





# **Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008**

**No. 8, 2008**

**An Act to amend the *Workplace Relations Act 1996*,  
and for related purposes**

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



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**An Act to amend the *Workplace Relations Act 1996*,  
and for related purposes**

[Assented to 20 March 2008]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Workplace Relations Amendment  
(Transition to Forward with Fairness) Act 2008*.

## 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 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	20 March 2008
2. Schedules 1 to 7	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Workplace agreements and the no-disadvantage test**

### **Part 1—Main amendments**

#### *Workplace Relations Act 1996*

##### **1 Section 326**

Repeal the section, substitute:

##### **326 Individual transitional employment agreements**

- (1) An employer may make an agreement (an *individual transitional employment agreement* or *ITEA*) in writing with a person whose employment will be subject to the agreement.
  - (2) The agreement is not an ITEA unless:
    - (a) as at 1 December 2007 the employer employed at least one person whose employment with that employer was regulated by an agreement of a kind specified in subsection (3); and
    - (b) the person whose employment is to be subject to the ITEA:
      - (i) did not commence that employment more than 14 days before the day on which the ITEA was made, and had not previously been employed by the employer; or
      - (ia) did not commence that employment more than 14 days before the day on which the ITEA was made, and had previously been employed by the employer (not being employment that had ceased for the reason that, or for reasons that included the reason that, the employer would re-employ the person under an ITEA); or
      - (ii) is in an employment relationship with the employer and that employment relationship is regulated by an ITEA or an agreement of a kind specified in subsection (3).
- Note: Subsection 583(1A) affects the operation of paragraph (2)(b) in the case of a transmission of business.
- (3) The kinds of agreements for the purposes of paragraph (2)(a) and subparagraph (2)(b)(ii) are the following:
    - (a) an AWA within the meaning of Schedule 7A;

- (b) a pre-reform AWA;
  - (c) a preserved individual State agreement within the meaning of Schedule 8;
  - (d) an employment agreement within the meaning of section 887.
- (4) The fact that a period of work performed by a casual employee has ended does not of itself bring an end to the employee's employment relationship with the employer for the purposes of subparagraph (2)(b)(ii).
- (5) An ITEA may be made before the commencement of the employment.

## **2 Division 5A of Part 8**

Repeal the Division, substitute:

### **Division 5A—The no-disadvantage test**

#### **Subdivision A—Preliminary**

##### **346B Definitions**

- (1) In this Division:

*designated award*, for an employee or employees whose employment is or may be subject to a workplace agreement, means an award determined by the Workplace Authority Director under section 346H, and includes an award taken to be so designated in relation to the employee or employees under section 346G (unless a different award has been designated in relation to the employee or employees under section 346H).

*industrial instrument* means any of the following:

- (a) a pre-reform AWA;
- (b) a pre-reform certified agreement (within the meaning of Schedule 7);
- (c) a workplace determination;
- (d) a section 170MX award (within the meaning of Schedule 7);
- (e) an old IR agreement (within the meaning of Schedule 7);
- (f) a preserved State agreement.

*reference instrument* has the meaning given by subsection 346E(1).

*relevant collective instrument* has the meaning given by subsection 346E(2).

*relevant general instrument* has the meaning given by subsection 346E(4).

- (2) Unless the contrary intention appears, this Division (other than sections 346K and 346L and Subdivision D) applies to a workplace agreement as varied under Division 8 in a corresponding way to the way in which it applies to a workplace agreement.

### **346C Application of Division to workplace agreements**

- (1) The obligations imposed on the Workplace Authority Director by this Division in relation to a workplace agreement apply irrespective of whether the workplace agreement is yet to operate, is in operation or has ceased to operate.
- (2) For the purposes of applying this Division to a workplace agreement that has ceased to operate:
  - (a) a reference to an employee whose employment is subject to the workplace agreement is taken to include a reference to an employee whose employment was at any time subject to the workplace agreement; and
  - (b) a reference to a person or organisation who is bound by the workplace agreement is taken to include a reference to a person or organisation who was at any time bound by the workplace agreement.
- (3) For the purposes of applying this Division to a workplace agreement, a reference to an employee whose employment is subject to the workplace agreement is, so far as the context permits, taken to include a reference to a person whose employment may at a future time be subject to the workplace agreement.

## **Subdivision B—The no-disadvantage test**

### **346D When does an agreement pass the no-disadvantage test?**

- (1) An ITEA passes the no-disadvantage test if the Workplace Authority Director is satisfied that the ITEA does not result, or would not result, on balance, in a reduction in the overall terms and conditions of employment of the employee whose employment is subject to the agreement under any reference instrument relating to the employee.
- (2) A collective agreement passes the no-disadvantage test if the Workplace Authority Director is satisfied that the agreement does not result, or would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees whose employment is subject to the agreement under any reference instrument relating to one or more of the employees.
- (2A) For the purposes of subsection (1) or (2):
  - (a) a law of a State or Territory that:
    - (i) relates to long service leave; and
    - (ii) immediately before the agreement was lodged, applied to an employee referred to in that subsection, 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 subsection, 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.
- (3) An employee collective agreement or a union collective agreement is taken to pass the no-disadvantage test if:
  - (a) it does not meet the requirements of subsection (2); but
  - (b) the Workplace Authority Director is satisfied that, because of exceptional circumstances, approval of the agreement would not be contrary to the public interest.
- (4) An example of a case where the Workplace Authority Director may be satisfied that the requirements in paragraph (3)(b) are met is where making the agreement is part of a reasonable strategy to

deal with a short-term crisis in, and to assist in the revival of, the employer's business.

- (5) If the Workplace Authority Director decides under subsection (3) that an agreement is taken to pass the no-disadvantage test, the Workplace Authority Director must publish his or her reasons for the decision on the Workplace Authority's website.
- (6) An ITEA is taken to pass the no-disadvantage test if there is no reference instrument in relation to the employee whose employment is subject to the agreement.
- (7) A collective agreement is taken to pass the no-disadvantage test if there is no reference instrument in relation to any of the employees whose employment is subject to the agreement.
- (8) To avoid doubt, if there is a reference instrument in relation to one or more, but not all, of the employees whose employment is subject to a collective agreement:
  - (a) in a case where the agreement passes the no-disadvantage test under subsection (2)—it passes the test in relation to all employees whose employment is subject to the agreement; or
  - (b) in a case where the agreement does not pass the no-disadvantage test under subsection (2)—it does not pass the test in relation to any employees whose employment is subject to the agreement.

Note 1: In addition to the no-disadvantage test, the Australian Fair Pay and Conditions Standard prevails over a workplace agreement to the extent to which the Australian Fair Pay and Conditions Standard provides a more favourable outcome for the employee or employees—see section 172.

Note 2: This section applies to a workplace agreement as varied under Division 8 in a corresponding way to the way in which it applies to a workplace agreement—see subsection 346B(2).

Note 3: See subsection 346J(1) for how the Workplace Authority Director makes decisions under this section.

### **346E Reference instruments etc.**

- (1) A *reference instrument* is:
  - (a) in relation to an employee whose employment is subject to an ITEA:
    - (i) any relevant collective instrument; or

- (ii) any relevant collective instrument and any relevant general instrument, to the extent that the instruments operate concurrently; or
    - (iii) if there is no relevant collective instrument—any relevant general instrument; or
    - (iv) if there is no relevant collective instrument or relevant general instrument—any designated award;  
for the employee; or
  - (b) in relation to employees whose employment is subject to a collective agreement:
    - (i) any relevant general instrument; or
    - (ii) if there is no relevant general instrument—any designated award;  
for one or more of the employees.
- (2) A **relevant collective instrument**, for an employee whose employment is subject to a workplace agreement, is an instrument of a kind specified in subsection (3):
- (a) that regulates, or would but for an ITEA, pre-reform AWA or AWA (within the meaning of Schedule 7A) 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 workplace agreement; and
  - (b) that was binding, or would but for an ITEA, pre-reform AWA or AWA (within the meaning of Schedule 7A) having come into operation have been binding, on the employee's employer immediately before the day on which the workplace agreement was lodged.
- (3) The kinds of instruments for the purposes of subsection (2) are any of the following:
- (a) a collective agreement;
  - (b) a pre-reform certified agreement (within the meaning of Schedule 7);
  - (c) an old IR agreement (within the meaning of Schedule 7);
  - (d) a preserved collective State agreement (within the meaning of Schedule 8);
  - (e) a workplace determination;
  - (f) a section 170MX award (within the meaning of Schedule 7).
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- (4) A *relevant general instrument*, for an employee whose employment is subject to a workplace agreement, is an instrument of a kind specified in subsection (5):
- (a) that regulates, or would but for a workplace 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 workplace agreement; and
  - (b) that was binding, or would but for a workplace agreement or another industrial instrument having come into operation have been binding, on the employee's employer immediately before the day on which the workplace agreement was lodged.
- (5) The kinds of instruments for the purposes of subsection (4) are any of the following:
- (a) an award;
  - (b) a common rule in operation under Schedule 6;
  - (c) a transitional Victorian reference award (within the meaning of Part 7 of Schedule 6);
  - (d) a transitional award (within the meaning of Schedule 6), other than a Victorian reference award (within the meaning of that Schedule), to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria;
  - (e) a notional agreement preserving State awards (within the meaning of Schedule 8).

### **346F Agreements to be tested as at lodgment date**

- (1) In deciding whether a workplace agreement passes, or does not pass, the no-disadvantage test, the Workplace Authority Director must consider it as in existence or operation (as the case may be) immediately after lodgment.
- (2) In deciding whether a workplace agreement as varied passes, or does not pass, the no-disadvantage test, the Workplace Authority Director must consider it as in existence or operation (as the case may be) immediately after the variation was lodged.

- (3) If a variation to a workplace agreement is lodged before the Workplace Authority Director has decided whether the agreement passes the no-disadvantage test under section 346D:
  - (a) the Workplace Authority Director must consider the workplace agreement and the workplace agreement as varied as part of the same process; and
  - (b) to avoid doubt, the Workplace Authority Director must consider, and make a separate decision in respect of, both the workplace agreement and the workplace agreement as varied.
- (4) For the purposes of applying subsection 346D(1) or (2), assume that the employment relationship of the employee or employees referred to in either of those subsections was in existence immediately before the day on which the ITEA or collective agreement was lodged.

**346G Designated awards—before a workplace agreement or variation is lodged**

- (1) The Workplace Authority Director 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) The Workplace Authority Director may make a determination under this section only if the Workplace Authority Director 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 a workplace 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 subsection (4).
  - (4) An award or awards determined by the Workplace Authority Director under this section:
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- (a) must be an award or awards regulating, or that would, but for a workplace 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
  - (b) must, in the opinion of the Workplace Authority Director, be an award or awards that would be appropriate for the purpose referred to in paragraph 346H(3)(b) if a workplace agreement or a variation of a workplace agreement were lodged; 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).
- (5) An award determined under this section in relation to an employee or employees is taken to be the designated award determined by the Workplace Authority Director under section 346H in relation to the employee or employees if the employer later lodges a workplace agreement, or a variation of a workplace agreement, in relation to the employee or the employees.
- (6) Despite subsection (5), the Workplace Authority Director may determine under section 346H that another award is a designated award in relation to the employee, or in relation to some or all of the employees, if:
- (a) the Workplace Authority Director becomes aware of information that was not available to the Workplace Authority Director at the time of the determination under subsection (1); and
  - (b) the Workplace Authority Director is satisfied that, had that information been available to the Workplace Authority Director at that time, the Workplace Authority Director would have determined under subsection (1) the other award to be the designated award.
- (7) The Workplace Authority Director may determine different awards under subsection (1) in relation to different employees.
- (8) In this section, 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.

- (9) A determination made under this section is not a legislative instrument.

**346H Designated awards—after a workplace agreement or variation is lodged**

- (1) This section applies to a workplace agreement if:
- (a) in the case of an ITEA—there is no relevant collective instrument or no relevant general instrument in relation to the employee whose employment is subject to the ITEA; or
  - (b) in the case of a collective agreement—there is no relevant general instrument in relation to an employee or class of employees whose employment is subject to the collective agreement; or
  - (c) a variation of the workplace agreement is lodged and:
    - (i) if the workplace agreement is an ITEA—there is no relevant collective instrument or no relevant general instrument in relation to the employee whose employment is subject to the ITEA as varied; or
    - (ii) if the workplace agreement is a collective agreement—there is no relevant general instrument in relation to an employee or class of employees whose employment is subject to the collective agreement as varied.
- (2) The Workplace Authority Director must determine that an award is a designated award for the employee or employees referred to in subsection (1), if the Workplace Authority Director is satisfied that:
- (a) on the date of lodgment of the agreement or variation (as the case requires), 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 a workplace 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 subsection (3).

- (3) An award or awards determined by the Workplace Authority Director under this section:
- (a) must be an award or awards regulating, or that would, but for a workplace 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 workplace agreement concerned; and
  - (b) must, in the opinion of the Workplace Authority Director, be appropriate for the purpose of deciding whether a workplace agreement, or a workplace agreement as varied, 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) The Workplace Authority Director may determine different awards under subsection (2) in relation to different employees.
- (5) A determination made under this section is not a legislative instrument.

### **346HA Effect of State awards etc.**

For the purposes of paragraphs 346G(2)(a) and 346H(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 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; or
- (b) are usually regulated by any of the following instruments:
  - (i) a transitional Victorian reference award (within the meaning of Part 7 of Schedule 6);
  - (ii) a common rule in operation under Schedule 6;
  - (iii) a transitional award (within the meaning of Schedule 6) other than a Victorian reference award (within the

meaning of that Schedule), to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria;  
or would, but for a workplace agreement or an industrial instrument having come into operation, usually be so regulated.

**346J Matters taken into account when testing agreement etc.**

- (1) In deciding under section 346D, 346Q or 346Z whether a workplace agreement, or a workplace agreement as varied, passes, or does not pass, the no-disadvantage test, the Workplace Authority Director:
  - (a) must have regard to the work obligations of the employee or employees under the workplace agreement; and
  - (b) may inform himself or herself in any way he or she 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, whose employment is subject to the workplace agreement;
    - (iii) a bargaining agent in relation to the agreement;
    - (iv) in the case of a union collective agreement or a union greenfields agreement—the organisation or organisations bound by 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, the Workplace Authority Director may inform himself or herself in any way he or she 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 section 346H—a bargaining agent in relation to the agreement;
  - (d) if the determination would be made under section 346H in relation to a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

## **Subdivision C—Agreements that operate from approval, and variations of agreements**

### **346K Application of this Subdivision**

- (1) This Subdivision applies to a workplace agreement that is:
  - (a) an ITEA to which subparagraph 326(2)(b)(ii) applies; or
  - (b) an employee collective agreement; or
  - (c) a union collective agreement; or
  - (d) a multiple-business agreement that would be an employee collective agreement or a union collective agreement but for subsection 331(1).
- (2) This Subdivision also applies to any variation of a workplace agreement under Division 8.

### **346L Applying the no-disadvantage test**

- (1) If a workplace agreement to which this Subdivision applies is lodged with the Workplace Authority Director under Division 5, the Workplace Authority Director must decide under section 346D whether the agreement passes the no-disadvantage test.
- (2) If a variation of a workplace agreement under Division 8 is lodged with the Workplace Authority Director under that Division, the Workplace Authority Director must decide under section 346D whether the agreement as varied passes the no-disadvantage test.

### **346M Workplace Authority Director must notify of decision**

- (1) If the Workplace Authority Director decides under section 346D that the agreement passes the no-disadvantage test, then:
  - (a) the Workplace Authority Director must notify the following of the decision:
    - (i) the employer in relation to the agreement;
    - (ii) if the agreement is an ITEA—the employee whose employment is subject to the ITEA;
    - (iii) 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)—the

- organisation or organisations bound by the agreement;  
and
- (b) the notice must also state that the agreement comes into operation on the seventh day after the date of issue specified in the notice.
- (2) If the Workplace Authority Director decides under section 346D that the agreement does not pass the no-disadvantage test, then:
- (a) the Workplace Authority Director must notify the following of the decision:
- (i) the employer in relation to the agreement;
- (ii) if the agreement is an ITEA—the employee whose employment is subject to the ITEA;
- (iii) 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)—the organisation or organisations bound by the agreement;  
and
- (b) the notice must also:
- (i) state that the agreement has not come into operation because it does not pass the no-disadvantage test; and
- (ii) contain advice as to how the agreement could be varied to pass the no-disadvantage test.
- (3) If subsection 346F(3) requires the Workplace Authority Director to consider, and make a separate decision in respect of, both a workplace agreement and the workplace agreement as varied, the notice under this section must deal with both agreements.
- (4) A notice under this section:
- (a) must be in writing; and
- (b) must specify the date of issue of the notice.

Note: Section 346ZH requires the employer to inform the employees concerned of the contents of the notice in relation to a collective agreement.

### **346N Agreement does not pass no-disadvantage test**

- (1) If the Workplace Authority Director decides under section 346D that the agreement does not pass the no-disadvantage test, the
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employer who is bound by the agreement may lodge a variation of the agreement with the Workplace Authority Director.

- (2) For the purposes of subsection (1), Division 8 does not apply to the variation of an agreement, except for sections 367, 368, 368A, 372, 373 and 374, paragraph 377(1)(b) and section 380A.

### **346P Lodging of variation documents with the Workplace Authority Director**

- (1) An employer lodges a variation with the Workplace Authority Director under section 346N if:
- (a) the employer lodges a declaration under subsection (2); and
  - (b) a copy of the variation is annexed to the declaration.
- (2) An employer lodges a declaration with the Workplace Authority Director if:
- (a) the employer gives it to the Workplace Authority Director; and
  - (b) it meets the form requirements mentioned in subsection (3).

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (3) The Workplace Authority Director may, by notice published in the *Gazette*, set out requirements for the form of a declaration for the purposes of paragraph (2)(b).
- (4) A declaration is given to the Workplace Authority Director for the purposes of subsection (2) only if the declaration is actually received by the Workplace Authority Director.

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) and section 160 of the *Evidence Act 1995* do not apply to lodgment of a declaration.

### **346Q Workplace Authority Director must test varied agreement**

- (1) If an employer lodges a variation of a workplace agreement under section 346N, the Workplace Authority Director must decide under this section whether the workplace agreement as varied passes the no-disadvantage test set out in section 346D.

- (2) If the Workplace Authority Director decides under subsection (1) that a workplace agreement as varied passes the no-disadvantage test, or that it does not pass the no-disadvantage test, the Workplace Authority Director must notify the following of the decision:
- (a) the employer in relation to the workplace agreement;
  - (b) if the workplace agreement is an ITEA—the employee whose employment is subject to the ITEA;
  - (c) 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)—the organisation or organisations bound by the agreement.
- (3) The notice must be in writing and must specify:
- (a) the date of issue of the notice; and
  - (b) if the workplace agreement as varied passes the no-disadvantage test—that the agreement as varied will come into operation on the seventh day after the date of issue specified in the notice; and
  - (c) if the workplace agreement as varied does not pass the no-disadvantage test—that the agreement has not come into operation because it does not pass the no-disadvantage test.

Note 1: Section 346ZH requires the employer to inform the employees concerned of the contents of the notice under this section in relation to a collective agreement.

