





# **Fair Work (State Referral and Consequential and Other Amendments) Act 2009**

**No. 54, 2009**

**An Act to amend the *Fair Work Act 2009*, to make  
amendments consequential on the enactment of  
that Act, and for other purposes**

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



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# **Fair Work (State Referral and Consequential and Other Amendments) Act 2009**

**No. 54, 2009**

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**An Act to amend the *Fair Work Act 2009*, to make  
amendments consequential on the enactment of  
that Act, and for other purposes**

*[Assented to 25 June 2009]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Fair Work (State Referral and  
Consequential and Other Amendments) Act 2009*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	25 June 2009
2. Schedule 1, items 1 to 10	Immediately after the commencement of the provision(s) covered by table item 3.	25 June 2009
3. Schedule 1, item 11	The day on which this Act receives the Royal Assent.	25 June 2009
4. Schedule 1, item 12	Immediately after the commencement of the provision(s) covered by table item 3.	25 June 2009
5. Schedule 2, Part 1	Immediately after the commencement of Schedule 3 to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> .	
6. Schedule 2, item 33	Immediately after the commencement of section 2 of the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> .	25 June 2009
7. Schedule 2, items 34 to 51	Immediately after the commencement of Schedule 3 to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> .	
8. Schedule 2, Part 2, Division 2	Immediately after the commencement of Part 3 of Schedule 6 to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> .	
9. Schedule 3	Immediately after the commencement of the provision(s) covered by table item 3.	25 June 2009
10. Schedule 4	Immediately after the commencement of	

<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>
	Part 2-4 of the <i>Fair Work Act 2009</i> .	
11. Schedule 5, items 1 to 30	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
12. Schedule 5, item 31	<p>The later of:</p> <p>(a) immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i>; and</p> <p>(b) immediately after the commencement of item 41 of Schedule 2 to the <i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	
13. Schedule 5, items 32 to 64	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
14. Schedule 5, items 65 and 66	<p>The later of:</p> <p>(a) immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i>; and</p> <p>(b) immediately after the commencement of item 101 of Schedule 2 to the <i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	
15. Schedule 5, item 67	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
16. Schedule 5, items 68 and 69	Immediately after the commencement of Part 2-3 of the <i>Fair Work Act 2009</i> .	
17. Schedule 5, items 70 to 79	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
18. Schedule 5, item 80	<p>The later of:</p> <p>(a) immediately after the commencement of item 68 of Schedule 5; and</p> <p>(b) the commencement of item 38 of Schedule 3 to the <i>Disability Discrimination and Other Human Rights</i></p>	

<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>
	<i>Legislation Amendment Act 2009.</i>	
	However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
19. Schedule 5, item 81	<p>The later of:</p> <p>(a) immediately after the commencement of item 70 of Schedule 5; and</p> <p>(b) the commencement of item 38 of Schedule 3 to the <i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009.</i></p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	
20. Schedule 5, item 82	<p>The later of:</p> <p>(a) immediately after the commencement of item 72 of Schedule 5; and</p> <p>(b) the commencement of item 38 of Schedule 3 to the <i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009.</i></p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	
21. Schedule 5, Part 3	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009.</i>	
22. Schedule 6	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009.</i>	
23. Schedule 7	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009.</i>	
24. Schedule 8, items 1 to 130	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009.</i>	
25. Schedule 8, items 131 and 132	<p>The later of:</p> <p>(a) immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i>; and</p> <p>(b) immediately after the commencement of item 33 of Schedule 2 to the <i>Social</i></p>	

<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>
	<i>Security Legislation Amendment (Employment Services Reform) Act 2009.</i>	
26. Schedule 8, items 133 to 135	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
27. Schedule 8 item 136	The later of: (a) immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> ; and (b) immediately after the commencement of item 147 of Schedule 2 to the <i>Social Security Legislation Amendment (Employment Services Reform) Act 2009</i> .	
28. Schedule 8, items 137 and 138	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
29. Schedule 8, item 139	The later of: (a) immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> ; and (b) immediately after the commencement of item 195 of Schedule 2 to the <i>Social Security Legislation Amendment (Employment Services Reform) Act 2009</i> .	
30. Schedule 8, items 140 to 161	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
31. Schedule 9	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
32. Schedule 10	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
33. Schedule 11	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
34. Schedule 12, items 1 to 3	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
35. Schedule 12, item 4	The later of: (a) immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> ; and (b) immediately after the commencement of Schedule 1 to the <i>Migration Legislation Amendment (Worker Protection) Act 2008</i> .	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
36. Schedule 13	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
37. Schedule 14	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
38. Schedule 15	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
39. Schedule 16	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
40. Schedule 17	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
41. Schedule 18	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
42. Schedule 19	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	
43. Schedule 20	The day on which this Act receives the Royal Assent.	25 June 2009

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

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

### **3 Schedule(s)**

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

### **4 Definition**

In this Act:

***WR Act repeal day*** has the meaning given by Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

## **Schedule 1—Referring States**

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

**1 Section 12 (at the end of note 2 at the end of the definition of *employee*)**

Add “and subsection 30E(1)”.

**2 Section 12 (at the end of note 2 at the end of the definition of *employer*)**

Add “and subsection 30E(2)”.

**3 Section 12 (at the end of the definition of *national system employee*)**

Add:

Note: Section 30C extends the meaning of *national system employee* in relation to a referring State.

**4 Section 12 (at the end of the definition of *national system employer*)**

Add:

Note: Section 30D extends the meaning of *national system employer* in relation to a referring State.

**5 Section 12 (note at the end of the definition of *outworker entity*)**

Repeal the note, substitute:

Note: Section 30F extends the meaning of *outworker entity* in relation to a referring State.

**6 At the end of section 13**

Add:

Note: Section 30C extends the meaning of *national system employee* in relation to a referring State.

**7 Section 14 (note)**

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Repeal the note, substitute:

Note 1: 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*).

Note 2: Section 30D extends the meaning of *national system employer* in relation to a referring State.

## 8 At the end of subsection 15(1)

Add:

Note: Subsection 30E(1) extends the meaning of *employee* in relation to a referring State.

## 9 At the end of subsection 15(2)

Add:

Note: Subsection 30E(2) extends the meaning of *employer* in relation to a referring State.

## 10 Section 24

Repeal the section, substitute:

## 24 Guide to this Part

This Part deals with the extent of the application of this Act.

Division 2 is about how this Act affects the operation of certain State or Territory laws.

Division 2A is about the extended application of this Act in a State that has referred to the Parliament of the Commonwealth matters relating to this Act.

Division 3 is about the geographical application of this Act.

Division 4 deals with other matters relating to the application of this Act.

## 11 After Division 2 of Part 1-3

Insert:

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## Division 2A—Application of this Act in a referring State

### 30A Meaning of terms used in this Division

In this Division:

***amendment*** includes the insertion, omission, repeal, substitution, addition or relocation of words or matter.

***excluded subject matter*** means:

- (a) a matter dealt with in a law referred to in subsection 27(1A) of this Act as originally enacted; or
- (b) a non-excluded matter within the meaning of subsection 27(2) of this Act as so enacted (other than paragraph 27(2)(p) of this Act as so enacted); or
- (c) rights or remedies incidental to a matter referred to in paragraph (a) or (b) of this definition;

except to the extent that this Act as so enacted deals with the matter (directly or indirectly), or requires or permits instruments made or given effect under this Act so to deal with the matter.

***express amendment*** means the direct amendment of this Act, but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act.

***law enforcement officer*** is a member of a police force, a police reservist, a police recruit or a protective services officer.

***referral law***, of a State, means the law of the State that refers matters, as mentioned in subsection 30B(1), to the Parliament of the Commonwealth.

***referred provisions*** means the provisions of this Division to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

***referred subject matters*** means any of the following:

- (a) terms and conditions of employment, including any of the following:
  - (i) minimum terms and conditions of employment, (including employment standards and minimum wages);

- (ii) terms and conditions of employment contained in instruments (including instruments such as awards, determinations and enterprise-level agreements);
  - (iii) bargaining in relation to terms and conditions of employment;
  - (iv) the effect of a transfer of business on terms and conditions of employment;
  - (b) terms and conditions under which an outworker entity may arrange for work to be performed for the entity (directly or indirectly), if the work is of a kind that is often performed by outworkers;
  - (c) rights and responsibilities of employees, employers, independent contractors, outworkers, outworker entities, associations of employees or associations of employers, being rights and responsibilities relating to any of the following:
    - (i) freedom of association and related protections;
    - (ii) protection from discrimination relating to employment;
    - (iii) termination of employment;
    - (iv) industrial action;
    - (v) protection from payment of fees for services related to bargaining;
    - (vi) sham independent contractor arrangements;
    - (vii) standing down employees without pay;
    - (viii) rights of entry and rights of access to records;
  - (d) compliance with, and enforcement of, this Act;
  - (e) the administration of this Act;
  - (f) the application of this Act;
  - (g) matters incidental or ancillary to the operation of this Act or of instruments made or given effect under this Act;
- but does not include any excluded subject matter.

**referring State:** see section 30B.

**State public sector employee,** of a State, means:

- (a) an employee of a State public sector employer of the State; or
- (b) any other employee in the State of a kind specified in the regulations;

and includes a law enforcement officer to whom subsection 30E(1) applies.

**State public sector employer**, of a State, means an employer that is:

- (a) the State; or
- (b) a body (whether incorporated or unincorporated) established for a public purpose by or under a law of the State, by the Governor of a State or by a Minister of the State; or
- (c) a body corporate in which the State has a controlling interest; or
- (d) any other employer in the State of a kind specified in the regulations;

and includes a holder of an office to whom subsection 30E(2) applies.

### **30B Meaning of *referring State***

#### *Reference of matters by State Parliament to Commonwealth Parliament*

- (1) A State is a **referring State** if the Parliament of the State has referred the matters covered by subsections (3), (4) and (5) in relation to the State to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:
  - (a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and
  - (b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.

This subsection has effect subject to subsection (6).

- (2) A State is a **referring State** even if:
  - (a) the State's referral law provides that the reference to the Parliament of the Commonwealth of any or all of the matters covered by subsections (3), (4) and (5) is to terminate in particular circumstances; or
  - (b) the State's referral law provides that particular matters relating to State public sector employees, or State public

sector employers, of the State are not included in any or all of those matters.

*Reference covering referred provisions*

- (3) This subsection covers the matters to which the referred provisions relate to the extent of making laws with respect to those matters by amending this Act, as originally enacted, to include the referred provisions.

*Reference covering amendments*

- (4) This subsection covers the referred subject matters to the extent of making laws with respect to those matters by making express amendments of this Act.

*Reference covering transitional matters*

- (5) This subsection covers making laws with respect to the transition from the regime provided for by:
- (a) the *Workplace Relations Act 1996*; or
  - (b) a law of a State relating to workplace relations;
- to the regime provided for by this Act.

*Effect of termination of reference*

- (6) Despite anything to the contrary in a referral law of a State, a State ceases to be a ***referring State*** if any or all of the following occurs:
- (a) the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection (3) terminates;
  - (b) the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection (4) terminates;
  - (c) the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection (5) terminates.

**30C Extended meaning of *national system employee***

- (1) A ***national system employee*** includes:

- (a) any individual in a referring State so far as he or she is employed, or usually employed, as described in paragraph 30D(1)(a), except on a vocational placement; and
  - (b) a law enforcement officer of the State to whom subsection 30E(1) applies.
- (2) This section does not limit the operation of section 13 (which defines a national system employee).

Note: Section 30H may limit the extent to which this section extends the meaning of *national system employee*.

**30D Extended meaning of *national system employer***

- (1) A *national system employer* includes:
- (a) any person in a referring State so far as the person employs, or usually employs, an individual; and
  - (b) a holder of an office to whom subsection 30E(2) applies.
- (2) This section does not limit the operation of section 14 (which defines a national system employer).

Note: Section 30H may limit the extent to which this section extends the meaning of *national system employer*.

**30E Extended ordinary meanings of *employee* and *employer***

- (1) A reference in this Act to an employee with its ordinary meaning includes a reference to a law enforcement officer of a referring State if the State's referral law so provides for the purposes of that law.
- (2) A reference in this Act to an employer with its ordinary meaning includes a reference to a holder of an office of a State if the State's referral law provides, for the purposes of that law, that the holder of the office is taken to be the employer of a law enforcement officer of the State.
- (3) This section does not limit the operation of section 15 (which deals with references to employee and employer with their ordinary meanings).

Note: Section 30H may limit the extent to which this section extends the meanings of *employee* and *employer*.

### **30F Extended meaning of *outworker entity***

- (1) An *outworker entity* includes a person, other than in the person's capacity as a national system employer, so far as:
  - (a) the person arranges for work to be performed for the person (either directly or indirectly); and
  - (b) the work is of a kind that is often performed by outworkers; and
  - (c) one or more of the following applies:
    - (i) at the time the arrangement is made, one or more parties to the arrangement is in a referring State;
    - (ii) the work is to be performed in a referring State;
    - (iii) the person referred to in paragraph (a) carries on an activity (whether of a commercial, governmental or other nature) in a referring State, and the work is reasonably likely to be performed in that State;
    - (iv) the person referred to in paragraph (a) carries on an activity (whether of a commercial, governmental or other nature) in a referring State, and the work is to be performed in connection with that activity.
- (2) This section does not limit the operation of the definition of *outworker entity* in section 12.

Note: Section 30H may limit the extent to which this section extends the meaning of *outworker entity*.

### **30G General protections**

- (1) Part 3-1 (which deals with general protections) applies to action taken in a referring State.
- (2) This section applies despite section 337 (which limits the application of Part 3-1), and does not limit the operation of sections 338 and 339 (which set out the application of that Part).

Note: Section 30H may limit the extent to which this section extends the application of Part 3-1.

### **30H Division only has effect if supported by reference**

A provision of this Division has effect in relation to a referring State only to the extent that the State's referral law refers to the Parliament of the Commonwealth the matters mentioned in

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subsection 30B(1) that result in the Parliament of the Commonwealth having sufficient legislative power for the provision so to have effect.

**30J Application of the *Acts Interpretation Act 1901***

- (1) The *Acts Interpretation Act 1901*, as in force on the day on which this Division commences, applies to this Act.
- (2) Amendments of the *Acts Interpretation Act 1901* made after that day do not apply to this Act.

**12 At the end of section 337**

Add:

Note: Section 30G extends the operation of this Part in a referring State.

## **Schedule 2—Consequential and transitional provisions relating to referral of matters**

### **Part 1—Treatment of transitional awards and common rules as transitional instruments etc.**

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

##### **1 Item 2 of Schedule 2**

Insert:

*common rule* means a common rule within the meaning of clauses 82 to 87 of Schedule 6 to the WR Act (including those clauses as they continue to apply because of item 8A of Schedule 3).

##### **2 Item 2 of Schedule 2**

Insert:

*State reference common rule*: see subitem 2A(2) of Schedule 3.

##### **3 Item 2 of Schedule 2**

Insert:

*State reference employee*: see subitem 2A(3) of Schedule 3.

##### **4 Item 2 of Schedule 2**

Insert:

*State reference employer*: see subitem 2A(4) of Schedule 3.

##### **5 Item 2 of Schedule 2**

Insert:

*State reference transitional award*: see subitem 2A(1) of Schedule 3.

##### **6 Item 2 of Schedule 2**

Insert:

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*State reference transitional award or common rule* means a State reference transitional award or a State reference common rule.

## **7 Item 2 of Schedule 2**

Insert:

*Victorian employment agreement*: see item 41 of Schedule 3.

## **8 After paragraph 2(2)(a) of Schedule 3**

Insert:

(aa) a State reference transitional award or common rule;

## **9 Subitem 2(2) of Schedule 3 (note 4)**

Repeal the note, substitute:

Note 4: For transitional provisions relating to other transitional awards, see Schedule 20.

## **10 At the end of subitem 2(3) of Schedule 3**

Add:

Note: Victorian employment agreements are not continued as transitional instruments. For provisions relating to these agreements, see Part 7 of this Schedule.

## **11 After subitem 2(3) of Schedule 3**

Insert:

(3A) If a State reference common rule comes into effect on or after the WR Act repeal day under the provisions that continue to apply because of item 8A, the State reference common rule becomes a *transitional instrument* when the common rule comes into effect.

## **12 Paragraph 2(5)(a) of Schedule 3**

After “awards,” (first occurring), insert “State reference transitional awards or common rules,”.

## **13 After item 2 of Schedule 3**

Insert:

## **2A Meanings of *State reference transitional award* and *State reference common rule***

(1) A *State reference transitional award* is a transitional award that covers:  
(a) one or more specified State reference employers; and

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**Schedule 2** Consequential and transitional provisions relating to referral of matters  
**Part 1** Treatment of transitional awards and common rules as transitional instruments  
etc.

