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1 MEETING OF SENATE

The Senate met at 9.30 am. The President (Senator the Honourable Paul Calvert) took the chair and read prayers.

2 NOTICES

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Watson): To move 15 sitting days after today—

No. 1—That the Building and Construction Industry Improvement Regulations 2005, as contained in Select Legislative Instrument 2005 No. 204 and made under the *Building and Construction Industry Improvement Act 2005*, be disallowed.

No. 2—That the Guide to the Assessment of the Degree of Permanent Impairment [second edition], made under subsection 28(1) of the *Safety, Rehabilitation and Compensation Act 1988*, be disallowed.

The Leader of the Australian Greens (Senator Bob Brown): To move on 6 December 2005—That the Senate—

- (a) abhors the hanging of Australian citizen Mr Nguyen Tuong Van in Singapore on Friday, 2 December 2005; and
- (b) reiterates its opposition to the death penalty wherever in the world it is invoked. (*general business notice of motion no. 343*)

Senator McLucas: To move on the next day of sitting—That, recognising that 3 December 2005 marks the International Day of People with DisAbility, the following matter be referred to the Community Affairs References Committee for inquiry and report by 17 August 2006:

An examination of the funding and operation of the Commonwealth-State/Territory Disability Agreement (CSTDA), including:

- (a) an examination of the intent and effect of the three CSTDAs to date;
- (b) the appropriateness or otherwise of current Commonwealth/state/territory joint funding arrangements, including an analysis of levels of unmet needs and in particular the unmet need for accommodation services and support;
- (c) an examination of the ageing/disability interface with respect to health, aged care and other services including the problems of jurisdictional overlap and inefficiency; and
- (d) an examination of alternative funding, jurisdiction and administrative arrangements including relevant examples from overseas.

The Leader of the Australian Greens (Senator Bob Brown): To move on 6 December 2005—That the Senate—

- (a) requests the Government to seek an end to the persecution of Falun Gong members in China; and
- (b) calls on the Government to lift restrictions on the Australian Falun Gong practitioners' peaceful appeal outside the Chinese Embassy in Canberra. (*general business notice of motion no. 344*)

3 **WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL 2005**

Order of the day read for the further consideration of the bill in committee of the whole.

In the committee

Consideration resumed of the bill, as amended.

Bill, as amended, further debated.

The Special Minister of State (Senator Abetz) moved the following amendment:

Schedule 1, item 72, page 343 (after line 4), after Division 1, insert:

Division 1A—Entitlement to public holidays

170AE Definition of *public holiday*

In this Division:

public holiday means:

- (a) each of these days:
 - (i) 1 January (New Year's Day);
 - (ii) 26 January (Australia Day);
 - (iii) Good Friday;
 - (iv) Easter Monday;
 - (v) 25 April (Anzac Day);
 - (vi) 25 December (Christmas Day);
 - (vii) 26 December (Boxing Day); and
- (b) any other day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:
 - (i) a day declared by or under (or determined in accordance with a procedure under) the law of the State or Territory to be observed as a public holiday in substitution for a day named in paragraph (a); or
 - (ii) a union picnic day; or
 - (iii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday.

170AF Entitlement to public holidays

- (1) An employee is entitled to a day off on a public holiday, subject to subsections (2) and (3).
- (2) An employer may request an employee to work on a particular public holiday.
- (3) The employee may refuse the request (and take the day off) if the employee has reasonable grounds for doing so.
- (4) A term to the contrary in:
 - (a) a workplace agreement; or
 - (b) an award;
 has no effect.

Note: Compliance with this section is dealt with in Part VIII.

170AG Reasonableness of refusal

In determining whether an employee has reasonable grounds for refusing a request to work on a public holiday, regard must be had to:

- (a) the nature of the work performed by the employee; and
- (b) the type of employment (for example, whether full-time, part-time, casual or shift work); and
- (c) the nature of the employer's workplace or enterprise (including its operational requirements); and
- (d) the employee's reasons for refusing the request; and
- (e) the employee's personal circumstances (including family responsibilities); and
- (f) whether the employee is entitled to additional remuneration or other benefits as a consequence of working on the public holiday; and
- (g) whether a workplace agreement, award, other industrial instrument, contract of employment or written guideline or policy that regulates the employee's employment contemplates that the employer might require work on public holidays, or particular public holidays; and
- (h) whether the employee has acknowledged or could reasonably expect that the employer might require work on public holidays, or particular public holidays; and
- (i) the amount of notice in advance of the public holiday given by the employer when making the request; and
- (j) the amount of notice in advance of the public holiday given by the employee in refusing the request; and
- (k) whether an emergency or other unforeseen circumstances are involved; and
- (l) any other relevant factors.