Note 2: See subsection 346J(1) for how the Workplace Authority Director makes decisions under this section.

### **346R Operation of section 346N variations**

If:

- (a) an employer lodges a variation of a workplace agreement under section 346N; and
- (b) the Workplace Authority Director decides under subsection 346Q(1) that the agreement as varied passes the no-disadvantage test set out in section 346D;

the agreement as varied comes into operation on the seventh day after the date of issue specified in the notice under section 346Q that advises the agreement as varied passes the no-disadvantage test.

## **Subdivision D—Agreements that operate from lodgment**

### **346S Application of this Subdivision**

This Subdivision applies to a workplace agreement that is:

- (a) an ITEA to which subparagraph 326(2)(b)(i) or (ia) applies; or
- (b) a union greenfields agreement; or
- (c) an employer greenfields agreement; or
- (d) a multiple-business agreement that would be a union greenfields agreement or an employer greenfields agreement but for subsection 331(1).

Note: Subdivision C, and not this Subdivision, will apply to a variation of any of these workplace agreements under Division 8.

### **346T Applying the no-disadvantage test**

If a workplace agreement to which this Subdivision applies is lodged with the Workplace Authority Director under Division 5, the Workplace Authority Director must decide under section 346D whether the agreement passes the no-disadvantage test.

### **346U Workplace Authority Director must notify of decision**

- (1) If the Workplace Authority Director decides under section 346D that the agreement passes the no-disadvantage test the Workplace Authority Director must notify the following of the decision:
  - (a) the employer in relation to the agreement;
  - (b) if the agreement is an ITEA—the employee whose employment is subject to the ITEA;
  - (c) if the agreement is a union greenfields agreement or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement.
- (2) If the Workplace Authority Director decides under section 346D that the agreement does not pass the no-disadvantage test, then:
  - (a) the Workplace Authority Director must notify the following of the decision:
    - (i) the employer in relation to the agreement;

- (ii) if the agreement is an ITEA—the employee whose employment is subject to the ITEA;
  - (iii) if the agreement is a union greenfields agreement or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement; and
- (b) the notice must also contain advice as to how the agreement could be varied to pass the no-disadvantage test.
- (3) If subsection 346F(3) requires the Workplace Authority Director to consider, and make a separate decision in respect of, both a workplace agreement and the workplace agreement as varied, the notice under this section must deal with both agreements.
- (4) A notice under this section:
- (a) must be in writing; and
  - (b) must specify the date of issue of the notice.

Note: Section 346ZH requires the employer to inform the employees concerned of the contents of the notice in relation to a collective agreement.

**346V Agreement does not pass no-disadvantage test—agreement not in operation**

If:

- (a) the Workplace Authority Director decides under section 346D that the agreement does not pass the no-disadvantage test; and
- (b) the agreement is not in operation in relation to any employee immediately before the date of the decision;

the employee or employees whose employment was at any time subject to the agreement are, on and from the seventh day after the date of issue specified in the notice under section 346U in relation to the agreement, entitled to any compensation payable to the employee or employees under section 346ZG.

**346W Agreement does not pass no-disadvantage test—agreement in operation**

- (1) This section applies if:
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- (a) the Workplace Authority Director decides under section 346D that the agreement does not pass the no-disadvantage test; and
  - (b) the agreement is in operation immediately before the date of the decision.
- (2) The employer who is bound by the agreement may:
- (a) lodge a variation of the agreement with the Workplace Authority Director; or
  - (b) in the case of an employer greenfields agreement—lodge a variation of the agreement by giving to the Workplace Authority Director a written undertaking in relation to the agreement.
- (3) If the employer does not take the action referred to in subsection (2) within the relevant period in relation to the agreement, then at the end of that period:
- (a) the workplace agreement ceases to operate; and
  - (b) the employee or employees whose employment was at any time subject to the agreement are, after the end of the relevant period in relation to the agreement, entitled to any compensation payable to the employee or employees under section 346ZG.
- (4) Despite subsection (3), if:
- (a) because of subsection 346F(3), the Workplace Authority Director considered, and made a separate decision in respect of, both the workplace agreement and the workplace agreement as varied; and
  - (b) the agreement did not pass the no-disadvantage test, but the agreement as varied passed the no-disadvantage test; the agreement as varied continues in operation, and the employee or employees whose employment was at any time subject to the agreement, whether before or after the variation was lodged, are, after the end of the relevant period in relation to the agreement, entitled to any compensation payable to the employee or employees under section 346ZG.
- (5) For the purposes of paragraph (2)(a), Division 8 does not apply to the variation of an agreement, except for sections 367, 368, 368A, 372, 373 and 374, paragraph 377(1)(b) and section 380A.

- (6) For the purposes of paragraph 2(b), Division 8 does not apply to an undertaking given to the Workplace Authority Director in relation to an employer greenfields agreement.
- (7) In this section:
- relevant period*, in relation to a workplace agreement, means:
- (a) the period of 30 days beginning on the seventh day after the date of issue specified in the notice under section 346U in relation to the workplace agreement; or
  - (b) if a longer period is prescribed by the regulations for the purposes of this paragraph—that period; or
  - (c) if the period referred to in paragraph (a) or (b) is extended under subsection (8) in relation to the workplace agreement—the period as extended.
- (8) The Workplace Authority Director may extend the period referred to in paragraph (7)(a) or (b), as the case requires, in relation to a particular workplace agreement in circumstances prescribed by the regulations.

### **346X Lodging of variation documents with the Workplace Authority Director**

- (1) An employer lodges a variation with, or gives an undertaking to, the Workplace Authority Director under section 346W if:
- (a) the employer lodges a declaration under subsection (2); and
  - (b) a copy of the variation or undertaking is annexed to the declaration.
- (2) An employer lodges a declaration with the Workplace Authority Director if:
- (a) the employer gives it to the Workplace Authority Director; and
  - (b) it meets the form requirements mentioned in subsection (3).

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (3) The Workplace Authority Director may, by notice published in the *Gazette*, set out requirements for the form of a declaration for the purposes of paragraph (2)(b). The requirements may be different for variations and undertakings.

- (4) A declaration is given to the Workplace Authority Director for the purposes of subsection (2) only if the declaration is actually received by the Workplace Authority Director.

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) and section 160 of the *Evidence Act 1995* do not apply to lodgment of a declaration.

### **346Y Operation of section 346W variations**

- (1) A variation of an agreement under paragraph 346W(2)(a) comes into operation when the variation is lodged with the Workplace Authority Director under that subsection in accordance with section 346X.
- (2) A variation of an employer greenfields agreement by way of an undertaking under paragraph 346W(2)(b) comes into operation when the undertaking is given to the Workplace Authority Director under that paragraph in accordance with section 346X.
- (3) For the purposes of this Act, an undertaking given by an employer to the Workplace Authority Director under paragraph 346W(2)(b) in relation to an employer greenfields agreement is taken to be a variation of the agreement lodged by the employer under section 346W.

### **346Z Workplace Authority Director must test varied agreement**

- (1) If an employer lodges a variation of a workplace agreement under section 346W, the Workplace Authority Director must decide under this section whether the workplace agreement as varied passes the no-disadvantage test set out in section 346D.

Note: See subsection 346J(1) for how the Workplace Authority Director makes decisions under this section.

- (2) If the Workplace Authority Director decides under subsection (1) that a workplace agreement as varied passes the no-disadvantage test, or that it does not pass the no-disadvantage test, the Workplace Authority Director must notify the following of the decision:
- (a) the employer in relation to the workplace agreement;
  - (b) if the workplace agreement is an ITEA—the employee whose employment is subject to the ITEA;

- (c) if the agreement is a union greenfields agreement, or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement.
- (3) The notice must be in writing and must specify:
- (a) the date of issue of the notice; and
  - (b) if the workplace agreement as varied passes the no-disadvantage test:
    - (i) that the workplace agreement continues in operation; and
    - (ii) that the workplace agreement was varied by way of a variation or a written undertaking, as the case may be; and
    - (iii) that the employee or employees whose employment is, or was at any time, subject to the workplace agreement are, on and from the seventh day after the date of issue specified in the notice, entitled to any compensation payable to the employee or employees under section 346ZG; and
  - (c) if the workplace agreement as varied does not pass the no-disadvantage test:
    - (i) that, if the workplace agreement was in operation immediately before the seventh day after the date of issue specified in the notice—the agreement ceases to operate on that day; and
    - (ii) that the employee or employees whose employment was at any time subject to the workplace agreement are, on and from that day, entitled to any compensation payable to the employee or employees under section 346ZG.

Note: Section 346ZH requires the employer to inform the employees concerned of the contents of the notice under this section in relation to a collective agreement.

### **346ZA Effect of decision on no-disadvantage test**

- (1) If the Workplace Authority Director decides under subsection 346Z(1) that a workplace agreement as varied passes, or does not pass, the no-disadvantage test:
- (a) if the workplace agreement passes the no-disadvantage test—it continues in operation; and
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- (b) if the workplace agreement does not pass the no-disadvantage test—it ceases to operate on and from the seventh day after the date of issue specified in the notice under section 346Z in respect of the workplace agreement; and
- (c) the employee or employees whose employment is, or was at any time, subject to the agreement are, on and from that day, entitled to any compensation payable to the employee or employees under section 346ZG.

Note: Even though the workplace agreement has been varied so that it passes the no-disadvantage test, compensation may be payable in respect of the period when the agreement did not pass the no-disadvantage test.

- (2) Paragraphs (1)(a) and (b) do not apply if the workplace agreement is not in operation in relation to any employee immediately before the date of the decision.

**346ZB Employment arrangements that apply if a workplace agreement ceases to operate because it does not pass no-disadvantage test**

- (1) This section applies if, on a particular day (the *cessation day*), a workplace agreement (the *original agreement*) ceases to operate under section 346W or 346ZA because the original agreement does not pass the no-disadvantage test.
- (2) The employer and the employee or employees who were bound by the original agreement immediately before the cessation day are taken, on and from the cessation day, to be bound by:
  - (a) the instrument or instruments that, but for the original agreement having come into operation, would have bound the employer and the employee or employees on and from the cessation day; or
  - (b) if there is no instrument of a kind referred to in paragraph (a) in relation to the employer and one or more of the employees—the designated award in relation to that employee or those employees.

Note 1: A workplace agreement binds all persons whose employment is, at any time when the agreement is in operation, subject to the agreement (see paragraph 351(b)). A collective agreement may therefore bind an employer in relation to existing and future employees.

Note 2: See section 601D for the employment arrangements that would apply in a transmission of business context.

- (3) If the original agreement is a workplace agreement as varied under Division 8, the workplace agreement as in force before the variation was lodged is, despite section 346ZE, capable of being an instrument described in paragraph (2)(a).
- (4) An instrument that has ceased to operate in relation to an employee or employees is capable of being an instrument described in paragraph (2)(a) only if the reason it ceased to operate was because the original agreement came into operation in relation to the employee or employees.
- (5) In this section:

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

- (a) a workplace agreement;
- (b) an award;
- (c) a workplace determination;
- (d) an employment agreement within the meaning of section 887;
- (e) a pre-reform certified agreement (within the meaning of Schedule 7);
- (f) a common rule continued in operation under Schedule 6;
- (g) a transitional Victorian reference award (within the meaning of Part 7 of Schedule 6);
- (h) a transitional award (within the meaning of Schedule 6) other than a Victorian reference award (within the meaning of that Schedule) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria;
- (i) a section 170MX award (within the meaning of Schedule 7);
- (j) an old IR agreement (within the meaning of Schedule 7);
- (k) a preserved State agreement (within the meaning of Schedule 8);
- (l) a notional agreement preserving State awards (within the meaning of Schedule 8).

### **346ZC Effect of section 346ZB in relation to instruments**

If, because of the operation of section 346ZB, an employer and an employee or employees, as the case requires, are taken to be bound by an instrument, the instrument is taken, despite any other provision of this Act, to operate again, or to have effect again, as the case requires, in relation to the employer and the employee or employees, on and from the cessation day.

Note 1: The following provisions operate in a similar way for other instruments:

- (a) subclause 3(5A) of Schedule 7 (pre-reform certified agreements);
- (b) subclause 25(4) of Schedule 7 (section 170MX awards);
- (c) subclause 28(5) of Schedule 7 (old IR agreements).

Note 2: An award has no effect in relation to an employee while a workplace agreement operates in relation to the employee (see section 349), but once the workplace agreement has ceased to operate, the award is capable of operating again.

### **346ZD Redundancy provisions and section 394 undertakings**

- (1) This section applies if, on a particular day (the *cessation day*), a workplace agreement (the *original agreement*) ceases to operate under section 346W or 346ZA because the original agreement does not pass the no-disadvantage test.
- (2) If, immediately before the day on which the original agreement was lodged, the employer was bound, under a designated provision relating to the agreement, by a redundancy provision in relation to an employee whose employment was subject to the original agreement, the employer is taken:
  - (a) to be bound, under the designated provision, by the redundancy provision in relation to the employee on and from the cessation day; and
  - (b) to continue to be so bound until the earliest of the following:
    - (i) the end of the period of 24 months beginning on the first day on which the employer became bound, under the designated provision, by the redundancy provision;
    - (ii) the time when the employee ceases to be employed by the employer;
    - (iii) the time when another workplace agreement comes into operation in relation to the employee and the employer.

- (3) If, immediately before the day on which the original agreement was lodged, the employer was bound by an undertaking under subsection 394(1) in relation to an employee whose employment was subject to the original agreement, the employer is taken:
- (a) to be bound under section 394 by the undertaking in relation to the employee on and from the cessation day; and
  - (b) to continue to be so bound until the earlier of the following:
    - (i) the time when the employee ceases to be employed by the employer;
    - (ii) the time when another workplace agreement comes into operation in relation to the employee and the employer.
- (4) In this section:

***designated provision***, in relation to a workplace agreement, means any of the following:

- (a) section 399A;
- (b) clause 6A of Schedule 7;
- (c) clause 20A of Schedule 7;
- (d) clause 21A of Schedule 8;
- (e) clause 21D of Schedule 8;

that, after the agreement is terminated, continues the effect of a redundancy provision that was included in the agreement.

***redundancy provision*** means a redundancy provision within the meaning of any of the following:

- (a) section 399A;
- (b) clause 6A of Schedule 7;
- (c) clause 20A of Schedule 7;
- (d) clause 21A of Schedule 8;
- (e) clause 21D of Schedule 8.

### **346ZE Operation of workplace agreements**

A workplace agreement that has ceased to operate because it does not pass the no-disadvantage test can never operate again.

Note: This rule is subject to subsection 346ZB(3), which deals with the situation where a workplace agreement as varied under Division 8 does not pass the no-disadvantage test.

**346ZF Regulations may make provision for operation of provisions of revived instruments**

The regulations may make provision for and in relation to the operation of instruments that are taken to bind an employer and employees because of the operation of section 346ZB.

**Subdivision E—Entitlement to compensation**

**346ZG Employee is entitled to compensation in respect of no-disadvantage test period**

- (1) This section applies to an employee who is entitled to compensation under this section on and from a particular day because a workplace agreement to which Subdivision D applies that was binding on the employee's employer did not pass the no-disadvantage test.

Note 1: Sections 346V, 346W and 346ZA specify the day on which an employee's entitlement to compensation takes effect.

Note 2: An employee may be able to recover compensation even where a workplace agreement that initially does not pass the no-disadvantage test is varied so that it subsequently passes the no-disadvantage test—see section 346ZA.

- (2) If the amount worked out under paragraph (a) is less than the amount worked out under paragraph (b), the employer must pay to the employee the amount of the shortfall:
- (a) the total value of the entitlements to which the employee was entitled, under the workplace agreement, and under any other applicable law, agreement or arrangement that operated in conjunction with the workplace agreement, in respect of one or more periods of employment during the no-disadvantage test period for the workplace agreement;
  - (b) the total value of the entitlements to which the employee would have been entitled, in respect of one or more periods of employment of the employee during the no-disadvantage test period, worked out in accordance with the assumptions set out in subsection (3).
- (3) For the purposes of working out the total value of the entitlements to which the employee would have been entitled, in respect of one or more periods of employment of the employee during the

no-disadvantage test period, it is to be assumed that, during that period or those periods of employment:

- (a) the employee's employment was subject to:
    - (i) the instrument or instruments that, but for the workplace agreement, would have bound the employer in relation to that period or those periods of employment of the employee; or
    - (ii) if there is no such instrument—the designated award in relation to the employee; and
  - (b) the employer was bound, under a designated provision relating to the agreement, by a redundancy provision that, but for the workplace agreement having come into operation, would have bound the employer in relation to the employee; and
  - (c) the employer was bound under section 394 by any undertaking that, but for the workplace agreement having come into operation, would have bound the employer in relation to the employee; and
  - (d) the employee's employment was subject to any other applicable law, agreement or arrangement that would have operated in conjunction with the instrument or instruments referred to in subparagraph (a)(i), or the designated award referred to in subparagraph (a)(ii), as the case requires.
- (4) An employer breaches this section if the employer does not pay to the employee the amount of the shortfall calculated under subsection (2) within whichever of the following periods is applicable:
- (a) if the employee is entitled to compensation because of the operation of section 346V in respect of the workplace agreement—the period of 14 days beginning on the seventh day after the date of issue specified in the notice under section 346U in relation to the workplace agreement;
  - (b) if the employee is entitled to compensation because of the operation of section 346W in respect of the workplace agreement—the period of 14 days beginning at the end of the relevant period (within the meaning of section 346W) in relation to the workplace agreement;
  - (c) if the employee is entitled to compensation because of the operation of section 346ZA in respect of the workplace agreement—the period of 14 days beginning on the seventh
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day after the date of issue specified in the notice under section 346Z in relation to the workplace agreement.

Note: Compliance with this section is dealt with in Part 14—this section is an applicable provision within the meaning of section 717.

(5) In this section:

*designated provision* has the same meaning as in section 346ZD.

*instrument* has the same meaning as in section 346ZB.

*no-disadvantage test period*, in relation to a workplace agreement, means:

(a) the period:

- (i) beginning on the day on which the workplace agreement was lodged; and
- (ii) ending on the day on which the workplace agreement ceased to operate (whether because of the operation of this Division or otherwise); or

(b) if the workplace agreement is continued in operation because of the operation of subsection 346W(4) or section 346ZA—the period:

- (i) beginning on the day on which the workplace agreement was lodged; and
- (ii) ending on the day on which the variation of the workplace agreement was lodged under section 346W or, if the workplace agreement had been varied before that day in such a way as to pass the no-disadvantage test, on that earlier day.

*redundancy provision* has the same meaning as in section 346ZD.

## **Subdivision F—Civil remedy provisions**

### **346ZH Employer must notify employees**

- (1) An employer that has received a notice under section 346M, 346Q, 346U or 346Z in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment is subject to the agreement when the employer receives the notice are given a copy of the notice as soon as practicable.
  - (2) Subsection (1) is a civil remedy provision.
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Note: See Division 11 for provisions on enforcement.