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(b) specified State reference employees of those employers.

Note: A transitional award includes a transitional Victorian reference award.

(2) A **State reference common rule** is a common rule that covers:

- (a) specified State reference employers; and
- (b) specified State reference employees of those employers.

(3) A **State reference employee** is an employee who is a national system employee only because of section 30C of the FW Act.

(4) A **State reference employer** is an employer that is a national system employer only because of section 30D of the FW Act.

(5) If:

- (a) a transitional award (the **current award**) covers one or more State reference employers, and State reference employees of those employers; and
- (b) the current award also covers:
  - (i) other employees of those employers; or
  - (ii) other employers, and employees of those other employers;

then, for the purposes of this Act, the current award is taken instead to constitute 2 separate transitional awards as follows:

- (c) a State reference transitional award covering:
  - (i) the employers, and the employees of those employers, referred to in paragraph (a); and
  - (ii) if the current award covers an organisation, in relation to certain employers or employees referred to in paragraph (a)—that organisation in relation to those employers or employees; and
- (d) a transitional award covering:
  - (i) the employers, and the employees of those employers, referred to in paragraph (b); and
  - (ii) if the current award covers an organisation, in relation to certain employers or employees referred to in paragraph (b)—that organisation in relation to those employers or employees.

## 14 At the end of Part 2 of Schedule 3

Add:

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**8A Continuing application of provisions of the WR Act about common rules**

- (1) Subject to this item, clauses 82 to 87 of Schedule 6 to the WR Act continue to apply on and after the WR Act repeal day in relation to State reference common rules.
- (2) Clauses 82 to 87 continue to apply as if:
  - (a) references in the clauses to the transitional period (including references to the end of the transitional period) were omitted; and
  - (b) a reference in the clauses to the Commission were instead a reference to FWA; and
  - (c) a reference in the clauses to a Registrar were instead a reference to the General Manager of FWA; and
  - (d) a reference in the clauses to the Rules of the Commission were instead a reference to the procedural rules of FWA.
- (3) Subitem (2) has effect unless the context otherwise requires and subject to the regulations.

Note: For example, paragraph (2)(a) does not apply if the reference is to something that the Commission did before the WR Act repeal day (or before the reform commencement).

**15 After item 12 of Schedule 3**

Insert:

**12A State reference transitional awards: variation and revocation**

*General provisions*

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

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

**Schedule 2** Consequential and transitional provisions relating to referral of matters  
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etc.

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Note 2: For variation of State reference common rules, see the provisions continued in effect by item 8A.

- (2) To avoid doubt, for the purpose of sections 552 and 553 of the WR Act, as applied by subitem (1) in relation to State reference transitional awards, “minimum safety net entitlements” includes minimum safety net entitlements relating to wages.

Note: For variation of terms relating to wages after the end of the bridging period, see subitems (4) to (6).

- (3) FWA must perform its powers and functions under Divisions 5 and 6 in a way that furthers the objects of Part 10 of the WR Act.

*Special provisions about variation or revocation after the end of the bridging period*

- (4) A State reference transitional award cannot be varied or revoked after the end of the bridging period except as follows:
- (a) a State reference transitional award, other than terms relating to wages, can be varied after the end of the bridging period under section 553 of the WR Act;
  - (b) terms of a State reference transitional award relating to wages can be varied after the end of the bridging period in an annual wage review under the FW Act as provided for in subitem (5);
  - (c) a State reference transitional award can be varied after the end of the bridging period as a result of FWA continuing to deal with a matter that it was dealing with before the end of the bridging period.
- (5) In an annual wage review, FWA may make a determination varying terms of a State reference transitional award relating to wages.
- (6) For the purpose of subitem (5), Division 3 of Part 2-6 of the FW Act (other than section 292) applies to terms of a State reference transitional award relating to wages in the same way as it applies to a modern award.

**16 At the end of Schedule 3**

Add:

## **Part 7—Victorian employment agreements**

### **41 Part applies to Victorian employment agreements**

This Part applies to a Victorian employment agreement that was in force in relation to an employer and an employee (the *parties*) under Division 12 of Part 21 of the WR Act immediately before the WR Act repeal. A *Victorian employment agreement* is an employment agreement within the meaning of that Division.

### **42 Victorian employment agreement enforceable as a contract**

On and after the WR Act repeal day the Victorian employment agreement is enforceable by one of the parties against the other party as if it were a contract. The provisions of Division 12 of Part 21 of the WR Act do not continue to apply in relation to the agreement.

### **17 Subitem 2(2A) of Schedule 6**

Omit “an award, if the award”, substitute “an award or a State reference transitional award, if the award or State reference transitional award”.

### **18 Subitem 3(1) of Schedule 7**

Insert:

*award* includes a State reference transitional award or common rule.

### **19 Paragraph 13(2)(a) of Schedule 7**

After “an award”, insert “, a State reference transitional award or common rule,”.

### **20 At the end of item 18 of Schedule 7**

Add:

*State reference transitional awards or common rules: transitional APCs not relevant*

- (5) If the relevant award-based transitional instrument in relation to an employee is a State reference transitional award or common rule, the references in this item to a transitional APCs are to be disregarded.

Note: State reference transitional awards or common rules contain terms dealing with wages.

## **21 At the end of item 19 of Schedule 7**

Add:

*State reference transitional awards or common rules: transitional APCs not relevant*

- (6) If the relevant award-based transitional instrument in relation to an employee is a State reference transitional award or common rule, the references in this item to a transitional APCs are to be disregarded.

Note: State reference transitional awards or common rules contain terms dealing with wages.

## **22 Item 21 of Schedule 7**

After “awards” (last occurring), insert “(including State reference transitional awards and common rules)”.

## **23 Paragraph 25(3)(a) of Schedule 7**

After “an award”, insert “or a State reference transitional award or common rule”.

## **24 Subitem 27(5) of Schedule 8**

Insert:

*award* includes a State reference transitional award.

## **25 At the end of item 5 of Schedule 9**

Add:

- (4) Despite item 6 of Schedule 2, the following provisions of Part 21 of the WR Act do not apply in relation to the continued AFPCs wages provisions:

- (a) subparagraph 861(1)(d)(iii);
- (b) section 865.

Note: Paragraph (a) has a flow-through effect to the reference in subparagraph 885(1)(j) of the WR Act to section 861.

## **26 At the end of paragraph 5(2)(d) of Schedule 10**

Add “or a State reference transitional award or common rule”.

## **27 After subitem 2(2) of Schedule 11**

Insert:

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- (2A) For the purpose of the continued application, by subitem (2), of Division 5 of Part 11 of the WR Act:
- (a) a reference in those provisions to an award is taken to include a reference to a State reference transitional award; and
  - (b) despite item 6 of Schedule 2, paragraph 885(1)(e) of that Act does not continue to apply.

Note: Paragraph 885(1)(e) would otherwise have disapplied Division 5 of Part 11 of the WR Act.

### **28 Subitem 5(2) of Schedule 11**

After “award”, insert “or a State reference transitional award”.

### **29 Subitem 8(1) of Schedule 11**

After “operation”, insert “and other than a State reference common rule”.

### **30 At the end of paragraph 8(2)(b) of Schedule 11**

Add “, other than a State reference common rule”.

### **31 Paragraph 13(2)(a) of Schedule 18**

Omit “, a transitional award (including a transitional Victorian reference award) or a common rule”, substitute “or a transitional award that is not a WR Act instrument”.

### **32 Item 1 of Schedule 20**

Repeal the item, substitute:

#### **1 Schedule 6 to the WR Act**

- (1) Schedule 6 to the WR Act (*continued Schedule 6*) continues to apply on and after the WR Act repeal day in accordance with this Schedule.
  - (2) Except for instrument content rules and instrument interaction rules, nothing in this Schedule or continued Schedule 6 applies to State reference transitional awards or common rules.
- Note: State reference transitional awards or common rules are continued in existence by Schedule 3 as transitional instruments.
- (3) Without limiting subitem (1) (but subject to subitem (2)), transitional awards that were in operation under Schedule 6 to the WR Act immediately before the WR Act repeal day continue in operation as
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**Schedule 2** Consequential and transitional provisions relating to referral of matters  
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etc.

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*continuing Schedule 6 instruments* on and after the repeal day in  
accordance with continued Schedule 6.

Note 1: In addition to provisions of this Schedule, Part 3 of Schedule 2 may also affect  
continuing Schedule 6 instruments.

Note 2: Compliance with continuing Schedule 6 instruments is dealt with in Schedule 16.

## **Part 2—State reference public sector modern awards**

### **Division 1—State reference public sector transitional award modernisation**

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

#### **33 Subsection 2(1)(after table item 4)**

Insert:

- 4A. Schedule 6A At the same time as the provision(s) covered by table item 2.

#### **34 Item 2 of Schedule 2 (at the end of the definition of *modernisation-related reduction in take-home pay*)**

Add:

- ; and (c) in relation to the State reference public sector transitional award modernisation process—has the meaning given by subitem 13(3) of Schedule 6A.

#### **35 Item 2 of Schedule 2**

Insert:

*State reference public sector employee*: see subitem 2(2) of Schedule 6A.

#### **36 Item 2 of Schedule 2**

Insert:

*State reference public sector employer*: see subitem 2(3) of Schedule 6A.

#### **37 Item 2 of Schedule 2**

Insert:

*State reference public sector modern award*: see subitem 3(2) of Schedule 6A.

#### **38 Item 2 of Schedule 2**

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Insert:

*State reference public sector modern awards objective*: see subitem 7(2) of Schedule 6A.

**39 Item 2 of Schedule 2**

Insert:

*State reference public sector transitional award*: see subitem 2(1) of Schedule 6A.

**40 Item 2 of Schedule 2**

Insert:

*State reference public sector transitional award modernisation process*: see subitem 3(1) of Schedule 6A.

**41 Item 2 of Schedule 2 (definition of *take-home pay*)**

Omit “and subitem 11(2) of Schedule 6”, substitute “, subitem 11(2) of Schedule 6 and subitem 13(2) of Schedule 6A”.

**42 Item 2 of Schedule 2 (definition of *take-home pay order*)**

Omit “and subitem 12(1) of Schedule 6”, substitute “, subitem 12(1) of Schedule 6 and subitem 14(1) of Schedule 6A”.

**43 Subitem 29(1) of Schedule 3 (note)**

Repeal the note, substitute:

Note: A modern award cannot be expressed to cover an employee who is covered by a transitional instrument that is an enterprise instrument or a State reference public sector transitional award (see subsections 143(8) and (10) of the FW Act).

**44 Schedule 5 (heading)**

Repeal the heading, substitute:

**Schedule 5—Modern awards (other than  
modern enterprise awards and State  
reference public sector modern  
awards)**

**45 Subitem 3(3) of Schedule 5**

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After “enterprise instrument” (wherever occurring), insert “or a State reference public sector transitional award”.

**46 Subitem 3(3) of Schedule 5 (note)**

After “Note”, insert “1.”.

**47 At the end of subitem 3(3) of Schedule 5**

Add:

Note 2: Item 10 of Schedule 6A deals with termination and variation of State reference public sector transitional awards to take account of the State reference public sector transitional award modernisation process.

**48 Item 6 of Schedule 5 (heading)**

After “modern enterprise awards”, insert “and State reference public sector modern awards”.

**49 Subitem 6(1) of Schedule 5**

After “modern enterprise awards”, insert “and State reference public sector modern awards”.

**50 Subitem 2(2) of Schedule 6**

After “award-based transitional instrument”, insert “, other than a State reference public sector transitional award,”.

**51 After Schedule 6**

Insert:

**Schedule 6A—State reference public sector  
modern awards**

**Part 1—Preliminary**

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

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

## Part 2—The State reference public sector transitional award modernisation process

### Division 1—State reference public sector transitional awards

#### 2 State reference public sector transitional awards

- (1) A *State reference public sector transitional award* is a State reference transitional award or common rule in relation to which the following conditions are satisfied:
- (a) the only employers that are expressed to be covered by the award or common rule are one or more specified State reference public sector employers;
  - (b) the only employees who are expressed to be covered by the award or common rule are specified State reference public sector employees of those employers.

Note: State reference transitional awards and common rules are continued in existence as transitional instruments by Schedule 3.

- (2) A *State reference public sector employee* is a State reference employee who is a State public sector employee as defined in section 30A of the FW Act.
- (3) A *State reference public sector employer* is a State reference employer that is a State public sector employer as defined in section 30A of the FW Act.
- (4) If:
- (a) a State reference transitional award or common rule (the *current award*) covers one or more State reference public sector employers, and State reference public sector employees of those employers; and
  - (b) the current award also covers:
    - (i) other employees of those employers; or
    - (ii) other employers, and employees of those other employers;

then, for the purposes of this Act, the current award is taken instead to constitute 2 separate State reference transitional awards or common rules as follows:

- (c) a State reference public sector transitional award covering:
-

- (i) the employers, and the employees of those employers, referred to in paragraph (a); and
- (ii) if the current award covers an organisation, in relation to certain employers or employees referred to in paragraph (a)—that organisation in relation to those employers or employees; and
- (d) a State reference transitional award or a State reference common rule (as the case requires) covering:
  - (i) the employers, and the employees of those employers, referred to in paragraph (b); and
  - (ii) if the current award covers an organisation, in relation to certain employers or employees referred to in paragraph (b)—that organisation in relation to those employers or employees.

## **Division 2—The State reference public sector transitional award modernisation process**

### **3 The State reference public sector transitional award modernisation process**

- (1) The *State reference public sector transitional award modernisation process* is the process of making State reference public sector modern awards under this Division covering employers, employees and organisations that are covered by State reference public sector transitional awards.
- (2) A *State reference public sector modern award* is a modern award in relation to which the following conditions are satisfied:
  - (a) the only employers that are expressed to be covered by the modern award are one or more specified State reference public sector employers;
  - (b) the only employees who are expressed to be covered by the modern award are specified State reference public sector employees of those employers.
- (3) A State reference public sector modern award must be made by a Full Bench.

### **4 Making State reference public sector modern awards on application**

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- (1) An employer or organisation that is covered by a State reference public sector transitional award (the *current award*) may apply to FWA for the making of a State reference public sector modern award (the *proposed award*).
- (2) The application may be made only during the period starting on the WR Act repeal day and ending at the end of 31 December 2013.
- (3) The application must specify the employers, employees and organisations (the *proposed parties*) proposed to be covered by the proposed award.
- (4) FWA must consider the application, and must make a State reference public sector modern award covering the proposed parties if FWA is satisfied that:
  - (a) the proposed parties are covered by State reference public sector transitional awards; and
  - (b) the employers and organisations that are proposed parties have agreed to the making of the application.

Note: The proposed parties will cease to be covered by State reference public sector transitional awards when the State reference public sector modern award comes into operation: see item 29 of Schedule 3.

## **5 Terminating State reference public sector transitional awards on application**

- (1) An employer or organisation that is covered by a State reference public sector transitional award (the *current award*) may apply to FWA to terminate the current award.
- (2) The application may be made only during the period starting on the WR Act repeal day and ending at the end of 31 December 2013.
- (3) FWA must not terminate the current award unless FWA is satisfied that the employees who are covered by the current award will, if the current award is terminated, be covered by a modern award (other than the miscellaneous modern award) that is in operation and that is appropriate for them.
- (4) In deciding whether to terminate the current award, FWA must take into account the following:
  - (a) the circumstances that led to the making of the current award;

- (b) the terms and conditions of employment applying in the industry or occupation in which the persons covered by the current award operate, and the extent to which those terms and conditions are reflected in the current award;
  - (c) the extent to which the current award facilitates arrangements, and provides terms and conditions of employment, referred to in paragraphs 7(2)(a) and (b);
  - (d) the likely impact on the persons covered by the current award of a decision to terminate, or not to terminate, the current award;
  - (e) the views of the persons covered by the current award;
  - (f) any other matter prescribed by the regulations.
- (5) If FWA terminates the current award, the termination operates from the day specified in the decision to terminate the current award, being a day that is not earlier than the FW (safety net provisions) commencement day.

## **6 Further obligation of FWA to make or vary State reference public sector modern awards at end of application period**

If, at the end of the period referred to in subitem 4(2), there are one or more State reference public sector transitional awards that still cover some employers and employees, FWA must make, or (in accordance with section 168L of the FW Act) vary the coverage of, one or more State reference public sector modern awards so that all those employers and employees are covered by State reference public sector modern awards.

Note: The employers and employees will cease to be covered by the State reference public sector transitional awards when they start to be covered by a State reference public sector modern award that is in operation: see item 29 of Schedule 3.