170AH Model dispute resolution process

The model dispute resolution process applies to a dispute under this Division.

Note: The model dispute resolution process is set out in Part VIIA.

170AI Employer not to prejudice employee for reasonable refusal

- (1) An employer must not, for the reason, or for reasons including the reason, that an employee has refused on reasonable grounds to work on a particular public holiday, do or threaten to do any of the following:
 - (a) dismiss an employee;
 - (b) injure an employee in his or her employment;
 - (c) alter the position of an employee to the employee's prejudice.
- (2) Subsection (1) is a civil remedy provision.

170AJ Penalties etc. for contravention of section 170AI

- (1) The Court, or the Federal Magistrates Court, on application by an eligible person, may make one or more of the following orders in relation to an employer who has contravened section 170AI:

- (a) an order imposing a pecuniary penalty on the employer;
 - (b) an order requiring the employer to pay a specified amount to the employee as compensation for damage suffered by the employee as a result of the contravention;
 - (c) any other order that the court considers appropriate.
- (2) The maximum pecuniary penalty under paragraph (1)(a) is 300 penalty units if the employer is a body corporate and otherwise 60 penalty units.
- (3) The orders that may be made under paragraph (1)(c) include:
- (a) injunctions; and
 - (b) any other orders that the court considers necessary to stop the conduct or remedy its effects.
- (4) In this section:
- eligible person** means any of the following:
- (a) a workplace inspector;
 - (b) an employee affected by the contravention;
 - (c) an organisation of employees that:
 - (i) has been requested in writing, by the employee concerned, to apply on the employee's behalf; and
 - (ii) has a member employed by the employee's employer; and
 - (iii) is entitled, under its eligibility rules, to represent the industrial interests of the employee in relation to work carried on by the employee for the employer;
 - (d) a person prescribed by the regulations for the purposes of this paragraph.
- (5) A regulation prescribing persons for the purposes of paragraph (d) of the definition of **eligible person** may provide that a person is prescribed only in relation to circumstances specified in the regulation.

170AK Burden of proof in relation to reasonableness of refusal

In establishing, for the purposes of an application under section 170AJ, whether an employee's refusal to work on a particular public holiday was on reasonable grounds, the burden of proof lies on the applicant.

170AL Proof not required of the reason for conduct

- (1) If:
- (a) in an application under section 170AJ relating to a person's conduct, it is alleged that the conduct was, or is being, carried out for a particular reason; and
 - (b) for the person to carry out the conduct for that reason would constitute a contravention of section 170AI;
- it is presumed, in proceedings under this Division arising from the application, that the conduct was, or is being, carried out for that reason, unless the person proves otherwise.
- (2) This section does not apply in relation to the granting of an interim injunction.

Note: See section 354A for interim injunctions.

170AM Extraterritorial extension

- (1) This Division, and the rest of this Act so far as it relates to this Division, extend:
- (a) to an employee outside Australia who meets any of the conditions in this section; and
 - (b) to the employee's employer (whether the employer is in or outside Australia); and
 - (c) to acts, omissions, matters and things relating to the employee (whether they are in or outside Australia).

Note: In this context, *Australia* includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the *Acts Interpretation Act 1901*.

In Australia's exclusive economic zone

- (2) One condition is that the employee is in Australia's exclusive economic zone and either:
- (a) is an employee of an Australian employer and is not prescribed by the regulations as an employee to whom this subsection does not apply; or
 - (b) is an employee prescribed by the regulations as an employee to whom this subsection applies.

Note: The regulations may prescribe the employee by reference to a class. See subsection 13(3) of the *Legislative Instruments Act 2003*.

On Australia's continental shelf outside exclusive economic zone

- (3) Another condition is that the employee:
- (a) is outside the outer limits of Australia's exclusive economic zone, but is in, on or over a part of Australia's continental shelf that is prescribed by the regulations for the purposes of this subsection, in connection with the exploration of the continental shelf or the exploitation of its natural resources; and
 - (b) meets the requirements that are prescribed by the regulations for that part.

