this section; or
    - (ii) the General Manager consents to the alteration under section 158A.

### **63A After section 158 of Schedule 1**

Insert:

### **158A Alteration of eligibility rules of organisation by General Manager**

- (1) The General Manager must, on application by an organisation in accordance with subsection (2), consent to an alteration of the eligibility rules of the organisation to extend them to apply to persons within the eligibility rules of an association of employers or employees that is registered under a State or Territory industrial law, if the General Manager is satisfied:
  - (a) that the alteration has been made under the rules of the organisation; and
  - (b) that the organisation is a federal counterpart of the association; and
  - (c) that the alteration will not extend the eligibility rules of the organisation beyond those of the association; and
  - (d) that the alteration will not apply outside the limits of the State or Territory for which the association is registered; and
  - (e) as to such other matters (if any) as are prescribed by the regulations.

Note: If the General Manager consents to the alteration, FWA may make orders that reflect State representation orders (see section 137F).

- (2) The application must not be made before 1 January 2011, or such later day as the Minister declares in writing.
- (3) A declaration made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the declaration.

(4) If the General Manager consents, under subsection (1), to an alteration, the alteration takes effect on:

- (a) if a day is specified in the consent—that day; or
- (b) in any other case—the day of the consent.

#### **64 Schedule 10 (heading)**

Omit “registered”, substitute “recognised”.

#### **65 Subclause 1(1) of Schedule 10 (definition of *transitionally registered association*)**

Repeal the definition.

#### **66 Subclause 2(1) of Schedule 10**

Omit “registration”, substitute “recognition”.

Note: The heading to clause 2 of Schedule 10 is altered by omitting “registration” and substituting “recognition”.

#### **67 Subclause 2(6) of Schedule 10**

Omit “registered” (last occurring), substitute “recognised”.

#### **68 Clause 3 of Schedule 10**

Before “The”, insert “(1)”.

#### **69 Clause 3 of Schedule 10**

Omit “registered” (wherever occurring), substitute “recognised”.

Note: The heading to clause 3 of Schedule 10 is altered by omitting “registered” and substituting “recognised”.

#### **70 At the end of clause 3 of Schedule 10**

Add:

- (2) To avoid doubt, this section does not confer on a transitionally recognised association:
  - (a) a legal identity that it would not otherwise have; or
  - (b) a right to represent its members’ industrial interests outside the State in relation to which it is a State-registered association.

#### **71 Subclause 4(1) of Schedule 10**

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Omit “registered”, substitute “recognised”.

Note: The heading to clause 4 of Schedule 10 is altered by omitting “**registered**” and substituting “**recognised**”.

## **72 Subclause 5(1) of Schedule 10**

Omit “registration”, substitute “recognition”.

Note: The heading to clause 5 of Schedule 10 is altered by omitting “**registration**” and substituting “**recognition**”.

## **73 Subclause 5(1) of Schedule 10**

Omit “registered”, substitute “recognised”.

## **74 Paragraphs 5(1)(b) and (c) of Schedule 10**

After “industrial action”, insert “(other than protected industrial action)”.

## **75 Subclause 5(3) of Schedule 10**

Omit “registration”, substitute “recognition”.

## **76 Subclause 5(5) of Schedule 10**

Omit “registration”, substitute “recognition”.

## **77 Subclause 5(5) of Schedule 10**

Omit “registered”, substitute “recognised”.

## **78 Subclause 5(6) of Schedule 10**

Omit “registration”, substitute “recognition”.

## **79 Subclause 5(6) of Schedule 10**

Omit “registered”, substitute “recognised”.

## **79A Clause 6 of Schedule 10**

Before “The”, insert “(1)”.

## **80 Clause 6 of Schedule 10**

Omit “registration”, substitute “recognition”.

Note: The heading to clause 6 of Schedule 10 is altered by omitting “**registration**” and substituting “**recognition**”.

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## **81 Clause 6 of Schedule 10**

Omit “registered”, substitute “recognised”.

## **82 Subparagraphs 6(c)(i) and (ii) of Schedule 10**

Repeal the subparagraphs, substitute:

- (i) unless subparagraph (ii) or (iii) applies—the fifth anniversary of the earliest day on which an organisation can make an application in accordance with subsection 158A(2); or
- (ii) if FWA grants the association an extension under subclause (2) of this clause and subparagraph (iii) does not apply—the sixth anniversary of that day; or
- (iii) if FWA grants the association a further extension under subclause (3) of this clause—the seventh anniversary of that day.

## **82A At the end of clause 6 of Schedule 10**

Add:

- (2) FWA may, on application by a transitionally recognised association, grant the association an extension for the purposes of subparagraph (1)(c)(ii) if FWA is satisfied that the association has made progress towards:
  - (a) becoming an organisation; or
  - (b) rationalising its internal affairs with those of its federal counterpart.
- (3) FWA may, on application by a transitionally recognised association, grant the association a further extension for the purposes of subparagraph (1)(c)(iii) if FWA is satisfied that:
  - (a) the association has made further progress towards:
    - (i) becoming an organisation; or
    - (ii) rationalising its internal affairs with those of its federal counterpart; and
  - (b) there are extenuating circumstances justifying the further extension.

## **83 Clause 7 of Schedule 10**

Omit “registered”, substitute “recognised”.

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## **84 At the end of the Act**

Add:

# **Schedule 2—Recognised State-registered associations**

Note: See section 5C.

## **1 Recognition of State-registered associations**

- (1) A State-registered association may apply to the General Manager for recognition under this Schedule if:
  - (a) the association has no federal counterpart; and
  - (b) the law of a State under which the association is registered is a law to which subclause (2) applies.
- (2) This subclause applies to a law of a State if the regulations so provide.
- (3) The application must be accompanied by:
  - (a) a copy of the current rules of the association; and
  - (b) a statement setting out:
    - (i) the address of the association; and
    - (ii) each office in the association; and
    - (iii) the name and address of each person holding office in the association.
- (4) If the General Manager is satisfied that the association satisfies subclause (1), the General Manager must, by written instrument, grant the application and record the fact that he or she is so satisfied.
- (5) An instrument under subclause (4) is not a legislative instrument.
- (6) The General Manager must give a copy of the instrument to the association.
- (7) A State-registered association is taken to be recognised under this Schedule when the General Manager grants the application.

## **2 Application of Fair Work Act to recognised State-registered associations**

- (1) The provisions of the *Fair Work Act 2009* and Part 3 of Chapter 4 of this Act apply in relation to a recognised State-registered association:
  - (a) in the same way as they apply in relation to an organisation; and
  - (b) as if a recognised State-registered association were a person.
- (2) To avoid doubt, this section does not confer on a recognised State-registered association:
  - (a) a legal identity that it would not otherwise have; or
  - (b) a right to represent its members' industrial interests outside the State in relation to which it is a State-registered association.

## **3 Cancellation of recognition**

### *Cancellation by the Federal Court*

- (1) A person interested or the Minister may apply to the Federal Court for an order cancelling the recognition under this Schedule of a recognised State-registered association on the ground that:
  - (a) the conduct of:
    - (i) the association (in relation to its continued breach of an order of FWA or an industrial instrument, or its continued failure to ensure that its members comply with and observe an order of FWA or an industrial instrument, or in any other respect); or
    - (ii) a substantial number of the members of the association (in relation to their continued breach of an order of FWA or an industrial instrument, or in any other respect);  
has, on or after the commencement of this Schedule, prevented or hindered the achievement of an object of this Act as in force at that time; or
  - (b) the association, or a substantial number of the members of the association or of a section or class of members of the association, has engaged in industrial action (other than protected industrial action) that has, on or after the

commencement of this Schedule, prevented, hindered or interfered with:

- (i) the activities of a federal system employer; or
- (ii) the provision of any public service by the Commonwealth or a State or Territory or an authority of the Commonwealth or a State or Territory; or
- (c) the association, or a substantial number of the members of the association or of a section or class of members of the association, has or have been, or is or are, engaged, on or after the commencement of this Schedule, in industrial action (other than protected industrial action) that has had, is having or is likely to have a substantial adverse effect on the safety, health or welfare of the community or a part of the community; or
- (d) the association, or a substantial number of the members of the association or of a section or class of members of the association, has or have failed to comply with one of the following, made on or after the commencement of this Schedule:
  - (i) an injunction granted under subsection 421(3) of the Fair Work Act (which deals with orders to stop industrial action);
  - (ii) an order made under the Fair Work Act in relation to a contravention of Part 3-1 of that Act (which deals with general protections);
  - (iii) an interim injunction granted under section 545 of the Fair Work Act so far as it relates to conduct or proposed conduct that could be the subject of an injunction under a provision mentioned in subparagraph (i) or (ii);
  - (iv) an order under section 23 of this Act (which deals with contraventions of the employee associations provisions).

(2) The Court must give the association an opportunity to be heard.

(3) If the Court:

- (a) finds that a ground for cancellation set out in the application has been established; and
- (b) does not consider that it would be unjust to do so having regard to the degree of gravity of the matters constituting the ground and the action (if any) that has been taken by or against the association in relation to the matters;

the Court must cancel the recognition of the association under this Schedule.

(4) A finding of fact in:

- (a) proceedings commenced on or after the commencement of this Schedule:
  - (i) under section 421 of the Fair Work Act; or
  - (ii) under the Fair Work Act in relation to a contravention of Part 3-1 of that Act; or
- (b) proceedings under section 23 of this Act;

is admissible as *prima facie* evidence of that fact in an application made on a ground specified in paragraph (1)(d).