## **7 The State reference public sector modern awards objective**

- (1) If FWA is required by item 4 or 6 to make a State reference public sector modern award, the modern awards objective and the minimum wages objective apply to the making of the modern award.
- (2) However, in applying the modern awards objective and the minimum wages objective, FWA must recognise:
  - (a) the need to facilitate arrangements for State reference public sector employers and State reference public sector employees

that are appropriately adapted to the effective administration of a State; and

- (b) that State reference public sector modern awards may provide terms and conditions tailored to reflect employment arrangements that have been developed in relation to State reference public sector employers and State reference public sector employees.

This is the *State reference public sector modern awards objective*.

Note 1: See also item 13 (State reference public sector transitional award modernisation process is not intended to result in reduction in take-home pay).

Note 2: See also item 19 (how the FW Act applies in relation to the State reference public sector transitional award modernisation process before the FW (safety net provisions) commencement day).

## **8 Terms of State reference public sector modern awards**

- (1) Division 3 (other than sections 143 and 154) of Part 2-3 of the FW Act (which deals with terms of modern awards) applies in relation to a State reference public sector modern award made under this Division.

Note: See also item 19 (how the FW Act applies in relation to the State reference public sector transitional award modernisation process before the FW (safety net provisions) commencement day).

- (2) If FWA makes a State reference public sector modern award before the FW (safety net provisions) commencement day, the State reference public sector modern award must not be expressed to commence on a day earlier than the FW (safety net provisions) commencement day.

## **9 Coverage terms**

*Coverage terms must be included*

- (1) A State reference public sector modern award must include terms (*coverage terms*) setting out, in accordance with this item, the employers, employees and organisations that are covered by the State reference public sector modern award.

*Employers and employees*

- (2) The coverage terms must be such that:
- (a) the only employers that are expressed to be covered by the modern award are one or more specified State reference public sector employers; and

- (b) the only employees who are expressed to be covered by the modern award are specified State reference public sector employees of those employers.

#### *Organisations*

- (3) A State reference public sector modern award may be expressed to cover one or more specified organisations, in relation to:
  - (a) all or specified employees covered by the modern award; or
  - (b) the employer, or all or specified employers, covered by the modern award.

#### *Outworker entities*

- (4) A State reference public sector modern award must not be expressed to cover outworker entities.

#### *How coverage etc. is expressed*

- (5) For the purposes of this item:
  - (a) an employer or employers may be specified by name or by inclusion in a specified class or specified classes; and
  - (b) employees must be specified by inclusion in a specified class or specified classes; and
  - (c) organisations must be specified by name.

### **10 Variation and termination of State reference public sector transitional awards to take account of the modernisation process**

- (1) If a State reference public sector modern award completely replaces a State reference public sector transitional award, the transitional award terminates when the modern award comes into operation.
- (2) If a State reference public sector modern award partially replaces a State reference public sector transitional award, FWA must, as soon as practicable after the modern award comes into operation, vary the transitional award so that employees who are covered by the modern award are no longer covered by the transitional award.
- (3) For the purposes of this item:
  - (a) the modern award ***completely replaces*** the transitional award if all the employees who are covered by the transitional

award become covered by the modern award when it comes into operation; and

- (b) the modern award *partially replaces* the transitional award if only some of the employees who are covered by the transitional award become covered by the modern award when it comes into operation.

Note: This item does not limit the effect of any other provision of this Act under which a transitional instrument (a State reference public sector transitional award is a transitional instrument) ceases to cover a person from a time earlier than when the instrument is terminated or varied under this item.

### **11 Notification of the cut-off for the State reference public sector transitional award modernisation process**

- (1) FWA must, at least 6 months before the end of the period specified in subitem 4(2), advise any persons still covered by a State reference public sector transitional award:
  - (a) that the period for making applications under items 4 and 5 ends on 31 December 2013; and
  - (b) that FWA will, at the end of that period, commence the State reference public sector transitional award modernisation process in relation to the transitional award for any employees and employers who are still covered by the transitional award at that time.
- (2) FWA may give that advice by any means it considers appropriate.
- (3) Section 625 of the FW Act (which deals with delegation by the President of functions and powers of FWA) has effect as if subsection (2) of that section included a reference to FWA's functions and powers under this item.

### **12 Regulations dealing with other matters**

The regulations may deal with other matters relating to the State reference public sector transitional award modernisation process.

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

### **13 State reference public sector transitional award modernisation process is not intended to result in reduction in take-home pay**

- (1) The State reference public sector transitional award modernisation process is not intended to result in a reduction in the take-home pay of employees.
  - (2) An employee's *take-home pay* is the pay an employee actually receives:
    - (a) including wages and incentive-based payments, and additional amounts such as allowances and overtime; but
    - (b) disregarding the effect of any deductions that are made as permitted by section 324 of the FW Act.
- Note: Deductions permitted by section 324 of the FW Act may (for example) include deductions under salary sacrificing arrangements.
- (3) An employee suffers a *modernisation-related reduction in take-home pay* if, and only if:
    - (a) a State reference public sector modern award made in the State reference public sector transitional award modernisation process starts to apply to the employee when the modern award comes into operation; and
    - (b) the employee is employed in the same position as (or a position that is comparable to) the position he or she was employed in immediately before the State reference public sector modern award came into operation; and
    - (c) the amount of the employee's take-home pay for working particular hours or for a particular quantity of work after the State reference public sector modern award comes into operation is less than what would have been the employee's take-home pay for those hours or that quantity of work immediately before the modern award came into operation; and
    - (d) that reduction in the employee's take-home pay is attributable to the State reference public sector transitional award modernisation process.

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

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

- (2) FWA may make a take-home pay order only on application by:
  - (a) an employee who has suffered a modernisation-related reduction in take-home pay; or
  - (b) an organisation that is entitled to represent the industrial interests of such an employee; or
  - (c) a person acting on behalf of a class of such employees.
- (3) If FWA is satisfied that an application for a take-home pay order has already been made in relation to an employee or a class of employees, FWA may dismiss any later application that is made under these provisions in relation to the same employee or employees.

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

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

### **16 Take-home pay order continues to have effect so long as State reference public sector modern award continues to cover the employee or employees**

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

### **17 Inconsistency with State reference public sector modern awards and enterprise agreements**

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

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

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

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

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

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

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

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

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

### **20 How the FW Act applies to modern awards made in the State reference public sector transitional award modernisation process**

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

## **Division 2—Other amendments related to State reference public sector modern awards**

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

#### **52 Section 12 (at the end of the definition of *award modernisation process*)**

add:

- ; and (c) the State reference public sector transitional award modernisation process provided for by Part 2 of Schedule 6A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

#### **53 Section 12 (at the end of the definition of *coverage terms*)**

add:

- ; and (c) in relation to a State reference public sector modern award: see section 143B.

#### **54 Section 12**

Insert:

***State reference public sector employee***: see subsection 168E(3).

#### **55 Section 12**

Insert:

*State reference public sector employer*: see subsection 168E(4).

## **56 Section 12**

Insert:

*State reference public sector modern award*: see subsection 168E(2).

## **57 Section 12**

Insert:

*State reference public sector modern awards objective*: see section 168F.

## **58 At the end of subsection 49(3)**

Insert:

Note: For when a State reference public sector modern award comes into operation, see section 168J.

## **59 Section 132 (after the paragraph relating to Division 7)**

Insert:

Division 8 contains additional provisions relating to State reference public sector modern awards.
--

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

Add:

*State reference public sector modern awards*

- (10) A modern award (other than a State reference public sector modern award) must be expressed not to cover employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*), or employers in relation to those employees.
- (11) This section does not apply to State reference public sector modern awards.

Note: The heading to section 143 is altered by adding at the end “**and State reference public sector modern awards**”.

## **61 After section 143A**

Insert:

### **143B Coverage terms of State reference public sector modern awards**

*Coverage terms must be included*

- (1) A State reference public sector modern award must include terms (*coverage terms*) setting out, in accordance with this section, the employers, employees and organisations that are covered by the modern award.

*Employers and employees*

- (2) The coverage terms must be such that:
  - (a) the only employers that are expressed to be covered by the modern award are one or more specified State reference public sector employers; and
  - (b) the only employees who are expressed to be covered by the modern award are specified State reference public sector employees of those employers.

*Organisations*

- (3) A State reference public sector modern award may be expressed to cover one or more specified organisations, in relation to:
  - (a) all or specified employees covered by the modern award; or
  - (b) the employer, or all or specified employers, covered by the modern award.

*Outworker entities*

- (4) A State reference public sector modern award must not be expressed to cover outworker entities.

*How coverage etc. is expressed*

- (5) For the purposes of this section:

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

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

Add:

### **Division 8—Additional provisions relating to State reference public sector modern awards**

#### **168E State reference public sector modern awards**

- (1) This Division contains additional provisions that relate to State reference public sector modern awards. The provisions in this Division have effect despite anything else in this Part.
- (2) A *State reference public sector modern award* is a modern award in relation to which the following conditions are satisfied:
  - (a) the only employers that are expressed to be covered by the modern award are one or more specified State reference public sector employers;
  - (b) the only employees who are expressed to be covered by the modern award are specified State reference public sector employees of those employers.
- (3) A *State reference public sector employee* is an employee:
  - (a) who is a national system employee only because of section 30C; and
  - (b) who is a State public sector employee as defined in section 30A.
- (4) A *State reference public sector employer* is an employer:
  - (a) that is a national system employer only because of section 30D; and
  - (b) that is a State public sector employer as defined in section 30A.

**168F The State reference public sector modern awards objective**

*The State reference public sector modern awards objective*

- (1) FWA must recognise:
  - (a) the need to facilitate arrangements for State reference public sector employers and State reference public sector employees that are appropriately adapted to the effective administration of a State; and
  - (b) that State reference public sector modern awards may provide terms and conditions tailored to reflect employment arrangements that have been developed in relation to State reference public sector employers and State reference public sector employees.

This is the *State reference public sector modern awards objective*.

*When does the State reference public sector modern awards objective apply?*

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

*References to the modern awards objective*

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

**168G Making State reference public sector modern awards on application**

- (1) FWA may make a State reference public sector modern award (the *proposed award*) only on application under section 158 by:
  - (a) a State reference public sector employer; or
  - (b) an organisation that is entitled to represent the industrial interests of a State reference public sector employer or of a State reference public sector employee.
- (2) The application must specify the employers, employees and organisations (the *proposed parties*) proposed to be covered by the proposed award.

- (3) FWA must consider the application, and must make a State reference public sector modern award covering the proposed parties if FWA is satisfied that:
  - (a) the employers and organisations that are proposed parties have agreed to the making of the application; and
  - (b) either:
    - (i) none of the employers and employees that are proposed parties are already covered by a State reference public sector modern award; or
    - (ii) if there are employers and employees that are proposed parties and that are already covered by a State reference public sector modern award (the *current award*)—it is appropriate (in accordance with section 168L) to vary the coverage of the current award so that the employers or employees cease to be covered by the current award.
- (4) FWA must not make a State reference public sector modern award otherwise than in accordance with this Division or in accordance with Part 2 of Schedule 6A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

#### **168H State reference public sector modern awards may contain State-based differences**

Section 154 (which deals with terms that contain State-based differences) does not apply in relation to State reference public sector modern awards.

#### **168J When State reference public sector modern awards come into operation**

Section 49 does not apply for the purpose of determining when a State reference public sector modern award comes into operation. Instead, the modern award comes into operation on the day on which it is expressed to commence, being a day that is not earlier than the day on which the modern award is made.

#### **168K Rules about revoking State reference public sector modern awards**

- (1) FWA may make a determination revoking a State reference public sector modern award only on application under section 158 by:
-

- (a) a State reference public sector employer; or
  - (b) an organisation that is entitled to represent the industrial interests of a State reference public sector employer or of a State reference public sector employee.
- (2) FWA must not make a determination revoking a State reference public sector modern award unless FWA is satisfied that:
- (a) the modern award is obsolete or no longer capable of operating; or
  - (b) all the employees covered by the modern award will, when the revocation comes into operation, be covered by a different modern award (other than the miscellaneous modern award) that is appropriate for them.
- (3) In deciding whether to revoke a State reference public sector modern award, FWA must take into account the following:
- (a) the circumstances that led to the making of the modern award;
  - (b) the terms and conditions of employment applying in the industry or occupation in which the persons covered by the modern award operate, and the extent to which those terms and conditions are reflected in the modern award;
  - (c) the extent to which the modern award facilitates arrangements, and provides terms and conditions of employment, referred to in paragraphs 168F(1)(a) and (b);
  - (d) the likely impact on the persons covered by the modern award of a decision to revoke, or not to revoke, the modern award;
  - (e) the views of the persons covered by the modern award;
  - (f) any other matter prescribed by the regulations.

### **168L Rules about varying coverage of State reference public sector modern awards**

- (1) FWA may make a determination varying the coverage of a State reference public sector modern award only on application under section 158 by:
- (a) a State reference public sector employer; or
  - (b) an organisation that is entitled to represent the industrial interests of a State reference public sector employer or of a State reference public sector employee.
-

- (2) FWA must not make a determination varying the coverage of a State reference public sector modern award so that it ceases to be a State reference public sector modern award.
- (3) In deciding whether to make a determination varying the coverage of a State reference public sector modern award in some other way, FWA must take into account the following:
  - (a) the circumstances that led to the making of the modern award;
  - (b) the terms and conditions of employment applying in the industry or occupation in which the persons covered, or proposed to be covered, by the modern award operate, and the extent to which those terms and conditions are reflected in the modern award;
  - (c) the likely impact on the persons covered, or proposed to be covered, by the modern award of a decision to make, or not make, the variation;
  - (d) if the variation would result in the modern award covering one or more additional classes of employers or employees—whether it is appropriate for that modern award to cover those classes of employers or employees, as well as the classes of employers and employees that it already covers;
  - (e) the views of the persons covered, or proposed to be covered, by the modern award;
  - (f) any other matter prescribed by the regulations.

### **63 Subsection 292(1)**

After “modern enterprise award” (wherever occurring), insert “or a State reference public sector modern award”.

## Schedule 3—Other amendments of the Fair Work Act 2009

### 1 Section 12

Insert:

***connected with a Territory***: an arrangement for work to be performed for a person (either directly or indirectly) is ***connected with a Territory*** if one or more of the following apply:

- (a) at the time the arrangement is made, one or more parties to the arrangement is in a Territory in Australia;
- (b) the work is to be performed in such a Territory;
- (c) the person carries on an activity (whether of a commercial, governmental or other nature) in such a Territory, and the work is reasonably likely to be performed in that Territory;
- (d) the person carries on an activity (whether of a commercial, governmental or other nature) in such a Territory, and the work is to be performed in connection with that activity.

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*).

### 2 Section 12 (paragraph (e) of the definition of *outworker entity*)

Omit “who carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia.”.

### 3 Section 12 (subparagraph (e)(iii) of the definition of *outworker entity*)

Repeal the subparagraph, substitute:

- (iii) the arrangement is connected with a Territory.

### 4 Subparagraph 27(1)(d)(i)

Repeal the subparagraph, substitute:

- (i) any law referred to in subsection (1A); or

## **Schedule 4—Agriculture, Fisheries and Forestry**

### *Australian Meat and Live-stock Industry (Repeals and Consequential Provisions) Act 1997*

**1 Item 23 of Schedule 5 (definition of award)**

Repeal the definition.

### *Dairy Industry Service Reform Act 2003*

**2 Subsection 22(2) (definition of award)**

Repeal the definition.

**3 Subsection 38(2) (definition of award)**

Repeal the definition.

### *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*

**4 Subsection 4(1) (definition of award)**

Repeal the definition.

### *Pig Industry Act 2001*

**5 Section 7 (definition of award)**

Repeal the definition.

## Schedule 5—Attorney-General

### Part 1—General consequential amendments

#### *Age Discrimination Act 2004*

**1 Section 5 (paragraph (c) of the definition of *Commonwealth law*)**

Omit “or award”, substitute “, determination or award”.

**2 Subsection 23(3) (definition of *registered organisation*)**

Omit “within the meaning of Schedule 1B to the *Workplace Relations Act 1996*”, substitute “registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*”.

Note: The heading to section 23 is altered by omitting “**Schedule 1B to the *Workplace Relations Act 1996***” and substituting “**the *Fair Work (Registered Organisations) Act 2009***”.

**3 Subsection 36(2) (definition of *registered organisation*)**

Omit “within the meaning of Schedule 1B to the *Workplace Relations Act 1996*”, substitute “registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*”.

#### *Australian Capital Territory (Self-Government) Act 1988*

**4 Section 28 (note)**

Omit “Section 17 of the *Workplace Relations Act 1996*”, substitute “Sections 29 and 40 of the *Fair Work Act 2009*”.