Note: The regulations may prescribe different requirements relating to different parts of Australia's continental shelf. The regulations may need to do so to give effect to Australia's international obligations.

Definition

- (4) In this section:
this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.

Debate ensued.

Senator Murray moved the following amendment to Senator Abetz's proposed amendment:

After paragraph 170AG(k), insert:

- (ka) whether the employee has previously been paid penalty rates by the employer and no longer will be paid penalty rates;

Debate ensued.

Question—That Senator Murray's amendment to Senator Abetz's proposed amendment be agreed to—put.

The committee divided—

AYES, 31

Senators—

Allison	Crossin	Ludwig	Sherry
Bartlett	Evans	Marshall	Siewert
Bishop	Faulkner	McEwen	Stephens
Brown, Bob	Fielding	McLucas	Sterle
Brown, Carol	Forshaw	Moore	Stott Despoja
Campbell, G (Teller)	Hogg	Murray	Webber
Carr	Hurley	Nettle	Wortley
Conroy	Kirk	Polley	

NOES, 34

Senators—

Abetz	Ellison	Kemp	Patterson
Adams	Ferguson	Lightfoot	Payne
Boswell	Fierravanti-Wells	Macdonald, Ian	Ronaldson
Brandis	Fifield	Macdonald, Sandy	Santoro
Calvert	Heffernan	Mason	Scullion
Campbell, Ian	Hill	McGauran	Troeth
Chapman	Humphries	Minchin	Trood
Colbeck	Johnston	Nash	
Eggleston (Teller)	Joyce	Parry	

Question negatived.

Debate continued.

Question—That the amendment be agreed to—put and passed.

Senator Murray moved the following amendment:

Schedule 1, item 9, page 25 (line 28), at the end of subsection 7C(3), add:

- ; (n) any application filed or proceedings otherwise commenced and not finally determined prior to the commencement of this Act;
- (o) any cause of action which existed prior to the commencement of this Act.

Debate ensued.

Question—That the amendment be agreed to—put and negatived. All Australian Greens senators, by leave, recorded their votes for the ayes.

Senator Murray moved the following amendments together by leave:

Schedule 1, item 10, page 26 (lines 1 to 4), omit subsection 7C(4).

Schedule 1, item 10, page 29 (lines 26 and 27), omit subsection 7K(3).

Schedule 1, item 10, page 30 (lines 25 and 26), omit subsection 7N(3).

Schedule 4, item 2, page 674 (lines 16 to 19), omit subitem (1).

Debate ensued.

Question—That the amendments be agreed to—put and negatived.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 71, Division 7.

Schedule 1, item 71, Division 7 debated and agreed to.

Senator Murray moved the following amendments together by leave:

Schedule 1, item 10, page 28 (line 20), after “conduct”, insert “annual”.

Schedule 1, item 10, page 29 (lines 1 to 12), omit section 7J, substitute:

7J AFPC’s wage-setting parameters

- (1) The objective of the AFPC in performing its wage-setting function is to ensure that a safety net of fair minimum wages and conditions of employment is established and maintained while promoting economic prosperity of the people of Australia, having regard to the following:
 - (a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
 - (b) the capacity of the unemployed and low paid to obtain and remain in employment;
 - (c) economic factors, including levels of productivity and inflation, desirability of attaining a high level of employment, employment and competitiveness across the economy;
 - (d) relevant taxation and government transfer payments;
 - (e) the needs of the low paid.
- (2) In performing its functions under this Part, the AFPC must have regard to the following:
 - (a) the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed;
 - (b) the need to support training arrangements through appropriate trainee wage provisions;
 - (c) the need, using a case-by-case approach, to protect the competitive position of young people in the labour market, to promote youth employment, youth skills and community standards and to assist in reducing youth unemployment, through appropriate wage provisions, including, where appropriate, junior wage provisions, taking into account:
 - (i) the extent of labour market disadvantage faced by young workers; and
 - (ii) the work value of young workers at different ages; and
 - (iii) the promotion of skills development and training of young workers to reduce their labour market disadvantages; and
 - (iv) the desirability of minimising discrimination on the basis of age in wage rates only to the extent necessary to further these objectives; and
 - (v) the structural efficiency principle; and
 - (vi) that 18 years of age is considered an adult;
 - (d) the need to provide a supported wage system for people with disabilities;
 - (e) the need to apply the principle of equal pay for work of equal value;

- (f) the need to prevent and eliminate discrimination because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (3) For the purposes of paragraph (2)(f), trainee wage arrangements are not to be treated as constituting discrimination by reason of age if:
 - (a) they apply (whether directly or otherwise) the wage criteria set out in the award providing for the national training wage or wage criteria of that kind; or
 - (b) they contain different rates of pay for adult and non-adult employees participating in an apprenticeship, cadetship or other similar work-based training arrangement.