**346ZJ Employer not to dismiss etc. employee because agreement does not pass the no-disadvantage test**

- (1) An employer must not:
- (a) dismiss an employee; or
  - (b) threaten to dismiss an employee;
- if the sole or dominant reason for the employer dismissing, or threatening to dismiss, the employee is that a workplace agreement does not, or may not, pass the no-disadvantage test.

- (2) Subsection (1) is a civil remedy provision.

Note 1: An employee may still be entitled to compensation under section 346ZG if his or her workplace agreement does not pass the no-disadvantage test.

Note 2: A contravention of subsection (1) is enforceable by a workplace inspector—see Division 11 for provisions on enforcement.

- (3) In proceedings alleging a contravention of subsection (1) it is presumed that the employer's sole or dominant reason was that the workplace agreement did not, or may not, pass the no-disadvantage test, unless the employer proves otherwise.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.

**346ZK Other remedies for the contravention of section 346ZJ**

- (1) The Court, on application by an eligible person, may make one or more of the following orders in relation to an employer who has contravened subsection 346ZJ(1):
- (a) an order requiring the employer to pay a specified amount to the employee as compensation for damage suffered by the employee as a result of the contravention;
  - (b) any other order that the Court considers appropriate.

Note: The employee may still be entitled to compensation under section 346ZG if his or her workplace agreement does not pass the no-disadvantage test.

- (2) The orders that may be made under paragraph (1)(b) include:
- (a) injunctions; and

(b) any other orders that the Court considers necessary to stop the conduct or remedy its effects.

(3) In this section:

*eligible person* means any of the following:

- (a) a workplace inspector;
  - (b) an employee affected by the contravention;
  - (c) an organisation of employees that:
    - (i) has been requested in writing, by the employee concerned, to apply on the employee's behalf; and
    - (ii) is entitled, under its eligibility rules, to represent the industrial interests of the employee in relation to work carried on by the employee for the employer;
  - (d) a person prescribed by the regulations for the purposes of this paragraph.
- (4) A regulation prescribing persons for the purposes of paragraph (d) of the definition of *eligible person* in subsection (3) may provide that a person is prescribed only in relation to circumstances specified in the regulation.

### **3 Subsection 347(1)**

Repeal the subsection, substitute:

- (1) A workplace agreement comes into operation at whichever of the following times is applicable:
  - (a) for an ITEA to which subparagraph 326(2)(b)(i) or (ia) applies, a union greenfields agreement, an employer greenfields agreement or a multiple-business agreement that would be such an agreement but for subsection 331(1)—the day the agreement is lodged;
  - (b) for an ITEA to which subparagraph 326(2)(b)(ii) applies, an employee collective agreement, a union collective agreement or a multiple-business agreement that would be such an agreement but for subsection 331(1)—the seventh day after the date of issue specified in the notice under subsection 346M(1) or 346Q(2) in relation to the agreement.

### **4 After section 347**

Insert:

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**347A Whether certain non-compliance affects the operation of a workplace agreement**

- (1) Despite section 347, a workplace agreement does not come into operation unless the requirements in Division 2 and section 340 have been met in relation to the agreement.
- (2) However, failure to comply with any or all of the following in relation to a workplace agreement:
  - (a) the requirements in Division 3;
  - (b) the requirements in Division 4 (apart from section 340);
  - (c) the requirements in section 342;does not prevent the agreement coming into operation.

Note: Under Division 11, penalties apply to a person who contravenes a civil remedy provision in Division 3 or 4 or section 342.

**4A Section 349**

Before “An award”, insert “(1)”.

**4B At the end of section 349**

Add:

- (2) Despite subsection (1), if:
  - (a) a person’s employment is subject to a workplace agreement; and
  - (b) but for the workplace agreement, an award would have effect in relation to the person’s employment;the terms of the award have effect to the extent that they are about outworker conditions, despite any terms of the workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

- (3) In this section:

***outworker*** means an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer.

***outworker conditions*** means conditions (other than pay) for outworkers, but only to the extent necessary to ensure that their overall conditions of employment are fair and reasonable in

comparison with the conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises.

## **5 Before paragraph 352(1)(a)**

Insert:

- (aa) in the case of an ITEA:
  - (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than 31 December 2009—that specified date; or
  - (ii) otherwise—31 December 2009; or
- (ab) in the case of an employee collective agreement or a union collective agreement that is taken to pass the no-disadvantage test under subsection 346D(3):
  - (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the second anniversary of the seventh day after the date of issue specified in the notice under subsection 346M(1)—that specified date; or
  - (ii) otherwise—the second anniversary of the seventh day after the date of issue specified in the notice under subsection 346M(1); or

## **6 At the end of subsection 352(1)**

Add:

Note: Subsection 346D(3) is about workplace agreements that are taken to pass the no-disadvantage test because of exceptional circumstances.

## **7 Before paragraph 352(2)(a)**

Insert:

- (aa) in the case of an ITEA—the earlier of the following dates:
  - (i) the date specified in the agreement as varied as its nominal expiry date;
  - (ii) 31 December 2009; or
- (ab) in the case of an employee collective agreement or a union collective agreement that is taken to pass the no-disadvantage test under subsection 346D(3)—the earlier of the following dates:

- (i) the date specified in the agreement as varied as its nominal expiry date;
- (ii) the second anniversary of the seventh day after the date of issue specified in the notice under subsection 346M(1); or

## **8 Sections 354 and 355**

Repeal the sections.

## **9 Subsections 380(1) and (2)**

Repeal the subsections, substitute:

- (1) A variation to a workplace agreement under this Division comes into operation on the seventh day after the date of issue specified in the notice under subsection 346M(1) in relation to the agreement as varied.

## **10 At the end of Subdivision D of Division 8**

Add:

### **380A Whether certain non-compliance affects the operation of a variation**

- (1) A variation to a workplace agreement does not come into operation unless the requirements in Subdivision A and section 373 have been met in relation to the variation.
- (2) However, failure to comply with any or all of the following in relation to a variation to a workplace agreement:
  - (a) the requirements in Division 3;
  - (b) the requirements in Subdivision B of this Division (apart from section 373);
  - (c) the requirements in section 375;does not prevent the variation coming into operation.

Note: Under Division 11, penalties apply to a person who contravenes a civil remedy provision in Division 3, Subdivision B of this Division or section 375.

## **11 Section 393**

Repeal the section, substitute:

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### **393 Unilateral termination of ITEA with 90 days written notice**

- (1) This section applies whether or not an ITEA provides for a manner of terminating the agreement after its nominal expiry date.
- (2) Any of the following persons may terminate the ITEA by lodging a declaration in accordance with section 395:
  - (a) the employer in relation to the ITEA;
  - (b) the employee whose employment is subject to the ITEA;
  - (c) a bargaining agent at the request of the employer or the employee.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (3) However, this may be done only if the nominal expiry date of the ITEA has passed.
- (4) At least 90 days before the lodgment, and after the nominal expiry date of the ITEA has passed, the person intending to lodge the declaration must take reasonable steps to ensure that:
  - (a) written notice of the termination is given to:
    - (i) if the employer, or a bargaining agent at the employer's request, is intending to lodge the declaration—the employee; or
    - (ii) if the employee, or a bargaining agent at the employee's request, is intending to lodge the declaration—the employer; and
  - (b) if the person giving the notice is the employer in relation to the ITEA, or is a bargaining agent doing so at the request of the employer—a written copy of the undertakings (if any) made by the employer under section 394 is given to the employee.
- (5) The notice must:
  - (a) state that the ITEA is to be terminated; and
  - (b) specify the day on which the person proposes to lodge the notice; and
  - (c) be in the form (if any) that the Workplace Authority Director requires by notice published in the *Gazette*; and
  - (d) contain the information (if any) that the Workplace Authority Director requires by notice published in the *Gazette*; and

- (e) if the person giving the notice is the employer in relation to the ITEA, or is a bargaining agent doing so at the request of the employer—state whether the parties to the ITEA will, under section 399A, continue to be bound by one or more redundancy provisions included in the ITEA; and
  - (f) if the parties to the ITEA will continue to be so bound—include an annexed copy of the provision or the provisions.
- (6) A person contravenes this subsection if:
- (a) the person lodges a declaration to terminate an ITEA under subsection (2); and
  - (b) the person failed to comply with subsection (4) or (5).
- Note: See Division 11 for provisions on enforcement.
- (7) Subsection (6) is a civil remedy provision.

## **12 After Subdivision D of Division 9 of Part 8**

Insert:

### **Subdivision DA—Termination by the Commission**

#### **397A Termination by the Commission**

- (1) The Commission may, by order, terminate a collective agreement that has passed its nominal expiry date on application under subsection (2) if it is satisfied that it would not be contrary to the public interest to terminate the agreement.
- (2) Any of the following persons may apply for an order under subsection (1):
  - (a) the employer;
  - (b) a majority of the employees whose employment is subject to the agreement;
  - (c) an organisation of employees that is bound by the agreement.
- (3) In deciding whether it would be contrary to the public interest to terminate the agreement, the Commission must have regard to all circumstances of the case, including:
  - (a) the views of each party bound by the agreement (including the employees) about whether it should be terminated; and

- (b) the circumstances of each such party, including the likely effect on each such party of the termination of the agreement.

### **13 Section 398**

Repeal the section, substitute:

#### **398 Whether a termination takes effect if certain non-compliance occurs**

- (1) Failure to comply with the requirements in Division 3 in relation to a termination does not prevent the termination taking effect.
- (2) Failure to comply with any or all of the following:
  - (a) the requirements in Subdivision B (apart from sections 382 and 386);
  - (b) the requirements in section 388;does not prevent a termination of a kind mentioned in paragraph 381(1)(a) taking effect.
- (3) However, a termination of that kind does not take effect unless the requirements in sections 382 and 386 have been met in relation to the termination.
- (4) Failure to comply with any or all of the requirements in subsections 392(4) and (5) and 393(4) and (5) does not prevent a termination of a kind mentioned in paragraph 381(1)(b) taking effect.

### **14 Section 399**

Repeal the section.

## Part 2—Transitional matters

### *Workplace Relations Act 1996*

#### 15 After Schedule 7

Insert:

## Schedule 7A—Transitional arrangements for existing AWAs

Note: See section 8

### 1 Definitions

- (1) In this Schedule:

*AWA* has the meaning that was given by sections 4 and 326 of the pre-transition Act, but does not include:

- (a) an agreement made after the commencement of this Schedule; or
- (b) a pre-reform AWA within the meaning of Schedule 7.

*pre-transition Act* means this Act as in force immediately before the commencement of this Schedule.

- (2) For the purposes of this Schedule, an agreement ceases to be an AWA unless:
- (a) it was lodged with the Workplace Authority Director before the commencement of this Schedule; or
  - (b) it is lodged, in accordance with section 344 of the pre-transition Act, within 14 days after that commencement.
- (3) Paragraph 333(a) and subsection 340(1) of the pre-transition Act apply to working out, for the purposes of the definition of *AWA* in subclause (1), when an agreement was made.

## **2 Continuing operation of AWAs**

- (1) Subject to this Schedule, the pre-transition Act continues to apply in relation to an AWA despite the repeals and amendments made by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.
- (2) However, subclause (1) does not apply in relation to the following provisions of the pre-transition Act:
  - (a) the definition of **Australian workplace agreement**, or the definition of **AWA**, in subsection 4(1);
  - (c) section 467;
  - (d) section 399;
  - (e) Part 11;
  - (f) Schedule 6;
  - (g) Schedule 7;
  - (h) Schedule 8;
  - (i) Schedule 9;
  - (j) any other provision to the extent that it relates to the operation of the provisions mentioned in the preceding paragraphs.

Note: The application of Schedules 6, 7, 8 and 9 to AWAs is dealt with in those Schedules.

- (3) Regulations made under the pre-transition Act continue to apply in relation to an AWA, except to the extent that they relate to the provisions mentioned in subclause (2).
- (4) To avoid doubt, nothing in this Schedule permits an agreement made after the commencement of this Schedule to be treated as an AWA.

## **3 Bargaining agents**

- (1) Despite the definition of **bargaining agent** in subsection 4(1) of the pre-transition Act, an appointment of a bargaining agent ceases to have effect 14 days after the commencement of this Schedule if the appointment relates to:
  - (a) making an AWA; or

- (b) varying an AWA (other than varying an AWA in circumstances referred to in paragraph 367(2)(aa), (b), (c) or (d) of the pre-transition Act).
- (1A) However, paragraph 405(1)(e) of the pre-transition Act continues to apply in relation to a person whose appointment has ceased to have effect under subclause (1), as if the person continues to be a bargaining agent.
- (2) Despite subsection 334(1) of the pre-transition Act, an appointment of a bargaining agent made later than 14 days after the commencement of this Schedule is of no effect if the appointment relates to:
- (a) making an AWA; or
  - (b) varying an AWA (other than varying an AWA in circumstances referred to in paragraph 367(2)(aa), (b), (c) or (d) of the pre-transition Act).

#### **4 Effect of late lodgment of AWAs**

Despite subsection 347(2) of the pre-transition Act, an AWA comes into operation only if:

- (a) it was lodged with the Workplace Authority Director before the commencement of this Schedule; or
- (b) it is lodged, in accordance with section 344 of the pre-transition Act, within 14 days after the commencement of this Schedule.

#### **5 Restriction on varying AWAs**

- (1) Despite Division 8 of Part 8 of the pre-transition Act, a variation of an AWA cannot be made after the commencement of this Schedule.

Note: Under section 368 of the pre-transition Act, a variation of an AWA was made when it was approved in accordance with section 373 of the pre-transition Act.

- (2) Despite subsection 380(2) of the pre-transition Act, a variation of an AWA comes into operation only if:
- (a) it was lodged with the Workplace Authority Director before the commencement of this Schedule; or

- (b) it is lodged, in accordance with section 377 of the pre-transition Act, within 14 days after the commencement of this Schedule.
- (3) However, this clause does not prevent:
  - (a) variation of an AWA in circumstances referred to in paragraph 367(2)(aa), (b), (c) or (d) of the pre-transition Act; or
  - (b) the application of subsection 380(2) of the pre-transition Act in relation to a variation of an AWA in any of those circumstances.

## **6 Replacement of AWAs**

- (1) An AWA ceases to be in operation if it is replaced by an ITEA.
- (2) If an AWA has ceased operating because of subclause (1), it can never operate again.
- (3) Subclause (1) does not limit the operation of paragraph 347(4)(a), (ba), (bb) or (c) of the pre-transition Act for the purposes of this Schedule.
- (4) To avoid doubt, despite paragraph 347(4)(b) of the pre-transition Act, an AWA cannot be replaced by another AWA made after the commencement of this Schedule.

## **7 Workplace Authority Director to notify of ineffective AWAs and variations**

- (1) If:
  - (a) a purported AWA made after the commencement of this Schedule is lodged with the Workplace Authority Director; or
  - (b) an AWA is lodged with the Workplace Authority Director after the end of a period of 14 days after the commencement of this Schedule;the Workplace Authority Director must notify the parties to the agreement that lodgment of the agreement has not been accepted and that the purported AWA or AWA is not in operation.
- (2) If:

- (a) a purported variation made to an AWA after the commencement of this Schedule is lodged with the Workplace Authority Director; or
  - (b) a variation made to an AWA is lodged with the Workplace Authority Director after the end of a period of 14 days after the commencement of this Schedule;
- the Workplace Authority Director must notify the parties to the agreement that lodgment of the variation has not been accepted and that the purported variation or variation is not in operation.
- (3) However, subclause (2) does not apply to a variation of an AWA in circumstances referred to in paragraph 367(2)(aa), (b), (c) or (d) of the pre-transition Act.

### **8 Effect of AWAs on making and approving collective agreements etc.**

- (1) Despite clause 2 of this Schedule, the following provisions of this Act apply as if references in those provisions to an ITEA that has passed its nominal expiry date included references to an AWA that has passed its nominal expiry date:
  - (a) section 327;
  - (aa) paragraph 336(b);
  - (b) paragraph 340(2)(a);
  - (c) paragraph 367(1)(b);
  - (d) subparagraph 369(b)(ii);
  - (e) subparagraph 373(2)(a)(ii);
  - (f) subparagraph 467(1)(a)(iii);
  - (g) subparagraph 467(1)(b)(ii).
- (2) Despite clause 2 of this Schedule, subsection 467(2) of this Act applies as if the reference in that subsection to an ITEA whose nominal expiry date has not passed included a reference to an AWA whose nominal expiry date has not passed.

## **Schedule 7B—Transitional arrangements for existing collective agreements**

Note: See section 8

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## 1 Definitions

In this Schedule:

***fairness test*** means the test set out in section 346M of the pre-transition Act.

***pre-transition Act*** means this Act as in force immediately before the commencement of this Schedule.

***pre-transition collective agreement*** means a collective agreement made before the commencement of this Schedule that:

- (a) was lodged with the Workplace Authority Director before that commencement; or
- (b) is lodged, in accordance with section 344 of the pre-transition Act, within 14 days after that commencement;

but does not include a collective agreement made after that commencement.

## 2 Continuing operation of fairness test and protected award conditions to pre-transition collective agreements

- (1) Subject to this Schedule, the following provisions of the pre-transition Act continue to apply in relation to a pre-transition collective agreement, despite the repeals and amendments made by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*:
  - (a) paragraph 150B(1)(f);
  - (b) subsection 164A(7);
  - (c) Division 5A of Part 8;
  - (ca) subsections 347(1) and (2);
  - (d) paragraphs 347(4)(ba) and (bb);
  - (e) subsections 347(8A) and (9A);
  - (f) section 354;
  - (g) section 355;
  - (h) paragraph 367(2)(aa);
  - (i) paragraphs 407(2)(jb) to (jd);
  - (j) sections 416 to 418;

- (k) subsection 506(5);
  - (l) any other provision relating to the operation of the provisions mentioned in the preceding paragraphs.
- (2) Regulations made under the pre-transition Act, to the extent that they relate to the provisions mentioned in subclause (1), continue to apply in relation to a pre-transition collective agreement.
  - (3) To the extent that provisions of the pre-transition Act, and the regulations made under the pre-transition Act, continue to apply in relation to a pre-transition collective agreement, the corresponding provisions of this Act do not apply to the agreement.
  - (4) The provisions of this Act (other than the corresponding provisions referred to in subclause (3)) apply in relation to a pre-transition collective agreement as if references in those provisions to the no-disadvantage test were references to the fairness test.

### **3 Application of this Schedule to variations of pre-transition collective agreements**

Clause 2 of this Schedule does not apply in relation to a variation of a pre-transition collective agreement unless the variation:

- (a) was lodged with the Workplace Authority Director before the commencement of this Schedule; or
- (b) is made before that commencement and is lodged, in accordance with section 377 of the pre-transition Act, within 14 days after that commencement.

### **15A Effect of repeal of section 399**

- (1) To avoid doubt, if, immediately before the commencement of this item, an industrial instrument had no effect because of the operation of section 399 of the pre-transition Act, the repeal of that section by this Act:
  - (a) does not cause the instrument to have effect after that commencement; and
  - (b) does not cause any protected award condition to cease to have effect.
- (2) In this item:

***industrial instrument*** means an instrument mentioned in subsection 399(3) of the pre-transition Act, and includes any of the following (except to the extent that they contain protected award conditions):

- (a) a common rule within the meaning of clause 89 of Schedule 6;
- (b) a transitional Victorian reference award within the meaning of Part 7 of that Schedule;
- (c) a transitional award within the meaning of that Schedule, to the extent that subclause 102(1) of that Schedule applies to it.