#### *Australian Crime Commission Act 2002*

**5 Subsection 19A(8) (definition of *prescribed agency*)**

Omit “the Australian Industrial Relations Commission”, substitute “Fair Work Australia”.

**6 Schedule 1**

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Insert the following entry in its appropriate alphabetical position (determined on a letter-by-letter basis):

*Fair Work (Registered Organisations) Act 2009*, section 356

## **7 Schedule 1**

Omit “*Workplace Relations Act 1996*, section 355, and section 356 of Schedule 1B”.

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

### **8 Subsection 4(1) (definition of *collective agreement*)**

Repeal the definition.

### **9 Subsection 27(4) (definition of *industrial instrument*)**

Omit all the words from and including “any” to and including “an AWA.”, substitute “an award, determination or industrial agreement made under the *Fair Work Act 2009* or continued in existence by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (see item 2 of Schedule 3 to that Act).”.

### **10 Subsection 27(4) (note)**

Omit “, within the meaning given by the *Workplace Relations Act 1996*”, substitute “(within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*: see item 4 of Schedule 2 to that Act) or under the National Employment Standards (within the meaning of the *Fair Work Act 2009*)”.

### **11 Section 28 (note)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

### **12 Subparagraph 40J(1)(ab)(i)**

Omit “certified agreement or collective agreement”, substitute “industrial agreement (however described)”.

### **13 Subsection 69B(1)**

Omit “*Workplace Relations Act 1996* (other than Division 9 of Part 9 or Part 16)”, substitute “*Fair Work Act 2009* (other than Part 3-1 or Division 9 of Part 3-3)”.

Note: The heading to section 69B is altered by omitting “**Workplace Relations Act**” and substituting “**Fair Work Act**”.

**14 Paragraph 69B(1)(b)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

**15 Subsection 69B(2)**

Omit “*Workplace Relations Act 1996* (other than Division 4 of Part 12)”, substitute “*Fair Work Act 2009* (other than Parts 3-1, 3-2, 6-1 and 6-4, and Division 2 of Part 3-6)”.

**16 Subsection 69B(3)**

Omit “*Workplace Relations Act 1996*” (wherever occurring), substitute “*Fair Work Act 2009*”.

***Bankruptcy Act 1966***

**17 Subsection 5(1)**

Insert:

***industrial instrument*** means:

- (a) a law of the Commonwealth, a State or a Territory regulating conditions of employment; or
- (b) an award, determination or agreement made under such a law.

**18 Paragraph 109(1)(e)**

Omit “an award or agreement, regulating conditions of employment, or the Australian Fair Pay and Conditions Standard (within the meaning given by the *Workplace Relations Act 1996*)”, substitute “an industrial instrument”.

**19 Subparagraph 139Y(1)(b)(i)**

Repeal the subparagraph, substitute:

- (i) in the case of employment where an industrial instrument prescribes rates or minimum rates of salary or wages for the employment—might reasonably be expected to be or to have been received by the bankrupt

in respect of the employment by virtue of the industrial instrument; or

### ***Crimes Act 1914***

#### **20 Section 85ZL (subparagraphs (c)(ii) and (iii) of the definition of *Commonwealth authority*)**

Repeal the subparagraphs, substitute:

- (ii) an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*, or a branch of such an organisation or association;

### ***Criminal Code Act 1995***

#### **21 Dictionary in the *Criminal Code* (subparagraphs (a)(vi) and (vii) of the definition of *Commonwealth authority*)**

Repeal the subparagraphs.

#### **22 Dictionary in the *Criminal Code* (after paragraph (aa) of the definition of *Commonwealth authority*)**

Insert:

- (ab) an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*; or

#### **23 Dictionary in the *Criminal Code* (paragraph (n) of the definition of *Commonwealth public official*)**

After “individual”, insert “(other than an official of a registered industrial organisation)”.

#### **24 Dictionary in the *Criminal Code* (subparagraphs (n)(vi) and (vii) of the definition of *Commonwealth public official*)**

Repeal the subparagraphs.

#### **25 Dictionary in the *Criminal Code* (paragraph (r) of the definition of *Commonwealth public official*)**

After “individual”, insert “(other than an official of a registered industrial organisation)”.

**26 Dictionary in the *Criminal Code* (subparagraph (r)(vi) of the definition of *Commonwealth public official*)**

Repeal the subparagraph.

**27 Dictionary in the *Criminal Code***

Insert:

*official of a registered industrial organisation* means a person who holds an office (within the meaning of the *Fair Work Act 2009*) in an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*.

***Disability Discrimination Act 1992***

**28 Subsection 4(1) (paragraph (c) of the definition of *Commonwealth law*)**

Omit “(b); or”, substitute “(b).”.

**29 Subsection 4(1) (paragraph (d) of the definition of *Commonwealth law*)**

Repeal the paragraph.

**30 Subsection 4(1) (definition of *registered organisation*)**

Repeal the definition, substitute:

*registered organisation* means an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*.

Note: The heading to section 20 is altered by omitting “*Schedule 1B to the Workplace Relations Act 1996*” and substituting “*the Fair Work (Registered Organisations) Act 2009*”.

**31 Paragraph 21A(4)(b)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work (Registered Organisations) Act 2009*”.

***Human Rights and Equal Opportunity Commission Act 1986***

**32 Subsection 3(1) (paragraph (a) of the definition of *trade union*)**

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Repeal the paragraph, substitute:

- (a) an association of employees that is registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009*; or

### ***Judges' Pensions Act 1968***

#### **33 Subsection 4(1) (paragraph (a) of the definition of *appropriate current judicial salary*)**

Omit “or (d)”, substitute “, (d) or (e)”.

#### **34 Subsection 4(1) (paragraph (a) of the definition of *appropriate current judicial salary*)**

Omit “died;”, substitute “died; and”.

#### **35 Subsection 4(1) (paragraph (b) of the definition of *appropriate current judicial salary*)**

Omit “Australia;”, substitute “Australia; and”.

#### **36 Subsection 4(1) (at the end of the definition of *appropriate current judicial salary*)**

Add:

- ; and (e) in the case of a Judge who was a Presidential Member of the Australian Industrial Relations Commission—the salary that would be payable to the Judge if section 79 of the *Workplace Relations Act 1996* (as in force immediately before the repeal of that section) continued to apply in relation to the Judge.

#### **37 Paragraph 20(2)(a)**

Omit “presidential members of the Australian Industrial Relations Commission—to the Industrial Registrar”, substitute “persons who were Presidential Members of the Australian Industrial Relations Commission or the President of Fair Work Australia—to the General Manager of Fair Work Australia”.

### ***Judiciary Act 1903***

#### **38 Subsection 39B(2)**

Omit all the words from and including “reference to” to and including “Australia.”, substitute “reference to a Judge or Judges of the Family Court of Australia.”.

### ***Jurisdiction of Courts (Cross-vesting) Act 1987***

#### **39 After paragraph 4(4)(aa)**

Insert:

- (ab) the *Fair Work Act 2009*; or
- (ac) the *Fair Work (Registered Organisations) Act 2009*; or
- (ad) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or

### ***Jury Exemption Act 1965***

#### **40 The Schedule**

Omit “Members of the Australian Industrial Relations Commission”, substitute “Members of Fair Work Australia”.

#### **41 The Schedule**

Omit “Members of the Australian Fair Pay Commission”.

### ***Legislative Instruments Act 2003***

#### **42 Subsection 7(1) (table items 18, 18A and 19)**

Repeal the items, substitute:

18	Fair work instruments (within the meaning of the <i>Fair Work Act 2009</i> )
18A	Transitional instruments (within the meaning of the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> )
19	Decisions and orders of Fair Work Australia
19A	Orders made by the Australian Industrial Relations Commission in proceedings under the <i>Workplace Relations Act 1996</i> or the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>
19B	Decisions of the Australian Fair Pay Commission

### ***Northern Territory (Self-Government) Act 1978***

#### **43 Subsections 53(3) and (4)**

Omit “the Australian Industrial Relations Commission”, substitute “Fair Work Australia”.

Note: The heading to section 53 is altered by omitting “*Workplace Relations Act 1996*” and substituting “*Fair Work Act 2009*”.

#### **44 Subsection 53(4)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

#### **45 Subsection 53(4)**

Omit “the Commission”, substitute “Fair Work Australia”.

#### **46 After subsection 53(6)**

Insert:

Note: See section 40 of the *Fair Work Act 2009* and regulations made under subsection (2) of that section for the interaction between determinations made under paragraph (6)(b) of this section and fair work instruments (within the meaning of that Act).

#### **47 Subsection 53(7)**

Repeal the subsection.

### ***Seat of Government (Administration) Act 1910***

#### **48 Subsections 5(3) and (4)**

Omit “the Australian Industrial Relations Commission”, substitute “Fair Work Australia”.

Note: The heading to section 5 is altered by omitting “*Workplace Relations Act 1996*” and substituting “*Fair Work Act 2009*”.

#### **49 Subsection 5(4)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

#### **50 Subsection 5(4)**

Omit “the Commission”, substitute “Fair Work Australia”.

**51 Subsection 5(5)**

Repeal the subsection.

***Sex Discrimination Act 1984***

**52 Subsection 4(1) (definition of *committee of management*)**

Omit “organization” (wherever occurring), substitute “organisation”.

**53 Subsection 4(1) (paragraph (c) of the definition of *Commonwealth law*)**

Omit “(b); or”, substitute “(b).”.

**54 Subsection 4(1) (paragraph (d) of the definition of *Commonwealth law*)**

Repeal the paragraph.

**55 Subsection 4(1)**

Insert:

*registered organisation* means an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*.

**56 Subsection 4(1) (definition of *registered organization*)**

Repeal the definition.

**57 Subsection 4(1) (paragraph (b) of the definition of *voluntary body*)**

Omit “organization”, substitute “organisation”.

**58 Section 19**

Omit “organization” (wherever occurring), substitute “organisation”.

Note: The heading to section 19 is altered by omitting “**Schedule 1B to the Workplace Relations Act 1996**” and substituting “**the Fair Work (Registered Organisations) Act 2009**”.

**59 Section 109**

Repeal the section.

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## **Part 2—Amendments relating to discrimination in compliance with industrial instruments and laws**

### **Division 1—General**

#### ***Age Discrimination Act 2004***

##### **60 Paragraph 39(8)(a)**

Omit “decision”, substitute “determination”.

##### **61 Paragraph 39(8)(b)**

Repeal the paragraph, substitute:

- (b) an instrument (an *industrial instrument*) that is:
  - (i) a fair work instrument (within the meaning of the *Fair Work Act 2009*); or
  - (ii) a transitional instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

##### **62 Subsection 39(8) (note)**

Repeal the note, substitute:

Note: A person does not comply with an industrial instrument for the purpose of this subsection if that person purports to comply with a provision of that instrument that has no effect. Accordingly, the exemption under this subsection for acting in direct compliance with such an instrument would not apply in such circumstances.

##### **63 Schedule 1 (after table item 25)**

Insert:

25A *Fair Work Act 2009*

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25B *Fair Work (Registered Organisations) Act 2009*

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25C *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*

##### **64 Schedule 1 (table item 48)**

Repeal the item.

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## ***Disability Discrimination Act 1992***

### **65 Paragraph 47(1)(c)**

Repeal the paragraph, substitute:

(c) an instrument (an *industrial instrument*) that is:

(i) a fair work instrument (within the meaning of the *Fair Work Act 2009*); or

(ii) a transitional instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*);

to the extent to which the industrial instrument has specific provisions relating to the payment of rates of salary or wages to persons, in circumstances in which:

(iii) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension; and

(iv) the salary or wages are determined by reference to the capacity of the person; or

### **66 Subsection 47(1) (note)**

Repeal the note, substitute:

Note: A person does not comply with an industrial instrument for the purpose of this subsection if that person purports to comply with a provision of that instrument that has no effect. Accordingly, the exemption under this subsection for acting in direct compliance with such an instrument would not apply in such circumstances.

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

### **67 Section 12**

Insert:

***Disability Discrimination Commissioner*** means the Disability Discrimination Commissioner appointed under the *Disability Discrimination Act 1992*.

### **68 Subsection 161(2)**

Repeal the subsection, substitute:

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- (2) The following are entitled to make submissions to FWA for consideration in the review:
- (a) if the referral relates to action that would be unlawful under Part 4 of the *Age Discrimination Act 2004*—the Human Rights and Equal Opportunity Commission;
  - (b) if the referral relates to action that would be unlawful under Part 2 of the *Disability Discrimination Act 1992*—the Disability Discrimination Commissioner;
  - (c) if the referral relates to action that would be unlawful under Part II of the *Sex Discrimination Act 1984*—the Sex Discrimination Commissioner.

**69 Subsection 161(3)**

Omit “Part II of the *Sex Discrimination Act 1984*”, substitute “any of the Acts referred to in subsection (2)”.

**70 Subsection 218(2)**

Repeal the subsection, substitute:

- (2) The following are entitled to make submissions to FWA for consideration in the review:
- (a) if the referral relates to action that would be unlawful under Part 4 of the *Age Discrimination Act 2004*—the Human Rights and Equal Opportunity Commission;
  - (b) if the referral relates to action that would be unlawful under Part 2 of the *Disability Discrimination Act 1992*—the Disability Discrimination Commissioner;
  - (c) if the referral relates to action that would be unlawful under Part II of the *Sex Discrimination Act 1984*—the Sex Discrimination Commissioner.

**71 Subsection 218(3)**

Omit “Part II of the *Sex Discrimination Act 1984*”, substitute “any of the Acts referred to in subsection (2)”.

**72 Paragraph 279(2)(f)**

Omit “agreements”, substitute “agreements) other than section 218 (which deals with variation of an enterprise agreement on referral by HREOC)”.

## ***Human Rights and Equal Opportunity Commission Act 1986***

### **73 Subsections 46PW(3) and (5)**

Omit “Australian Industrial Relations Commission”, substitute “Fair Work Australia”.

Note: The heading to section 46PW is altered by omitting “**Australian Industrial Relations Commission**” and substituting “**Fair Work Australia**”.

### **74 Subsection 46PW(7) (definition of *discriminatory act under an industrial instrument*)**

Repeal the definition, substitute:

*discriminatory act under an industrial instrument* means an act that would be unlawful under:

- (a) Part 4 of the *Age Discrimination Act 2004*; or
- (b) Part 2 of the *Disability Discrimination Act 1992*; or
- (c) Part II of the *Sex Discrimination Act 1984*;

but for the fact that the act was done in direct compliance with an industrial instrument.

### **75 Subsection 46PW(7) (definition of *industrial instrument*)**

Repeal the definition, substitute:

*industrial instrument* means:

- (a) a fair work instrument (within the meaning of the *Fair Work Act 2009*); or
- (b) a transitional instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

## ***Sex Discrimination Act 1984***

### **76 Paragraph 40(1)(e)**

After “order”, insert “, determination”.

### **77 Paragraph 40(1)(f)**

Repeal the paragraph.

### **78 Paragraph 40(1)(g)**

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Repeal the paragraph, substitute:

- (g) an instrument (an *industrial instrument*) that is:
  - (i) a fair work instrument (within the meaning of the *Fair Work Act 2009*); or
  - (ii) a transitional instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

## **79 Subsection 40(1) (note)**

Repeal the note, substitute:

Note: A person does not comply with an industrial instrument for the purpose of this subsection if that person purports to comply with a provision of that instrument that has no effect. Accordingly, the exemption under this subsection for acting in direct compliance with such an instrument would not apply in such circumstances.

## **Division 2—Amendments relating to HREOC name change**

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

#### **80 Paragraph 161(2)(a)**

Omit “Human Rights and Equal Opportunity Commission”, substitute “Australian Human Rights Commission”.

#### **81 Paragraph 218(2)(a)**

Omit “Human Rights and Equal Opportunity Commission”, substitute “Australian Human Rights Commission”.

#### **82 Paragraph 279(2)(f)**

Omit “HREOC”, substitute “the Australian Human Rights Commission”.

## Part 3—Application provisions

### 83 Application of item 5

Despite the amendment made by item 5 of this Schedule, section 19A of the *Australian Crime Commission Act 2002* continues to apply, on and after the WR Act repeal day, in relation to the Australian Industrial Relations Commission as it continues in existence because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, as if that amendment had not been made.

### 84 Application of item 29

Despite the amendment made by item 29 of this Schedule, the *Disability Discrimination Act 1992*, as in force immediately before the WR Act repeal day, continues to apply in relation to a decision of the Australian Fair Pay Commission, whether made before or after that day.