Schedule 1, item 10, page 29 (line 15), before “the” insert, “subject to paragraph 7I(a).”.

Schedule 1, item 71, page 70 (line 30), omit “21”, substitute “18”.

Schedule 1, item 71, page 75 (after line 8), after Subdivision A, insert:

Subdivision AA—Indexation of minimum wage

90EA Indexation of minimum wage

- (1) This Subdivision provides for the indexation of the minimum wage, in line with the Consumer Price Index, to start on commencement of this section.
- (2) The indexation factor is to be worked out in accordance with section 1193 of the *Social Security Act 1991*.
- (3) The rounding off of indexed amounts is to be worked out in accordance with section 1194 of the *Social Security Act 1991*.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 33

Senators—

Allison	Evans	Marshall	Siewert
Bartlett	Faulkner	McEwen	Stephens
Bishop	Fielding	McLucas	Sterle
Brown, Carol	Forshaw	Moore	Stott Despoja
Brown, Bob	Hogg	Murray	Webber (Teller)
Campbell, George	Hurley	Nettle	Wortley
Carr	Kirk	O'Brien	
Conroy	Ludwig	Polley	
Crossin	Lundy	Sherry	

NOES, 35

Senators—

Abetz	Coonan	Johnston	Parry
Adams	Eggleston	Joyce	Patterson
Barnett	Ellison	Lightfoot	Payne
Boswell	Ferguson	Macdonald, Ian	Ronaldson
Brandis	Fierravanti-Wells	Macdonald, Sandy	Santoro
Calvert	Fifield	Mason	Scullion
Campbell, Ian	Heffernan	McGauran (Teller)	Troeth
Chapman	Hill	Minchin	Trood
Colbeck	Humphries	Nash	

Question negatived.

Senator Murray moved the following amendments together by leave:

Schedule 1, item 10, page 28 (after line 10), after paragraph 7H(a), insert:

- (aa) monitor and investigate pay equity and publish annually in relation to wage differentials between men and women in relation to work of equal and comparable value;
- (ab) take into account outcomes of (aa) before setting FMW and APCSs;
- (ac) in accordance with 90AA, review any decision in relation to the FMW or APCSs if gender related undervaluation has been identified as a result of a sex discrimination complaint to the Human Rights and Equal Opportunity Commission;
- (ad) provide simplified proceedings for the conduct of matters arising under paragraph (ac) which comply with sections 44F and 44G;

Schedule 1, item 10, page 29 (after line 25), after subsection 7K(2), insert:

- (2A) Despite subsection (2), the AFPC must consult with the Human Rights and Equal Opportunity Commission before introducing or changing an APCS.

Schedule 1, item 43, page 57 (after line 31), paragraph 83BB(1)(h), insert:

- (ha) investigate, research and regularly publish the results of a representative annual survey of both collective agreements and AWAs for the purpose of determining wage differentials between men and women carrying out work of equal and comparable value;

Schedule 1, item 43, page 58 (line 26), at the end of subsection 83BB(3), add:

- ; and (c) the principle that men and women should receive equal remuneration for work of equal value.

Schedule 1, item 71, page 69 (after line 8), after section 90A, insert:

90AA HREOC to investigate allegations of discrimination

In exercising any of its powers under this Division, the AFPC is to have regard to any relevant recommendations made by HREOC with respect to discrimination, in accordance with powers conferred upon them under the *Human Rights and Equal Opportunity Act 1986*.

Schedule 1, item 71, page 70 (lines 23 to 26), omit the definition of *employee with a disability*, substitute:

employee with a disability is as defined by the *Disability Discrimination Act 1992*.

Schedule 1, item 74, page 344 (line 29) to page 345 (line 4), omit subsections 170BAC(2) and (3).