***pre-transition Act*** means the *Workplace Relations Act 1996* as in force immediately before the commencement of this item.

***protected award condition*** has the meaning it had for the purposes of section 354 of the pre-transition Act.

### **Part 3—Other amendments of the Workplace Relations Act 1996**

#### **16 Subsection 4(1) (definition of *Australian workplace agreement* or *AWA*)**

Repeal the definition.

#### **17 Subsection 4(1) (definition of *AWA*)**

Repeal the definition.

#### **18 Subsection 4(1) (paragraph (a) of the definition of *bargaining agent*)**

Repeal the paragraph, substitute:

- (a) in relation to an ITEA—a person who has been duly appointed as a bargaining agent in relation to the ITEA in accordance with section 334; or

#### **19 Subsection 4(1)**

Insert:

*individual transitional employment agreement* or *ITEA* has the meaning given by section 326.

*ITEA*: see individual transitional employment agreement.

#### **20 Subsection 4(1) (definition of *workplace agreement*)**

Repeal the definition, substitute:

*workplace agreement* means:

- (a) an ITEA; or
- (b) a collective agreement;

and includes a document that the Court has ordered under section 412A is to have effect as a workplace agreement.

Note 1: Section 324 affects the meaning of *workplace agreement*.

Note 2: Under section 324A, some other documents are taken to be workplace agreements for certain limited purposes.

Note 3: An order by the Court under paragraph 412A(1)(a) enables a document to which section 324A applies to have effect as a workplace agreement.

## **21 Section 8**

Repeal the section, substitute:

### **8 Schedules 1, 6, 7, 7A, 7B, 8, and 9 have effect**

Schedules 1, 6, 7, 7A, 7B, 8 and 9 have effect.

Note 1: Schedule 1 is about registration and accountability of organisations.

Note 2: Schedule 6 is about transitional arrangements for parties bound by federal awards.

Note 3: Schedule 7 is about transitional arrangements for existing pre-reform certified agreements.

Note 4: Schedule 7A is about transitional arrangements for existing AWAs.

Note 5: Schedule 7B is about transitional arrangements for existing collective agreements.

Note 6: Schedule 8 is about transitional treatment of State employment agreements and State awards.

Note 7: Schedule 9 is about transitional instruments and transmission of business.

## **22 Paragraph 150B(1)(f)**

Omit “fairness test”, substitute “no-disadvantage test”.

## **23 Subsection 164A(7)**

Repeal the subsection, substitute:

(7) Despite subsections (1), (2) and (5), a workplace agreement official is not authorised by any of those subsections to disclose to the Minister information relating to a decision under Division 5A of Part 8 whether a particular workplace agreement passes the no-disadvantage test.

## **24 Paragraph 165(1)(c)**

Omit “AWA”, substitute “ITEA”.

Note 1: The heading to section 165 is altered by omitting “AWAs” and substituting “ITEAs”.

Note 2: The heading to section 166 is altered by omitting “AWAs” and substituting “workplace agreements”.

**25 Subsection 185(3) (cell at table item 1, column headed “In this situation ...”)**

Repeal the cell, substitute:

if:

- (a) subsection 182(1) applies to the employment of the employee;  
and
- (b) the employee’s employment has never been subject to a workplace agreement;

**26 Subsection 185(3) (cell at table item 2, column headed “In this situation ...”)**

Repeal the cell, substitute:

if:

- (a) subsection 182(1) applies to the employment of the employee;  
and
- (b) the employee’s employment has been, but is no longer, subject to a workplace agreement;

**27 After section 324**

Insert:

**324A Documents taken to be workplace agreements etc.**

If a document:

- (a) is represented (expressly or by implication) to be a workplace agreement, or a type of workplace agreement mentioned in section 326, 327, 328, 329, 330 or 331; and
- (b) could not come into operation under this Act as a workplace agreement, or as a workplace agreement of that type, even if it were to pass the no-disadvantage test;

the document is taken to be a workplace agreement, or a workplace agreement of that type, for the purposes of:

- (c) Divisions 3 and 4, Division 5 (other than section 342), Divisions 8, 9 and 10 and Division 11 (other than sections 409 to 412A); and

- (d) any other provision of this Act, to the extent that the provision relates to the operation of any of the provisions mentioned in paragraph (c).

Note: The Court can order under section 412A that a document is to have effect as a workplace agreement for the purposes of the entire Act.

## **28 Section 327**

After “will”, insert “, or would but for the operation of an ITEA that has passed its nominal expiry date,”.

## **29 Paragraph 333(a)**

Repeal the paragraph, substitute:

- (a) for an ITEA—the time when the ITEA is approved in accordance with section 340;

## **30 Subsection 334(1)**

Omit “AWA”, substitute “ITEA”.

Note: The heading to section 334 is altered by omitting “AWAs” and substituting “ITEAs”.

## **31 Paragraph 336(a)**

Repeal the paragraph, substitute:

- (a) in the case of an ITEA—the person whose employment will be subject to the ITEA; or

## **32 Paragraph 336(b)**

After “will”, insert “, or would but for the operation of an ITEA that has passed its nominal expiry date,”.

## **33 Paragraph 337(4)(b)**

Omit “AWA”, substitute “ITEA”.

## **34 Paragraph 337(4)(ca)**

Repeal the paragraph.

## **35 Subsection 337(6)**

Repeal the subsection, substitute:

- (6) For the purposes of this section, if the workplace agreement incorporates terms from another workplace agreement or an award,

the eligible employees have ready access to the workplace agreement only if they have ready access to that other workplace agreement or award in writing.

**36 Subsection 340(1)**

Omit “AWA” (wherever occurring), substitute “ITEA”.

**37 Paragraph 340(2)(a)**

After “will”, insert “, or would but for the operation of an ITEA that has passed its nominal expiry date,”.

**38 Subsection 342(1)**

Omit “AWA”, substitute “ITEA”.

**39 Paragraph 344(1)(b)**

Repeal the paragraph, substitute:

- (b) the workplace agreement:
  - (i) in the case of an ITEA—meets the signature requirements of subsection 340(1); or
  - (ii) in the case of a collective agreement—meets the signature requirements of regulations made for the purposes of paragraph 418(e); and
- (c) a copy of the signed agreement is annexed to the declaration.

**40 Paragraph 345(2)(b)**

Omit “AWA”, substitute “ITEA”.

**41 Subsection 346A(1)**

Omit “AWA” (wherever occurring), substitute “ITEA”.

Note: The heading to section 346A is altered by omitting “AWA” and substituting “ITEA”.

**42 Subsections 347(2) and (2A)**

Repeal the subsections.

**43 Paragraphs 347(4)(b), (ba) and (bb)**

Repeal the paragraphs, substitute:

- (b) in the case of an ITEA—it is replaced by another ITEA; or

- (ba) in the case of an agreement to which paragraph (1)(a) applies—the Workplace Authority Director decides under section 346D that the agreement does not pass the no-disadvantage test and the employer who is bound by the agreement does not take the action referred to in subsection 346W(2) within the relevant period (as defined in subsection 346W(7)) in relation to the agreement; or
- (bb) the Workplace Authority Director decides under section 346Z that the agreement as varied does not pass the no-disadvantage test; or

**44 Subsections 347(7A), (8A) and (9A)**

Repeal the subsections.

**45 Subsection 348(2)**

Omit “AWA”, substitute “ITEA”.

**46 Paragraphs 360(2)(b) and 367(1)(a)**

Omit “AWA”, substitute “ITEA”.

**47 Paragraph 367(1)(b)**

After “will”, insert “, or would but for the operation of an ITEA that has passed its nominal expiry date,”.

**48 Paragraph 367(2)(aa)**

Repeal the paragraph, substitute:

- (aa) section 346N or 346W (which deal with agreements that do not pass the no-disadvantage test); or

**49 Paragraph 368(a)**

Omit “AWA”, substitute “ITEA”.

**50 At the end of Subdivision A of Division 8 of Part 8**

Add:

**368A Documents taken to be variations of workplace agreements etc.**

If a document:

- (a) is represented (expressly or by implication) to be a variation of a workplace agreement, or of a type of workplace agreement mentioned in section 326, 327, 328, 329, 330 or 331; and
- (b) could not come into operation under this Act as a variation of a workplace agreement, or as a variation of a workplace agreement of that type, even if the agreement as varied were to pass the no-disadvantage test;

the document is taken to be a variation of a workplace agreement, or of a workplace agreement of that type, for the purposes of:

- (c) Division 3, Subdivisions B and C of this Division (other than section 375), Division 10 and Division 11 (other than sections 409 to 412A); and
- (d) any other provision of this Act, to the extent that the provision relates to the operation of any of the provisions mentioned in paragraph (c).

Note: The Court can order under section 412A that a document is to have effect as a variation for the purposes of the entire Act.

**51 Paragraph 369(a)**

Omit “AWA”, substitute “ITEA”.

**52 Subparagraph 369(b)(ii)**

After “will”, insert “, or would but for the operation of an ITEA that has passed its nominal expiry date,”.

**53 Paragraph 370(4)(b)**

Omit “AWA”, substitute “ITEA”.

**54 Subsection 370(6)**

Repeal the subsection, substitute:

- (6) For the purposes of this section, if, because of the variation, the agreement as varied would incorporate terms from another workplace agreement or an award, the eligible employees have ready access to the variation only if they have ready access to that other workplace agreement or award in writing.

**55 Subsection 373(1)**

Omit “AWA”, substitute “ITEA”.

**56 Subparagraph 373(2)(a)(ii)**

After “will”, insert “, or would but for the operation of an ITEA that has passed its nominal expiry date,”.

**57 Paragraph 377(1)(b)**

Repeal the paragraph, substitute:

- (b) the workplace agreement:
  - (i) in the case of a variation of an ITEA—meets the signature requirements of subsection 373(1); or
  - (ii) in the case of a variation of a collective agreement—meets the signature requirements of regulations made for the purposes of paragraph 418(ea); and
- (c) a copy of the signed variation is annexed to the declaration.

**58 Paragraph 378(2)(b)**

Omit “AWA”, substitute “ITEA”.

**59 At the end of section 380**

Add:

Note: Section 346R sets out when variations of workplace agreements under Division 5A come into operation.

**60 At the end of subsection 381(1)**

Add:

; or (c) by the Commission (see Subdivision DA).

**61 Paragraph 381(2)(c)**

Omit “a declaration”, substitute “in the case of an ITEA—a declaration”.

**62 At the end of subsection 381(2)**

Add:

; or (d) in the case of a collective agreement—an order by the Commission under section 397A takes effect.

**63 At the end of Subdivision A of Division 9 of Part 8**

Add:

**381A Documents taken to be terminations of workplace agreements etc.**

If a document:

- (a) is represented (expressly or by implication) to be a termination of a workplace agreement, or of a type of workplace agreement mentioned in section 326, 327, 328, 329, 330 or 331; and
- (b) could not come into operation under this Act as a termination of a workplace agreement, or as a termination of a workplace agreement of that type;

the document is taken to be a termination of a workplace agreement, or of a workplace agreement of that type, for the purposes of:

- (c) Division 3, Subdivisions B and C of this Division (other than section 388), Division 10 and Division 11 (other than sections 409 to 412A); and
- (d) any other provision of this Act, to the extent that the provision relates to the operation of any of the provisions mentioned in paragraph (c).

Note: The Court can order under section 412A that a document is to have effect as a termination for the purposes of the entire Act.

**64 Paragraphs 382(a), 383(a) and 384(3)(b)**

Omit “AWA”, substitute “ITEA”.

**65 Subsection 386(1)**

Omit “AWA” (wherever occurring), substitute “ITEA”.

**66 Paragraph 389(1)(b)**

Repeal the paragraph, substitute:

- (b) if the workplace agreement is an ITEA:
  - (i) the termination agreement meets the signature requirements of subsection 386(1); and
  - (ii) a copy of the signed termination agreement is annexed to the declaration.

**67 Paragraphs 390(2)(b) and 392(2)(ba) and (c)**

Omit “AWA”, substitute “ITEA”.

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**68 Subsection 394(1)**

Omit “a workplace agreement”, substitute “an ITEA”.

**69 Subsections 394(1) and 394(2)**

Omit “the workplace agreement”, substitute “the ITEA”.

**70 Subsections 394(4) and (5)**

Omit “a workplace agreement”, substitute “an ITEA”.

**71 Subsection 394(8)**

Repeal the subsection (including the note).

**72 Subsection 395(1)**

Repeal the subsection (including the note), substitute:

- (1) A person lodges a declaration to terminate a workplace agreement under section 392 with the Workplace Authority Director if:
  - (a) the person gives it to the Workplace Authority Director; and
  - (b) it meets the form requirements mentioned in subsection (3).
- (1A) A person lodges a declaration to terminate an ITEA under section 393 with the Workplace Authority Director if:
  - (a) the person gives it to the Workplace Authority Director; and
  - (b) it meets the form requirements mentioned in subsection (3); and
  - (c) if the employer in relation to the ITEA, or a bargaining agent at the request of the employer in relation to the ITEA, lodges the declaration to terminate the ITEA—the declaration states whether the parties to the ITEA will, under section 399A, continue to be bound by one or more redundancy provisions included in the ITEA.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

**73 Subsection 395(2)**

Omit “agreement” (wherever occurring), substitute “ITEA”.

**74 Subsection 395(3)**

After “paragraph (1)(b)”, insert “or (1A)(b)”.

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**75 Subsection 395(4)**

After “subsection (1)”, insert “or (1A)”.

**76 Subsection 396(1A)**

Omit “a workplace agreement, or a bargaining agent at the request of the employer in relation to a workplace agreement, lodged a declaration under subsection 395(1) to terminate the agreement”, substitute “an ITEA, or a bargaining agent at the request of the employer in relation to an ITEA, lodged a declaration under subsection 395(1A) to terminate the ITEA”.

**77 Paragraph 396(1A)(a)**

Omit “workplace agreement” (wherever occurring), substitute “ITEA”.

**78 Paragraph 396(2)(c)**

Omit “AWA”, substitute “ITEA”.

**79 Subsection 399A(1)**

Omit “a workplace agreement”, substitute “an ITEA”.

**80 Subsection 399A(1)**

Omit “the agreement” (wherever occurring), substitute “the ITEA”.

**81 Subsection 399A(2)**

Omit “workplace agreement” (wherever occurring), substitute “ITEA”.

**82 Subsection 399A(2A)**

Omit “a workplace agreement”, substitute “an ITEA”.

**83 Paragraph 399A(3)(a)**

Omit “workplace agreement”, substitute “ITEA”.

**84 Subsections 400(3), (5) and (6)**

Omit “AWA”, substitute “ITEA”.

**85 Paragraphs 400(6A)(b) and (d) and 405(1)(e)**

Omit “AWA”, substitute “ITEA”.

**86 At the end of section 406**

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Add “or Division 7A of Part 11”.

**87 Paragraph 407(2)(jb)**

Omit “346ZE(1)”, substitute “346ZH(1)”.

**88 Paragraph 407(2)(jba)**

Repeal the paragraph.

**89 Paragraph 407(2)(jc)**

Omit “346ZF(1)”, substitute “346ZJ(1)”.

**90 Paragraph 407(2)(jd)**

Repeal the paragraph.

**91 At the end of subsection 407(2)**

Add:

; (zl) for subsection 601H(2)—30 penalty units.

**92 After section 412**

Insert:

**412A Court may give effect to purported workplace agreements etc.**

(1) The Court may order that:

- (a) a document to which section 324A applies that was lodged with the Workplace Authority Director is to have effect as a workplace agreement for the purposes of this Act; or
- (b) a document to which section 368A applies that was lodged with the Workplace Authority Director is to have effect as a variation of a workplace agreement for the purposes of this Act; or
- (c) a document to which section 381A applies that was lodged with the Workplace Authority Director is to have effect as a termination of a workplace agreement for the purposes of this Act.

(2) However, the Court must not make an order under this section unless it is satisfied that the order would not reduce any employee’s overall terms and conditions of employment.

- (3) In deciding for the purposes of subsection (2) whether an order will disadvantage an employee, the Court is to take into account any reference instruments (within the meaning of Division 5A) that relate to the employee.
- (4) An order under this section:
  - (a) is taken to have had effect from a date specified in the order that is earlier than the date of the order; or
  - (b) has effect from a date specified in the order that is later than the date of the order; or
  - (c) otherwise—has effect from the date of the order.
- (5) The date specified in the order must not be earlier than the date of lodgment of the document to which section 324A, 368A or 381A applies.

**93 Subsections 415(1) and (2)**

Omit “AWAs”, substitute “ITEAs”.

Note: The heading to section 415 is altered by omitting “AWAs” and substituting “ITEAs”.

**94 Paragraph 416(1)(a)**

Omit “346S(2), 377(2), 389(2) or 395(1)”, substitute “346X(2), 377(2), 389(2) or 395(1) or (1A)”.

**95 Paragraph 416(1)(d)**

Omit “346J(1) or (2), 346P(1) or (2), 346U(2)”, substitute “346M(1) or (2), 346U(1) or (2), 346Z(2)”.

**96 Paragraph 416(1)(g)**

Omit “346K or 346L”, substitute “346G or 346H”.

**97 Paragraph 417(1)(a)**

Omit “346S(2), 377(2), 389(2) or 395(1)”, substitute “346X(2), 377(2), 389(2) or 395(1) or (1A)”.

**98 Paragraph 417(1)(g)**

Omit “346P(3)(a)”, substitute “346M(2)(b), 346U(2)(b)”.

**99 Paragraph 417(1)(k)**

Omit “346J(1) or (2), 346P(1) or (2), 346U(2)”, substitute “346M(1) or (2), 346U(1) or (2), 346Z(2)”.

**100 Paragraph 418(d)**

Omit “AWAs”, substitute “ITEAs”.

**101 After paragraph 418(e)**

Insert:

- (ea) the signing of variations of workplace agreements by persons bound by those agreements, or representatives of those persons;

**102 Section 450 (definition of *relevant employee*)**

Omit “AWA”, substitute “ITEA”.

**103 Subparagraphs 467(1)(a)(iii) and (b)(ii)**

After “will”, insert “, or would but for the operation of an ITEA that has passed its nominal expiry date,”.

**104 Subsection 467(2)**

Omit “AWA”, substitute “ITEA”.

**105 Paragraph 485(1)(d)**

Omit “AWA”, substitute “ITEA”.

**106 Subsections 495(1) and (2)**

Omit “AWA” (wherever occurring), substitute “ITEA”.

Note: The heading to section 495 is altered by omitting “AWA” and substituting “ITEA”.

**107 Subsection 506(4)**

Omit “sections”, substitute “subsection”.

**108 Subsection 506(4)**

Omit “is lodged”, substitute “comes into operation”.

**109 Subsection 506(5)**

Repeal the subsection (including the note).

**110 Subsection 513(1) (note 3)**

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Repeal the note.

**111 Paragraph 578(2)(a)**

Omit “AWAs”, substitute “ITEAs”.