### 85 Application of item 38

- (1) The amendment made by item 38 of this Schedule applies in relation to any matter in which a writ of mandamus or prohibition or an injunction is sought, on or after the WR Act repeal day, against an officer or officers of the Commonwealth in relation to a decision made (whether before or after that day) by the officer or officers in the capacity of a person who holds office under the *Fair Work Act 2009*.
- (2) Despite the amendment made by item 38 of this Schedule, subsection 39B(2) of the *Judiciary Act 1903*, as in force immediately before the WR Act repeal day, continues to apply in relation to any matter in which a writ of mandamus or prohibition or an injunction is sought, on or after that day, against an officer or officers of the Commonwealth in relation to a decision made (whether before or after that day) by the officer or officers in the capacity of a person who holds office under the *Workplace Relations Act 1996*.

### 86 Application of items 40 and 41

Despite the amendments made by items 40 and 41 of this Schedule, the *Jury Exemption Act 1965*, as in force immediately before the commencement of those items, continues to apply, on and after that commencement, in relation to members of the Australian Industrial Relations Commission and the Australian Fair Pay Commission, as those members continue to hold office because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, as if those amendments had not been made.

#### **87 Application of item 54**

Despite the amendment made by item 54 of this Schedule, the *Sex Discrimination Act 1984*, as in force immediately before the WR Act repeal day, continues to apply, in relation to a decision of the Australian Fair Pay Commission (whether made before or after that day), as if that amendment had not been made.

#### **88 Application of item 77**

Despite the amendment made by item 77 of this Schedule, subsection 40(1) of the *Sex Discrimination Act 1984*, as in force immediately before the commencement of that amendment, continues to apply on and after that commencement in relation to a decision of the Australian Fair Pay Commission made before that commencement.

## Schedule 6—Broadband, Communications and the Digital Economy

### *Telstra Corporation Act 1991*

**1 Subsection 9A(2) (definition of *industrial instrument*)**

Repeal the definition.

**2 Subsection 9A(2) (paragraph (b) of the definition of *law*)**

Omit “or industrial instrument”, substitute “, award or industrial agreement”.

**3 Subsection 9A(2) (definition of *post-sale long service leave rights*)**

Omit “or industrial instrument”, substitute “, award, industrial agreement”.

## Schedule 7—Defence

### *Naval Defence Act 1910*

**1 Subsection 40(1) (definition of *Australian Fair Pay and Conditions Standard*)**

Repeal the definition.

**2 Subsection 40(1)**

Insert:

*National Employment Standards* has the meaning given by the *Fair Work Act 2009*.

**3 Subsection 40(1) (definition of *industrial award*)**

Repeal the definition.

**4 Subsection 42A(7)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

**5 Subsection 42D(3)**

Omit “(other than the Australian Fair Pay and Conditions Standard or an industrial award)”, substitute “, but subject to the National Employment Standards and any relevant national minimum wage order or industrial award”.

## Schedule 8—Education, Employment and Workplace Relations

### Part 1—Consequential amendments

#### *Air Passenger Ticket Levy (Collection) Act 2001*

##### **1 Section 5 (definition of *Workplace Relations Minister*)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

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

##### **2 Subsection 4(1) (definition of *Australian Fair Pay and Conditions Standard*)**

Omit all the words after “has”, substitute “the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.”.

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

Omit all the words after “has”, substitute “the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.”.

##### **4 Subsection 4(1) (definition of *award*)**

Omit all the words after “has”, substitute “the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.”.

##### **5 Subsection 4(1)**

Insert:

*bargaining representative* has the same meaning as in the FW Act.

##### **6 Subsection 4(1) (definition of *building agreement*)**

Repeal the definition.

**7 Subsection 4(1) (definition of *building collective agreement*)**

Repeal the definition.

**8 Subsection 4(1)**

Insert:

*building enterprise agreement* means an enterprise agreement that applies to building work (whether or not it also applies to other work).

**9 Subsection 4(1) (at the end of the definition of *Commonwealth industrial instrument*)**

Add:

- ; (f) a fair work instrument;
- (g) the National Employment Standards.

**10 Subsection 4(1) (paragraph (a) of the definition of *designated building law*)**

Omit “or the Workplace Relations Act”, substitute “, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**11 Subsection 4(1) (definition of *employee organisation*)**

Omit “within the meaning of the Workplace Relations Act”.

**12 Subsection 4(1)**

Insert:

*enterprise agreement* has the same meaning as in the FW Act.

**13 Subsection 4(1)**

Insert:

*fair work instrument* has the same meaning as in the FW Act.

**14 Subsection 4(1)**

Insert:

*FWA* has the same meaning as in the FW Act.

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**15 Subsection 4(1)**

Insert:

*FW Act* means the *Fair Work Act 2009*.

**16 Subsection 4(1)**

Insert:

*independent contractor* has the same meaning as in the FW Act.

**17 Subsection 4(1) (definition of *industrial association*)**

Repeal the definition, substitute:

*industrial association* means:

- (a) an association of employees or independent contractors, or both, or an association of employers, that is registered or recognised as such an association (however described) under a workplace law (within the meaning of the FW Act); or
- (b) an association of employees, or independent contractors, or both, a purpose of which is the protection and promotion of their interests in matters concerning their employment, or their interests as independent contractors (as the case may be); or
- (c) an association of employers a principal purpose of which is the protection and promotion of their interests in matters concerning employment, independent contractors or both;

and includes:

- (d) a branch of such an association; and
- (e) an organisation; and
- (f) a branch of an organisation.

**18 Subsection 4(1) (definition of *industrial body*)**

Repeal the definition, substitute:

*industrial body* has the same meaning as in the FW Act.

**19 Subsection 4(1) (definition of *industrial dispute*)**

Repeal the definition.

**20 Subsection 4(1) (paragraph (a) of the definition of *industrial law*)**

Omit “or the Workplace Relations Act”, substitute “, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**21 Subsection 4(1) (definition of *Industrial Registrar*)**

Repeal the definition.

**22 Subsection 4(1)**

Insert:

*National Employment Standards* has the same meaning as in the FW Act.

**23 Subsection 4(1) (definition of *negotiating party*)**

Repeal the definition.

**24 Subsection 4(1) (definition of *occupier*)**

Omit “meaning given by section 4 of the Workplace Relations Act”, substitute “same meaning as in the FW Act”.

**25 Subsection 4(1) (definition of *organisation*)**

Omit “meaning given by the Workplace Relations Act”, substitute “same meaning as in the *Fair Work (Registered Organisations) Act 2009*”.

**26 Subsection 4(1) (definition of *premises*)**

Omit “meaning given by section 4 of the Workplace Relations Act”, substitute “same meaning as in the FW Act”.

**27 Subsection 4(1) (definition of *pre-reform AWA*)**

Omit all the words after “has”, substitute “the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**28 Subsection 4(1) (definition of *pre-reform certified agreement*)**

Omit all the words after “has”, substitute “the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**29 Subsection 4(1)**

Insert:

*protected industrial action* has the same meaning as in the FW Act.

**30 Subsection 4(1) (definition of *workplace agreement*)**

Omit “has the meaning given by the Workplace Relations Act”, substitute “means a workplace agreement within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**31 Subparagraph 10(a)(i)**

Omit “and the Workplace Relations Act”, substitute “, the FW Act and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**32 Subparagraph 10(b)(i)**

Omit “the Workplace Relations Act”, substitute “the FW Act, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**33 Paragraph 10(c)**

After “proceedings”, insert “, or making submissions,”.

**34 Paragraph 10(d)**

Omit “and the Workplace Relations Act”, substitute “, the FW Act and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**35 Paragraph 10(e)**

Omit “or the Workplace Relations Act” (wherever occurring), substitute “, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**36 Paragraph 10(f)**

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Omit “the Workplace Relations Act”, substitute “the FW Act, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**37 Subsection 36(1) (paragraph (c) of the definition of *constitutionally-connected action*)**

Repeal the paragraph.

**38 Subsection 36(1) (paragraph (e) of the definition of *constitutionally-connected action*)**

Omit all the words after “relates to”, substitute “the bargaining or proposed bargaining for, or the making or proposed making of, an enterprise agreement”.

**39 Subsection 36(1) (definition of *excluded action*)**

Omit all the words after “protected”, substitute “industrial action (as affected by Part 3 of this Chapter)”.

**40 Subsection 36(4) (paragraph (e) of the definition of *industrial dispute*)**

Omit “under an industrial law”.

**41 Part 3 of Chapter 5 (heading)**

Repeal the heading, substitute:

**Part 3—Protected industrial action**

**42 Subsection 40(1)**

Omit “building agreement is not protected action for the purposes of the Workplace Relations Act”, substitute “building enterprise agreement is not protected industrial action”.

**43 Subsection 40(2) (paragraph (a) of the definition of *protected person*)**

Omit “negotiating party to”, substitute “bargaining representative for”.

**44 Subsection 40(2) (paragraph (b) of the definition of *protected person*)**

Omit “whose employment will be subject to”, substitute “who will be covered by”.

**45 Subsection 40(2) (paragraph (d) of the definition of *protected person*)**

Omit “negotiating party to”, substitute “bargaining representative for”.

**46 Section 41**

Repeal the section.

**47 Subsection 42(1)**

Omit “Division 9 of Part 9 of the Workplace Relations Act”, substitute “Division 9 of Part 3-3 of the FW Act (which deals with payments for periods of industrial action)”.

**48 Paragraph 42(1)(b)**

Repeal the paragraph, substitute:

- (b) if the person who contravenes a civil remedy provision to which table item 21, 22, 23 or 24 of the table set out in section 539 of the FW Act relates is a body corporate—then, for the purposes of paragraph 546(2)(b) of that Act, the pecuniary penalty must not be more than 1,000 penalty units.

**49 Subsection 42(2)**

Omit “Division 9 of Part 9 of the Workplace Relations Act”, substitute “Division 9 of Part 3-3 of the FW Act (which deals with payments for periods of industrial action)”.

**50 Paragraph 44(1)(c)**

Omit “building agreement under Part 8 of the Workplace Relations Act”, substitute “building enterprise agreement”.

Note: The heading to section 44 is altered by omitting “**collective**” and substituting “**enterprise**”.

**51 Subsection 44(2)**

Omit “protected action for the purposes of the Workplace Relations Act”, substitute “protected industrial action”.

**52 Subsection 44(3)**

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Omit all the words from and including “the employer” (first occurring), to and including “request” (last occurring), substitute “the employer in relation to who is to be, or is not to be, the employee’s bargaining representative”.

**53 Subsection 44(4)**

Omit all the words from and including “the employer” (first occurring) to and including “request” (last occurring), substitute “the employer in relation to who is to be, or is not to be, the employee’s bargaining representative”.

**54 Subsection 44(5)**

Repeal the subsection, substitute:

- (5) To the extent that section 343 of the FW Act relates to:
- (a) the making, varying or terminating of an enterprise agreement; or
  - (b) the appointment, or termination of appointment, of a bargaining representative for an enterprise agreement;
- that section does not apply if the agreement is a building enterprise agreement.

**55 At the end of paragraph 45(1)(a)**

Add:

- (v) the National Employment Standards; or

**56 At the end of paragraph 45(1)(b)**

Add:

- ; or (v) the National Employment Standards.

**57 Subsection 45(1) (example for subparagraphs (1)(a)(ii) and (1)(b)(ii))**

Repeal the example.

**58 Subsection 45(2)**

Omit “protected action for the purposes of the Workplace Relations Act”, substitute “protected industrial action”.

**59 Paragraph 45(4)(a)**

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Omit “or pre-reform AWA”, substitute “, pre-reform AWA or fair work instrument”.

**60 Subsection 46(2)**

Omit “protected action for the purposes of the Workplace Relations Act”, substitute “protected industrial action”.

**61 Subsection 50(4)**

Repeal the subsection.

**62 Subsection 64(1)**

Omit “(1)”.

**63 Paragraph 64(1)(d)**

Repeal the paragraph, substitute:

(d) the agreement has not been not approved by FWA (within the meaning of the FW Act);

**64 Subsection 64(2)**

Repeal the subsection.

**65 Subsection 65(8) (paragraph (j) of the definition of *designated official*)**

Repeal the paragraph, substitute:

(j) the General Manager of FWA;

**66 Paragraph 67(c)**

Omit “or the Workplace Relations Act”, substitute “, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**67 Paragraph 71(1)(b)**

Omit “or the Workplace Relations Act”, substitute “, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**68 Section 72**

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Omit “Industrial Registrar, intervene in a matter before the AIRC that arises under the Workplace Relations Act”, substitute “General Manager of FWA, make a submission in a matter before FWA that arises under the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

Note: The heading to section 72 is altered by omitting “**intervention in AIRC**” and substituting “**may make submissions in FWA**”.

### **69 Subsection 73(1)**

Omit “Workplace Relations Act, or of an instrument under that Act, authorises a workplace inspector (within the meaning of that Act)”, substitute “FW Act, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or of an instrument under either of those Acts, authorises a Fair Work Inspector (within the meaning of the FW Act)”.

Note 1: The heading to section 73 is altered by omitting “**Workplace Relations Act**” and substituting “**FW Act, etc.**”.

Note 2: The heading to subsection 73(1) is altered by omitting “*workplace inspectors under the Workplace Relations Act*” and substituting “*Fair Work Inspectors under the FW Act, etc.*”.

### **70 Paragraph 73(1)(a)**

Omit “the AIRC”, substitute “FWA”.

### **71 Subsection 73(2)**

Omit “the Workplace Relations Act”, substitute “the FW Act, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

### **72 Subsection 73(2)**

Omit “workplace inspector (within the meaning of that Act)”, substitute “Fair Work Inspector (within the meaning of the FW Act)”.

### **73 Subsection 73(3)**

Omit “subsection 167(7) of the Workplace Relations Act”, substitute “section 704 or 705 of the FW Act”.

### **74 Subsections 73(4) and (5)**

Repeal the subsections.

### **75 Subsection 73A(3)**

Omit “subsection 167(7) of the Workplace Relations Act”, substitute “section 704 or 705 of the FW Act”.

### **76 Section 74**

Omit “Industrial Registrar” (first occurring), substitute “General Manager of FWA”.

Note: The heading to section 74 is altered by omitting “**Industrial Registrar**” and substituting “**General Manager of FWA**”.

### **77 Paragraph 74(a)**

Omit “the AIRC, or the Industrial Registrar, under the Workplace Relations Act”, substitute “FWA, or the General Manager of FWA under the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

### **78 Paragraph 75(3)(a)**

Omit “Workplace Relations Act”, substitute “FW Act”.

Note: The heading to subsection 75(3) is altered by omitting “*Workplace Relations*” and substituting “*FW*”.

### **79 Subsection 75(4)**

Omit “Subsections 412(2) and (3), and subsection 415(1), of the Workplace Relations Act”, substitute “Paragraph 563(b) of the FW Act and paragraph 22(b) of Schedule 17 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

### **80 After section 75**

Insert:

### **75A Exercising jurisdiction in the Fair Work Division of the Federal Court**

- (1) This section applies if:
- (a) an application is made to the Federal Court under this Act; or
  - (b) a writ of mandamus or prohibition or an injunction is sought in the Federal Court against a person holding office under this Act; or

- (c) a declaration is sought under section 21 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or
  - (d) an injunction is sought under section 23 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or
  - (e) a prosecution is instituted in the Federal Court under this Act; or
  - (f) an appeal is instituted in the Federal Court from a judgment of the Federal Magistrates Court or a court of a State or Territory in a matter arising under this Act; or
  - (g) proceedings in relation to a matter arising under this Act are transferred to the Federal Court from the Federal Magistrates Court; or
  - (h) the Federal Magistrates Court or a court of a State or Territory states a case or reserves a question for the consideration of the Federal Court in a matter arising under this Act; or
  - (i) the High Court remits a matter arising under this Act to the Federal Court.
- (2) The jurisdiction of the Federal Court is to be exercised in the Fair Work Division of the Federal Court.

### **75B Exercising jurisdiction in the Fair Work Division of the Federal Magistrates Court**

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

(e) the High Court remits a matter arising under this Act to the Federal Magistrates Court.

(2) The jurisdiction of the Federal Magistrates Court is to be exercised in the Fair Work Division of the Federal Magistrates Court.

**81 Paragraph 76(b)**

Omit “Workplace Relations Act”, substitute “FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**82 Paragraph 77(1)(b)**

Omit “or the Workplace Relations Act”, substitute “, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

**83 Subsection 77(2) (paragraph (j) of the definition of *protected person*)**

Omit “Industrial Registrar”, substitute “General Manager of FWA”.

**84 Subparagraph 78(2)(d)(i)**

Omit “or the Workplace Relations Act”, substitute “, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

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

**85 Subsection 4(1) (definition of *Australian Fair Pay and Conditions Standard*)**

Repeal the definition.