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 32

Senators—

Allison	Crossin	Lundy	Polley
Bartlett	Evans	Marshall	Sherry
Bishop	Faulkner	McEwen	Siewert
Brown, Bob	Forshaw	McLucas	Stephens
Brown, Carol	Hogg	Moore	Sterle
Campbell, George	Hurley	Murray	Stott Despoja
Carr	Kirk (Teller)	Nettle	Webber
Conroy	Ludwig	O'Brien	Wortley

NOES, 35

Senators—

Abetz	Coonan	Johnston	Parry
Adams	Eggleston	Joyce	Patterson
Barnett	Ellison	Lightfoot	Payne
Boswell	Ferguson	Macdonald, Ian	Ronaldson
Brandis	Fierravanti-Wells	Macdonald, Sandy	Santoro
Calvert	Fifield	Mason	Scullion
Campbell, Ian	Heffernan	McGauran (Teller)	Troeth
Chapman	Hill	Minchin	Trood
Colbeck	Humphries	Nash	

Question negatived.

On the motion of Senator Murray the following amendment was agreed to:

Schedule 1, item 20, page 45 (line 5), omit “without discrimination based on sex”.

Senator Murray moved the following amendments together by leave:

Schedule 1, item 20, page 44 (line 17), after “economy”, insert “and society”.

Schedule 1, item 20, page 44 (line 27), after “economy”, insert “and society”.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 31

Senators—

Bishop	Faulkner	Marshall	Sherry
Brown, Bob	Fielding	McEwen	Siewert
Brown, Carol	Forshaw	McLucas	Stephens
Campbell, George	Hogg	Moore	Sterle
Carr	Hurley	Murray	Stott Despoja
Conroy	Kirk (Teller)	Nettle	Wong
Crossin	Ludwig	O'Brien	Wortley
Evans	Lundy	Polley	

NOES, 35

Senators—

Adams	Eggleston	Joyce	Parry
Barnett	Ellison	Kemp	Patterson
Boswell	Ferguson	Lightfoot	Payne
Brandis	Fierravanti-Wells	Macdonald, Ian	Ronaldson
Calvert	Fifield	Macdonald, Sandy	Santoro
Campbell, Ian	Heffernan	Mason	Scullion
Chapman	Hill	McGauran (Teller)	Troeth
Colbeck	Humphries	Minchin	Trood
Coonan	Johnston	Nash	

Question negatived.

Senator Siewert moved the following amendment:

Schedule 1, item 10, page 28 (after line 16), after section 7H, insert:

7HA Performance of AFPC functions

- (1) In performing its functions under this Part, the AFPC must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:
 - (a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
 - (b) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;
 - (c) when adjusting the safety net, the needs of the low paid.
- (2) In performing its functions under this Part, the AFPC must have regard to the following:
 - (a) the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed;
 - (b) the need to support training arrangements through appropriate trainee wage provisions;
 - (ba) the need, using a case-by-case approach, to protect the competitive position of young people in the labour market, to promote youth employment, youth skills and community standards and to assist in reducing youth unemployment, through appropriate wage provisions, including, where appropriate, junior wage provisions;
 - (c) the need to provide a supported wage system for people with disabilities;
 - (d) the need to apply the principle of equal pay for work of equal value without discrimination based on sex;
 - (e) the need to prevent and eliminate discrimination because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (3) For the purposes of paragraph (2)(e), junior wage provisions are not to be treated as constituting discrimination by reason of age.

- (4) For the purposes of paragraph (2)(e), trainee wage arrangements are not to be treated as constituting discrimination by reason of age if:
- (a) they apply (whether directly or otherwise) the wage criteria set out in the award providing for the national training wage or wage criteria of that kind; or
 - (b) they contain different rates of pay for adult and non-adult employees participating in an apprenticeship, cadetship or other similar work-based training arrangement.

Debate ensued.

Question—That the amendment be agreed to—put and negatived.

Senator Siewert moved the following amendments together by leave:

Page 1 (line 1) to page 687 (line 28), omit “Australian Fair Pay Commission” (wherever occurring), substitute “Australian Pay Commission”.

Page 1 (line 1) to page 687 (line 28), omit “AFPC” (wherever occurring), substitute “APC”.