*Cancellation by FWA*

(5) FWA may cancel the recognition under this Schedule of a recognised State-registered association:

- (a) on application by the association made under the regulations; or
- (b) on application by a person interested or by the Minister, if FWA has satisfied itself, as prescribed:
  - (i) that the association was recognised by mistake; or
  - (ii) that the association is no longer a State-registered association; or
  - (iii) that the association has been found by another industrial body (within the meaning of the Fair Work Act) to have contravened a State or Territory industrial law, and that the contravention constitutes serious misconduct.

*Cancellation by General Manager*

(6) The General Manager may, by written instrument, cancel the recognition under this Schedule of a recognised State-registered association if he or she is satisfied that the association no longer exists.

(7) An instrument under subclause (6) is not a legislative instrument.

*Cancellation if subclause 1(2) no longer applies*

(8) The recognition under this Schedule of a recognised State-registered association is taken to be cancelled if the law of a

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State under which the association is registered ceases to be a law to which subclause 1(2) applies.

## **Part 3—Representation orders**

### ***Workplace Relations Act 1996***

#### **85 Section 6 of Schedule 1**

Insert:

*peak council* has the same meaning as in the Fair Work Act.

#### **86 Section 6 of Schedule 1**

Insert:

*workplace group* means a class or group of employees, all of whom perform work:

- (a) for the same employer; or
- (b) at the same premises or workplace; or
- (c) for the same employer and at the same premises or workplace.

#### **87 Section 132 of Schedule 1**

Repeal the section, substitute:

#### **132 Simplified outline**

This Chapter enables FWA to make orders about the representation rights of organisations of employees.

Part 2 provides for the orders to be made generally in relation to demarcation disputes.

Part 3 provides for the orders to be made in relation to employees who perform work for the same employer and/or at the same premises or workplace.

Part 4 contains miscellaneous provisions.

#### **88 Subsection 133(1) of Schedule 1**

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Omit “this Chapter”, substitute “this Part, Part 4”.

## **89 After section 137 of Schedule 1**

Insert:

## **Part 3—Representation orders for workplace groups**

Note: In addition to registered organisations, this Part also applies to transitionally recognised associations (see clause 3 of Schedule 1) and recognised State-registered associations (see clause 2 of Schedule 2).

### **137A Orders about representation rights of organisations of employees**

- (1) Subject to this Part, Part 4 and subsection 151(6), FWA may, on the application of an organisation, an employer or the Minister, make the following orders in relation to a dispute (including a threatened, impending or probable dispute) about the entitlement of an organisation of employees to represent, under this Act or the Fair Work Act, the industrial interests of employees:
  - (a) an order that an organisation of employees is to have the right, to the exclusion of another organisation or other organisations, to represent under this Act or the Fair Work Act the industrial interests of the employees in a particular workplace group who are eligible for membership of the organisation;
  - (b) an order that an organisation of employees is not to have the right to represent under this Act or the Fair Work Act the industrial interests of the employees in a particular workplace group.

Note: Section 151 deals with agreements between organisations of employees and State unions.

#### *Interim orders*

- (2) FWA may make an interim order in relation to an application under subsection (1) on application by a person or organisation who would have been eligible to make the application under subsection (1).

- (3) FWA must not make an order under subsection (2) if FWA considers that the making of the order would be unfair to a person or organisation other than the applicant.
- (4) An interim order made under subsection (2) ceases to have effect if the application under subsection (1) is determined.

*Variation of orders*

- (5) FWA may, on application by an organisation, an employer or the Minister, vary an order made under subsection (1) or (2).
- (6) FWA may, on its own initiative, vary an order made under subsection (1) or (2) if the order is inconsistent with an order that is in force under subsection 133(1).

*Inconsistency with orders under subsection 133(1)*

- (7) FWA must not make an order under subsection (1) or (2) if the order would be inconsistent with an order that is in force under subsection 133(1).

**137B Factors to be taken into account by FWA**

- (1) In considering whether to make an order under subsection 137A(1) in relation to a particular workplace group, FWA must have regard to:
  - (a) the history of award coverage and agreement making in relation to the employees in the workplace group; and
  - (b) the wishes of the members of the workplace group; and
  - (c) the extent to which particular organisations of employees represent the employees in the workplace group, and the nature of that representation; and
  - (d) any agreement or understanding of which FWA becomes aware that deals with the right of an organisation of employees to represent under this Act or the Fair Work Act the industrial interests of a particular class or group of employees; and
  - (e) the consequences of not making the order for any employer, employees or organisation concerned; and
  - (f) any matter prescribed by the regulations.

- (2) However, if:

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- (a) the workplace group relates to a genuine new enterprise (within the meaning of the Fair Work Act) that one or more employers are establishing or propose to establish; and
- (b) the employer or employees have not employed any of the persons who will be necessary for the normal conduct of that enterprise;

FWA must, as far as practicable, have regard to the matters set out in subsection (1) as they would apply in relation to the persons who would be the employees in the workplace group.

Note: The expression genuine new enterprise includes a genuine new business, activity, project or undertaking (see the definition of *enterprise* in section 12 of the Fair Work Act).

(3) If:

- (a) the eligibility rules of an organisation of employees have been altered with the consent of the General Manager under section 158A; and
- (b) because of the alteration, members of an association of employees registered under a State or Territory industrial law have become eligible for membership of the organisation;

a reference in this section to the organisation includes a reference to the association referred to in paragraph (b) of this subsection.

### **137C Submissions by peak councils**

- (1) A peak council is entitled to make a submission for consideration in relation to the proposed making of an order under subsection 137A(1).
- (2) Subsection (1) applies whether or not FWA holds a hearing in relation to the matter.

### **137D Order may be subject to limits**

An order under subsection 137A(1) or (2) may be subject to conditions or limitations.

### **137E Organisation must comply with order**

- (1) An organisation to which an order under subsection 137A(1) or (2) applies must comply with the order.

- (2) The Federal Court may, on application by the Minister or a person or organisation affected by an order made under subsection 137A(1) or (2), make such orders as it thinks fit to ensure compliance with that order.

## **Part 4—Miscellaneous**

### **137F FWA may make orders reflecting State representation orders**

- (1) If:
  - (a) the eligibility rules of an organisation of employees have been altered with the consent of the General Manager under section 158A; and
  - (b) because of the alteration, members of an association of employees that is registered under a State or Territory industrial law (a *State registered association*) have become eligible for membership of the organisation; and
  - (c) immediately before the alteration took effect, an order (a *State representation order*) was in force that:
    - (i) was made by a State industrial authority in relation to the State registered association; and
    - (ii) was an order of the same kind as, or of a similar kind to, an order that FWA could make under this Chapter in relation to an organisation;

FWA may, on application by the organisation or by a party to the State representation order, make an order in relation to the organisation that is to the same effect, or substantially the same effect, as the State representation order.

- (2) The order under subsection (1) applies to each organisation that is:
  - (a) a federal counterpart of the State registered association; or
  - (b) a federal counterpart of any other association of employees:
    - (i) that is registered under a State or Territory industrial law; and
    - (ii) to which the State representation order applied.

### **90 Section 138 of Schedule 1**

Omit “or Presidential Member”.

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### **91 Clause 3 of Schedule 10**

After “the Fair Work Act”, insert “and Part 3 of Chapter 4 of the *Fair Work (Registered Organisations) Act 2009*”.

## **Part 4—References to Schedules to the Workplace Relations Act**

### ***Fair Work Act 2009***

#### **92 Section 12 (paragraph (c) of the definition of *industrial body*)**

Omit “Schedule 1 to the *Workplace Relations Act 1996*”, substitute “the *Fair Work (Registered Organisations) Act 2009*”.

#### **93 Section 12 (paragraph (b) of the definition of *industrial law*)**

Omit “Schedule 1 to the *Workplace Relations Act 1996*”, substitute “the *Fair Work (Registered Organisations) Act 2009*”.

#### **94 Section 12 (definition of *organisation*)**

Omit “Schedule 1 to the *Workplace Relations Act 1996*”, substitute “the *Fair Work (Registered Organisations) Act 2009*”.

#### **95 Section 12 (paragraph (b) of the definition of *workplace law*)**

Omit “Schedule 1 to the *Workplace Relations Act 1996*”, substitute “the *Fair Work (Registered Organisations) Act 2009*”.

### ***Workplace Relations Act 1996***

#### **97 Subsections 5(1), (2), (3) and (4) of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

Note: The heading to section 5 of Schedule 1 is altered by omitting “**this Schedule**” and substituting “**this Act**”.

#### **98 Subsection 5(4) of Schedule 1 (note)**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

#### **99 Subsections 5A(1) and (2) of Schedule 1**

Omit “Schedule”, substitute “Act”.

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Note: The heading to section 5A of Schedule 1 is altered by omitting “**Schedule**” and substituting “**Act**”.

**100 Section 6 of Schedule 1**

Omit “this Schedule” (first occurring), substitute “this Act”.

**101 Section 6 of Schedule 1 (paragraph (c) of the definition of *demarcation dispute*)**

Omit “this Schedule”, substitute “this Act”.

**104 Section 6 of Schedule 1 (definition of *organisation*)**

Omit “this Schedule”, substitute “this Act”.

**105 Section 6 of Schedule 1 (note at the end of the definition of *organisation*)**

Omit “this Schedule” (first occurring), substitute “former Schedule 1B of that Act”.

**106 Section 6 of Schedule 1 (note at the end of the definition of *organisation*)**

Omit “this Schedule” (last occurring), substitute “that Schedule (and therefore under this Act)”.