**86 Subsection 4(1) (paragraph (a) of the definition of *eligible employee*)**

Omit “Australian Fair Pay and Conditions Standard”, substitute “National Employment Standards”.

**87 Subsection 4(1) (definition of *industrial authority*)**

Omit “the Australian Industrial Relations Commission, the Workplace Authority Director, the Employment Advocate”, substitute “Fair Work Australia,”.

**88 Subsection 4(1)**

Insert:

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

**89 Subsection 4(1) (paragraph (a) of the definition of *relevant industrial instrument*)**

Repeal the paragraph, substitute:

- (a) an award made by, or registered with, an industrial authority;
- or

**90 Subsection 4(1) (paragraphs (d) to (f) of the definition of *relevant industrial instrument*)**

Repeal the paragraphs, substitute:

- (d) an agreement approved by, or registered with, an industrial authority;

***Defence Act 1903***

**91 Section 58F**

Insert:

*Fair Work Australia* means the body established by section 575 of the *Fair Work Act 2009*.

**92 Section 58F**

Insert:

*FWA* means Fair Work Australia.

**93 Section 58F (definition of *presidential member of the Commission*)**

Repeal the definition.

**94 Subsection 58G(4)**

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Omit “presidential member of the Commission”, substitute “Deputy President of FWA”.

**95 Subsection 58K(7)**

Omit all the words from and including “to any decision” to the end, substitute:

to:

- (a) any decision of, or principles established by, FWA that is or are relevant to the making of the determination; or
- (b) if FWA has not yet made any such decision or established any such principles, any decision of, or principles established by, the Commission that is or are relevant to the making of the determination.

**96 Subsection 58KB(4)**

Omit all the words from and including “to any decision” to the end, substitute:

to:

- (a) any decision of, or principles established by, FWA that is or are relevant to the making of the determination; or
- (b) if FWA has not yet made any such decision or established any such principles, any decision of, or principles established by, the Commission that is or are relevant to the making of the determination.

**97 Paragraph 58L(2)(c)**

Omit “presidential member of the Commission”, substitute “Deputy President of FWA”.

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

**98 Paragraph 12(11)(a)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work (Registered Organisations) Act 2009*”.

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

Add:

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; and (e) does not prevent the making of an award, order, agreement or determination under the *Fair Work Act 2009* in relation to long service leave for maritime employees included in a prescribed class of maritime employees, or affect the operation of such an award, order, agreement or determination.

**100 Subsection 15(4) (definition of *maritime employee*)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

***Maternity Leave (Commonwealth Employees) Act 1973***

**101 Section 8**

Omit “Sections 280 and 281 of the *Workplace Relations Act 1996* apply”, substitute “Section 84 of the *Fair Work Act 2009* applies”.

***Occupational Health and Safety Act 1991***

**102 Subsection 5(1) (paragraph (a) of the definition of *registered organisation*)**

Repeal the paragraph, substitute:

- (a) an association that is registered or recognised under the *Fair Work (Registered Organisations) Act 2009*; or

***Occupational Health and Safety (Maritime Industry) Act 1993***

**103 Section 4 (paragraph (a) of the definition of *registered union*)**

Repeal the paragraph, substitute:

- (a) an association of employees that is registered or recognised under the *Fair Work (Registered Organisations) Act 2009*; or

***Remuneration Tribunal Act 1973***

**104 Paragraph 3(4)(j)**

Repeal the paragraph, substitute:

(j) the office of President of Fair Work Australia;

**105 Paragraphs 5(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) national minimum wage orders made by Fair Work Australia;  
or
- (b) if Fair Work Australia has not yet made its first national minimum wage order—the last wage-setting decision of the Australian Fair Pay Commission.

**106 Subsection 7(4B)**

Omit “members of the Australian Industrial Relations Commission established under section 8 of the *Workplace Relations Act 1996*”, substitute “the President of Fair Work Australia”.

**107 Subsection 7(4C)**

Repeal the subsection.

**108 Paragraph 7(9)(af)**

Repeal the paragraph.

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

**109 Paragraph 52(6)(b)**

After “award”, insert “, determination”.

**110 Subsection 116(1)**

Omit “award”, substitute “industrial award, determination or agreement”.

***Seafarers Rehabilitation and Compensation Act 1992***

**111 Section 3 (definition of *Australian Fair Pay and Conditions Standard*)**

Repeal the definition.

**112 Section 3 (definition of *collective agreement*)**

Repeal the definition.

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**113 Section 3**

Insert:

*individual industrial agreement* means an industrial agreement that applies to only one employee.

**114 Section 3**

Insert:

*industrial instrument*:

- (a) includes an industrial award, determination or agreement; but
- (b) does not include an individual industrial agreement.

**115 Section 3**

Insert:

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

**116 Section 3 (definition of *pre-reform certified agreement*)**

Repeal the definition.

**117 Subsection 13(2)**

Omit “award, determination, collective agreement, pre-reform certified agreement or the Australian Fair Pay and Conditions Standard”, substitute “industrial instrument or National Employment Standards”.

**118 Subsection 13(3)**

Omit “a certified agreement”, substitute “an industrial instrument”.

**119 Subsection 13(5)**

Omit “award, determination, collective agreement, pre-reform certified agreement or the Australian Fair Pay and Conditions Standard or”, substitute “industrial instrument, the National Employment Standards or a”.

**120 Paragraph 13(6)(b)**

Omit “award, determination, collective agreement, pre-reform certified agreement or the Australian Fair Pay and Conditions Standard”, substitute “industrial instrument or the National Employment Standards”.

**121 Paragraph 31(14)(a)**

Omit “award, determination, collective agreement, pre-reform certified agreement or the Australian Fair Pay and Conditions Standard that applies”, substitute “industrial instrument or National Employment Standards that apply”.

**122 Subsection 61(6) (definition of *award*)**

Omit “determination or order”, substitute “determination, order or agreement”.

**123 Subsection 61(6) (definition of *award*)**

Omit “award or order made”, substitute “award, determination or order made, or agreement entered into,”.

**124 Subsection 78(7) (definition of *industry panel*)**

Omit “a collective agreement or a pre-reform certified agreement”, substitute “an industrial agreement”.

**125 Section 137**

Omit “award, determination, collective agreement or pre-reform certified agreement”, substitute “industrial instrument or National Employment Standards”.

***Social Security Act 1991***

**126 Section 16C**

Repeal the section.

**127 Subsection 23(1) (definition of *applicable statutory conditions*)**

Omit “has the meaning given by section 16C”, substitute “, in relation to particular work, means the minimum terms and conditions of employment (including wages) applicable under law in relation to that work”.

**128 Subsection 23(1) (definition of *Australian Fair Pay and Conditions Standard*)**

Repeal the definition.

**129 Subsection 23(1) (definition of *relevant minimum wage*)**

Omit all the words after “means”, substitute “the minimum wage payable to the employee under law”.

**130 Paragraph 120(d)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

**131 Paragraph 501D(4)(d)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

**132 Paragraph 544B(8)(d)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

**133 Paragraphs 553A(4)(a) to (c)**

Repeal the paragraphs, substitute:

- (a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
- (b) Fair Work Australia or the Australian Industrial Relations Commission; or
- (c) the Federal Court of Australia; or
- (d) the Federal Magistrates Court;

**134 Subsection 596(4)**

Omit “by a State industrial authority, the Australian Industrial Relations Commission, the Federal Court or the Federal Magistrates Court,”, substitute:

by:

- (a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
- (b) Fair Work Australia or the Australian Industrial Relations Commission; or

- (c) the Federal Court of Australia; or
- (d) the Federal Magistrates Court;

**135 Subsection 596(4) (note)**

Repeal the note.

**136 Paragraph 631C(d)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

**137 Subsection 660XBE(4)**

Omit “by a State industrial authority, the Australian Industrial Relations Commission, the Federal Court or the Federal Magistrates Court,”, substitute:

by:

- (a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
- (b) Fair Work Australia or the Australian Industrial Relations Commission; or
- (c) the Federal Court of Australia; or
- (d) the Federal Magistrates Court;

**138 Subsection 660XBE(4) (note)**

Repeal the note.

**139 Paragraph 745L(d)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

**140 Subsection 771HB(4)**

Omit “by a State industrial authority, the Australian Industrial Relations Commission, the Federal Court or the Federal Magistrates Court,”, substitute:

by:

- (a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
  - (b) Fair Work Australia or the Australian Industrial Relations Commission; or
-

- (c) the Federal Court of Australia; or
- (d) the Federal Magistrates Court;

**141 Subsection 771HB(4) (note)**

Repeal the note.

**142 Paragraph 954A(1)(f)**

Omit all the words after “above”, substitute “the relevant minimum wage; and”.

**143 Paragraph 1061PB(2)(a)**

Omit “AFPCS”, substitute “National Employment Standards”.

**144 Subsection 1061PB(6) (definition of *AFPCS*)**

Repeal the definition.

**145 Subsection 1061PB(6) (definition of *industrial instrument*)**

After “award”, insert “, determination”.

**146 Subsection 1061PB(6)**

Insert:

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

**147 Subparagraph 1067A(10)(c)(i)**

Omit “the Australian Pay and Classification Scale”, substitute “a transitional Australian Pay and Classification Scale or modern award”.

**148 Subparagraph 1067A(10)(c)(ii)**

Omit “the Australian Fair Pay Commission”, substitute “Fair Work Australia”.

**149 Paragraph 1188BB(d)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

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

**150 Section 6 (definition of *Australian Pay and Classification Scale*)**

Repeal the definition.

**151 Section 6 (definition of *award*)**

Repeal the definition.

**152 Section 6 (definition of *industrial agreement*)**

Repeal the definition.

**153 Subsections 33E(6) and 41(6) and (7)**

Omit "Australian Pay and Classification Scale, the appropriate", substitute "standard, pay or classification scale,".

***United States Naval Communication Station (Civilian Employees) Act 1968***

**154 Paragraph 4(b)**

Omit "within the meaning of Schedule 1B to the *Workplace Relations Act 1996*", substitute "registered under, or association recognised by, the *Fair Work (Registered Organisations) Act 2009*".

## **Part 2—Transitional provisions**

### **Division 1—Provisions relating to the Building and Construction Industry Improvement Act 2005**

#### **155 General transitional provision relating to functions and powers of the ABC Commissioner and ABC inspectors**

If the *Building and Construction Industry Improvement Act 2005* confers a function or power on the ABC Commissioner or an ABC inspector in relation to the *Fair Work Act 2009*, the *Building and Construction Industry Improvement Act 2005* has effect, on and after the WR Act repeal day, as if the function or power were also conferred in relation to:

- (a) the *Workplace Relations Act 1996* as in force before the WR Act repeal day; and
- (b) the *Workplace Relations Act 1996* as continued in force after the WR Act repeal day by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

#### **156 Transitional provision relating to paragraph 44(1)(c)**

Despite the amendment of paragraph 44(1)(c) of the *Building and Construction Industry Improvement Act 2005* made by item 50 of this Schedule, that paragraph applies, in relation to a building agreement made before the WR Act repeal day as if it referred to that agreement.

#### **157 Transitional provision relating to paragraph 64(1)(d)**

Despite the repeal of paragraph 64(1)(d) of the *Building and Construction Industry Improvement Act 2005* by item 63 of this Schedule, that paragraph continues to apply, in relation to an agreement entered into before the WR Act repeal day, as if it had not been repealed.

#### **158 Transitional provisions relating to the Industrial Registrar**

- (1) Section 65 of the *Building and Construction Industry Improvement Act 2005* applies, on and after the WR Act repeal day, in relation to the

Industrial Registrar as if the Industrial Registrar were a designated person.

- (2) Section 74 of the *Building and Construction Industry Improvement Act 2005*, as in force immediately before the WR Act repeal day, continues to apply in relation to an application lodged before that day.
- (3) Subsection 77(2) of the *Building and Construction Industry Improvement Act 2005* applies, on and after the WR Act repeal day, in relation to the Industrial Registrar as if the Industrial Registrar were a protected person.

## **Division 2—Provision relating to the Defence Act 1903**

### **159 Transitional provision relating to the appointment of the President of the Defence Force Remuneration Tribunal**

- (1) Despite the amendment made by item 94, an appointment as President of the Defence Force Remuneration Tribunal in effect under section 58G of the *Defence Act 1903* immediately before the commencement of that amendment continues in effect on and after that commencement, subject to:
  - (a) its terms; and
  - (b) the amendments made by this Schedule.
- (2) However, for the purposes of an appointment continued in effect by subitem (1), the requirement in paragraph 58L(2)(c) of the *Defence Act 1903* (as amended by this Act) that the President of the Defence Force Remuneration Tribunal be a Deputy President of FWA may be met instead by the President being a presidential member of the Commission (within the meaning of section 58F of the *Defence Act 1903* as in force immediately before the commencement of item 93).

## **Division 3—Provisions relating to the Remuneration Tribunal Act 1973**

### **160 Transitional provision relating to section 3**

- (1) Despite the repeal of paragraph 3(4)(j) of the *Remuneration Tribunal Act 1973* by item 104, that paragraph, as in force immediately before that repeal, continues to apply in relation to an office of member of the Australian Industrial Relations Commission until that Commission ceases to exist.

- (2) The reference in paragraph 3(4)(j) of the *Remuneration Tribunal Act 1973*, as substituted by item 104, to the office of President of Fair Work Australia is taken to include a reference to an office of member (other than President) of Fair Work Australia, but only in relation to persons who are taken to have been appointed to that office under item 1 of Schedule 18 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

#### **161 Transitional provision relating to section 7**

- (1) Despite the amendment of subsection 7(4B) of the *Remuneration Tribunal Act 1973* by item 106, that subsection, as in force immediately before that amendment, continues to apply in relation to members of the Australian Industrial Relations Commission until that Commission ceases to exist.
- (2) The reference in subsection 7(4B) of the *Remuneration Tribunal Act 1973*, as amended by item 106, to the President of Fair Work Australia is taken to include a reference to the other members of Fair Work Australia, but only in relation to persons who are taken to have been appointed as such a member under item 1 of Schedule 18 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.
- (3) Despite the repeal of subsection 7(4C) of the *Remuneration Tribunal Act 1973* by item 107, that subsection, as in force immediately before that repeal, continues to apply in relation to members of the Australian Fair Pay Commission until that Commission ceases to exist.

## **Schedule 9—Families, Housing, Community Services and Indigenous Affairs**

### ***Equal Opportunity for Women in the Workplace Act 1999***

#### **1 Subsection 3(1) (paragraph (a) of the definition of *trade union*)**

Omit “an organisation within the meaning of Schedule 1B to the *Workplace Relations Act 1996*”, substitute “registered or recognised under the *Fair Work (Registered Organisations) Act 2009*”.

### ***Social Security Act 1991***

#### **2 Paragraphs 729AA(4)(a) to (c)**

Repeal the paragraphs, substitute:

- (a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
- (b) Fair Work Australia or the Australian Industrial Relations Commission; or
- (c) the Federal Court of Australia; or

#### **3 Paragraphs 759(4)(a) to (c)**

Repeal the paragraphs, substitute:

- (a) a prescribed State industrial authority within the meaning of the *Fair Work Act 2009*; or
- (b) Fair Work Australia or the Australian Industrial Relations Commission; or
- (c) the Federal Court of Australia; or

## **Schedule 10—Finance and Deregulation**

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

#### **1 Paragraphs 59(4)(b), (c), (d) and (da)**

Repeal the paragraphs, substitute:

- (b) any of the following (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*):
  - (i) an award;
  - (ii) a pre-reform certified agreement;
  - (iii) an individual transitional employment agreement;
  - (iv) an AWA; or

#### **2 At the end of subsection 59(4)**

Add:

- Note: For an instrument referred to in paragraph (b), see item 4 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

### ***Commonwealth Authorities and Companies Act 1997***

#### **3 Paragraph 7(2)(c)**

Repeal the paragraph, substitute:

- (c) associations that are organisations (within the meaning of the *Fair Work (Registered Organisations) Act 2009*).

### ***Commonwealth Electoral Act 1918***

#### **4 Section 5 (definition of *electoral matters*)**

Omit “and ballots under the *Workplace Relations Act 1996*”, substitute “, ballots under the *Fair Work Act 2009* or the *Fair Work (Registered Organisations) Act 2009*”.

#### **5 Subsection 287(1) (definition of *registered industrial organisation*)**

Repeal the definition, substitute:

*registered industrial organisation* means:

- (a) an organisation registered under the *Fair Work (Registered Organisations) Act 2009*; or
- (b) an association registered or recognised under that Act or under a law of a State or Territory concerning the registration of industrial associations.