Page 1 (line 1) to page 687 (line 28), omit “Australian Fair Pay and Conditions Standard” (wherever occurring), substitute “Australian Pay and Conditions Standard”.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 33

Senators—

Allison	Evans	McEwen	Stephens
Bartlett	Faulkner	McLucas	Sterle
Bishop	Forshaw	Moore	Stott Despoja
Brown, Bob	Hogg	Murray	Webber
Brown, Carol	Hurley	Nettle	Wong
Campbell, G (Teller)	Kirk	O’Brien	Wortley
Carr	Ludwig	Polley	
Conroy	Lundy	Sherry	
Crossin	Marshall	Siewert	

NOES, 37

Senators—

Abetz	Eggleston (Teller)	Joyce	Patterson
Adams	Ellison	Kemp	Payne
Barnett	Ferguson	Lightfoot	Ronaldson
Boswell	Fielding	Macdonald, Ian	Santoro
Brandis	Fierravanti-Wells	Macdonald, Sandy	Scullion
Calvert	Fifield	Mason	Troeth
Campbell, Ian	Heffernan	McGauran	Trood
Chapman	Hill	Minchin	
Colbeck	Humphries	Nash	
Coonan	Johnston	Parry	

Question negatived.

The Leader of the Family First Party (Senator Fielding) moved the following amendment:

Schedule 1, item 71, page 177 (line 30), at the end of paragraph 101B(1)(b), add “provided that the provisions in the agreement concerning penalty rates, loadings for working overtime or for shift work, and rest breaks, must be comparable to the relevant awards”.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 34

Senators—

Allison	Evans	Marshall	Siewert
Bartlett	Faulkner	McEwen	Stephens
Bishop	Fielding	McLucas	Sterle
Brown, Bob	Forshaw	Moore	Stott Despoja
Brown, Carol	Hogg	Murray	Webber
Campbell, G (Teller)	Hurley	Nettle	Wong
Carr	Kirk	O'Brien	Wortley
Conroy	Ludwig	Polley	
Crossin	Lundy	Sherry	

NOES, 36

Senators—

Abetz	Coonan	Johnston	Nash
Adams	Eggleston (Teller)	Joyce	Parry
Barnett	Ellison	Kemp	Patterson
Boswell	Ferguson	Lightfoot	Payne
Brandis	Fierravanti-Wells	Macdonald, Ian	Ronaldson
Calvert	Fifield	Macdonald, Sandy	Santoro
Campbell, Ian	Heffernan	Mason	Scullion
Chapman	Hill	McGauran	Troeth
Colbeck	Humphries	Minchin	Trood

Question negatived.

Senator Fielding moved the following amendment:

Schedule 1, item 72, page 341 (line 17), at the end of paragraph 170AB(c), add “, provided that any provision in an award, workplace agreement or industrial agreement is at least comparable to the entitlement provided for in section 170AA”.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 33

Senators—

Allison	Evans	McEwen	Stephens
Bartlett	Faulkner	McLucas	Sterle
Bishop	Fielding	Moore	Stott Despoja
Brown, Bob	Forshaw	Murray	Webber (Teller)
Brown, Carol	Hogg	Nettle	Wong
Campbell, George	Hurley	O'Brien	Wortley
Carr	Kirk	Polley	
Conroy	Lundy	Sherry	
Crossin	Marshall	Siewert	

NOES, 35

Senators—

Abetz	Eggleston	Joyce	Parry
Adams	Ellison	Kemp	Patterson
Boswell	Ferguson	Lightfoot	Payne
Brandis	Fierravanti-Wells	Macdonald, Ian	Ronaldson
Calvert	Fifield	Macdonald, Sandy	Santoro
Campbell, Ian	Heffernan	Mason	Scullion
Chapman	Hill	McGauran (Teller)	Troeth
Colbeck	Humphries	Minchin	Trood
Coonan	Johnston	Nash	

Question negatived.

Senator Siewert moved the following amendments together by leave:

Schedule 1, item 113, page 356 (line 8), after “employer”, insert “, together with any related entity, related body corporate and associated entity of the employer,”.

Schedule 1, item 113, page 356 (line 21), at the end of subsection 170CE(5F), add:

- (c) for the purposes of subsection (5E), *related entity* has the meaning given by section 9 of the *Corporations Act 2001*, excluding item (k) of that definition; and
- (d) for the purposes of subsection (5E), *related body corporate* has the meaning given by section 50 of the *Corporations Act 2001*; and
- (e) for the purposes of subsection (5E), *associated entity* has the meaning given by section 50AAA of the *Corporations Act 2001*.