**107 Subsections 9(1) and (2), 10(1), (2) and (3) and 11(1) and (2) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**108 Section 12 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**109 Paragraph 13(1)(b) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**110 Subsection 13(2) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**111 Section 15 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**112 Section 15 of Schedule 1 (note 1)**

Repeal the note, substitute:

Note 1: Section 6 defines *this Act* to include the regulations.

**113 Section 15 of Schedule 1 (note 2)**

Omit “this Schedule”, substitute “this Act”.

**114 Paragraphs 16(a) and (b), 18A(4)(a), 18B(5)(a), 18C(2)(k), 18C(5)(a) and 19(1)(e), (f) and (i) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**115 Subsection 19(3) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**116 Paragraphs 20(1)(d), (e) and (i), 21(3)(a), 22(3)(a) and 25(1)(a) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**117 Subsection 25(1) of Schedule 1 (note)**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**118 Subsections 26(2) and (4) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**119 Paragraph 28(1)(a) of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**120 Subsection 28(5) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**121 Paragraph 29(2)(a) of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**122 Sections 31 and 32 of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**123 Subsections 36(3) and 38(5) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

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**124 Paragraphs 38(8)(c), 55(1)(d) and (e) and 57(1)(b) of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**125 Subsection 60(6) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**126 Paragraph 62(3)(b) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**127 Subsection 65(4) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**128 Subparagraph 73(2)(c)(i) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**129 Subsection 87(2) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**130 Paragraph 92(a) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**131 Subsection 97(3) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**132 Paragraphs 133(1)(a), (b) and (c) and 135(b) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**133 Subsections 138A(1) and (2) and 140(1) and (2) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**134 Paragraphs 142(1)(a) and (c) of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**135 Subparagraph 144(3)(a)(i) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

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**136 Subsection 146(5) of Schedule 1 (paragraph (a) of the definition of *relevant provisions*)**

Omit “this Schedule”, substitute “this Act”.

**137 Section 150 of Schedule 1 (paragraph (b) of the definition of *State union*)**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**138 Subparagraphs 151(5)(a)(ia), (i) and (iii) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**139 Subsection 151(6) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**140 Paragraph 152(6)(a) of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**141 Subsection 156(1) of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**142 Subsection 158(6) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**143 Paragraphs 158(7)(a) and 159(1)(a) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**144 Sections 160 and 161 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**145 Subsection 164B(2) of Schedule 1 (note)**

Omit “of this Schedule”.

**146 Sections 170 and 175 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**147 Paragraph 186(1)(a) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**148 Subparagraph 186(1)(b)(i) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**149 Paragraph 205(3)(a) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**150 Subsection 230(2) of Schedule 1 (note 2)**

Omit “the Schedule”, substitute “this Act”.

**151 Section 239 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**152 Subparagraphs 246(2)(b)(i) and 249(5)(b)(i) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**153 Subsection 253(3) of Schedule 1 (note 2)**

Omit “this Schedule”, substitute “this Act”.

**154 Subsection 256(7) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**155 Paragraph 257(11)(a) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**156 Subsection 261(2) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**157 Section 281 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**158 Subsection 285(2) of Schedule 1 (note)**

Omit “this Schedule”, substitute “this Act”.

**159 Section 290 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**160 Paragraphs 293(2)(a), 297(1)(a), 298(1)(a), 299(1)(a), 300(1)(a), 301(1)(a), 302(1)(a) and 303(1)(a) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**161 Section 317 of Schedule 1**

Omit “the Schedule”, substitute “this Act”.

**162 Section 317 of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**163 Subsection 329(1) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**164 Subparagraphs 337A(d)(i) and (ii) of Schedule 1**

Omit “this Schedule or this Act”, substitute “this Act or the Fair Work Act”.

**165 Subsection 337F(1) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**166 Sections 337G, 337H and 337J of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**167 Subsections 337K(1) and (2) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**168 Paragraph 337K(4)(a) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**169 Subsections 339(1), 340(1) and 341(1) of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**170 Section 343 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**171 Subsections 344(1) and (2) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

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**172 Subsection 344(3) of Schedule 1 (note)**

Repeal the note, substitute:

Note: Section 6 defines *this Act* to include the regulations.

**173 Section 351 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**174 Subsection 352(1) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**175 Section 353 of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**176 Subsection 354(1) of Schedule 1**

Omit “this Schedule” (wherever occurring), substitute “this Act”.

**177 Section 357 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**178 Paragraphs 358(1)(a) and 359(1)(a) and (b), (2)(a), (b) and (e) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**179 Section 360 of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**180 Subsection 362(3) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**181 Paragraph 363(2)(b) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**182 Subparagraph 367(9)(d)(i) of Schedule 1**

Omit “this Schedule”, substitute “this Act”.

**183 Subclause 1(1) of Schedule 10 (definition of *federal system employer*)**

Repeal the definition.

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**184 Clause 7 of Schedule 10**

Omit “of the Registration and Accountability of Organisations Schedule”, substitute “of this Act”.

Note: The heading to clause 7 of Schedule 10 is altered by omitting “**Registration and Accountability of Organisations Schedule**” and substituting “**this Act**”.

## **Part 5—References to the Workplace Relations Act etc.**

### ***Workplace Relations Act 1996***

#### **185 Subsection 5(2) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

#### **186 Subsection 5(4) of Schedule 1 (note)**

Omit “Workplace Relations Act” (wherever occurring), substitute “Fair Work Act”.

#### **188 Section 6 of Schedule 1 (paragraph (c) of the definition of *demarcation dispute*)**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

#### **191 Section 6 of Schedule 1 (note at the end of the definition of *organisation*)**

Omit “the Workplace Relations Act”, substitute “the *Workplace Relations Act 1996*”.

#### **192 Section 6 of Schedule 1 (definitions of *public sector employment* and *State or Territory industrial law*)**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

#### **193 Section 6 of Schedule 1 (definition of *State-registered association*)**

Omit “Schedule 10 to the Workplace Relations Act”, substitute “Schedule 1”.

#### **194 Section 6 of Schedule 1 (definition of *vocational placement*)**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

#### **195 Paragraphs 19(1)(e) and (i) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

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**196 Subsection 19(3) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**197 Paragraphs 20(1)(d) and (i) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**198 Subsection 25(1) of Schedule 1 (note)**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**199 Subsection 26(4) of Schedule 1 (note)**

Omit “the Workplace Relations Act”, substitute “the *Workplace Relations Act 1996*”.

**200 Paragraph 28(1)(a) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**201 Subparagraph 28(1)(d)(i) of Schedule 1**

Omit “subsection 496(12) of the Workplace Relations Act”, substitute “subsection 421(3) of the Fair Work Act”.

**202 Subparagraph 28(1)(d)(ii) of Schedule 1**

Repeal the subparagraph, substitute:

- (ii) an order made under the Fair Work Act in relation to a contravention of Part 3-1 of that Act (which deals with general protections); or

**203 Subparagraph 28(1)(d)(iii) of Schedule 1**

Repeal the subparagraph.

**204 Subparagraph 28(1)(d)(iv) of Schedule 1**

Omit “section 838 of the Workplace Relations Act”, substitute “section 545 of the Fair Work Act”.

**205 Subparagraph 28(1)(d)(iv) of Schedule 1**

Omit “the Workplace Relations Act” (second occurring), substitute “the Fair Work Act”.

**206 Subsection 28(7) of Schedule 1**

Repeal the subsection, substitute:

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(7) A finding of fact in proceedings:

- (a) under section 23 or subsection 131(2) of this Act; or
- (b) under Division 4 of Part 3-3 or Part 4-1 of the Fair Work Act;  
or
- (c) under the Fair Work Act in relation to a contravention of  
Part 3-1 of that Act;

is admissible as *prima facie* evidence of that fact in an application  
made on a ground specified in paragraph (1)(d).

**207 Paragraph 29(2)(a) of Schedule 1**

Omit “the Workplace Relations Act” (wherever occurring), substitute  
“the Fair Work Act”.

**208 Subsection 38(5) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**209 Paragraphs 38(8)(c), 55(1)(d) and 57(1)(b) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**210 Subparagraph 73(2)(c)(i) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**211 Paragraph 80(1)(a) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**212 Subsection 87(2) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**213 Paragraph 92(a) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the *Workplace Relations Act 1996*”.

**214 Subparagraph 94(1)(a)(i) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the *Workplace Relations Act 1996*”.

**215 Paragraph 117(1)(a) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

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**216 Paragraphs 133(1)(a), (b) and (c) and 135(b) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**217 Subsection 138A(2) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**218 Paragraphs 142(1)(a) and (c) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**219 Subparagraph 144(3)(a)(i) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**220 Subsection 144(9) of Schedule 1**

Omit “Subsection 147(1) of the Workplace Relations Act”, substitute “Subsection 604(1) of the Fair Work Act”.

**221 Subsection 144(9) of Schedule 1 (note)**

Omit “Subsection 147(1) of the Workplace Relations Act”, substitute “Subsection 604(1) of the Fair Work Act”.

**222 Subparagraphs 151(5)(a)(i) and (iii) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**223 Subsection 151(6) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**224 Paragraph 152(6)(a) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**225 Subsection 158(6) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**226 Paragraphs 158(7)(a) and 159(1)(a) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**227 Sections 161, 170 and 175 of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

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**228 Subsection 180(2) of Schedule 1**

Omit “section 147 of the Workplace Relations Act”, substitute “section 604 of the Fair Work Act”.

**229 Subparagraphs 246(2)(b)(i) and 249(5)(b)(i) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**230 Subsection 255(5) of Schedule 1**

Omit “Section 147 of the Workplace Relations Act”, substitute “Section 604 of the Fair Work Act”.