### ***Superannuation Act 1976***

#### **6 Subsection 3(1) (definition of *industrial award*)**

Repeal the definition, substitute:

*industrial award* means an industrial award, determination or agreement made, approved, lodged or registered under a law of the Commonwealth, a State or a Territory.

#### **7 Subsection 51(2BB) (paragraph (a) of the definition of *approved organisation*)**

Omit “under Schedule 1B to the *Workplace Relations Act 1996*”, substitute “or an association recognised under the *Fair Work (Registered Organisations) Act 2009*”.

#### **8 Subsection 54C(1)**

Omit “award, determination”, substitute “industrial award”.

### ***Superannuation Act 1990***

#### **9 Subsection 13(1)**

Omit “award, determination”, substitute “industrial award”.

#### **10 At the end of section 13**

Add:

- (3) In subsection (1), *industrial award* means an industrial award, determination or agreement made, approved, lodged or registered under a law of the Commonwealth, a State or a Territory.

## **Schedule 11—Health and Ageing**

### *Commonwealth Serum Laboratories Act 1961*

#### **1 Subsection 27(1)**

Omit “or industrial instrument”, substitute “, award or industrial agreement”.

#### **2 Subsection 27(5)**

Repeal the subsection.

#### **3 Paragraph 29(2)(b)**

Omit “or industrial instrument”, substitute “, award or industrial agreement”.

#### **4 Subsection 29(3) (definition of *industrial instrument*)**

Repeal the definition.

### *National Health Act 1953*

#### **5 Subsection 98A(4)**

Omit “Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission”, substitute “Deputy President of Fair Work Australia”.

#### **6 Paragraphs 98B(5)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) national minimum wage orders of Fair Work Australia, and, in particular, any statements by Fair Work Australia about the effect of wage increases on productivity, inflation and levels of employment; or
- (b) if no such order has been made—the last wage-setting decision of the Australian Fair Pay Commission.

#### **7 Subsection 99A(2)**

Omit “Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission”, substitute “Deputy President of Fair Work Australia”.

**8 Subsection 99B(1)**

Omit “Senior Deputy President or Deputy President of the Australian Industrial Relations Commission”, substitute “Deputy President of Fair Work Australia”.

**9 Subsections 99D(1) and (10)**

Omit “Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission”, substitute “Deputy President of Fair Work Australia”.

## **Schedule 12—Immigration and Citizenship**

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

#### **1 Section 709 (note)**

After “713”, insert “, 713A”.

#### **2 Paragraphs 713(d) and (e)**

Repeal the paragraphs.

#### **3 After section 713**

Insert:

#### **713A Certain records and documents are inadmissible**

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

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

### ***Migration Act 1958***

#### **4 Sections 140X, 140Y, 140Z and 140ZA**

Repeal the sections, substitute:

#### **140X Purpose for which powers of inspectors may be exercised**

The powers of an inspector under this Subdivision may be exercised:

- (a) for the purpose of determining whether a sponsorship obligation is being, or has been, complied with; or
  - (b) for a purpose prescribed by the regulations.
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### **140XA When powers of inspectors may be exercised**

An inspector may exercise powers under this Subdivision:

- (a) at any time during working hours; or
- (b) at any other time, if the inspector reasonably believes that it is necessary to do so for the purposes referred to in section 140X.

### **140XB Power of inspectors to enter premises or places**

- (1) An inspector may, without force, enter business premises or another place, if the inspector reasonably believes that there are records or documents relevant to the purposes referred to in section 140X on the premises or at the place, or accessible from a computer on the premises or at the place.
- (2) The inspector must, either before or as soon as practicable after entering those premises or that place, show his or her identity card to the occupier, or another person who apparently represents the occupier, if the occupier or other person is present at the premises or place.

### **140XC Powers of inspectors while on premises or at a place**

An inspector who enters premises or a place under section 140XB may exercise one or more of the following powers while on the premises or at the place:

- (a) inspect any work, process or object;
- (b) interview any person;
- (c) require a person to tell the inspector who has custody of, or access to, a record or document;
- (d) require a person who has the custody of, or access to, a record or document to produce the record or document to the inspector either while the inspector is on the premises or at the place, or within a specified period;
- (e) inspect, and make copies of, any record or document that:
  - (i) is kept on the premises or at the place; or
  - (ii) is accessible from a computer that is kept on the premises or at the place.

Note: See also sections 140XG, 140XH and 140XI (which deal with self-incrimination and produced documents etc.).

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**140XD Persons assisting inspectors**

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

**140XE Power to ask for person's name and address**

- (1) An inspector may require a person to tell the inspector the person's name and address if the inspector reasonably believes that the person has contravened a civil penalty provision.
- (2) If the inspector reasonably believes that the name or address is false, the inspector may require the person to give evidence of its correctness.
- (3) A person contravenes this subsection if:
  - (a) the inspector requires the person to do a thing referred to in subsection (1) or (2); and
  - (b) the inspector advises the person that he or she may contravene a civil penalty provision if he or she fails to comply with the requirement; and
  - (c) the inspector shows his or her identity card to the person; and
  - (d) the person does not comply with the requirement.

## Civil penalty:

- (a) for an individual—60 penalty units; and
- (b) for a body corporate—300 penalty units.

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

#### **140XF Power to require persons to produce records or documents**

- (1) An inspector may require a person, by notice, to produce a record or document to the inspector.
- (2) The notice must:
- (a) be in writing; and
  - (b) be served on the person; and
  - (c) require the person to produce the record or document at a specified place within a specified period of at least 7 days.
- The notice may be served by sending the notice to the person's fax number.
- (3) A person contravenes this subsection if:
- (a) the person is served with a notice to produce under subsection (1); and
  - (b) the person fails to comply with the notice.

Civil penalty:

- (a) for an individual—60 penalty units; and
  - (b) for a body corporate—300 penalty units.
- (4) Subsection (3) does not apply if the person has a reasonable excuse.

#### **140XG Self-incrimination**

- (1) A person is not excused from producing a record or document under paragraph 140XC(d), or subsection 140XF(1), on the ground that the production of the record or document might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual, none of the following are admissible in evidence against the individual in criminal proceedings:
- (a) the record or document produced;
  - (b) producing the record or document;
  - (c) any information, document or thing obtained as a direct or indirect consequence of producing the record or document;

except in proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to the information or document.

**140XH Certain records and documents are inadmissible**

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

- (a) any record or document inspected or copied under paragraph 140XC(e) of which the individual had custody, or to which the individual had access, when it was inspected or copied;
- (b) any information, document or thing obtained as a direct or indirect consequence of inspecting or copying a record or document of which the individual had custody, or to which the individual had access, when it was inspected or copied under paragraph 140XC(e).

**140XI Power to keep records or documents**

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

**140XJ Disclosure of information by the Secretary**

*Information to which this section applies*

- (1) This section applies to the following information:
  - (a) information acquired by an inspector in the course of performing functions, or exercising powers, as an inspector under this Subdivision;

- (b) information acquired by a person in the course of assisting an inspector under section 140XD.

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

- (2) The Secretary may disclose, or authorise the disclosure of, the information if the Secretary reasonably believes:
  - (a) that it is necessary or appropriate to do so in the course of performing functions, or exercising powers, under Division 3A of Part 2 of this Act; or
  - (b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

## **Schedule 13—Infrastructure, Transport, Regional Development and Local Government**

### *Navigation Act 1912*

#### **1 Section 292**

Repeal the section, substitute:

#### **292 Evidence of rates of wages**

Any of the following which is binding on or applicable to seamen employed in any part of the coasting trade is prima facie evidence of the rates of wages in Australia for those seamen:

- (a) a modern award (within the meaning of the *Fair Work Act 2009*);
- (b) a transitional APCS or transitional award (both within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

Note: For an instrument referred to in paragraph (b), see items 2 and 4 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

## Schedule 14—Innovation, Industry, Science and Research

### Part 1—Consequential amendments

#### *Independent Contractors Act 2006*

##### 1 Section 4

Insert:

*Fair Work Inspector* has the same meaning as in the *Fair Work Act 2009*.

##### 2 Section 4 (definition of *organisation*)

Repeal the definition, substitute:

*organisation* means an organisation that is registered or an association that is recognised under the *Fair Work (Registered Organisations) Act 2009*.

##### 3 Section 4 (definition of *workplace inspector*)

Repeal the definition.

##### 4 Section 6 (definition of *State or Territory industrial law*)

Repeal the definition, substitute:

*State or Territory industrial law* has the same meaning as in the *Fair Work Act 2009*.

##### 5 Subparagraph 8(1)(h)(i)

Repeal the subparagraph, substitute:

- (i) the *Fair Work Act 2009*; or
- (ia) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or

##### 6 Subparagraph 9(1)(e)(i)

Repeal the subparagraph, substitute:

- (i) the *Fair Work Act 2009*; or

- (ia) the *Workplace Relations Act 1996*, as in force at any time before the WR Act repeal day, or as that Act applies after that day because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or

**7 Subparagraph 9(1)(e)(iii)**

After “(i)”, insert “, (ia)”.

**8 At the end of section 9**

Add:

- (3) In this section:

***WR Act repeal day*** has the meaning given by Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

**9 Paragraph 34(5)(a)**

Repeal the paragraph, substitute:

- (a) a Fair Work Inspector; or

**10 Subsection 34(7)**

Omit “Division 3 of Part 14 of the *Workplace Relations Act 1996*”, substitute “Division 4 of Part 4-1 of the *Fair Work Act 2009*”.

## **Part 2—Transitional provision**

### **11 Transitional provision**

Despite the amendment of subsection 34(7) of the *Independent Contractors Act 2006* made by item 10, Division 3 of Part 14 of the *Workplace Relations Act 1996*, as in force immediately before the commencement of this item, continues to have effect on and after that commencement in relation to a breach, or suspected breach, of subsection 34(1) or (2) of the *Independent Contractors Act 2006* that was committed before the commencement of this item.

## **Schedule 15—Parliamentary Service**

### **Part 1—Consequential amendments**

#### *Parliamentary Service Act 1999*

##### **1 Section 7 (definition of APCS)**

Repeal the definition.

##### **2 Section 7 (definition of *Australian Fair Pay and Conditions Standard*)**

Repeal the definition, substitute:

*Australian Fair Pay and Conditions Standard* has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Note: See Schedules 4 and 9 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* in relation to the application of the Australian Fair Pay and Conditions Standard.

##### **3 Section 7 (definition of AWA)**

Repeal the definition.

##### **4 Section 7 (definition of *award*)**

Repeal the definition.

##### **5 Section 7 (definition of *collective agreement*)**

Repeal the definition.

##### **6 Section 7**

Insert:

*enterprise agreement* has the same meaning as in the *Fair Work Act 2009*.

##### **7 Section 7**

Insert:

*fair work instrument* has the same meaning as in the *Fair Work Act 2009*.

## 8 Section 7

Insert:

*modern award* has the same meaning as in the *Fair Work Act 2009*.

## 9 Section 7

Insert:

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

## 10 Section 7 (definition of *pre-reform AWA*)

Repeal the definition.

## 11 Section 7 (definition of *pre-reform certified agreement*)

Repeal the definition.

## 12 Section 7 (definition of *workplace agreement*)

Repeal the definition.

## 13 Section 7

Insert:

*WR Act collective transitional instrument* means an award, a collective agreement or a pre-reform certified agreement (within the meaning of those terms in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

## 14 Section 7

Insert:

*WR Act transitional instrument* means an award, a workplace agreement, a pre-reform certified agreement, an AWA or a pre-reform AWA (within the meaning of those terms in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

### **15 Subsection 8(1)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

Note: The heading to section 8 is replaced by the heading “**Relationship with Fair Work Acts**”.

### **16 Subsection 8(2)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009* or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

### **17 Subsection 23(2)**

Repeal the subsection, substitute:

- (2) The Classification Rules may apply, adopt or incorporate, with or without modification, any of the provisions of:
  - (a) a modern award, as in force at a particular time or as in force from time to time; or
  - (b) a transitional APCS, as in force at a particular time or as in force from time to time.

### **18 Subsection 23(5)**

Repeal the subsection, substitute:

- (5) If a relevant industrial instrument contains procedures to be followed when reducing the classification, then a reduction is of no effect unless those procedures are followed.
- (6) In this section:

*industrial instrument* means:

- (a) a modern award; or
- (b) an enterprise agreement; or
- (c) a workplace determination; or
- (d) a WR Act transitional instrument; or
- (e) a transitional APCS.

*transitional APCS* has the meaning given by Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

*workplace determination* has the same meaning as in the *Fair Work Act 2009*.

## **19 Subsections 24(1) and (2)**

Repeal the subsections, substitute:

- (1) A Secretary may from time to time determine in writing the remuneration and other terms and conditions of employment applying to a Parliamentary Service employee or Parliamentary Service employees in the relevant Department.

Note 1: Certain terms and conditions of employment are applicable to a Parliamentary Service employee under the Australian Fair Pay and Conditions Standard or the National Employment Standards.

Note 2: Other Commonwealth laws deal with matters such as superannuation, compensation, long service leave and maternity leave.

- (1A) A determination under subsection (1) is of no effect to the extent that it would reduce the benefit to a Parliamentary Service employee of an individual term or condition applicable to the employee under:

- (a) a fair work instrument; or
- (b) a WR Act transitional instrument.

Note: A determination under subsection (1) would also be of no effect to the extent that it would reduce the benefit to a Parliamentary Service employee of a term or condition applicable to the employee under the Australian Fair Pay and Conditions Standard or the National Employment Standards.

- (2) A determination under subsection (1) may apply, adopt or incorporate, with or without modification, any of the provisions of:

- (a) a fair work instrument; or
- (b) a WR Act collective transitional instrument;

as in force from time to time.

Note: A determination under subsection (1) may apply, adopt or incorporate, with or without modification, any of the provisions of the Australian Fair Pay and Conditions Standard or the National Employment Standards. However, any modification of the provisions of those Standards by a determination under subsection (1) would be of no effect to the extent that it would reduce the benefit to a Parliamentary Service employee of a term or condition applicable to the employee under those Standards.

## **20 Subsection 24(4)**

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Repeal the subsection, substitute:

- (4) The limitation in subsection (1A) does not apply in relation to a determination under subsection (3).
- (5) A determination under subsection (3) overrides the following, to the extent of any inconsistency:
  - (a) a determination under subsection (1);
  - (b) the Australian Fair Pay and Conditions Standard;
  - (c) the National Employment Standards.

**21 Subsection 29(1) (note)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

## **Part 2—Saving provision**

### **22 Saving provision—determinations under subsection 24(1)**

If a determination made by a Secretary under subsection 24(1) of the *Parliamentary Service Act 1999* was in force immediately before the commencement of this Schedule, the determination continues in force on and after that commencement as if it had been made under subsection 24(1) of that Act, as amended by this Schedule.

## **Schedule 16—Prime Minister and Cabinet**

### **Part 1—Consequential amendments**

#### *Privacy Act 1988*

#### **1 Subsection 6(1) (subparagraph (c)(ii) of the definition of agency)**

Repeal the subparagraph, substitute:

- (ii) an organisation that is registered under the *Fair Work (Registered Organisations) Act 2009* or a branch of such an organisation; or

#### **2 After subsection 6E(1A)**

Insert:

*Small business operator that is a protected action ballot agent under the Fair Work Act 2009*

- (1B) If a small business operator is the protected action ballot agent for a protected action ballot conducted under Part 3-3 of the *Fair Work Act 2009*, this Act applies, with the prescribed modifications (if any), in relation to the activities carried on by the small business operator for the purpose of, or in connection with, the conduct of the protected action ballot, as if the small business operator were an organisation.

Note: The regulations may prescribe different modifications of the Act for different small business operators. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

*Small business operator that is an association of employees that is registered or recognised under the Fair Work (Registered Organisations) Act 2009*

- (1C) If a small business operator is an association of employees that is registered or recognised under the *Fair Work (Registered Organisations) Act 2009*, this Act applies, with the prescribed modifications (if any), in relation to the activities carried on by the small business operator, as if the small business operator were an organisation (within the meaning of this Act).

Note: The regulations may prescribe different modifications of the Act for different small business operators. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

### 3 Subsection 6E(3)

Insert:

***protected action ballot agent*** means a person (other than the Australian Electoral Commission) that conducts a protected action ballot under Part 3-3 of the *Fair Work Act 2009*.

Note: The heading to subsection 6E(3) is replaced by the heading “*Definitions*”.

## ***Public Service Act 1999***

### 4 Section 7 (definition of *APCS*)

Repeal the definition.

### 5 Section 7 (definition of *Australian Fair Pay and Conditions Standard*)

Repeal the definition, substitute:

***Australian Fair Pay and Conditions Standard*** has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Note: See Schedules 4 and 9 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* in relation to the application of the Australian Fair Pay and Conditions Standard.