**112 Section 579 (paragraph (a) of the definition of *instrument*)**

Repeal the paragraph, substitute:

(a) an ITEA; or

**113 Division 3 of Part 11 (heading)**

Repeal the heading, substitute:

**Division 3—Transmission of ITEA**

**114 Paragraph 583(1)(a)**

Omit “AWA”, substitute “ITEA that was in operation”.

**115 Paragraph 583(1)(b)**

Omit “AWA”, substitute “ITEA”.

**116 Subsection 583(1)**

Omit “AWA” (last occurring), substitute “ITEA”.

Note 1: The heading to section 583 is altered by omitting “AWA” and substituting “ITEA”.

Note 2: The heading to subsection 583(1) is altered by omitting “AWA” and substituting “*ITEA in operation*”.

**117 After subsection 583(1)**

Insert:

*Transferring employee considered an existing employee for the purposes of eligibility to make an ITEA*

(1A) For the purposes of applying section 326 to a transferring employee in relation to a new employer:

(a) treat the employee as being in an employment relationship with the employer; and

(b) assume that subparagraphs 326(2)(b)(i) and (ia) do not apply to the employee.

**118 Subsection 583(2)**

Omit “AWA” (wherever occurring), substitute “ITEA”.

**119 Section 584**

Repeal the section, substitute:

**584 Termination of transmitted ITEA**

The ITEA cannot be terminated under subsection 392(2) or 393(2) during the transmission period (even if the ITEA has passed its nominal expiry date).

**120 Paragraph 585(1)(a)**

After “collective agreement”, insert “that was in operation”.

Note: The heading to subsection 585(1) is altered by inserting “*in operation*” after “*collective agreement*”.

**121 Paragraph 585(3)(a)**

Repeal the paragraph.

**122 Subsection 587(2)**

Repeal the subsection (including the note).

**123 Subsection 588(2)**

Omit “or 393(2)”.

Note: The heading to subsection 588(2) is altered by omitting “*subsections 392(2) and 393(2)*” and substituting “*subsection 392(2)*”.

**124 Subsection 588(3)**

Repeal the subsection (including the note).

**125 Paragraph 595(3)(a)**

Repeal the paragraph.

**126 Subsection 596(2) (note 2)**

Omit “AWAs and”.

**127 Subsection 597(2)**

Repeal the subsection (including the note).

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## 128 After Division 7 of Part 11

Insert:

### Division 7A—Application of no-disadvantage test

#### 601A No decision under section 346D at time of transmission

- (1) This section applies if a workplace agreement that is in operation becomes binding upon a new employer and a transferring employee or transferring employees, because of the operation of section 583 or 585, before the Workplace Authority Director has decided whether the agreement passes the no-disadvantage test under section 346D.
- (2) Subject to subsection (4), for the purposes of deciding under section 346D whether the workplace agreement passes the no-disadvantage test, references to the employer in the following provisions:
  - (a) section 346D;
  - (b) the definitions of *relevant collective instrument* and *relevant general instrument* in section 346E;
  - (c) section 346J;are taken to be references to the old employer.
- (3) If:
  - (a) the Workplace Authority Director has been notified that the workplace agreement is binding on the new employer and the transferring employee or transferring employees; and
  - (b) the Workplace Authority Director is required to give a notice under section 346M, 346U or 346Z to the employer in relation to the workplace agreement;the Workplace Authority Director must give the notice to both the old employer and the new employer.
- (4) If the Workplace Authority Director decides under section 346D that the workplace agreement does not pass the no-disadvantage test:
  - (a) references in section 346W to the employer bound by the workplace agreement are taken to be references to the new employer; and

(b) to avoid doubt, if the new employer subsequently lodges a variation of the workplace agreement under section 346W then, for the purposes of deciding under section 346Z whether the workplace agreement as varied passes the no-disadvantage test, references to the employer in the following provisions:

- (i) section 346D;
- (ii) the definitions of *relevant collective instrument* and *relevant general instrument* in section 346E;
- (iii) section 346J;

are taken to be references to the old employer.

Note 1: The employment arrangements that have effect in relation to the new employer and the transferring employee or transferring employees are as set out in section 601D.

Note 2: The compensation payable to the transferring employees under section 346ZG by both the old employer and the new employer is as specified in subsections 346ZG(2), (3) and 601G(1).

### **601B No decision on a varied agreement under section 346Z at time of transmission**

(1) This section applies if a workplace agreement as varied becomes binding upon a new employer and a transferring employee or transferring employees, because of the operation of section 583 or 585, before the Workplace Authority Director has decided whether the agreement as varied passes the no-disadvantage test under section 346Z.

(2) For the purposes of deciding under section 346Z whether the workplace agreement as varied passes the no-disadvantage test, references to the employer in the following provisions:

- (a) section 346D;
- (b) the definitions of *relevant collective instrument* and *relevant general instrument* in section 346E;
- (c) section 346J;

are taken to be references to the old employer.

(3) If:

- (a) the Workplace Authority Director has been notified that the workplace agreement is binding upon the new employer and a transferring employee or transferring employees; and

- (b) the Workplace Authority Director is required to give a notice under section 346Z to the employer in relation to the workplace agreement;
- the Workplace Authority Director must give the notice to both the old employer and the new employer.

### **601C Employees still employed by old employer**

To avoid doubt, if a workplace agreement becomes binding upon a new employer and a transferring employee or transferring employees because of the operation of section 583 or 585, Division 5A of Part 8 has effect, to the extent that the workplace agreement continues to bind:

- (a) the old employer; and
  - (b) an employee or employees who are not transferring employees;
- according to its terms.

### **601D Employment arrangements if a workplace agreement ceases to operate because it does not pass no-disadvantage test**

- (1) This section applies if:
  - (a) on a particular day (the *cessation day*), a workplace agreement (the *original agreement*) ceases to operate under section 346W or 346ZA 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 became binding upon a new employer and a transferring employee or transferring employees because of the operation of section 583 or 585 in relation to a business being transferred; and
  - (c) the cessation day occurs during the transmission period in relation to the business being transferred.

Note: If the cessation day occurs after the transmission period ends, the rules in Divisions 3, 4, 5 and 6 of this Part will have effect according to their terms.

- (2) Despite subsection 346ZB(2), the new employer and the transferring employee or transferring employees who were bound

by the original agreement immediately before the cessation day are taken, on and from the cessation day, to be bound by:

- (a) the instrument:
    - (i) that, but for the original agreement having come into operation, would have bound the old employer and the transferring employee or transferring employees immediately before the time of transmission; and
    - (ii) that was capable of binding the new employer after the time of transmission under this Part, Schedule 6 or Schedule 9; 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) in relation to that employee or those employees.
- (3) If, but for the original agreement having come into operation, the old employer would have been bound, immediately before the time of transmission, under a designated provision relating to the agreement, by a redundancy provision in relation to a transferring employee or transferring employees whose employment was subject to the original agreement, the new employer is taken:
- (a) to be bound under section 598A or clause 27A of Schedule 9, as the case requires, on and from the cessation day, by the redundancy provision in relation to the transferring employee or transferring employees; and
  - (b) to continue to be so bound 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 bound, under the designated provision, by the redundancy provision;
    - (ii) the time when the employee ceases to be employed by the new employer;
    - (iii) the time when another workplace agreement comes into operation in relation to the transferring employee or the transferring employees and the new employer.
- (4) If the original agreement is a workplace agreement as varied under Division 8 of Part 8, the workplace agreement as in force before the variation was lodged is, despite section 346ZE, capable of being an instrument described in paragraph (2)(a).

(5) In this section:

*designated provision* has the same meaning as in section 346ZD.

*instrument* means any of the following:

- (a) a workplace agreement;
- (b) an award;
- (c) a pre-reform certified agreement (within the meaning of Schedule 7);
- (d) a transitional Victorian reference award (within the meaning of Part 7 of Schedule 6);
- (e) a transitional award (within the meaning of Schedule 6) other than a Victorian reference award (within the meaning of that Schedule) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria;
- (f) a preserved State agreement (within the meaning of Schedule 8);
- (g) a notional agreement preserving State awards (within the meaning of Schedule 8).

*redundancy provision* has the same meaning as in section 346ZD.

#### **601E Effect of section 601D in relation to instruments**

If, because of the operation of section 601D, a new employer and a transferring employee or transferring employees are taken to be bound by an instrument, the instrument is taken, despite any other provision of this Act, to have effect in relation to the new employer and the transferring employee or employees throughout the period:

- (a) beginning on the cessation day; and
- (b) ending at the end of the transmission period in relation to the business being transferred;

as if the new employer and the transferring employee or transferring employees had become bound by the instrument under Division 3, 4, 5 or 6 of this Part or Schedule 6 or Schedule 9, as the case requires.

**601F Regulations may make provision for operation of revived instruments**

The regulations may make provision for and in relation to the operation of instruments that are taken to bind an employer and the employees because of the operation of section 601D.

**601G Compensation in respect of no-disadvantage test period**

- (1) If, because of the operation of section 583 or 585, a workplace agreement to which section 346ZG applies bound an old employer and a new employer in relation to the employment of a transferring employee during the no-disadvantage test period for that agreement, section 346ZG applies with the following modifications:
  - (a) the transferring employee is entitled to be paid compensation by the old employer in respect of the period or periods during which the employee was employed by the old employer, worked out in accordance with the assumptions set out in subsection 346ZG(3); and
  - (b) the transferring employee is entitled to be paid compensation by the new employer in respect of the period or periods during which the employee was employed by the new employer, worked out in accordance with the assumptions set out in subsection 346ZG(3), subject to the following modifications:
    - (i) subparagraph 346ZG(3)(a)(i) is taken to refer to the instrument described in paragraph 601D(2)(a); and
    - (ii) a reference in paragraph 346ZG(3)(b) to a designated provision is taken to be a reference to section 598A or clause 27A of Schedule 9, as the case requires.

- (2) In this section:

*no-disadvantage test period* has the same meaning as in section 346ZG.

**601H Notice requirements in relation to transmission of business**

- (1) This section applies if:
-

- (a) a new employer is bound by a workplace agreement (the *transmitted workplace agreement*) in relation to a transferring employee because of section 583 or 585; and
  - (b) as at the time of transmission, the Workplace Authority Director has not yet decided whether the transmitted workplace agreement passes the no-disadvantage test under section 346D or 346Z.
- (2) The old employer must take reasonable steps to give a written notice to the Workplace Authority Director that:
- (a) identifies the transmitted workplace agreement; and
  - (b) states whether or not the old employer remains bound by the transmitted workplace agreement in relation to the employment of any employees; and
  - (c) specifies the date on which the transmission period in relation to the business being transferred ends; and
  - (d) specifies the name and address of the new employer.
- (3) Subsection (2) is a civil remedy provision.

Note: See Division 11 of Part 8 for provisions on enforcement.

### **129 Subparagraph 602(1)(a)(i)**

Omit “AWA”, substitute “ITEA”.

### **130 Subsection 602(6)**

Repeal the subsection, substitute:

- (6) Subsection (2) does not apply if:
- (a) the transmitted instrument is an award and the new employer and the transferring employee become bound by a collective agreement at the time of transmission or within 14 days after the time of transmission; or
  - (b) the transmitted instrument is an ITEA and the new employer and the transferring employee become bound by an ITEA within 14 days after the time of transmission.

### **131 Paragraphs 603(1)(a) and 603B(2)(a)**

Omit “AWA”, substitute “ITEA”.

### **132 Subsection 605(5) (table item 1)**

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Omit “AWA”, substitute “ITEA”.

**133 Paragraph 659(2)(g)**

Omit “AWA”, substitute “ITEA”.

**134 Subsection 691A(6) (at the end of the definition of *industrial instrument*)**

Add:

; (l) an AWA (within the meaning of Schedule 7A).

**135 Section 717 (subparagraph (a)(i) of the definition of *applicable provision*)**

Repeal the subparagraph, substitute:

(i) an ITEA;

**136 Section 717 (paragraph (aa) of the definition of *applicable provision*)**

Repeal the paragraph, substitute:

(aa) section 346ZG (no-disadvantage test compensation); and

**137 Subsection 718(1) (table item 1)**

Repeal the item, substitute:

- |   |                   |   |
|---|-------------------|---|
| 1 | a term of an ITEA | (a) an employer that is bound by the ITEA;<br>(b) an employee who is bound by the ITEA;<br>(c) an organisation of employees that represents an employee who is bound by the ITEA (subject to subsection (5));<br>(d) an inspector |
|---|-------------------|---|

**138 Subsection 718(1) (table item 5A)**

Repeal the item, substitute:

- |    |   |   |
|----|---|---|
| 5A | section 346ZG (no-disadvantage test compensation) | (a) an employee to whom section 346ZG applies;<br>(b) an organisation of employees (subject to subsection (6));<br>(c) an inspector |
|----|---|---|

**139 Subsection 718(1) (note 2)**

Repeal the note.

**140 Subsection 718(5)**

Omit “AWA” (wherever occurring), substitute “ITEA”.

**141 Paragraph 718(6)(ba)**

Omit “346ZD”, substitute “346ZG”.

**142 Subsections 719(5), (6) and (7)**

Omit “AWA” (wherever occurring), substitute “ITEA”.

**143 Section 720**

Omit “AWA”, substitute “ITEA”.

**144 Subsection 721(1)**

Omit “AWA” (wherever occurring), substitute “ITEA”.

Note: The heading to section 721 is altered by omitting “AWA” and substituting “ITEA”.

**145 Paragraph 747(1)(b)**

Omit “AWA”, substitute “ITEA”.

**146 Subsection 747(2)**

Omit “AWA”, substitute “ITEA”.

Note: The heading to subsection 747(2) is altered by omitting “AWA” and substituting “ITEA”.

**147 Subsection 748(12) (subparagraph (b)(iii) of the definition of *record relevant to the suspected breach*)**

Omit “AWA”, substitute “ITEA”.

**148 Subsection 757(4) (paragraph (b) of the definition of *employment record*)**

Omit “AWA”, substitute “ITEA”.

**149 Paragraph 885(1)(f)**

Omit “AWA” (wherever occurring), substitute “ITEA”.

**150 Paragraph 885(1)(g)**

Repeal the paragraph.

**151 Subsection 890(2)**

Omit “AWA”, substitute “ITEA”.

**152 Subsection 890(3)**

Repeal the subsection (including the note).

**153 Paragraph 893(d)**

Omit “AWA”, substitute “ITEA”.

**154 Clause 6 of Schedule 1 (definition of AWA)**

Repeal the definition.

**155 Subclause 2(1) of Schedule 6**

Insert:

*fairness test* means the test set out in section 346M of the pre-transition Act.

Note: The fairness test continues to apply to an AWA within the meaning of Schedule 7A and to a pre-transition collective agreement within the meaning of Schedule 7B.

**156 Subclause 2(1) of Schedule 6**

Insert:

*pre-transition Act* means this Act as in force immediately before the commencement of Schedule 7A.

**157 Subclause 2(1) of Schedule 6**

Insert:

*workplace agreement* includes an AWA within the meaning of Schedule 7A.

**158 Paragraph 89(1)(a) of Schedule 6**

Repeal the paragraph, substitute:

(a) sections 349, 865 and 897; and

**159 At the end of subclause 89(1) of Schedule 6**

Add:

- ; and (c) section 349 of the pre-transition Act as it applies because of clause 2 of Schedule 7A; and
- (d) section 354 of the pre-transition Act as it applies because of clause 2 of Schedule 7A and clause 2 of Schedule 7B.

**160 Paragraph 89(3)(a) of Schedule 6**

Omit “a workplace agreement”, substitute “an AWA (within the meaning of Schedule 7A) or a pre-transition collective agreement (within the meaning of Schedule 7B)”.

**161 Paragraph 89(3)(b) of Schedule 6**

Omit “workplace”.

**162 Subclause 89(3) of Schedule 6**

Omit “this Act (which deals with the fairness test) has effect in relation to that workplace agreement”, substitute “the pre-transition Act (which deals with the fairness test) has effect in relation to that agreement”.

**163 Paragraph 89(3)(d) of Schedule 6**

After “subsection 346Y(5)”, insert “of the pre-transition Act”.

**164 Paragraph 95(1)(a) of Schedule 6**

Repeal the paragraph, substitute:

- (a) sections 349, 865 and 897; and

**165 At the end of subclause 95(1) of Schedule 6**

Add:

- ; and (c) section 349 of the pre-transition Act as it applies because of clause 2 of Schedule 7A; and
- (d) section 354 of the pre-transition Act as it applies because of clause 2 of Schedule 7A and clause 2 of Schedule 7B.

**166 Paragraph 95(2)(a) of Schedule 6**

Omit “a workplace agreement”, substitute “an AWA (within the meaning of Schedule 7A) or a pre-transition collective agreement (within the meaning of Schedule 7B)”.

**167 Paragraph 95(2)(b) of Schedule 6**

Omit “workplace”.

**168 Subclause 95(2) of Schedule 6**

Omit “this Act (which deals with the fairness test) has effect in relation to that workplace agreement”, substitute “the pre-transition Act (which deals with the fairness test) has effect in relation to that agreement”.

**169 Paragraph 95(2)(d) of Schedule 6**

After “346YA(5)”, insert “of the pre-transition Act”.

**170 Paragraph 102(1)(a) of Schedule 6**

Repeal the paragraph, substitute:

(a) sections 349, 865 and 897; and

**171 At the end of subclause 102(1) of Schedule 6**

Add:

; and (c) section 349 of the pre-transition Act as it applies because of clause 2 of Schedule 7A; and

(d) section 354 of the pre-transition Act as it applies because of clause 2 of Schedule 7A and clause 2 of Schedule 7B.

**172 Paragraph 102(2)(a) of Schedule 6**

Omit “a workplace agreement”, substitute “an AWA (within the meaning of Schedule 7A) or a pre-transition collective agreement (within the meaning of Schedule 7B)”.

**173 Paragraph 102(2)(b) of Schedule 6**

Omit “workplace”.

**174 Subclause 102(2) of Schedule 6**

Omit “this Act (which deals with the fairness test) has effect in relation to that workplace agreement”, substitute “the pre-transition Act (which deals with the fairness test) has effect in relation to that agreement”.

**175 Paragraph 102(2)(d) of Schedule 6**

After “346YA(5)”, insert “of the pre-transition Act”.

**176 Clause 1 of Schedule 7**

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Insert:

*AWA* has the same meaning as in Schedule 7A.

### **177 Clause 1 of Schedule 7**

Insert:

*fairness test* means the test set out in section 346M of the pre-transition Act.

Note: The fairness test continues to apply to an AWA and to a pre-transition collective agreement.

### **178 Clause 1 of Schedule 7**

Insert:

*pre-transition Act* means this Act as in force immediately before the commencement of Schedule 7A.

### **179 Clause 1 of Schedule 7**

Insert:

*pre-transition collective agreement* has the same meaning as in Schedule 7B.

### **180 Clause 1 of Schedule 7**

Insert:

*pre-transition workplace agreement* means:

- (a) an AWA; or
- (b) a pre-transition collective agreement.

### **181 Clause 1 of Schedule 7**

Insert:

*workplace agreement* includes an AWA.

### **182 Subclause 3(2) of Schedule 7**

After “an AWA”, insert “or an ITEA”.