**231 Section 290 of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**232 Paragraphs 293(2)(a), 297(1)(a), 298(1)(a), 299(1)(a),  
300(1)(a), 301(1)(a), 302(1)(a) and 303(1)(a) of  
Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**233 Section 317 of Schedule 1**

Omit “Division 4 of Part 3 of the Workplace Relations Act”, substitute “Division 3 of Part 5-1 of the Fair Work Act”.

**234 Subsections 345(2) and 346(2) of Schedule 1**

Omit “Division 4 of Part 9 of the Workplace Relations Act”, substitute “Division 8 of Part 3-3 of the Fair Work Act”.

**235 Section 353 of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**236 Subsection 362(3) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**237 Paragraph 363(2)(b) of Schedule 1**

Omit “the Workplace Relations Act”, substitute “the Fair Work Act”.

**238 Subclause 1(1) of Schedule 10 (definition of *notional  
agreement preserving State awards*)**

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Omit “will be”, substitute “was”.

**239 Subclause 1(1) of Schedule 10 (definition of *notional agreement preserving State awards*)**

Omit “this Act”, substitute “the *Workplace Relations Act 1996*”.

**240 Subclause 1(1) of Schedule 10 (definition of *preserved State agreement*)**

Omit “will be”, substitute “was”.

**241 Subclause 1(1) of Schedule 10 (definition of *preserved State agreement*)**

Omit “this Act”, substitute “the *Workplace Relations Act 1996*”.

**242 Subclause 1(2) of Schedule 10**

Omit “this Act”, substitute “the *Workplace Relations Act 1996*”.

**243 Clause 3 of Schedule 10**

Omit “this Act apply, on and after the reform commencement”, substitute “the Fair Work Act apply, on and after the commencement of those provisions”.

Note: The heading to clause 3 of Schedule 10 is altered by omitting “this Act” and substituting “the Fair Work Act”.

**244 Subclause 4(1) of Schedule 10**

Omit “this Act, on and after the reform commencement”, substitute “the Fair Work Act, on and after the commencement of provisions of that Act”.

**245 Paragraph 5(1)(a) of Schedule 10**

Omit “this Act”, substitute “the *Workplace Relations Act 1996*”.

**246 Paragraph 5(1)(a) of Schedule 10**

After “at that time”, insert “, or has, on or after the commencement of section 3 of the Fair Work Act, prevented or hindered the achievement of the object set out in that section”.

**247 Subparagraph 5(1)(d)(i) of Schedule 10**

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After “subsection 496(12)”, insert “of the *Workplace Relations Act 1996*”.

**248 Subparagraphs 5(1)(d)(ii) and (iii) of Schedule 10**

Before “(which”, insert “of that Act”.

**249 Subparagraph 5(1)(d)(iv) of Schedule 10**

After “section 838”, insert “of that Act”.

**250 Subparagraph 5(1)(d)(v) of Schedule 10**

Repeal the subparagraph.

**251 At the end of subclause 5(1) of Schedule 10**

Add:

- ; or (e) the association, or a substantial number of the members of the association or of a section or class of members of the association, has or have failed to comply with an order under section 23 of this Act (which deals with contraventions of the employee associations provisions) made on or after the reform commencement; or
- (f) the association, or a substantial number of the members of the association or of a section or class of members of the association, has or have failed to comply with one of the following made on or after the commencement of the relevant provision:
  - (i) an injunction granted under subsection 421(3) of the Fair Work Act (which deals with orders to stop industrial action);
  - (ii) an order made under the Fair Work Act in relation to a contravention of Part 3-1 of that Act (which deals with general protections);
  - (iii) an interim injunction granted under section 545 of the Fair Work Act so far as it relates to conduct or proposed conduct that could be the subject of an injunction or order under a provision mentioned in subparagraph (i) or (ii).

**252 Subclause 5(4) of Schedule 10**

Repeal the subclause, substitute:

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- (4) A finding of fact in proceedings under section 496, 508, 509 or 807 of the *Workplace Relations Act 1996* commenced on or after the reform commencement is admissible as *prima facie* evidence of that fact in an application made on a ground specified in paragraph (1)(d).
- (4A) A finding of fact in proceedings under section 23 of this Act is admissible as *prima facie* evidence of that fact in an application made on a ground specified in paragraph (1)(e).
- (4B) A finding of fact in proceedings:
  - (a) under Division 4 of Part 3-3 or Part 4-1 of the Fair Work Act; or
  - (b) under the Fair Work Act in relation to a contravention of Part 3-1 of that Act;is admissible as *prima facie* evidence of that fact in an application made on a ground specified in paragraph (1)(f).

## **Part 6—References to the Commission etc.**

### ***Workplace Relations Act 1996***

#### **253 Subsection 5(4) of Schedule 1 (note)**

Omit “the Commission”, substitute “FWA”.

#### **254 Section 6 of Schedule 1 (definition of *Full Bench*)**

Repeal the definition, substitute:

*Full Bench* has the same meaning as in the Fair Work Act.

#### **255 Section 6 of Schedule 1 (definition of *President*)**

Omit “the Commission”, substitute “FWA”.

#### **256 Section 17 of Schedule 1**

Omit “the Commission”, substitute “FWA”.

#### **257 Subsection 19(1) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

#### **258 Paragraph 19(1)(e) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

#### **259 Subsections 19(2), (3) and (4) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

#### **260 Subsection 20(1) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

#### **261 Paragraphs 20(1)(d) and (g) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

#### **262 Subsection 20(1A) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

#### **263 Subsection 20(1A) of Schedule 1 (note)**

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Omit “The Commission”, substitute “FWA”.

**264 Subsection 20(2) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**265 Paragraph 21(4)(c) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**266 Subsection 25(1) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**267 Subsections 25(1) and 26(1) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**268 Subparagraphs 28(1)(a)(i) and (ii) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**269 Subsection 30(1) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**270 Paragraph 30(1)(b) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**271 Paragraph 30(1)(c) of Schedule 1**

Omit “the Commission’s”, substitute “FWA’s”.

**272 Subparagraph 30(1)(c)(i) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**273 Subsection 30(2) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**274 Subsection 30(3) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**275 Paragraphs 30(3)(a) and (b) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**276 Paragraph 30(4)(c) of Schedule 1**

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Omit “the Commission’s”, substitute “FWA’s”.

**277 Paragraph 30(6)(c) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**278 Subsection 30(6) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**279 Subsection 30(6) of Schedule 1**

Omit “the Commission” (last occurring), substitute “FWA”.

**280 Paragraphs 32(c) and (d) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**281 Part 4 of Chapter 2 of Schedule 1 (heading)**

Repeal the heading, substitute:

## **Part 4—FWA’s powers under this Chapter**

**282 Section 33 of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to section 33 of Schedule 1 is altered by omitting “**Presidential Member**” and substituting “**President or a Deputy President**”.

**283 Section 33 of Schedule 1**

Omit “a Presidential Member”, substitute “the President or a Deputy President”.

**284 Section 34 of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**285 Subsections 36(2) and (3) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**286 Subparagraph 36(4)(b)(i) of Schedule 1**

Omit “or the Rules of the Commission”, substitute “, or the procedural rules of FWA made under section 609 of the Fair Work Act”.

**287 Section 37 of Schedule 1**

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Omit “the Commission”, substitute “FWA”.

Note: The heading to section 37 of Schedule 1 is altered by omitting “Commission’s” and substituting “FWA’s”.

**288 Section 37 of Schedule 1**

Omit “a Presidential Member”, substitute “the President or a Deputy President”.

**289 Subsection 38(3) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**290 Paragraphs 38(7)(a) and (b) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**291 Subsections 43(3) and (4) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**292 Subsection 43(5) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**293 Subsection 43(5) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**294 Subsection 43(6) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**295 Subsection 43(6) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**296 Subsection 43(7) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**297 Subsection 43(9) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**298 Subsections 43(9) and (10) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**299 Section 53 of Schedule 1**

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Omit “the Commission”, substitute “FWA”.

**300 Subsections 54(3), 55(1), (2), (3), (5), (6), (7) and (8) and 56(1) and (2) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

Note: The headings to subsections 55(5) and (7) of Schedule 1 are altered by omitting “Commission” and substituting “FWA”.

**301 Subsection 56(4) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**302 Subsections 57(1), (2), (3), (6), (7), (8) and (9) and 58(1) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

Note: The headings to subsections 57(6) and (8) of Schedule 1 are altered by omitting “Commission” and substituting “FWA”.

**303 Paragraphs 58(2)(a) and (b) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**304 Subsection 58(4) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**305 Section 59 of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**306 Subsection 60(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**307 Subsection 60(3) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**308 Paragraphs 60(5)(a) and (b) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**309 Subsection 60(6) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

Note: The heading to subsection 60(6) of Schedule 1 is altered by omitting “Commission” and substituting “FWA”.

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**310 Subsection 60(7) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to subsection 60(7) of Schedule 1 is altered by omitting “*Commission*” and substituting “*FWA*”.

**311 Subsection 61(1) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**312 Subsections 61(4) and (5) and 62(1) and (2) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

Note: The heading to subsection 61(4) of Schedule 1 is altered by omitting “*Commission*” and substituting “*FWA*”.

**313 Subsection 62(3) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**314 Subsection 63(1) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**315 Section 64 of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**316 Subsection 65(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**317 Paragraphs 65(9)(a) and (b) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**318 Subsections 67(2) and 73(2) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**319 Paragraph 73(3)(c) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**320 Subsection 73(4) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**321 Sections 75 and 79 of Schedule 1**

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Omit “the Commission”, substitute “FWA”.

**322 Subsection 94(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to section 94 of Schedule 1 is altered by omitting “**the Commission**” and substituting “**FWA**”.