### 6 Section 7 (definition of *AWA*)

Repeal the definition.

### 7 Section 7 (definition of *award*)

Repeal the definition.

### 8 Section 7 (definition of *collective agreement*)

Repeal the definition.

### 9 Section 7

Insert:

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*enterprise agreement* has the same meaning as in the *Fair Work Act 2009*.

**10 Section 7**

Insert:

*fair work instrument* has the same meaning as in the *Fair Work Act 2009*.

**11 Section 7**

Insert:

*modern award* has the same meaning as in the *Fair Work Act 2009*.

**12 Section 7**

Insert:

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

**13 Section 7 (definition of *pre-reform AWA*)**

Repeal the definition.

**14 Section 7 (definition of *pre-reform certified agreement*)**

Repeal the definition.

**15 Section 7 (definition of *workplace agreement*)**

Repeal the definition.

**16 Section 7**

Insert:

*WR Act collective transitional instrument* means an award, a collective agreement or a pre-reform certified agreement (within the meaning of those terms in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

**17 Section 7**

Insert:

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***WR Act transitional instrument*** means an award, a workplace agreement, a pre-reform certified agreement, an AWA or a pre-reform AWA (within the meaning of those terms in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

### 18 Subsection 8(1)

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

Note: The heading to section 8 is replaced by the heading “**Relationship with Fair Work Acts**”.

### 19 Subsection 8(2)

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009* or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

### 20 Subsection 23(2)

Repeal the subsection, substitute:

- (2) The Classification Rules may apply, adopt or incorporate, with or without modification, any of the provisions of:
  - (a) a modern award, as in force at a particular time or as in force from time to time; or
  - (b) a transitional APCS, as in force at a particular time or as in force from time to time.

### 21 Subsection 23(5)

Repeal the subsection, substitute:

- (5) If a relevant industrial instrument contains procedures to be followed when reducing the classification, then a reduction is of no effect unless those procedures are followed.

- (6) In this section:

***industrial instrument*** means:

- (a) a modern award; or
- (b) an enterprise agreement; or
- (c) a workplace determination; or

- (d) a WR Act transitional instrument; or
- (e) a transitional APCS.

*transitional APCS* has the meaning given by Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

*workplace determination* has the same meaning as in the *Fair Work Act 2009*.

## **22 Subsections 24(1) and (2)**

Repeal the subsections, substitute:

- (1) An Agency Head may from time to time determine in writing the remuneration and other terms and conditions of employment applying to an APS employee or APS employees in the Agency.

Note 1: Certain terms and conditions of employment are applicable to an APS employee under the Australian Fair Pay and Conditions Standard or the National Employment Standards.

Note 2: Other Commonwealth laws deal with matters such as superannuation, compensation, long service leave and maternity leave.

- (1A) A determination under subsection (1) is of no effect to the extent that it would reduce the benefit to an APS employee of an individual term or condition applicable to the employee under:

- (a) a fair work instrument; or
- (b) a WR Act transitional instrument.

Note: A determination under subsection (1) would also be of no effect to the extent that it would reduce the benefit to an APS employee of a term or condition applicable to the employee under the Australian Fair Pay and Conditions Standard or the National Employment Standards.

- (2) A determination under subsection (1) may apply, adopt or incorporate, with or without modification, any of the provisions of:

- (a) a fair work instrument; or
- (b) a WR Act collective transitional instrument;

as in force from time to time.

Note: A determination under subsection (1) may apply, adopt or incorporate, with or without modification, any of the provisions of the Australian Fair Pay and Conditions Standard or the National Employment Standards. However, any modification of the provisions of those Standards by a determination under subsection (1) would be of no effect to the extent that it would reduce the benefit to an APS

employee of a term or condition applicable to the employee under those Standards.

### **23 Subsection 24(4)**

Repeal the subsection, substitute:

- (4) The limitation in subsection (1A) does not apply in relation to a determination under subsection (3).
- (5) A determination under subsection (3) overrides the following, to the extent of any inconsistency:
  - (a) a determination under subsection (1);
  - (b) the Australian Fair Pay and Conditions Standard;
  - (c) the National Employment Standards.

### **24 Subsection 29(1) (note)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*”.

### **25 Paragraphs 72(3)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) a fair work instrument; or
- (b) a WR Act transitional instrument; or
- (c) a determination under this Act.

### **26 Paragraph 72(4)(a)**

Repeal the paragraph, substitute:

- (a) results from:
  - (i) the making, variation or termination of a modern award, an enterprise agreement or a workplace determination; or
  - (ii) the variation, termination or replacement of a WR Act transitional instrument; and

### **27 Subsection 72(6)**

Insert:

*workplace determination* has the same meaning as in the *Fair Work Act 2009*.

## **Part 2—Saving provision**

### **28 Saving provision—determinations under subsection 24(1)**

If a determination made by an Agency Head under subsection 24(1) of the *Public Service Act 1999* was in force immediately before the commencement of this Schedule, the determination continues in force on and after that commencement as if it had been made under subsection 24(1) of that Act, as amended by this Schedule.

## Schedule 17—Resources, Energy and Tourism

### *Moomba-Sydney Pipeline System Sale Act 1994*

#### **1 Subsection 3(1) (definition of *award*)**

Repeal the definition.

### *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

#### **2 Clause 3 of Schedule 3 (definition of *registered organisation*)**

Omit “within the meaning of the *Workplace Relations Act 1996*”, substitute “registered or an association recognised under the *Fair Work (Registered Organisations) Act 2009*”.

#### **3 Clause 3 of Schedule 3 (paragraph (a) of the definition of *workforce representative*)**

Omit “a registered organisation, or a transitionally registered association (within the meaning of Schedule 10 to the *Workplace Relations Act 1996*)”, substitute “an organisation registered or an association recognised under the *Fair Work (Registered Organisations) Act 2009*”.

#### **4 Clause 3 of Schedule 3 (paragraph (a) of the definition of *workforce representative*)**

After “that organisation”, insert “or association”.

#### **5 Clause 3 of Schedule 3 (paragraph (b) of the definition of *workforce representative*)**

Omit “a registered organisation, or a transitionally registered association (within the meaning of Schedule 10 to the *Workplace Relations Act 1996*)”, substitute “an organisation registered or an association recognised under the *Fair Work (Registered Organisations) Act 2009*”.

#### **6 Clause 3 of Schedule 3 (paragraph (b) of the definition of *workforce representative*)**

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After “that organisation”, insert “or association”.

***Snowy Hydro Corporatisation Act 1997***

**7 Paragraph 23(5)(b)**

Omit “as defined by section 4 of the *Workplace Relations Act 1996*”, substitute “within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

## Schedule 18—Treasury

### Part 1—Consequential amendments

#### *Commonwealth Volunteers Protection Act 2003*

##### **1 Subsection 4(1) (paragraph (b) of the definition of Commonwealth authority)**

Repeal the paragraph, substitute:

- (b) an organisation registered or an association recognised under the *Fair Work (Registered Organisations) Act 2009*; or

#### *Corporations Act 2001*

##### **2 Subparagraphs 764A(1)(d)(i), (e)(i) and (f)(i)**

Omit “that is an organisation within the meaning of the *Workplace Relations Act 1996* for a member of the organisation”, substitute “that is registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009* for a member of the association”.

##### **3 Paragraph 765A(1)(u)**

Omit “that is an organisation within the meaning of the *Workplace Relations Act 1996* for a member of the organisation”, substitute “that is registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009* for a member of the association”.

#### *Financial Sector (Business Transfer and Group Restructure) Act 1999*

##### **4 Subsection 43(7)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

#### *Fringe Benefits Tax Assessment Act 1986*

##### **5 Paragraph 65J(1)(f)**

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Omit “under the *Workplace Relations Act 1996*”, substitute “or recognised under the *Fair Work (Registered Organisations) Act 2009*”.

### ***Income Tax Assessment Act 1997***

#### **6 Section 50-15 (table item 3.1)**

Omit “under the *Workplace Relations Act 1996*”, substitute “or recognised under the *Fair Work (Registered Organisations) Act 2009*”.

#### **7 Paragraph 290-80(1)(b)**

Omit “given by Schedule 8 to the *Workplace Relations Act 1996*”, substitute “of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

#### **8 Subsection 290-80(2) (note)**

Omit all the words from and including “individual” to and including “1996”, substitute “enterprise agreement within the meaning of the *Fair Work Act 2009*”.

#### **9 At the end of section 290-80**

Add:

- (3) For the purposes of this section, a reference to a determination does not include a reference to a workplace determination made under the *Fair Work Act 2009* or the *Workplace Relations Act 1996*.

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

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

Omit all the words from and including “*Workplace*” to and including “7A to”, substitute “*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or an AWA within the meaning of”.

### ***Insurance Act 1973***

#### **11 Subsection 3(1) (paragraph (e) of the definition of *insurance business*)**

Omit all the words from and including “an organisation” to and including “1996”, substitute “registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009*”.

### ***Life Insurance Act 1995***

#### **12 Paragraph 11(3)(b)**

Omit all the words and subparagraphs from and including “that is” to and including “1996” (second occurring), substitute “that is registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009*”.

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

#### **13 Paragraph 5B(1)(a)**

Omit all the words from and including “the Australian” to and including “1996”, substitute “Fair Work Australia”.

Note: The heading to section 5B is altered by omitting “**Australian Industrial Relations Commission**” and substituting “**Fair Work Australia**”.

#### **14 Paragraph 5B(1)(aa)**

Repeal the paragraph.

#### **15 Paragraph 5B(1)(b)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

#### **16 Subsection 5B(2)**

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

#### **17 Section 12A**

Repeal the section, substitute:

## 12A Interpretation: references to industrial instruments

- (1) In this Act, the following expressions have the same meanings as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*:
- (a) *AWA*;
  - (b) *collective agreement*;
  - (c) *ITEA*;
  - (d) *notional agreement preserving State awards*;
  - (e) *old IR agreement*;
  - (f) *pre-reform AWA*;
  - (g) *pre-reform certified agreement*;
  - (h) *preserved State agreement*.

Note: For an instrument referred to in this subsection, see item 4 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

- (2) In this Act, *enterprise agreement* has the same meaning as in the *Fair Work Act 2009*.
- (3) In this Act, *workplace determination* means a workplace determination made under the *Fair Work Act 2009* or the *Workplace Relations Act 1996*.

## 18 At the end of subsection 32C(6)

Add:

- ; or (g) a workplace determination; or
- (h) an enterprise agreement.

Note: The heading to subsection 32C(6) is altered by omitting “*workplace agreements*” and substituting “*agreements and workplace determinations*”.

## 19 Subsection 32C(6) (note)

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Fair Work Act 2009*”.

## 20 Subsection 32C(6A) (note)

Omit “*Workplace Relations Act 1996*”, substitute “*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Fair Work Act 2009*”.

**21 Subsection 32C(6B) (note)**

Omit “Workplace Relations Act 1996”, substitute “*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Fair Work Act 2009*”.

**22 Subsection 32C(7)**

Repeal the subsection.

***Superannuation Industry (Supervision) Act 1993***

**23 Subsection 10(1) (paragraph (c) of the definition of *registered organisation*)**

Omit “under Schedule 1B to the *Workplace Relations Act 1996*”, substitute “, or recognised, under the *Fair Work (Registered Organisations) Act 2009*”.

***Trade Practices Act 1974***

**24 Subsection 45DD(4)**

Omit “an industrial instrument” (wherever occurring), substitute “a workplace instrument”.

**25 Subsection 45DD(4)**

Omit “*industrial instrument* have the meanings given by subsection 779(1) of the *Workplace Relations Act 1996*”, substitute “*workplace instrument* have the same meanings as in the *Fair Work Act 2009*”.

**26 Subsection 45DD(8) (note)**

Omit “Section 170MT of the *Workplace Relations Act 1996*”, substitute “Section 415 of the *Fair Work Act 2009*”.

**27 Subsection 87AA(2) (definition of *industrial authority*)**

Repeal the definition, substitute:

*industrial authority* means:

- (a) a board or court of conciliation or arbitration, or tribunal, body or persons, having authority under a law of a State to exercise any power of conciliation or arbitration in relation to industrial disputes within the limits of the State; or

- (b) a special board constituted under a law of a State relating to factories; or
- (c) any other State board, court, tribunal, body or official prescribed by the regulations for the purposes of this definition.

## **28 Subsection 93AB(11) (definition of *trade union*)**

Repeal the definition, substitute:

*trade union* means the following:

- (a) an association of employees that is registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009*;
- (b) an association of employees that is registered or recognised as a trade union (however described) under the law of a State or Territory;
- (c) an association of employees a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment.

## **29 Subclause 45DD(4) of the Schedule**

Omit "an industrial instrument" (wherever occurring), substitute "a workplace instrument".

## **30 Subclause 45DD(4) of the Schedule**

Omit ", *industrial dispute* and *industrial instrument* have the meanings given by subsection 298B(1) of the *Workplace Relations Act 1996*", substitute "and *workplace instrument* have the same meanings as in the *Fair Work Act 2009*".

## **31 Subclause 45DD(6) of the Schedule (note)**

Omit "Section 170MT of the *Workplace Relations Act 1996*", substitute "Section 415 of the *Fair Work Act 2009*".

## Part 2—Application provision

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

Despite the amendments of section 5B of the *Superannuation Guarantee (Administration) Act 1992* made by this Schedule, that section continues to apply, on and after the WR Act repeal day, as if those amendments had not been made, in relation to:

- (a) the Australian Industrial Relations Commission, as it continues in existence because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; and
- (b) the Australian Fair Pay Commission, as it continues in existence because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; and
- (c) the *Workplace Relations Act 1996*, as that Act continues to apply because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

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## **Schedule 19—Veterans' Affairs**

### ***Military Rehabilitation and Compensation Act 2004***

#### **1 Subsection 89(3) (note 1)**

Repeal the note, substitute:

Note 1: If a member's normal earnings are less than the relevant minimum wage set by a national minimum wage order, then the member's normal earnings are instead the relevant minimum wage (see section 179).

#### **2 Subsection 132(2) (note 1)**

Repeal the note, substitute:

Note 1: If a person's normal earnings are less than the relevant minimum wage set by a national minimum wage order, then the person's normal earnings are instead the relevant minimum wage (see section 179).

#### **3 Paragraph 178(a)**

Omit "federal minimum wage", substitute "relevant minimum wage set by a national minimum wage order".

#### **4 Section 179**

Omit "Federal Minimum Wage (as it applies under section 194 of the *Workplace Relations Act 1996*)", substitute "relevant minimum wage set by a national minimum wage order (under section 294 of the *Fair Work Act 2009*)".

Note: The heading to section 179 is altered by omitting "**federal**".

#### **5 Subparagraph 185(2)(b)(ii)**

Omit "an Australian Pay and Classification Scale", substitute "a national minimum wage order".

#### **6 Subparagraph 185(2)(b)(ii)**

Omit "*Workplace Relations Act 1996*", substitute "*Fair Work Act 2009*".

#### **7 Paragraph 193(2)(b)**

Omit "an Australian Pay and Classification Scale", substitute "a national minimum wage order".

**8 Paragraph 193(2)(b)**

Omit "*Workplace Relations Act 1996*", substitute "*Fair Work Act 2009*".

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## Schedule 20—Regulations

### 1 Regulations may deal with transitional etc. matters

- (1) The Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to amendments made by this Act.
- (2) In this item:  
*amendments made by this Act* includes amendments made by regulations under item 2.

### 2 Regulations may make consequential amendments of Acts

- (1) The Governor-General may make regulations amending Acts (other than the *Fair Work Act 2009*) being amendments that are consequential on, or that otherwise relate to, the enactment of the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or this Act.
- (2) For the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of this item are to be treated as if they had been made by an Act.

Note: This subitem ensures that the amendments can be incorporated into a reprint of the Act.

### 3 Regulations may take effect from date before registration

- (1) Despite subsection 12(2) of the *Legislative Instruments Act 2003* and subject to subitem (2), regulations made under item 1 or 2 may be expressed to take effect from a date before the regulations are registered under that Act.
- (2) If:
  - (a) regulations made under item 1 or 2 are expressed to take effect from a date (the *registration date*) before the regulations are registered under the *Legislative Instruments Act 2003*; and
  - (b) a person engaged in conduct before the registration date; and
  - (c) but for the retrospective effect of the regulations, the conduct would not have contravened a provision of an Act;

then a court must not convict the person of an offence, or order the person to pay a pecuniary penalty, in relation to the conduct on the grounds that it contravened a provision of that Act.

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*[Minister's second reading speech made in—  
House of Representatives on 27 May 2009  
Senate on 15 June 2009]*

(108/09)

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