### **183 Paragraph 3(5A)(a) of Schedule 7**

Omit “a collective agreement”, substitute “a pre-transition collective agreement”.

**184 Subclause 3(5A) (note) of Schedule 7**

After “346Z”, insert “of the pre-transition Act”.

**185 Clause 7 of Schedule 7**

Repeal the clause.

**186 Clause 9 of Schedule 7**

Omit “workplace agreement” (first occurring), substitute “pre-transition workplace agreement”.

**187 Clause 9 of Schedule 7**

Omit “this Act”, substitute “the pre-transition Act”.

**188 Clause 9 of Schedule 7**

After “workplace agreement” (last occurring), insert “for the purposes of that Act”.

**189 Subclause 18(1) of Schedule 7**

After “an AWA”, insert “or an ITEA”.

**190 Subclause 18(5) (note) of Schedule 7**

After “346Z”, insert “of the pre-transition Act”.

**191 Clause 20 of Schedule 7**

Omit “an AWA”, substitute “an ITEA”.

**191A After paragraph 20(a) of Schedule 7**

Insert:

- (aa) section 327;
- (ab) paragraph 336(b);
- (ac) paragraph 340(2)(a);
- (ad) paragraph 367(1)(b);
- (ae) subparagraph 369(b)(ii);
- (af) subparagraph 373(2)(a)(ii);
- (ag) subparagraph 467(1)(a)(iii);

(ah) subparagraph 467(1)(b)(ii);

**192 Clause 21 of Schedule 7**

Omit “workplace agreement” (first occurring), substitute “pre-transition workplace agreement”.

**193 Clause 21 of Schedule 7**

Omit “this Act”, substitute “the pre-transition Act”.

**194 Clause 21 of Schedule 7**

After “workplace agreement” (last occurring), insert “for the purposes of that Act”.

**195 Subclause 25(1) of Schedule 7**

After “an AWA”, insert “or an ITEA”.

**196 Paragraph 25(4)(a) of Schedule 7**

Omit “a collective agreement”, substitute “a pre-transition collective agreement”.

**197 Subclause 25(4) of Schedule 7 (note 1)**

After “346Z”, insert “of the pre-transition Act”.

**198 Subclause 25(4) of Schedule 7 (note 2)**

After “AWA” (wherever occurring), insert “or ITEA”.

**199 Clause 26 of Schedule 7**

Repeal the clause.

**200 Paragraph 27(2)(a) of Schedule 7**

Omit “a workplace agreement”, substitute “a pre-transition workplace agreement”.

**201 Subclause 27(2) of Schedule 7 (note)**

After “346Z”, insert “of the pre-transition Act”.

**202 Paragraph 28(5)(a) of Schedule 7**

Omit “a workplace agreement”, substitute “a pre-transition workplace agreement”.

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**203 Subclause 28(5) of Schedule 7 (note)**

After “346Z”, insert “of the pre-transition Act”.

**204 At the end of clause 28 of Schedule 7**

Add:

- (6) Despite subclause (4), an old IR agreement that has ceased to operate because of subclause (2) can operate again if:
  - (a) the old IR agreement ceased to operate because it was replaced by an AWA or an ITEA; and
  - (b) the AWA or ITEA ceased to operate after the commencement of Schedule 7A.

**205 Subclause 32(1) of Schedule 7**

Omit “an AWA”, substitute “a pre-reform AWA”.

**206 Subclause 32(2) of Schedule 7**

Omit “AWA”, substitute “pre-reform AWA”.

**207 Subclause 1(1) of Schedule 8**

Insert:

*fairness test* means the test set out in section 346M of the pre-transition Act.

Note: The fairness test continues to apply to an AWA within the meaning of Schedule 7A and to a pre-transition collective agreement within the meaning of Schedule 7B.

**208 Subclause 1(1) of Schedule 8**

Insert:

*pre-transition Act* means this Act as in force immediately before the commencement of Schedule 7A.

**209 Subclause 1(1) of Schedule 8**

Insert:

*pre-transition workplace agreement* means:

- (a) an AWA within the meaning of Schedule 7A; or

- (b) a pre-transition collective agreement within the meaning of Schedule 7B.

**210 Subclause 1(1) of Schedule 8**

Insert:

*workplace agreement* includes an AWA within the meaning of Schedule 7A.

**210A After subclause 15G(1) of Schedule 8**

Insert:

- (1A) If, after the commencement of this subclause, a preserved individual State agreement ceases to operate in relation to an employee because of subclause (1):
  - (a) any preserved collective State agreement binding the employer; or
  - (b) if there is no such preserved collective State agreement—any notional agreement preserving State awards that would have been taken to come into operation in relation to the employer and employee on the reform commencement but for the preserved individual State agreement;  
has effect in relation to the employer and employee.
- (1B) If, after the commencement of this subclause, a preserved collective State agreement ceases to operate in relation to an employee because of subclause (1), any notional agreement preserving State awards that would have been taken to come into operation in relation to the employer and employee on the reform commencement but for the preserved collective State agreement has effect in relation to the employer and employee.
- (1C) However, subsection (1A) or (1B) ceases to apply if an award or a workplace agreement comes into operation in relation to the employer and employee.

**211 Paragraph 15G(4)(a) of Schedule 8**

Omit “a workplace agreement”, substitute “a pre-transition workplace agreement”.

**212 Subclause 15G(4) of Schedule 8 (note)**

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After “346Z”, insert “of the pre-transition Act”.

**213 At the end of clause 15G of Schedule 8**

Add:

- (5) Despite subclause (3), a preserved collective State agreement that has ceased operating because of subclause (2) can operate again if:
  - (a) the preserved collective State agreement ceased to operate because it was replaced by an AWA or an ITEA; and
  - (b) the AWA or ITEA ceased to operate after the commencement of Schedule 7A.

**214 Subclause 20(3) of Schedule 8**

Omit “AWA”, substitute “ITEA”.

**215 After subclause 20(3) of Schedule 8**

Insert:

- (3A) Subclause (3) does not apply, and the pre-transition Act continues to apply, to any enforcement process begun before the commencement of this subclause in relation to a preserved individual State agreement.

**216 Subclause 20(4) of Schedule 8**

Omit “AWA”, substitute “ITEA”.

**217 At the end of clause 20 of Schedule 8**

Add:

- (5) Subclause (4) does not apply, and the pre-transition Act continues to apply, to any actions taken by a workplace inspector that were begun before the commencement of this subclause in the performance of functions or exercise of powers in relation to a preserved individual State agreement.

**218 Subclause 21(3) of Schedule 8**

Omit “an AWA” (wherever occurring), substitute “a pre-reform AWA”.

**219 Paragraph 25A(1)(b) of Schedule 8**

Omit “a workplace agreement”, substitute “a pre-transition workplace agreement”.

**220 Subclauses 25A(2) and (3) of Schedule 8**

Omit “workplace agreement” (wherever occurring), substitute “pre-transition workplace agreement”.

**221 Paragraph 25B(1)(a) of Schedule 8**

Omit “a workplace agreement”, substitute “a pre-transition workplace agreement”.

**222 Paragraphs 25B(1)(b) and (c) of Schedule 8**

Omit “workplace agreement”, substitute “pre-transition workplace agreement”.

**223 Subclause 25B(1) of Schedule 8**

Omit “this Act (which deals with the fairness test) has effect in relation to that workplace agreement”, substitute “the pre-transition Act (which deals with the fairness test) has effect in relation to that pre-transition workplace agreement”.

**224 Paragraph 25B(1)(f) of Schedule 8**

Omit “workplace agreement”, substitute “pre-transition workplace agreement”.

**225 Subclause 25B(2) of Schedule 8**

After “346YA(2)(b)”, insert “of the pre-transition Act”.

**226 Subclause 25B(2) of Schedule 8**

Omit “this Act”, substitute “the pre-transition Act”.

**227 Paragraph 25B(2)(a) of Schedule 8**

Omit “an AWA—”, substitute “an AWA within the meaning of Schedule 7A—such”.

**228 Paragraph 25B(2)(b) of Schedule 8**

Omit “collective agreement—”, substitute “pre-transition collective agreement within the meaning of Schedule 7B—such”.

**228A Subclause 26(1) of Schedule 8**

Omit “workplace agreement” (first occurring), substitute “pre-transition workplace agreement”.

**228B Subclause 26(1) of Schedule 8**

After “section 355”, insert “of the pre-transition Act”.

**228C At the end of subclause 26(1) of Schedule 8**

Add “for the purposes of that Act”.

**228D Subclause 26(2) of Schedule 8**

After “subsection 355(6)”, insert “of the pre-transition Act”.

**228E Subclause 26(2) of Schedule 8**

Omit “workplace agreement”, substitute “pre-transition workplace agreement”.

**229 Paragraph 28(b) of Schedule 8**

Omit “AWA”, substitute “ITEA”.

**230 Subclause 38A(2) of Schedule 8**

After “a workplace agreement”, insert “or a pre-transition workplace agreement”.

**231 Subclause 38A(5) of Schedule 8**

Omit “a workplace agreement”, substitute “a pre-transition workplace agreement”.

**232 Subclause 38A(5) of Schedule 8 (note)**

After “346Z”, insert “of the pre-transition Act”.

**233 At the end of clause 38A of Schedule 8**

Add:

- (6) Despite subclause (4), a notional agreement that has ceased operating because of subclause (2) can operate again if:
  - (a) the notional agreement ceased to operate because it was replaced by a workplace agreement or a pre-transition workplace agreement; and

- (b) the workplace agreement or pre-transition workplace agreement ceased to operate after the commencement of this subclause.

**234 Paragraph 52(1)(a) of Schedule 8**

Omit “a workplace agreement”, substitute “a pre-transition workplace agreement”.

**235 Subclauses 52(2) and (2A) of Schedule 8**

Omit “workplace agreement” (wherever occurring), substitute “pre-transition workplace agreement”.

**236 Paragraphs 52AAA(1)(a), (b) and (c) of Schedule 8**

Omit “workplace agreement”, substitute “pre-transition workplace agreement”.

**237 Subclause 52AAA(1) of Schedule 8**

Omit “this Act (which deals with the fairness test) has effect in relation to that workplace agreement”, substitute “the pre-transition Act (which deals with the fairness test) has effect in relation to that pre-transition workplace agreement”.

**237A Subclause 52A(1) of Schedule 8**

Omit “workplace agreement” (first occurring), substitute “pre-transition workplace agreement”.

**237B Subclause 52A(1) of Schedule 8**

After “section 355”, insert “of the pre-transition Act”.

**237C At the end of subclause 52A(1) of Schedule 8**

Add “for the purposes of that Act”.

**237D Subclause 52A(2) of Schedule 8**

After “subsection 355(6)”, insert “of the pre-transition Act”.

**237E Subclause 52A(2) of Schedule 8**

Omit “workplace agreement”, substitute “pre-transition workplace agreement”.

**238 Subclause 2(2) of Schedule 9**

Omit “Parts 3”, substitute “Parts 2A”.

**239 Before paragraph 2(2)(a) of Schedule 9**

Insert:

(aa) Part 2A deals with the transmission of AWAs;

**240 Subclauses 2(5) and (6) of Schedule 9**

Repeal the subclauses.

**241 Clause 3 of Schedule 9**

Insert:

*AWA* has the same meaning as in Schedule 7A.

**242 Clause 3 of Schedule 9**

Insert:

*pre-transition Act* means this Act as in force immediately before the commencement of Schedule 7A.

**243 Clause 3 of Schedule 9 (definition of *transitional industrial instrument*)**

Repeal the definition.

**244 Clause 3 of Schedule 9 (definition of *transitional instrument*)**

After paragraph (b), insert:

(ba) an AWA; or

**245 Clause 3 of Schedule 9**

Insert:

*workplace agreement* includes an AWA.

**246 After Part 2 of Schedule 9**

Insert:

## Part 2A—Transmission of AWAs

### 6B Transmission of AWA

#### *New employer bound by AWA*

- (1) If:
- (a) immediately before the time of transmission:
    - (i) the old employer; and
    - (ii) an employee;were bound by an AWA; and
  - (b) the employee is a transferring employee in relation to the AWA;
- the new employer is bound by the AWA by force of this section.

Note: The new employer must notify the transferring employee and lodge a copy of the notice with the Workplace Authority Director (see clauses 28 and 29).

#### *Period for which new employer remains bound*

- (2) The new employer remains bound by the AWA, by force of this section, until whichever of the following first occurs:
- (a) the AWA is terminated (see Division 9 of Part 8 of the pre-transition Act as modified by clause 6C of this Schedule);
  - (b) the AWA ceases to be in operation because it is replaced by an ITEA between the new employer and the transferring employee (see clause 6 of Schedule 7A);
  - (c) the transferring employee ceases to be a transferring employee in relation to the AWA;
  - (d) the transmission period ends.

#### *Old employer's rights and obligations that arose before time of transmission not affected*

- (3) This section does not affect the rights and obligations of the old employer that arose before the time of transmission.

**6C Termination of transmitted AWA**

The AWA cannot be terminated under subsection 392(2) or 393(2) of the pre-transition Act during the transmission period (even if the AWA has passed its nominal expiry date).

**6D Transferring employee considered an existing employee for the purposes of eligibility to make an ITEA**

For the purposes of applying section 326 to a transferring employee in relation to a new employer:

- (a) treat the employee as being in an employment relationship with the employer; and
- (b) assume that subparagraphs 326(2)(b)(i) and (ia) do not apply to the employee.

**247 Paragraph 7(2)(b) of Schedule 9**

Omit “AWA” (last occurring), substitute “an AWA or an ITEA”.

**248 Clause 8 of Schedule 9**

Repeal the clause.

**249 Paragraph 10(6)(a) of Schedule 9**

Repeal the paragraph.

**250 Subclauses 11(5) and (6) of Schedule 9**

Repeal the subclauses.

**251 Subclauses 20(4) and (5) of Schedule 9**

Repeal the subclauses.

**252 Before subparagraph 28(1)(a)(i) of Schedule 9**

Insert:

- (ia) clause 6B (AWA); or

**253 Paragraph 28(4)(a) of Schedule 9**

After “a pre-reform AWA”, insert “or an AWA”.

**254 Paragraph 28(4)(a) of Schedule 9**

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After “an AWA”, insert “or an ITEA”.

**255 Paragraph 28(4)(b) of Schedule 9**

After “a pre-reform AWA”, insert “or an AWA”.

**256 Paragraph 28(4)(b) of Schedule 9**

After “an AWA”, insert “, an ITEA”.

**257 Paragraph 29(1)(a) of Schedule 9**

After “pre-reform AWA”, insert “or an AWA”.

**258 Subclause 31(4) of Schedule 9 (before item 1 of the table)**

Insert:

- |    |     |   |
|----|-----|---|
| 1A | AWA | (a) the transferring employee; or   |
|    |     | (b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of the transferring employee and has been requested by the transferring employee to apply for the order on the transferring employee’s behalf; or |
|    |     | (c) a workplace inspector   |

**259 Parts 8 and 9 of Schedule 9**

Repeal the Parts.

## **Part 4—Amendments of other Acts**

### ***Airports (Transitional) Act 1996***

#### **260 Paragraph 59(4)(d)**

Repeal the paragraph, substitute:

- (d) an individual transitional employment agreement (as defined by section 4 of the *Workplace Relations Act 1996*); or
- (da) an AWA (as defined by clause 1 of Schedule 7A to the *Workplace Relations Act 1996*); or

### ***APEC Public Holiday Act 2007***

#### **261 Section 4 (paragraph (b) of the definition of *industrial instrument*)**

Omit “workplace agreement”, substitute “collective agreement”.

#### **262 Section 4 (after paragraph (b) of the definition of *industrial instrument*)**

Insert:

- (ba) an AWA within the meaning of Schedule 7A to the *Workplace Relations Act 1996*;

### ***Australian Federal Police Act 1979***

#### **263 Subsection 27(4) (at the end of the definition of *industrial instrument*)**

Add:

- ; (f) an AWA.

### ***Building and Construction Industry Improvement Act 2005***

#### **264 Subsection 4(1) (definition of *AWA*)**

Omit “section 4 of”, substitute “Schedule 7A to”.

**265 Subsection 4(1) (at the end of the definition of *workplace agreement*)**

Add “, and includes an AWA”.

***Coal Mining Industry (Long Service Leave Funding) Act 1992***

**266 Subsection 4(1) (after subparagraph (d)(i) of the definition of *relevant industrial instrument*)**

Insert:

- (ia) an AWA within the meaning of Schedule 7A to that Act; and

***Commonwealth Serum Laboratories Act 1961***

**267 Subsection 27(5) (at the end of the definition of *industrial instrument*)**

Add:

- ; (f) an AWA.

**268 Subsection 29(3) (at the end of the definition of *industrial instrument*)**

Add:

- ; (f) an AWA.

***Health Insurance Commission (Reform and Separation of Functions) Act 1997***

**269 Subsection 26(2) (at the end of the definition of *industrial instrument*)**

Add:

- ; (f) an AWA.

**270 Subsection 33(2) (at the end of the definition of *industrial instrument*)**

Add:

- ; (f) an AWA.
-

***Income Tax Assessment Act 1997***

**271 Subsection 290-80(2) (note)**

Before “Australian Workplace Agreement”, insert “individual transitional employment agreement,”.

***Income Tax (Transitional Provisions) Act 1997***

**272 Paragraph 82-10(1)(a)**

Omit “or a workplace agreement within the meaning of the *Workplace Relations Act 1996*”, substitute “, a collective agreement within the meaning of the *Workplace Relations Act 1996* or an AWA within the meaning of Schedule 7A to that Act”.

***Long Service Leave (Commonwealth Employees) Act 1976***

**273 At the end of subsection 15(1)**

Add:

; and (d) does not affect the operation of an AWA within the meaning of Schedule 7A to the *Workplace Relations Act 1996* in relation to long service leave for maritime employees included in a prescribed class of maritime employees.

***Parliamentary Service Act 1999***

**274 Section 7**

Insert:

*AWA* has the meaning given by Schedule 7A to the *Workplace Relations Act 1996*.

**275 Subsections 23(5) and 24(1)**

After “certified agreement”, insert “, AWA”.

***Public Service Act 1999***

**276 Section 7**

Insert:

*AWA* has the meaning given by Schedule 7A to the *Workplace Relations Act 1996*.

**277 Subsections 23(5) and 24(1)**

After “certified agreement”, insert “, AWA”.

**278 Paragraph 72(3)(a)**

After “certified agreement”, insert “, AWA”.

**279 Subparagraph 72(4)(a)(iii)**

After “certified agreement”, insert “, AWA”.

***Skilling Australia’s Workforce Act 2005***

**280 Subsection 3(1) (definition of *Australian workplace agreement*)**

Repeal the definition, substitute:

*Australian workplace agreement* means an AWA within the meaning of Schedule 7A to the *Workplace Relations Act 1996*.

**281 Paragraph 12(1)(b)**

Omit “by offering Australian workplace agreements to staff, except where the *Workplace Relations Act 1996* does not apply, in which case other individual agreements should be offered”.

**282 Paragraph 12(1)(g)**

After “workplace agreements,”, insert “AWAs,”.

**283 Subsection 12(3)**

After “workplace agreements”, insert “, AWAs”.