**323 Paragraph 94(2)(a) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**324 Subsections 95(2) and (4) and 96(1) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**325 Paragraph 96(2)(b) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**326 Subsection 96(3) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**327 Subsection 97(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**328 Paragraphs 97(2)(a) and (b) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**329 Subsection 97(3) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**330 Subsection 98(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**331 Subsection 98(2) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**332 Subsection 98(2) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**333 Subsection 100(1) of Schedule 1**

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Omit “The Commission”, substitute “FWA”.

**334 Subsections 100(1), (2) and (3) and 108(1), (2) and (3) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**335 Section 108A of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to section 108A of Schedule 1 is altered by omitting “**the Commission**” and substituting “**FWA**”.

**336 Subsection 113(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to section 113 of Schedule 1 is altered by omitting “**the Commission**” and substituting “**FWA**”.

**337 Subsection 133(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**338 Subsection 133(2) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**339 Section 134 of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**340 Sections 134, 135 and 138 of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

Note 1: The heading to section 135 of Schedule 1 is altered by omitting “**Commission**” and substituting “**FWA**”.

Note 2: The heading to section 138 of Schedule 1 is altered by omitting “**Commission’s**” and substituting “**FWA’s**”.

**341 Subsection 138A(2) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**342 Subparagraphs 141(1)(b)(vi) and 142(1)(b)(i) and (ii) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

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**343 Subsection 151(4) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**344 Subsection 151(5) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**345 Subsections 151(5), (8) and (9) and 152(5) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**346 Subsection 152(6) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**347 Subsection 152(6) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**348 Section 155 of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to section 155 of Schedule 1 is altered by omitting “Commission’s” and substituting “FWA’s”.

**349 Section 155 of Schedule 1**

Omit “a Presidential Member”, substitute “the President or a Deputy President”.

**350 Subsection 157(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to section 157 of Schedule 1 is altered by omitting “Commission” and substituting “FWA”.

**351 Subsection 157(1) of Schedule 1**

Omit “the Commission’s”, substitute “FWA’s”.

**352 Subsection 157(2) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**354 Subsection 158(2) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**355 Subsection 158(2) of Schedule 1**

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Omit “the Commission”, substitute “FWA”.

**356 Subsection 158(3) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**357 Subsection 158(3) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**358 Subsection 158(4) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**359 Subsection 158(4) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**359A Subsection 158(5) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**360 Subsections 158(6) and (7) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**361 Paragraph 158(7)(a) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**362 Subsections 158(8) and (9) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**363 Paragraph 158(10)(a) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**364 Section 162 of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to section 162 of Schedule 1 is altered by omitting “Commission” and substituting “FWA”.

**365 Section 162 of Schedule 1**

Omit “a Presidential Member”, substitute “the President or a Deputy President”.

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**366 Subsection 163(12) of Schedule 1 (paragraph (a) of the definition of *appropriate authority*)**

Omit “a Presidential Member of the Commission”, substitute “the President or a Deputy President”.

**367 Subsections 166(1) and (4), 180(2) and 273(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**368 Subsections 273(2) and (3) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**369 Subsections 273(4) and 274(2) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**370 Section 275 of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**371 Subsection 278(2) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

Note: The heading to section 278 of Schedule 1 is altered by omitting “Commission” and substituting “FWA”.

**372 Section 279 of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to section 279 of Schedule 1 is altered by omitting “Commission” and substituting “FWA”.

**373 Section 279 of Schedule 1**

Omit “a Presidential Member”, substitute “the President or a Deputy President”.

**374 Sections 281 and 294 of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**375 Paragraphs 297(1)(a), 298(1)(a), 299(1)(a), 300(1)(a), 301(1)(a), 302(1)(a), 303(1)(a) and 303A(1)(a) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

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**376 Section 317 of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**377 Part 4B of Chapter 11 of Schedule 1 (heading)**

Repeal the heading, substitute:

**Part 4B—Functions and powers of FWA**

**378 Subsection 337F(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**379 Subsection 337F(2) of Schedule 1 (paragraph (c) of the definition of *prescribed premises*)**

Omit “the Commission”, substitute “FWA”.

**380 Section 337G of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**381 Sections 337H and 337J of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**382 Subsection 337K(1) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**383 Subsection 337K(2) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**384 Subparagraphs 340(1)(b)(i) and (ii) of Schedule 1**

Omit “a Presidential Member”, substitute “the President or a Deputy President”.

**385 Section 353 of Schedule 1**

Omit “the Rules of the Commission”, substitute “the procedural rules of FWA made under section 609 of the Fair Work Act”.

**386 Section 355 of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

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**387 Subsection 356(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**388 Subsections 356(2), (3), (4) and (5) of Schedule 1**

Omit “Commission”, substitute “FWA”.

**389 Paragraph 359(2)(e) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**390 Subsection 362(3) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**391 Subsection 363(1) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to section 363 of Schedule 1 is altered by omitting “Commission” and substituting “FWA”.

**392 Subsection 363(2) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**393 Subsections 363(3) and 367(2) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**394 Subsection 367(5) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**395 Subsections 367(8) and (9) of Schedule 1**

Omit “the Commission” (wherever occurring), substitute “FWA”.

**396 Subsection 367(10) of Schedule 1**

Omit “The Commission”, substitute “FWA”.

**397 Subsection 367(10) of Schedule 1**

Omit “the Commission”, substitute “FWA”.

**398 Division 5 of Part 7 of Chapter 11 of Schedule 1 (heading)**

Repeal the heading, substitute:

## **Division 5—Exercise of FWA's powers**

### **399 Section 368 of Schedule 1**

Omit “the Commission”, substitute “FWA”.

Note: The heading to section 368 of Schedule 1 is altered by omitting “Commission’s” and substituting “FWA’s”.

### **400 Section 368 of Schedule 1**

Omit “a Presidential Member”, substitute “the President or a Deputy President”.

### **401 Subclauses 4(1) and (2) of Schedule 10**

Omit “the Commission”, substitute “FWA”.

### **402 Subparagraphs 5(1)(a)(i) and (ii) of Schedule 10**

Omit “the Commission” (wherever occurring), substitute “FWA”.

### **403 Subclause 5(5) of Schedule 10**

Omit “The Commission”, substitute “FWA”.

Note: The heading to subclause 5(5) of Schedule 10 is altered by omitting “Commission” and substituting “FWA”.

### **404 Paragraph 5(5)(b) of Schedule 10**

Omit “the Commission”, substitute “FWA”.

## **Part 7—References to the Registrar etc.**

### ***Fair Work Act 2009***

#### **405 At the end of section 576**

Add:

Note: Section 13 of the *Fair Work (Registered Organisations) Act 2009* confers additional functions on FWA.

### ***Workplace Relations Act 1996***

#### **406 Subsection 5(4) of Schedule 1 (note)**

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

#### **407 Subsection 13(1) of Schedule 1**

Omit “the Industrial Registry”, substitute “FWA”.

Note: The heading to section 13 of Schedule 1 is altered by omitting “**the Industrial Registry**” and substituting “**FWA**”.

#### **408 Subsection 13(1) of Schedule 1 (note)**

Repeal the note, substitute:

Note: Other functions of FWA are set out in section 576 of the Fair Work Act.

#### **409 Subsections 13(2), 26(1), (2), (4) and (6), 28(1A) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

#### **410 Subsection 28(1A) of Schedule 1 (note)**

Omit “a Registrar”, substitute “the General Manager”.

#### **411 Section 31 of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

#### **412 Subsection 38(1) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**413 Subsection 38(4) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**414 Subsections 43(1), 44(1), 46(1) and 47(1) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**415 Subsection 50(1) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**416 Paragraph 52(2)(b) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**417 Subsections 60(2) and (5) and 67(1) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**418 Paragraphs 68(1)(b) and 73(3)(a) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**419 Subsection 77(2) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**420 Subsections 95(3A), (3B) and (3C) and 99(1) of Schedule 1**

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

**421 Paragraph 104(2)(b) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**422 Paragraphs 106(2)(b) and 107(1)(b) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**423 Section 110 of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**424 Subsection 111(2) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**425 Subsection 114(2) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**426 Subsection 144(2) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**427 Subsections 144(3), (4), (6) and (7) of Schedule 1**

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

**428 Subsection 144(7) of Schedule 1**

Omit “Industrial Registrar’s”, substitute “General Manager’s”.

**429 Subsection 144(9) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**430 Subsection 144(9) of Schedule 1 (note)**

Omit “Industrial Registrar”, substitute “General Manager”.

**431 Subsection 151(2) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**432 Subsections 151(3), (4), (5) and (10) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**433 Paragraph 151(11)(a) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**434 Paragraph 151(11)(b) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**435 Subsection 152(3) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**436 Subsections 152(4), (5) and (6) and 154(4) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**437 Subsection 156(1) of Schedule 1**

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Omit “Industrial Registrar’s” (wherever occurring), substitute “General Manager’s”.

Note: The heading to section 156 of Schedule 1 is altered by omitting “**Industrial Registrar**” and substituting “**General Manager**”.

**438 Subsection 156(1) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**439 Subsection 159(1) of Schedule 1**

Omit “in the Industrial Registry and a Registrar”, substitute “with FWA and the General Manager”.

**440 Subsection 159(2) of Schedule 1**

Omit “in the Industrial Registry, a Registrar”, substitute “with FWA, the General Manager”.

**441 Paragraph 159(4)(b) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**442 Section 160 of Schedule 1**

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

**443 Section 161 of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**444 Subsection 163(12) of Schedule 1 (paragraph (b) of the definition of *appropriate authority*)**

Omit “Industrial Registrar”, substitute “General Manager”.

**445 Paragraph 180(1)(a) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**446 Subsection 180(1) of Schedule 1**

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

**447 Subsections 180(2) and (3) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

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**448 Subsection 180(3) of Schedule 1**

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

**449 Paragraph 180(4)(a) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**450 Subsection 180(4) of Schedule 1**

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

**451 Subsection 180(6) of Schedule 1 (definition of appropriate organisation)**

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

**452 Subsection 183(1) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**453 Subsection 183(4) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**454 Subsection 184(2) of Schedule 1**

Omit “Industrial Registrar or, if the Industrial Registrar directs, another Registrar”, substitute “General Manager”.

**455 Subsection 186(1) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

Note: The heading to section 186 of Schedule 1 is altered by omitting “Registrar” and substituting “General Manager”.

**456 Subsection 186(1) of Schedule 1**

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

**457 Subsection 186(2) of Schedule 1**

Omit “A Registrar”, substitute “The General Manager”.

**458 Paragraph 186(2)(b) of Schedule 1**

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

**459 Subsections 187(3) and 189(1) of Schedule 1**

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Omit “in the Industrial Registry”, substitute “with FWA”.

Note: The heading to section 189 of Schedule 1 is altered by omitting “**Registrar**” and substituting “**General Manager**”.

#### **460 Subsection 189(2) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

#### **461 Paragraph 189(3)(a) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

#### **462 Subsection 189(3) of Schedule 1**

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

#### **463 Paragraph 192(2)(b) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

#### **464 Paragraph 197(1)(a) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

#### **465 Subparagraph 198(6)(b)(i) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

#### **466 Subsection 202(1) of Schedule 1**

Omit “Industrial Registrar to arrange, for the purposes of the inquiry, for a designated Registry official”, substitute “General Manager”.

Note: The heading to section 202 of Schedule 1 is altered by omitting “**Industrial Registrar**” and substituting “**General Manager**”.

#### **467 Subsection 202(2) of Schedule 1**

Omit “a Registry official is designated by the Industrial Registrar for the purposes of subsection (1), the actions that the official may take are as follows”, substitute “the General Manager is authorised for the purposes of subsection (1), he or she may take the following actions”.

#### **468 Paragraph 202(5)(b) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

#### **469 Subsection 203(1) of Schedule 1**

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Omit “Industrial Registrar”, substitute “General Manager”.

Note: The heading to section 203 of Schedule 1 is replaced by the heading “**Identity cards**”.

#### **470 Subsection 203(1) of Schedule 1**

Omit “designated Registry official”, substitute “member of the staff of FWA (an *official*) to whom powers of the General Manager under section 202 have been delegated under section 343A”.

#### **471 Subsection 203(3) of Schedule 1**

Omit “A designated Registry official”, substitute “The official”.

#### **472 Paragraph 203(6)(b) of Schedule 1**

Omit “Registry official”, substitute “member of the staff of FWA to whom powers of the General Manager under section 202 have been delegated under section 343A”.

#### **473 Paragraphs 203(6)(c) and 206(4)(c) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

#### **474 Section 207 of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

Note: The heading to section 207 of Schedule 1 is altered by omitting “**Industrial Registrar**” and substituting “**General Manager**”.

#### **475 Subsection 215(5) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

#### **476 Section 229 of Schedule 1**

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

#### **477 Subsections 233(1) and (2) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

Note: The heading to section 233 of Schedule 1 is altered by omitting “**in Industrial Registry**” and substituting “**with FWA**”.

#### **478 Subsection 234(3) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

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**479 Subsection 234(4) of Schedule 1**

Omit “A Registrar”, substitute “The General Manager”.

**480 Subsection 234(4) of Schedule 1**

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

**481 Subsection 235(1) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

Note: The heading to section 235 of Schedule 1 is altered by omitting “Registrar” and substituting “General Manager”.

**482 Subsection 235(1) of Schedule 1**

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

**483 Paragraph 236(1)(a) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

Note: The heading to section 236 of Schedule 1 is altered by omitting “Registrar” and substituting “General Manager”.

**484 Subsection 236(1) of Schedule 1**

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

**485 Paragraph 236(2)(a) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**486 Subsections 236(2), (3) and (4) of Schedule 1**

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

**487 Subsection 236(5) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**488 Subsections 236(5) and 237(1) of Schedule 1**

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

**489 Subsections 237(1), (2) and (4) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

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**490 Subsection 237(4) of Schedule 1**

Omit “at any registry”.

**491 Subsection 241(1) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**492 Subsection 241(2) of Schedule 1**

Omit “Registrar”, substitute “General Manager”.

**493 Subsections 242(3) and 245(1) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**494 Subsection 245(2) of Schedule 1**

Omit “Registrar”, substitute “General Manager”.

**495 Paragraph 246(1)(b) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**496 Subsection 246(2) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**497 Subsection 246(2) of Schedule 1**

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

**498 Subsection 247(1) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

Note: The heading to section 247 of Schedule 1 is altered by omitting “**Industrial Registrar**” and substituting “**General Manager**”.

**499 Subsection 247(1) of Schedule 1**

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

**500 Subsection 247(2) of Schedule 1**

Omit “Industrial Registrar’s” (wherever occurring), substitute “General Manager’s”.

**501 Subsections 247(2) and 249(1) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

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**502 Subsection 249(3) of Schedule 1**

Omit “Registrar”, substitute “General Manager”.

**503 Paragraph 249(4)(b) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**504 Subsection 249(5) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**505 Subsection 249(5) of Schedule 1**

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

**506 Subsection 249(6) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**507 Subsection 249(6) of Schedule 1**

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

**508 Paragraph 249(7)(a) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**509 Subsection 249(7) of Schedule 1**

Omit “Registrar’s” (wherever occurring), substitute “General Manager’s”.

**510 Subsection 249(7) of Schedule 1**

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

**511 Subsections 255(1) and (4) and 257(11) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**512 Subsection 261(2) of Schedule 1**

Omit “with the Industrial Registry”, substitute “with FWA”.

**513 Subsection 265(5) of Schedule 1**

Omit “A Registrar”, substitute “The General Manager”.

**514 Subsection 266(1) of Schedule 1**

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Omit “a Registrar”, substitute “the General Manager”.

### **515 Section 268 of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

Note: The heading to section 268 of Schedule 1 is altered by omitting “**in Industrial Registry**” and substituting “**with FWA**”.

### **516 Section 268 of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

### **517 Paragraph 269(2)(a) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

### **518 Paragraph 269(2)(c) of Schedule 1**

Omit “with the Industrial Registry”, substitute “with FWA”.

### **519 Subsection 270(1) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

### **520 Subsection 270(1) of Schedule 1**

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

### **521 Paragraph 270(3)(c) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

### **522 Paragraph 270(3)(c) of Schedule 1**

Omit “with the Industrial Registry”, substitute “with FWA”.

### **523 Subsection 270(7) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

### **524 Subsection 270(7) of Schedule 1**

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

### **525 Subsection 271(1) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

### **526 Subsection 271(1) of Schedule 1**

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

**527 Subsection 271(3) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**528 Subsection 271(3) of Schedule 1**

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

**529 Subsection 272(1) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

Note: The heading to section 272 of Schedule 1 is altered by omitting “Registrar” and substituting “General Manager”.

**530 Subsection 272(4) of Schedule 1**

Omit “A Registrar”, substitute “The General Manager”.

**531 Subsection 272(4) of Schedule 1**

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

**532 Paragraph 276(1)(a) of Schedule 1**

Omit “Registry official”, substitute “member of the staff of FWA”.

**533 Subsections 278(1) and (2) of Schedule 1**

Omit “the Industrial Registry” (wherever occurring), substitute “FWA”.

**534 Subsection 278(2) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**535 Paragraph 305(2)(q) of Schedule 1**

Omit “in Registry”, substitute “with FWA”.

**536 Subsection 310(1) of Schedule 1**

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

Note: The heading to subsection 310(1) of Schedule 1 is altered by omitting “Industrial Registrar” and substituting “General Manager”.

**537 Section 317 of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

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**538 Section 317 of Schedule 1**

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

**539 Subsections 330(1) and (2) of Schedule 1**

Omit “A Registrar, or another Registry official on behalf of a Registrar,”, substitute “The General Manager”.

Note: The heading to section 330 of Schedule 1 is altered by omitting “**Registrar or staff**” and substituting “**General Manager**”.

**540 Subsection 331(1) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

Note: The heading to section 331 of Schedule 1 is altered by omitting “**Registrar**” and substituting “**General Manager**”.

**541 Subsection 331(1) of Schedule 1**

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

**542 Subsection 331(2) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**543 Subsection 331(2) of Schedule 1**

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

**544 Subsection 331(3) of Schedule 1**

Omit “A Registrar”, substitute “The General Manager”.

**545 Subsection 331(4) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**546 Subsection 331(4) of Schedule 1**

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

**547 Subsection 332(1) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**548 Paragraph 332(1)(a) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**549 Paragraph 332(1)(b) of Schedule 1**

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

**550 Subsection 332(2) of Schedule 1**

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

**551 Subsection 332(3) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**552 Subsection 332(3) of Schedule 1**

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

**553 Subsection 333(1) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**554 Subsections 333(1) and (2) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**555 Subsection 333(2) of Schedule 1**

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

**556 Subsection 333(3) of Schedule 1**

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

**557 Section 334 of Schedule 1**

Repeal the section, substitute:

**334 Investigations arising from referral under section 278**

If a matter is referred to the General Manager under section 278, the General Manager must conduct an investigation.