***Superannuation Guarantee (Administration) Act 1992***

**284 Section 12A (definition of *AWA*)**

Omit “section 4 of”, substitute “Schedule 7A to”.

**285 Section 12A**

Insert:

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*ITEA* has the meaning given by section 4 of the *Workplace Relations Act 1996*.

**286 At the end of subsection 32C(6)**

Add:  
; or (f) an ITEA.

***Telstra Corporation Act 1991***

**287 Subsection 9A(2) (after paragraph (d) of the definition of *industrial instrument*)**

Insert:  
(da) an AWA;

***Tradesmen's Rights Regulation Act 1946***

**288 Section 6 (paragraph (a) of the definition of *industrial agreement*)**

After "workplace agreement," insert "AWA,".

## Schedule 2—Awards

### Part 1—Award modernisation

#### *Workplace Relations Act 1996*

##### 1 After paragraph 3(g)

Insert:

(ga) establishing a process for making modern awards; and

##### 2 Subsection 4(1)

Insert:

*award modernisation process* means a process of award modernisation carried out by the Commission in accordance with an award modernisation request.

##### 3 Subsection 4(1)

Insert:

*award modernisation request* has the meaning given by subsection 576C(1).

##### 4 Subsection 4(1)

Insert:

*modern award* means an award made by the Commission under section 576G.

##### 5 Subsection 4(1) (definition of *proceeding*)

Repeal the definition, substitute:

*proceeding* includes a proceeding relating to an award modernisation process.

##### 6 Subsection 527(5)

Repeal the subsection.

##### 7 Subsection 529(3) (note 1)

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Repeal the note.

## **8 Subsection 529(3) (note 2)**

Omit “Note 2”, substitute “Note”.

## **9 After Part 10**

Insert:

# **Part 10A—Award modernisation**

## **Division 1—Preliminary**

### **576A Object of Part**

- (1) The object of this Part is to provide for the Commission to make modern awards in accordance with an award modernisation request.
- (2) Modern awards:
  - (a) must be simple to understand and easy to apply, and must reduce the regulatory burden on business; and
  - (b) together with any legislated employment standards, must provide a fair minimum safety net of enforceable terms and conditions of employment for employees; and
  - (c) must be economically sustainable, and promote flexible modern work practices and the efficient and productive performance of work; and
  - (d) must be in a form that is appropriate for a fair and productive workplace relations system that promotes collective enterprise bargaining but does not provide for statutory individual employment agreements; and
  - (e) must result in a certain, stable and sustainable modern award system for Australia.

## **Division 2—Award modernisation process**

### **576B Commission’s award modernisation function**

- (1) It is a function of the Commission to carry out one or more award modernisation processes.
-

- (2) In performing its functions under this Part, the Commission must have regard to the following factors:
- (a) promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;
  - (b) protecting the position in the labour market of young people, employees with a disability and employees to whom training arrangements apply;
  - (c) the needs of the low-paid;
  - (d) the desirability of reducing the number of awards operating in the workplace relations system;
  - (e) the need to help prevent and eliminate discrimination on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, and to promote the principle of equal remuneration for work of equal value;
  - (f) the need to assist employees to balance their work and family responsibilities effectively, and to improve retention and participation of employees in the workforce;
  - (g) the safety, health and welfare of employees;
  - (h) relevant rates of pay in Australian Pay and Classification Scales and transitional awards;
  - (i) minimum wage decisions of the Australian Fair Pay Commission;
  - (j) the representation rights, under this Act or the Registration and Accountability of Organisations Schedule, of organisations and transitionally registered associations.

- (3) In this section:

*transitional award* has the same meaning as in Schedule 6.

*transitionally registered association* has the same meaning as in Schedule 10.

### **576C Award modernisation request**

- (1) An award modernisation process must be carried out in accordance with a written request (an *award modernisation request*) made to the President by the Minister.
- (2) An award modernisation request must specify:
  - (a) the award modernisation process that is to be carried out; and
  - (b) the time by which the award modernisation process must be completed, which must not be later than 2 years after the making of the request; and
  - (c) any other matter relating to the award modernisation process that the Minister considers appropriate.
- (3) Without limiting subsection (2), an award modernisation request may also do any of the following:
  - (a) require the Commission to prepare progress reports on specified matters relating to the award modernisation process and make them available as required by the request;
  - (b) specify matters (in addition to those referred to in subsection 576J(1) and sections 576K and 576M) about which terms may be included in modern awards;
  - (c) require the Commission to include in a modern award terms about particular matters, being matters about which terms may be included in a modern award;
  - (d) give directions about how, or whether, the Commission is to deal with particular matters about which terms may be included in a modern award.
- (4) The Minister may, by written instrument, vary or revoke an award modernisation request.
- (5) If the Minister makes an instrument varying an award modernisation request, the instrument may also specify a later time for the completion of the award modernisation process requested. The later time:
  - (a) may be more than 2 years after the making of the award modernisation request; but
  - (b) must not be more than 2 years after the making of the instrument varying the award modernisation request.
- (6) Neither of the following is a legislative instrument:

- (a) an award modernisation request;
- (b) an instrument made under subsection (4).

**576D Award modernisation request to be published**

- (1) As soon as practicable after receiving an award modernisation request, or an instrument varying or revoking an award modernisation request, the President must give a copy of the request or instrument to a Registrar.
- (2) As soon as practicable after a Registrar receives a copy of a request or an instrument under subsection (1), the Registrar must publish the request or instrument as follows:
  - (a) if requirements relating to publication are prescribed by the regulations—in accordance with those requirements;
  - (b) if no such requirements are prescribed—in such manner as the Registrar thinks appropriate.

**576E Procedure for carrying out award modernisation process**

- (1) As soon as practicable after receiving an award modernisation request, the President must establish one or more Full Benches to carry out the award modernisation process requested.
- (2) For the purpose of enabling the award modernisation process to be carried out, the President may, at any time while the award modernisation process is being carried out:
  - (a) give each Full Bench established under subsection (1) directions for carrying out the award modernisation process; and
  - (b) allocate specified tasks in relation to the award modernisation process to any member of the Commission, and give directions about how those tasks are to be carried out.
- (3) For the purpose of carrying out the award modernisation process and subject to any directions given by the President under subsection (2), the procedure of a Full Bench is within the absolute discretion of the Full Bench.
- (4) Without limiting subsection (3), a Full Bench may inform itself in any way it thinks appropriate, including by:
  - (a) undertaking or commissioning research; or

- (b) consulting with any other person, body or organisation in any manner it considers appropriate.
- (5) To avoid doubt, subsection (4) does not limit the powers of a Full Bench under other provisions of this Act.

Note: For example, Division 4 of Part 3 confers powers on the Commission that may be applicable in the context of award modernisation.

### **576F Completion of award modernisation process**

The Commission must complete an award modernisation process by the time allowed by the award modernisation request relating to the award modernisation process.

Note: The time by which an award modernisation process must be completed may be varied under subsection 576C(5).

### **576G Full Bench must make modern awards**

- (1) A Full Bench must make one or more modern awards to give effect to the outcome of an award modernisation process.

Note 1: A modern award must comply with Divisions 3, 4 and 5.

Note 2: Section 576Y deals with the commencement of a modern award.

- (2) A modern award must be consistent with the award modernisation request to which the modern award relates.
- (3) The Commission must not make a modern award other than under subsection (1).
- (4) A modern award is not a legislative instrument.

### **576H Commission may vary modern awards**

The Commission may make an order varying a modern award if the variation is consistent with the award modernisation request to which the modern award relates.

## Division 3—Terms of modern awards

### Subdivision A—Terms that may be included in modern awards

#### 576J Matters that may be dealt with by modern awards

##### *General*

- (1) A modern award may include terms about any of the following matters:
  - (a) minimum wages (including wage rates for junior employees, employees with a disability and employees to whom training arrangements apply), and:
    - (i) skill-based classifications and career structures; and
    - (ii) incentive-based payments, piece rates and bonuses;

Note: *Employee with a disability* and *junior employee* are defined in subsection (3).
  - (b) type of employment, such as full-time employment, casual employment, regular part-time employment and shift work, and the facilitation of flexible working arrangements, particularly for employees with family responsibilities;
  - (c) arrangements for when work is performed, including hours of work, rostering, notice periods, rest breaks and variations to working hours;
  - (d) overtime rates;
  - (e) penalty rates, including for any of the following:
    - (i) employees working unsocial, irregular or unpredictable hours;
    - (ii) employees working on weekends or public holidays;
    - (iii) shift workers;
  - (f) annualised wage or salary arrangements that:
    - (i) have regard to the patterns of work in an occupation, industry or enterprise; and
    - (ii) provide an alternative to the separate payment of wages, or salaries, and other monetary entitlements; and
    - (iii) include appropriate safeguards to ensure that individual employees are not disadvantaged;
  - (g) allowances, including for any of the following:
    - (i) expenses incurred in the course of employment;

- (ii) responsibilities or skills that are not taken into account in rates of pay;
- (iii) disabilities associated with the performance of particular tasks or work in particular conditions or locations;
- (h) leave, leave loadings and arrangements for taking leave;
- (i) superannuation;
- (j) procedures for consultation, representation and dispute settlement.

*Other matters*

- (2) A modern award may also include terms about any other matter specified in the award modernisation request to which the modern award relates.

*Definitions*

- (3) In this section:

***employee with a disability*** means an employee who is qualified for a disability support pension as set out in section 94 or 95 of the *Social Security Act 1991*, or who would be so qualified but for paragraph 94(1)(e) or 95(1)(c) of that Act.

Note: This definition includes employees under the Supported Wage System endorsed by the Commission in the Full Bench decision dated 10 October 1994 (print L5723).

***junior employee*** means an employee who is under the age of 21.

## **576K Terms providing for outworkers**

- (1) In this section:

***outworker*** means:

- (a) an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer; or
- (b) an individual who is a party to a contract for services, and who, for the purposes of the contract, performs work:
  - (i) in the textile, clothing or footwear industry; and

(ii) at private residential premises or at other premises that are not business or commercial premises of the other party to the contract or (if there are 2 or more other parties to the contract) of any of the other parties to the contract.

- (2) A modern award may include either or both of the following:
- (a) terms relating to the conditions under which an employer may employ employees who are outworkers (including terms relating to the pay or conditions of the outworkers);
  - (b) terms relating to the conditions under which an eligible entity (within the meaning of Division 4) may arrange for work to be carried out for the entity (either directly or indirectly) by outworkers (including terms relating to the pay or conditions of the outworkers).

Note: In paragraph (2)(a), *employee* and *employer* have the meanings given by subsections 5(1) and 6(1).

### **576L Terms may only provide a fair minimum safety net**

A modern award may include terms about the matters referred to in subsection 576J(1) or (2) or section 576K only to the extent that the terms provide a fair minimum safety net.

### **576M Incidental and machinery terms**

- (1) A modern award may include terms that are:
- (a) incidental to a term that is required or permitted to be in the modern award; and
  - (b) essential for the purpose of making a particular term operate in a practical way.
- (2) A modern award may include machinery provisions including, but not limited to, provisions about the following:
- (a) commencement;
  - (b) definitions;
  - (c) titles;
  - (d) arrangement;
  - (e) employers, employees and organisations;
  - (f) duration of the modern award.

**576N Terms must be in accordance with award modernisation request**

- (1) A modern award must include a term about a matter referred to in subsection 576J(1) or (2) or section 576K or 576M if the award modernisation request to which the modern award relates requires the modern award to include a term about that matter.
- (2) A term of a modern award about a matter referred to in subsection 576J(1) or (2) or section 576K or 576M must be consistent with any directions in relation to the matter specified in the award modernisation request to which the modern award relates.

**Subdivision B—Terms that must not be included in modern awards**

**576P Terms not permitted by Subdivision A**

A modern award must not include terms other than those permitted or required by Subdivision A.

**576Q Terms that breach freedom of association provisions**

A modern award must not include a term that requires or permits, or has the effect of requiring or permitting, any conduct that would contravene Part 16 (Freedom of association).

**576R Terms about right of entry**

A modern award must not include a term that requires or authorises an officer or employee of an organisation to do any of the following:

- (a) enter premises:
  - (i) occupied by an employer that is bound by the modern award; or
  - (ii) in which work to which the modern award applies is being carried on;
- (b) inspect or view any work, material, machinery, appliance, article, document or other thing on such premises;
- (c) interview an employee on such premises.

### 576S Terms that are discriminatory

- (1) A modern award must not include terms that discriminate against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (2) A modern award does not discriminate against an employee for the purposes of subsection (1) merely because:
  - (a) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
  - (b) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed:
    - (i) on the basis of those teachings or beliefs; and
    - (ii) in good faith.
- (3) A modern award does not discriminate against an employee for the purposes of subsection (1) merely because it includes terms providing for minimum wages for:
  - (a) all junior employees, or a class of junior employees; or
  - (b) all employees with a disability, or a class of employees with a disability; or
  - (c) all employees to whom training arrangements apply, or a class of employees to whom training arrangements apply.
- (4) In this section:

*employee with a disability* has the same meaning as in section 576J.

*junior employee* has the same meaning as in section 576J.

### 576T Terms that contain State-based differences

- (1) A modern award must not include terms and conditions of employment that:
  - (a) are determined by reference to State or Territory boundaries; or
  - (b) do not have effect in each State and Territory.

- (2) Despite subsection (1), a modern award may include terms and conditions of employment of the kind referred to in subsection (1) for a period of up to 5 years starting on the day on which the modern award commences.
- (3) If, at the end of the period of 5 years starting on the day on which a modern award commences, the modern award includes terms and conditions of employment of the kind referred to in subsection (1), those terms and conditions of employment cease to have effect at the end of that period.

## Division 4—Who is bound by modern awards

### 576U Definitions

In this Division:

**eligible entity** means any of the following entities, other than in the entity's capacity as an employer:

- (a) a constitutional corporation;
- (b) the Commonwealth;
- (c) a Commonwealth authority;
- (d) a body corporate incorporated in a Territory;
- (e) a person or entity (which may be an unincorporated club) that carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, in connection with the activity carried on in the Territory.

Note: In this context, **Australia** includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands. See paragraph 17(a) of the *Acts Interpretation Act 1901*.

**enterprise award** means an award that regulates the terms and conditions of employment in a single business only (being the single business specified in the award).

**outworker term** means a term of a modern award that is:

- (a) about a matter referred to in section 576K; or
- (b) incidental to such a matter, and included in the modern award as permitted by subsection 576M(1); or
- (c) a machinery provision in respect of such a matter, and included in the modern award as permitted by subsection 576M(2).

## 576V Who is bound by a modern award

*Modern award binds employers, employees etc. that it is expressed to bind*

- (1) A modern award binds, in accordance with its terms, the employers, employees, organisations and eligible entities that it is expressed to bind.

*Modern award must be expressed to bind specified employers and employees*

- (2) A modern award must be expressed to bind the following:
  - (a) specified employers;
  - (b) specified employees of employers bound by the modern award, in respect of work that is expressed to be regulated by the modern award.

*Modern award must be expressed not to bind employers bound by enterprise awards*

- (3) A modern award must be expressed not to bind an employer who is bound by an enterprise award in respect of an employee to whom the enterprise award applies.

*Modern award may be expressed to bind organisations*

- (4) A modern award may be expressed to bind one or more specified organisations in respect of all or specified employees or employers who are bound by the modern award.

*Modern award may be expressed to bind eligible entities or employers in relation to outworker terms*

- (5) In addition to the employers, employees and organisations that a modern award is expressed to bind, the modern award may be expressed to bind, but only in relation to outworker terms included in the modern award, an eligible entity or an employer that operates in an industry:
  - (a) to which the modern award relates; or
  - (b) in respect of which the outworker terms are applicable.

*Modern award must be in accordance with award modernisation request*

- (6) The power of the Commission under subsections (2), (3), (4) and (5) must be exercised in accordance with the award modernisation request to which the modern award relates.

*Specification of employers, employees etc. by name or class*

- (7) For the purposes of subsections (2), (3), (4) and (5):
- (a) 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; and
  - (d) eligible entities may be specified by name or by inclusion in a specified class or specified classes.
- (8) Without limiting the way in which a class may be described for the purposes of subsection (7), the class may be described by reference to a particular industry or particular kinds of work.

## **Division 5—Technical matters**

### **576W Formal requirements of modern awards and variation orders**

- (1) A modern award or an order varying a modern award must:
- (a) be in writing; and
  - (b) be signed by:
    - (i) if the President is a member of the Full Bench making the modern award or order—the President; or
    - (ii) if the President is not a member of the Full Bench making the modern award or order—the member of the Full Bench who has seniority under section 65; and
  - (c) state the day on which it is signed.
- (2) A modern award must:
- (a) have a unique title; and
  - (b) have a table of contents; and
  - (c) be expressed in plain English and be easy to understand in structure and content; and

- (d) not include terms that are obsolete.

### **576X When is a modern award or variation order made**

A modern award or an order varying a modern award is made on the day on which the modern award or order is signed under paragraph 576W(1)(b).

### **576Y Commencement of modern awards and variation orders**

- (1) A modern award or an order varying a modern award must be expressed to commence on:
- (a) if the modern award or order is made before the start-up day—the start-up day; or
  - (b) in any other case—a day that is not earlier than the day on which the modern award or order is made.

Note: *Start-up day* is defined in subsection (3).

- (2) A modern award, or an order varying a modern award, that has not yet commenced must include a statement to this effect.
- (3) For the purposes of this section, the *start-up day* is:
- (a) unless paragraph (b) applies, 1 January 2010; or
  - (b) if a later date is prescribed by the regulations—that later date.

### **576Z Modern awards and variation orders must be published**

- (1) As soon as practicable after the Commission makes a modern award or an order varying a modern award, the Commission must give to a Registrar:
- (a) a copy of the modern award or order; and
  - (b) written reasons for the modern award or order; and
  - (c) a statement specifying the employers, employees, organisations and eligible entities bound by the modern award or order.
- (2) As soon as practicable after a Registrar receives a copy of a modern award or an order varying a modern award under subsection (1), the Registrar must:
- (a) give notice to the employers, employees, organisations and eligible entities specified in the statement referred to

- paragraph (1)(c) of the making of the modern award or order;  
and
- (b) ensure that a copy of the modern award or order, and the written reasons for the modern award or order, are available for inspection at each registry; and
  - (c) ensure that the modern award or order, and the written reasons for the modern award or order, are published.
- (3) The Registrar must give the notice required by paragraph (2)(a):
- (a) in accordance with any requirements prescribed by the regulations; or
  - (b) if no such requirements are prescribed—in such manner as the Registrar thinks appropriate.
- (4) In this section:
- eligible entity* has the same meaning as in section 576U.

#### **576ZA Modern awards and variation orders are final**

- (1) A modern award or an order varying a modern award:
  - (a) is final and conclusive; and
  - (b) must not be challenged, appealed against, reviewed, quashed or called in question in any court; and
  - (c) is not subject to prohibition, mandamus or injunction in any court on any account.
- (2) A modern award or an order varying a modern award is not invalid because it was made by the Commission constituted otherwise than as provided by this Act.