**558 Subsection 335(1) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**559 Paragraph 335(1)(e) of Schedule 1**

Omit “Registrar”, substitute “General Manager”.

**560 Subsection 335(2) of Schedule 1**

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

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**561 Subsection 336(1) of Schedule 1**

Omit “Registrar who conducted the investigation”, substitute “General Manager”.

**562 Subsection 336(1) of Schedule 1**

Omit “Registrar” (second occurring), substitute “General Manager”.

**563 Subsection 336(2) of Schedule 1**

Omit “Industrial Registrar”, substitute “General Manager”.

**564 Subsection 336(2) of Schedule 1 (note)**

Omit “Registrar”, substitute “General Manager”.

**565 Subsections 336(3) and (5) of Schedule 1**

Omit “Registrar”, substitute “General Manager”.

**566 Subparagraph 337(1)(a)(i) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

Note: The heading to section 337 of Schedule 1 is altered by omitting “Registrar” and substituting “General Manager”.

**567 Paragraph 337(1)(c) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**568 Subparagraph 337A(b)(i) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**569 Paragraph 337K(1)(b) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**570 Subsection 337K(3) of Schedule 1**

Omit “A Registrar who receives a copy of an order under subsection (1)”, substitute “The General Manager”.

**571 Paragraphs 337K(3)(a) and (b) of Schedule 1**

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

**572 Subsection 337K(4) of Schedule 1**

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Omit “Industrial Registrar”, substitute “General Manager”.

**573 Paragraph 337K(4)(b) of Schedule 1**

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

**574 Paragraph 347(1)(c) of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**575 Section 348 of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**576 Section 349 of Schedule 1**

Omit “in the Industrial Registry”, substitute “with FWA”.

**577 Section 349 of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**578 Subsection 358(1) of Schedule 1**

Omit “a Registrar”, substitute “the General Manager”.

**579 Subclauses 2(1) and (3) of Schedule 10**

Omit “a Registrar”, substitute “the General Manager”.

**580 Subclause 2(3) of Schedule 10**

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

**581 Subclauses 2(5) and (6) of Schedule 10**

Omit “Registrar”, substitute “General Manager”.

**582 Subclause 5(6) of Schedule 10**

Omit “A Registrar”, substitute “The General Manager”.

Note: The heading to subclause 5(6) of Schedule 10 is altered by omitting “Registrar” and substituting “General Manager”.

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## **Part 8—References to awards and collective agreements**

### ***Fair Work Act 2009***

#### **583 Paragraph 48(2)(a)**

After “this Act”, insert “or of the *Fair Work (Registered Organisations) Act 2009*”.

#### **584 Paragraph 53(3)(a)**

After “this Act”, insert “or of the *Fair Work (Registered Organisations) Act 2009*”.

### ***Workplace Relations Act 1996***

#### **585 Subparagraph 28(1)(a)(i) of Schedule 1**

Omit “an award” (first occurring), substitute “a modern award”.

#### **586 Subparagraph 28(1)(a)(i) of Schedule 1**

Omit “a collective agreement” (first occurring), substitute “an enterprise agreement”.

#### **587 Subparagraph 28(1)(a)(i) of Schedule 1**

Omit “an award” (second occurring), substitute “a modern award”.

#### **588 Subparagraph 28(1)(a)(i) of Schedule 1**

Omit “a collective agreement” (second occurring), substitute “an enterprise agreement”.

#### **589 Subparagraph 28(1)(a)(ii) of Schedule 1**

Omit “an award”, substitute “a modern award”.

#### **590 Subparagraph 28(1)(a)(ii) of Schedule 1**

Omit “a collective agreement”, substitute “an enterprise agreement”.

#### **591 Paragraph 29(2)(a) of Schedule 1**

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Before “awards”, insert “modern”.

**592 Paragraph 29(2)(a) of Schedule 1**

Omit “collective”, substitute “enterprise”.

**593 Paragraph 32(c) of Schedule 1**

Before “award”, insert “modern”.

**594 Paragraph 32(c) of Schedule 1**

Omit “collective”, substitute “enterprise”.

**595 Subsection 38(6) of Schedule 1**

Repeal the subsection, substitute:

(6) Subsection (5) does not have the effect that a modern award or enterprise agreement covers the federation.

**596 Paragraphs 43(5)(c) and (6)(c) of Schedule 1**

Omit “bound by the same”, substitute “covered by the same modern”.

**597 Paragraph 55(1)(d) of Schedule 1**

Omit “awards or collective”, substitute “modern awards or enterprise”.

**598 Paragraph 57(1)(b) of Schedule 1**

Omit “awards and collective”, substitute “modern awards and enterprise”.

**599 Paragraph 76(a) of Schedule 1**

Repeal the paragraph, substitute:

- (a) a modern award or an enterprise agreement that, immediately before that day, covered a proposed de-registering organisation and its members covers, by force of this section, the proposed amalgamated organisation and its members; and
- (aa) a modern award, an order of FWA or an enterprise agreement that, immediately before that day, applied to a proposed de-registering organisation and its members applies to, by force of this section, the proposed amalgamated organisation and its members; and

Note: The heading to section 76 of Schedule 1 is altered by omitting “**awards, orders and collective agreements**” and substituting “**modern awards, orders and enterprise agreements**”.

## **600 Subsection 113(1) of Schedule 1**

Omit “an award or a collective agreement that was, immediately before the day the registration takes effect, binding on”, substitute “a modern award or an enterprise agreement that, immediately before the day the registration takes effect, covered”.

Note: The heading to section 113 of Schedule 1 is altered by omitting “**awards**” and substituting “**modern awards**”.

## **601 Subsection 113(2) of Schedule 1**

Omit “collective”.

## **602 Paragraph 113(2)(a) of Schedule 1**

Omit “becomes binding on”, substitute “covers”.

## **603 Subsection 113A(1) of Schedule 1**

Omit “a collective”, substitute “an enterprise”.

Note: The heading to section 113A of Schedule 1 is altered by omitting “**Collective**” and substituting “**Enterprise**”.

## **604 Paragraph 113A(1)(b) of Schedule 1**

Omit “is binding on”, substitute “covers”.

## **605 Subsection 113A(2) of Schedule 1**

Omit “becomes binding on” (wherever occurring), substitute “covers”.

## **606 Paragraph 142(1)(a) of Schedule 1**

Omit “an award or a collective”, substitute “a modern award or an enterprise”.

## **607 Subparagraph 142(1)(b)(i) of Schedule 1**

Omit “an award”, substitute “a modern award”.

## **608 Subparagraph 142(1)(b)(ii) of Schedule 1**

Omit “a collective”, substitute “an enterprise”.

## **609 Subparagraph 142(1)(b)(iii) of Schedule 1**

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Omit “an award”, substitute “a modern award”.

**610 Subparagraph 142(1)(b)(ii) of Schedule 1**

Omit “a collective”, substitute “an enterprise”.

**611 Subparagraph 144(3)(a)(i) of Schedule 1**

Omit “awards or collective”, substitute “modern awards or enterprise”.

**612 Paragraph 159(1)(a) of Schedule 1**

Omit “awards and collective”, substitute “modern awards and enterprise”.

**613 Subsections 166(1) and (4) of Schedule 1**

Before “award”, insert “modern”.

**614 Subsection 177(3) of Schedule 1**

Omit “an award”, substitute “a modern award”.

**615 Subsection 177(3) of Schedule 1**

Omit “collective”, substitute “enterprise”.

**616 Subparagraphs 246(2)(b)(i) and 249(5)(b)(i) of Schedule 1**

Omit “awards or collective”, substitute “modern awards or enterprise”.

**617 Subsection 337F(2) of Schedule 1 (paragraph (c) of the definition of *prescribed premises*)**

Omit “an award”, substitute “a modern award”.

**618 Subsection 337F(2) of Schedule 1 (paragraph (d) of the definition of *prescribed premises*)**

Omit “a collective”, substitute “an enterprise”.

**619 Subparagraph 367(9)(d)(i) of Schedule 1**

Before “awards”, insert “modern”.

**620 Subclause 1(1) of Schedule 10 (paragraphs (a) and (b) of the definition of *industrial instrument*)**

Repeal the paragraphs, substitute:

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- (a) a modern award; or
- (b) an enterprise agreement; or

## **Part 9—Transitional provisions etc.**

### **621 Things done before the commencement of this Schedule**

(1) The following table has effect if:

- (a) before the commencement of this item, a thing was done under, or for the purposes of, a provision of Schedule 1 to the WR Act (as in force from time to time) by, or in relation to, a person or body mentioned in column 1 of the table; and
- (b) immediately before that commencement, the thing continued to have effect.

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#### **Things done before the commencement of this item**

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<b>Item</b>	<b>If the thing was done by, or in relation to ...</b>	<b>then, after that commencement, the thing has effect as if it had been done by, or in relation to ...</b>
1	the Commission	FWA.
2	the Industrial Registry	FWA.
3	the Industrial Registrar	the General Manager.
4	a Registrar	the General Manager.
5	a member of the Commission	an FWA member.
6	a Presidential Member	the President or a Deputy President.
7	a Registry official	the General Manager.
8	a designated Registry official	a member of the staff of FWA.

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(2) Without limiting subitem (1), a reference in that subitem to a thing being done in relation to a person or body includes a reference to:

- (a) an application, request, statement, objection, disclosure, direction or referral being made or given to, or lodged with, the person or body; and
- (b) information or a document being given or produced to, or lodged with, the person or body; and
- (c) evidence being taken by the person or body.

### **622 Instruments made under, or for the purposes of, a provision of Schedule 1 to the WR Act**

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(1) The following table has effect if:

- (a) before the commencement of this item, an instrument was made under, or for the purposes of, a provision of Schedule 1 to the WR Act (as in force from time to time); and
- (b) the instrument was in force immediately before that commencement.

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**Instruments in force immediately before the commencement of this item**

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Item	A reference in the instrument to ...	has effect after that commencement as if it were a reference to ...
1	the Commission	FWA.
2	the Industrial Registry	FWA.
3	the Industrial Registrar	the General Manager.
4	a Registrar	the General Manager.
5	a member of the Commission	an FWA member.
6	a Presidential Member	the President or a Deputy President.
7	a Registry official	the General Manager.
8	a designated Registry official	a member of the staff of FWA.

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(2) Subject to subitem (3), a reference in the instrument to a provision of Schedule 1 to the WR Act is to be construed, after the commencement of this item, as a reference to the same provision of the *Fair Work (Registered Organisations) Act 2009*.

(3) Subitem (2) does not apply to a reference that is expressed as a reference to a provision as in force at a time that is before the commencement of this item.

## **623 Award-based transitional instruments and agreement-based transitional instruments**

The *Fair Work (Registered Organisations) Act 2009* applies as if:

- (a) references in that Act to a modern award included a reference to an award-based transitional instrument; and
- (b) references in that Act to an enterprise agreement included a reference to an agreement-based transitional instrument.

**624 Register of organisations kept under paragraph 13(1)(a) of Schedule 1 to the WR Act**

The register of organisations kept by the Industrial Registry under paragraph 13(1)(a) of Schedule 1 to the WR Act in its form immediately before the commencement of this item is taken, after that commencement, to be the register of organisations kept by FWA under paragraph 13(1)(a) of the *Fair Work (Registered Organisations) Act 2009*.

**625 Application of paragraph 73(2)(c) of Schedule 1 to the WR Act**

To avoid doubt:

- (a) subparagraph 73(2)(c)(i) of the *Fair Work (Registered Organisations) Act 2009* applies in relation to contraventions of the WR Act (as in force from time to time) that occurred before the commencement of this item; and
- (b) subparagraph 73(2)(c)(ii) of that Act applies in relation to breaches of orders made under the WR Act (as in force from time to time) that occurred before the commencement of this item.

**626 Application of section 337A of Schedule 1 to the WR Act**

- (1) Part 4A of Chapter 11 of the *Fair Work (Registered Organisations) Act 2009* applies as if a disclosure of information made to a person referred to in subparagraph 337A(b)(i) or (ii) of Schedule 1 to the WR Act:
  - (a) after the commencement of this item; and
  - (b) before:
    - (i) if the person is of a kind referred to in subparagraph 337A(b)(i) of that Schedule 1 to the WR Act—the cessation time for the Industrial Registrar under item 7 of Schedule 18 to this Act; or
    - (ii) if the person is of a kind referred to in subparagraph 337A(b)(ii) of Schedule 1 to the WR Act—the cessation time for the Workplace Authority Director under item 7 of Schedule 18 to this Act;

were a disclosure to which paragraph 337A(b) of the *Fair Work (Registered Organisations) Act 2009* applies.

(2) Paragraph 337A(d) of the *Fair Work (Registered Organisations) Act 2009* applies as if references in that paragraph to contraventions of the FW Act included references to contraventions of the WR Act (as in force from time to time) that occurred before the commencement of this item.

## **627 Transitionally registered associations**

For the purposes of the *Fair Work (Registered Organisations) Act 2009*, an association that, immediately before the commencement of this item, was a transitionally registered association is taken, on that commencement, to be a transitionally recognised association.

## **Schedule 23—Other amendments of the FW Act**

### ***Fair Work Act 2009***

#### **1 At the end of section 3**

Add:

; and (g) acknowledging the special circumstances of small and medium-sized businesses.

#### **2 Section 12 (definition of *civil remedy provision*)**

Omit “subsection 539(1)”, substitute “subsections 539(1) and (3)”.

#### **2A At the end of subsection 22(2)**

Add:

; (c) any other period of a kind prescribed by the regulations.

#### **2B After subsection 22(3)**

Insert:

(3A) Regulations made for the purposes of paragraph (2)(c) may prescribe different kinds of periods for the purposes of different provisions of this Act (other than provisions to which subsection (4) applies). If they do so, subsection (3) applies accordingly.

#### **2C Paragraph 22(4)(a)**

Repeal the paragraph, substitute:

(a) a period of *service* by a national system employee with his or her national system employer is a period during which the employee is employed by the employer, but does not include:

- (i) any period of unauthorised absence; or
- (ii) any other period of a kind prescribed by the regulations;

and

#### **2D Paragraph 22(4)(b)**

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Omit “of unauthorised absence”, substitute “referred to in subparagraph (a)(i) or (ii)”.

## **2E After subsection 22(4)**

Insert:

(4A) Regulations made for the purposes of subparagraph (4)(a)(ii) may prescribe different kinds of periods for the purposes of different provisions to which subsection (4) applies. If they do so, paragraph (4)(b) applies accordingly.

## **3 Section 63**

Before “A”, insert “(1)”.

## **4 Section 63 (note)**

Repeal the note, substitute:

(2) The terms of a modern award or enterprise agreement may provide for average weekly hours that exceed the hours referred to in paragraph (1)(a) or (b) if the excess hours are reasonable for the purposes of subsection 62(1).

Note: Hours in excess of the hours referred to in paragraph (1)(a) or (b) that are worked in a week in accordance with averaging terms in a modern award or enterprise agreement (whether the terms comply with subsection (1) or (2)) will be treated as additional hours for the purposes of section 62. The averaging terms will be relevant in determining whether the additional hours are reasonable (see paragraph 62(3)(i)).

## **5 Section 64**

Before “An”, insert “(1)”.

## **6 Section 64 (note)**

Repeal the note, substitute:

(2) The agreed averaging arrangement may provide for average weekly hours that exceed the hours referred to in paragraph (1)(a) or (b) if the excess hours are reasonable for the purposes of subsection 62(1).

Note: Hours in excess of the hours referred to in paragraph (1)(a) or (b) that are worked in a week in accordance with an agreed averaging arrangement (whether the arrangement complies with subsection (1) or (2)) will be treated as additional hours for the purposes of

section 62. The averaging arrangement will be relevant in determining whether the additional hours are reasonable (see paragraph 62(3)(i)).

## **7 At the end of subsection 140(1)**

Add:

Note: A person who is an employer may also be an outworker entity (see the definition of *outworker entity* in section 12).

## **8 Subsection 312(2)**

Repeal the subsection (not including the heading), substitute:

(2) Each of the following is a *named employer award*:

- (a) a modern award (including a modern enterprise award) that is expressed to cover one or more named employers;
- (b) a modern enterprise award that is expressed to cover one or more specified classes of employers (other than a modern enterprise award that is expressed to relate to one or more enterprises as described in paragraph 168A(2)(b)).

Note: Paragraph 168A(2)(b) deals with employers that carry on similar business activities under the same franchise.

## **9 Part 2-9 (heading)**

Repeal the heading, substitute:

## **Part 2-9—Other terms and conditions of employment**

### **9A At the end of subsection 371(2)**

Add “, or within such period as a court allows on an application made during or after those 14 days”.

### **9B At the end of section 371**

Add:

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*.

### **10 Paragraph 411(c)**

Omit “; and”, substitute “.”.

### **11 Paragraph 411(d)**

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Repeal the paragraph.

**12 At the end of Subdivision C of Division 2 of Part 3-3 of Chapter 3**

Add:

**416A Employer response action does not affect continuity of employment**

Employer response action for a proposed enterprise agreement does not affect the continuity of employment of the employees who will be covered by the agreement, for such purposes as are prescribed by the regulations.

**13 Subsection 539(2) (cell at table item 2, column headed “Civil remedy provision”)**

Repeal the cell, substitute:

45 (other than  
in relation to a  
contravention  
or proposed  
contravention  
of an  
outworker  
term)

**14 Subsection 539(2) (cell at table item 3, column headed “Civil remedy provision”)**

Repeal the cell, substitute:

45 (in relation  
to a  
contravention  
or proposed  
contravention  
of an  
outworker  
term)

**15 Subsection 539(2) (cell at table item 4, column headed “Civil remedy provision”)**

Repeal the cell, substitute:

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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)

## **16 Subsection 539(2) (after table item 4)**

Insert:

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; 60 penalty units (b) the Federal Magistrates Court; (c) an eligible State or Territory court
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## **17 At the end of section 539**

Add:

- (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 in 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.

## **18 Subsection 540(2)**

Omit “(other than an outworker term)”.

## **19 Subsection 540(3)**

Omit “to items 4, 7 and 14 in the table in subsection 539(2).”, substitute:

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.

## **20 Subsection 540(4)**

Omit all the words after “proposed contravention”, substitute:

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.

## **21 Subsection 558(2)**

Omit “referred to in the relevant item in column 4 of the table in subsection 539(2) for contravening”, substitute “that a court could have ordered the person to pay under section 546 if the court was satisfied that the person had contravened”.

## **21A Paragraph 722(a)**

Omit “5 of Part 6-1”, substitute “3 of Part 6-4”.

## **21B At the end of subsection 779(2)**

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Add “, or within such period as a court allows on an application made during or after those 14 days”.

**21C At the end of section 779**

Add:

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*.

**22 Subsections 799(3) and (4)**

Repeal the subsections.

Note: The heading to subsection 799(3) is deleted.

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[Minister's second reading speech made in—  
House of Representatives on 19 March 2009  
Senate on 15 June 2009]

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(54/09)