#### **576ZB Expressions used in modern awards and variation orders**

Unless the contrary intention appears in a modern award or an order varying a modern award, an expression used in the modern award or order has the same meaning as it has in an Act because of the *Acts Interpretation Act 1901* or as it has in this Act.

#### **9A After paragraph 2(2)(s) of Schedule 2**

Insert:

- (sa) subsection 576K(1), definition of *outworker*;

**9B At the end of subclause 3(2) of Schedule 2**

Add:

; (j) subsection 576K(1), definition of *outworker*.

**10 Subclause 22(6) of Schedule 6**

Repeal the subclause.

**11 Subclause 45(3) of Schedule 8**

Repeal the subclause.

**12 Subclause 46(3) of Schedule 8 (note)**

Repeal the note.

## **Part 2—Repeal of award rationalisation and award simplification provisions**

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

#### **13 Subsection 4(1) (definition of *award*)**

Repeal the definition, substitute:

*award* means a pre-reform award.

#### **14 Subsection 4(1) (definition of *award rationalisation process*)**

Repeal the definition.

#### **15 Subsection 4(1) (definition of *award rationalisation request*)**

Repeal the definition.

#### **16 Subsection 4(1) (definition of *award simplification process*)**

Repeal the definition.

#### **17 Paragraph 510(b)**

Repeal the paragraph.

#### **18 Subsection 524(1)**

Omit “or (3)”.

#### **19 Subsection 524(2)**

Omit “a pre-reform award”, substitute “an award”.

#### **20 Subsection 524(3)**

Repeal the subsection.

#### **21 Subsection 527(1)**

Repeal the subsection (not including the note), substitute:

(1) A term, or more than one term, of an award is a *preserved award term* if:

- (a) the term or terms are about a matter referred to in subsection (2); and
- (b) the term or terms were in effect immediately before the reform commencement.

**22 Subsection 527(2)**

Omit “subsection (1)”, substitute “paragraph (1)(a)”.

**23 Section 528**

Repeal the section.

**24 Subsection 531(2)**

Omit “528,”.

**25 Paragraph 532(2)(a)**

Omit “, 528”.

**26 Division 4 of Part 10**

Repeal the Division.

**27 Paragraphs 552(1)(a) and (b)**

Repeal the paragraphs.

**28 Subsection 552(1) (note)**

Repeal the note.

**29 Subsection 552(3)**

Repeal the subsection, substitute:

- (3) The Commission must not vary a facilitative provision within the meaning of section 521 except on a ground set out in section 554.

**30 Subparagraph 553(4)(b)(iii)**

Repeal the subparagraph.

**31 Section 555**

Repeal the section.

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**32 Before subsection 556(1)**

Insert:

(1A) The Commission must not make an order revoking an award except in accordance with this section.

**33 Subsection 557(1) (notes 1 and 2)**

Repeal the notes, substitute:

Note 1: Item 4 of Schedule 4 to the *Workplace Relations Amendment (Work Choices) Act 2005* provides for the employers, employees and organisations bound by awards.

**34 Subsection 557(1) (note 3)**

Omit “Note 3”, substitute “Note 2”.

**35 Subsection 561(1)**

Omit “(1)” (first occurring).

Note: The heading to section 561 is altered by omitting “**additional matters**” and substituting “**when application may be made**”.

**36 Subsection 561(2)**

Repeal the subsection.

**37 Section 565**

Repeal the section.

**38 Section 573**

Omit “a provision referred to in section 555”, substitute “section 556”.

**39 Paragraph 50(1)(a) of Schedule 8**

Repeal the paragraph, substitute:

(a) the award is varied under section 558 or 559; and

**40 Subclause 50(7) of Schedule 8**

Repeal the subclause.

## Schedule 3—Functions of the Australian Fair Pay Commission

### *Workplace Relations Act 1996*

#### **1 Subsection 4(1) (definition of *new APCS*)**

Omit “subsection 214(1)”, substitute “section 178”.

#### **2 Subsection 22(1) (paragraphs (b), (c) and (d) of the note)**

Repeal the paragraphs, substitute:

- (b) adjusting special FMWs for employees with a disability;
- (c) adjusting basic periodic rates of pay and basic piece rates of pay payable to employees or employees of particular classifications.

#### **3 Section 176 (notes 1 and 2)**

Repeal the notes, substitute:

Note: Any additional considerations or limitations on the exercise of the AFPC’s powers are set out in the various sections of this Division (including section 222).

#### **4 Section 177**

Repeal the section.

#### **5 Section 178 (definition of *default casual loading percentage*)**

Omit “subsection 186(1)”, substitute “section 186”.

#### **6 Section 178 (definition of *new APCS*)**

Repeal the definition, substitute:

*new APCS* means an APCS determined under subsection 214(1) of this Act before the repeal of that subsection by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.

#### **7 Section 178 (definition of *special FMW*)**

Repeal the definition, substitute:

*special FMW* means a special FMW determined under section 197 of this Act before the repeal of that section by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.

## **8 Paragraphs 182(4)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) there is a special FMW for the employee;

## **9 Section 186**

Repeal the section, substitute:

### **186 Default casual loading percentage**

The *default casual loading percentage* is 20%.

## **10 Sections 187 and 188**

Repeal the sections.

## **11 Subparagraphs 190(1)(a)(iii) and (iv)**

Repeal the subparagraphs, substitute:

- (iii) adjusting a new APCS; and

## **12 Subsection 190(4)**

Repeal the subsection, substitute:

- (4) This section does not limit the AFPC's power to adjust APCSs made for the purpose of section 220 before the repeal of that section by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.

## **13 Subparagraphs 191(1)(a)(iii) and (iv)**

Repeal the subparagraphs, substitute:

- (iii) adjusting a new APCS; and

## **14 Subsection 191(4)**

Repeal the subsection, substitute:

- (4) This section does not limit the AFPC's power to adjust APCSs made for the purpose of section 220 before the repeal of that

section by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.

**15 Paragraphs 192(1)(b), (c) and (d)**

Repeal the paragraphs, substitute:

(b) adjusting a new APCS.

**16 Subsection 193(1)**

Omit “Subject to subsection (3), when exercising its power to make an APCS, or”, substitute “When exercising its power”.

**17 Subsection 193(1) (note 1)**

Omit “, or to any new APCS that replaces the preserved APCS”.

**18 Subsection 193(3)**

Repeal the subsection.

**19 Subsection 194(2)**

Repeal the subsection.

**20 Subsection 194(4)**

Repeal the subsection.

**21 Subsection 195(1)**

Omit “\$12.75”, substitute “\$13.74”.

**22 Paragraph 196(2)(a)**

Repeal the paragraph, substitute:

(a) section 176; and

**23 Sections 197 and 198**

Repeal the sections.

**24 Paragraph 200(2)(a)**

Repeal the paragraph, substitute:

(a) section 176; and

**25 Subsection 200(3)**

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Repeal the subsection.

**26 Subsection 201(1)**

Omit “(1)”.

**27 Subsection 201(2)**

Repeal the subsection.

**28 Subsection 202(4)**

Omit all the words before paragraph (a), substitute:

- (4) The AFPC must not adjust an APCS so that it includes provisions that:

**29 Subsection 203(4)**

Omit all the words after “to adjust”, substitute “an APCS”.

**30 Paragraph 205(2)(b)**

Omit “an APCS made in accordance with Subdivision M”, substitute “a new APCS determined in accordance with Subdivision M of Division 2 of Part 7 of this Act before the repeal of that Subdivision by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*”.

**31 Section 206**

Repeal the section.

**32 Subsection 207(3)**

Repeal the subsection.

**33 Subdivision J of Division 2 of Part 7**

Repeal the Subdivision.

**34 Subdivision K of Division 2 of Part 7 (heading)**

Repeal the heading, substitute:

**Subdivision K—Australian Pay and Classification Scales:  
duration and adjustment of APCSs (preserved or  
new)**

**35 Section 215**

Omit “revocation or”.

**36 Paragraph 216(2)(a)**

Repeal the paragraph, substitute:

(a) section 176; and

**37 Section 217**

Repeal the section.

**38 Subdivision M of Division 2 of Part 7**

Repeal the Subdivision, substitute:

**Subdivision M—Special provisions relating to APCSs for  
employees with a disability**

**219A Coverage of special APCSs for employees with a disability**

- (1) This section applies in relation to an APCS (the *special APCS*) that was determined in accordance with section 220 of this Act before the repeal of that section by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.
  - (2) The special APCS is taken not to cover the employment of a particular employee if:
    - (a) there is another APCS that covers the employment of the employee (disregarding the effect that paragraph 205(2)(b) would otherwise have because of the special APCS); and
    - (b) that other APCS determines a basic periodic rate of pay specifically for a particular class of employees with a disability; and
    - (c) the employee’s employment is covered by that other APCS because the employee is a member of that class; and
    - (d) that class is the same as, or is a subclass of, the employees whose employment would otherwise be covered by the special APCS.
-

- (3) Without limiting the power of the AFPC to adjust APCSs under section 216, the AFPC may adjust the special APCS under that section.

**39 Subsection 222(1)**

Omit “sections 176 and 177”, substitute “section 176”.

**40 Subsection 222(2)**

Repeal the subsection, substitute:

- (2) For the purposes of the Acts referred to in paragraph (1)(c), and of paragraph (1)(e), the AFPC does not discriminate against an employee or employees by (in accordance with this Division):
- (a) adjusting rate provisions in an APCS that determine a basic periodic rate of pay for:
    - (i) all junior employees, or a class of junior employees; or
    - (ii) all employees with a disability, or a class of employees with a disability; or
    - (iii) all employees to whom training arrangements apply, or a class of employees to whom training arrangements apply; or
  - (b) adjusting a special FMW for all employees with a disability, or a class of employees with a disability.

**41 After paragraph 861(1)(c)**

Insert:

- (ca) Division 2 of Part 7 has effect as if the definition of *APCS* in section 178 were modified by omitting “or a new APCS”; and

**42 Subparagraph 861(1)(d)(i)**

Omit “J”.

**43 Subparagraph 861(1)(d)(ii)**

Omit “206, 207, 216 and 217”, substitute “207 and 216”.

**44 At the end of subparagraph 861(1)(d)(iv)**

Add “and”.

**45 Subparagraph 861(1)(d)(v)**

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Repeal the subparagraph.

**46 Paragraph 864(1)(b)**

Repeal the paragraph, substitute:

- (b) is of a rate provision (within the meaning of Division 2 of Part 7).

**47 Paragraph 864(2)(a)**

Repeal the paragraph, substitute:

- (a) section 176; and

**48 Subsection 864(4)**

Repeal the subsection.

**49 Subsection 865(1)**

Omit “set or”.

**50 Paragraphs 865(1)(a) and (b)**

Omit “setting or”.

**51 Subsection 865(2)**

Omit “sets or”.

**52 Paragraphs 865(2)(a) and (b)**

Omit “setting or”.

**53 Wage reviews in progress before commencement—  
previous wage-setting powers of the AFPC**

- (1) This item applies to a wage review that is being conducted by AFPC under Division 2 of Part 2 of the *Workplace Relations Act 1996* before the commencement time if:
    - (a) the wage review relates to whether the AFPC should exercise a previous wage-setting power of the AFPC; and
    - (b) the wage review is not completed before the commencement time.
  - (2) The AFPC is not to continue to conduct the wage review after the commencement time, to the extent that the wage review relates to the exercise of the previous wage-setting power of the AFPC.
-

(3) In this item:

***commencement time*** means the time when this Schedule commences.

***previous wage-setting power*** of the AFPC means a power that:

- (a) was a wage-setting power of the AFPC under Division 2 of Part 7 of the *Workplace Relations Act 1996*, as in force immediately before the commencement time; and
- (b) is not a wage-setting power of the AFPC under Division 2 of Part 7 of the *Workplace Relations Act 1996*, as amended by this Schedule.

## **Schedule 4—Repeal of provisions for Workplace Relations Fact Sheet**

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

#### **1 Division 3A of Part 5**

Repeal the Division.

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## Schedule 5—Transitional arrangements for existing pre-reform Federal agreements etc.

### *Workplace Relations Act 1996*

#### **1 After clause 2 of Schedule 7**

Insert:

#### **2A Commission may extend or vary pre-reform certified agreements**

- (1) The Commission may, on application by any person bound by a pre-reform certified agreement, by order:
  - (a) extend the nominal expiry date of the agreement; or
  - (b) vary the terms of the agreement.
- (2) However, before making the order, the Commission must be satisfied that:
  - (a) all parties bound by the agreement genuinely agree to the extension or variation; and
  - (b) none of the parties have, after the introduction day:
    - (i) organised or engaged in, or threatened to organise or engage in, industrial action in relation to another party to the agreement; or
    - (ii) applied for a protected action ballot under section 451 in relation to proposed industrial action; and
  - (c) in the case of a variation—the agreement as varied would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees bound by the agreement under:
    - (i) any transitional award that would regulate any term or condition of employment of the employees if the employer had been an excluded employer immediately before the reform commencement; and
    - (ii) any law of the Commonwealth, or of a State or Territory, that the Commission considers relevant.

- (3) If the Commission extends the nominal expiry date of the agreement, the extended date cannot be more than 3 years after the date on which the order is made.
- (4) If the agreement was made under section 170LJ or 170LK of the pre-reform Act, the employees bound by the agreement are taken, for the purposes of paragraph (2)(a), to agree to the extension or variation if a valid majority of the employees bound by the agreement at the time of making the extension or variation agree to it.
- (5) Section 170LE of the pre-reform Act applies to deciding whether a valid majority of the employees agree to the extension or variation as if references in that section to making an agreement were references to making the extension or variation.
- (6) To avoid doubt, the terms and conditions of employment under a transitional award may, for the purposes of paragraph (2)(c), include terms and conditions that did not apply on the reform commencement, or that have been varied since the reform commencement.
- (7) The provisions of the pre-reform Act apply, in relation to an extension or variation to which this clause applies, to the same extent that they apply, because of clause 2, in relation to a variation under paragraph 170MD(6)(a) of the pre-reform Act.
- (8) In this clause:

*introduction day* means the day on which the Bill that became the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* was introduced into the House of Representatives.

## **2 After subclause 4(1) of Schedule 7**

Insert:

- (1A) A person must not:
  - (a) take or threaten to take any industrial action or other action;  
or
  - (b) refrain or threaten to refrain from taking any action;

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with intent to coerce another person to agree, or not to agree, to the extension of the nominal expiry date of, or the variation of, a pre-reform certified agreement under clause 2A.

**3 Subclause 4(2) of Schedule 7**

Omit “Subclause (1)”, substitute “This clause”.

**4 Subclause 4(3) of Schedule 7**

Omit “subclause (1)”, substitute “this clause”.

**5 Subclause 28(1) of Schedule 7**

Repeal the subclause, substitute:

- (1) An old IR agreement ceases to be in operation if it is terminated under clause 29A.

**6 At the end of Part 6 of Schedule 7**

Add:

**29A Termination of old IR agreements**

- (1) A party to an old IR agreement may apply to the Commission for the agreement to be terminated.
- (2) The Commission may, by order, terminate the agreement if the Commission is satisfied that all of the parties to the agreement agree to the termination.

## Schedule 5A—Transitional treatment of State employment agreements

### *Workplace Relations Act 1996*

#### 1 After clause 16 of Schedule 8

Insert:

#### **16A Commission may extend or vary preserved collective State agreements**

- (1) The Commission may, on application by any person bound by a preserved collective State agreement, by order:
  - (a) extend the nominal expiry date of the agreement; or
  - (b) vary the terms of the agreement.
- (2) However, before making the order, the Commission must be satisfied that:
  - (a) all parties bound by the agreement genuinely agree to the extension or variation; and
  - (b) none of the parties have, after the introduction day:
    - (i) organised or engaged in, or threatened to organise or engage in, industrial action in relation to another party to the agreement; or
    - (ii) applied for a protected action ballot under section 451 in relation to proposed industrial action; and
  - (c) in the case of a variation—the agreement as varied would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees bound by the agreement under:
    - (i) any relevant State award in relation to the employees; and
    - (ii) any law of the Commonwealth, or of a State or Territory, that the Commission considers relevant.
- (3) If the Commission extends the nominal expiry date of the agreement, the extended date cannot be more than 3 years after the date on which the order is made.

- (4) The employees bound by the agreement are taken, for the purposes of paragraph (2)(a), genuinely to agree to the extension or variation if:
- (a) the employer gives all of the employees bound by the agreement at the time of making the extension or variation a reasonable opportunity genuinely to decide whether they agree to the extension or variation; and
  - (b) either:
    - (i) if the decision is made by a vote—a majority of those employees who cast a valid vote; or
    - (ii) otherwise—a majority of those employees; genuinely decide that they agree to the extension or variation.
- (5) To avoid doubt, the terms and conditions of employment under a relevant State award may, for the purposes of paragraph (2)(c), include terms and conditions that did not apply on the reform commencement, or that have been varied since the reform commencement.

- (6) In this clause:

***introduction day*** means the day on which the Bill that became the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* was introduced into the House of Representatives.

***relevant State award***, in relation to an employee, means:

- (a) if, immediately before the reform commencement, the employee was bound by, or a party to, the original collective agreement to which the preserved collective State agreement referred to in subsection (1) relates, under the terms of that agreement or a State or Territory industrial law as in force at that time—the State award that would have bound the employee at that time but for that agreement; or
- (b) otherwise—the State award that would have bound, or but for the application of a State employment agreement would have bound, the employee at that time if the employee had been employed by the employer at that time.

## 2 After clause 21E of Schedule 8

Insert:

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## **Division 5A—Coercion**

### **3 After subclause 22(1) of Schedule 8**

Insert:

(1A) A person must not:

(a) take or threaten to take any industrial action or other action;  
or

(b) refrain or threaten to refrain from taking any action;  
with intent to coerce another person to agree, or not to agree, to the  
extension of the nominal expiry date of, or the variation of, a  
preserved collective State agreement under clause 16A.

Note: The heading to clause 22 of Schedule 8 is altered by adding at the end “etc.”.

### **4 Subclause 22(2) of Schedule 8**

Omit “Subclause (1)”, substitute “This clause”.

### **5 Subclause 22(3) of Schedule 8**

Omit “subclause (1)”, substitute “this clause”.

## **Schedule 6—Notional agreements preserving State awards**

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

#### **1 Subclause 38A(1) of Schedule 8**

Repeal the subclause, substitute:

- (1) A notional agreement preserving State awards ceases to be in operation at the end of:
  - (a) unless paragraph (b) applies, 31 December 2009; or
  - (b) if a later date is prescribed by the regulations—that later date.

#### **2 Paragraph 19(2)(b) of Schedule 9**

Omit all the words after “operation”, substitute “under subclause 38A(1) of Schedule 8;”.

## Schedule 7—Transitionally registered associations

### *Workplace Relations Act 1996*

#### **1 Paragraph 6(c) of Schedule 10**

Repeal the paragraph, substitute:

- (c) in any other case—at the end of:
    - (i) unless paragraph (b) applies, 31 December 2009; or
    - (ii) if a later date is prescribed by the regulations—that later date.
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*[Minister's second reading speech made in—  
House of Representatives on 13 February 2008  
Senate on 17 March 2008]*

(21/08)

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