Schedule 1, page 355 (after line 18), after item 109, insert:

109A At the end of subsection 170CE(1)

Add:

- ; or (d) on the ground that the employer had re-arranged the affairs of the business in which the employee was employed with a purpose or effect of evading the operation of subsection 170CE(6).

Schedule 1, page 355 (after line 18), after item 109, insert:

109B After subsection 1709CE(1)

Insert:

- (1A) Where an employee applies to the Commission for relief in respect of termination of employment in accordance with paragraph (1)(d), the Commission must investigate and consider the rearrangement of business affairs that led to the termination of employment including:
 - (a) whether the restructuring occurred after the commencement of the *Workplace Relations Amendment (Work Choices) Act 2005*; or
 - (b) their bona fides; or
 - (c) whether a purpose or effect of the rearrangement was to evade the operation of subsection 170CE(6).

Schedule 1, page 362 (after line 34), after item 131, insert:

131A At the end of subsection 170CK(2)

Add:

- ; (j) because the employer has rearranged the affairs of the business so that the employer now employs less than 100 employees, where a reason for that rearrangement was to evade the operation of subsection 170CE(6).

Debate ensued.

Limitation of debate: The time allotted for the consideration of the bill in committee of the whole expired.

Question—That the amendments be agreed to—put and negatived.

Question—That Schedule 1, items 113 and 114 stand as printed—put and passed.

The following amendments circulated by the Australian Democrats were negatived:

Schedule 1, item 10, page 31 (line 4), at the end of subsection 7P(1), add “on receipt of a recommendation based on merit received from the Minister in accordance with section 7PA”.

Schedule 1, item 10, page 31 (after line 9), after section 7P, insert:

7PA Procedures for merit selection of appointments under this Subdivision

- (1) The Minister must by writing determine a code of practice for selecting a person to be appointed by the Commonwealth to a position under this Subdivision, that sets out general principles on which the selections are to be made, including but not limited to:
 - (a) merit; and
 - (b) independent scrutiny of appointments; and
 - (c) probity; and
 - (d) openness and transparency.
- (2) After determining a code of practice under subsection (1), the Minister must publish the code in the *Gazette*.
- (3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.
- (4) In reviewing a code of practice, the Minister must invite the public to comment on the code.
- (5) A code of practice determined under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1, item 10, page 34 (line 17), at the end of subsection 7Y(1), add “on receipt of a recommendation based on merit received from the Minister in accordance with section 7YA”.

Schedule 1, item 10, page 34 (after line 26), after section 7Y, insert:

7YA Procedures for merit selection of appointments under this Subdivision

- (1) The Minister must by writing determine a code of practice for selecting a person to be appointed by the Commonwealth to a position under this Subdivision, that sets out general principles on which the selections are to be made, including but not limited to:
 - (a) merit; and
 - (b) independent scrutiny of appointments; and

- (c) probity; and
 - (d) openness and transparency.
- (2) After determining a code of practice under subsection (1), the Minister must publish the code in the *Gazette*.
 - (3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.
 - (4) In reviewing a code of practice, the Minister must invite the public to comment on the code.
 - (5) A code of practice determined under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1, page 57 (after line 10), after item 42, insert:

42A At the end of section 83BA

Add “appointed in accordance with the merit selection process set out in section 83BAA”.

Schedule 1, page 57 (after line 10), after item 42, insert:

42B After section 83BA

Insert:

83BAA Procedures for merit selection of the Employment Advocate

- (1) The Minister must by writing determine a code of practice for selecting the Employment Advocate, that sets out general principles on which the selection is to be made, including but not limited to:
 - (a) merit; and
 - (b) independent scrutiny of appointments; and
 - (c) probity; and
 - (d) openness and transparency.
- (2) After determining a code of practice under subsection (1), the Minister must publish the code in the *Gazette*.
- (3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.
- (4) In reviewing a code of practice, the Minister must invite the public to comment on the code.
- (5) A code of practice determined under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1, item 71, page 76 (line 29), omit “required”, substitute “required or requested”.

Schedule 1, item 71, page 101 (line 18), omit “required”, substitute “required or requested”.

Schedule 1, item 71, page 102 (lines 8 to 18), omit subsection 91C(3), substitute:

- (3) For the purposes of this section, the employee’s *applicable averaging period* is:
 - (a) one month; or
 - (b) such longer period as is agreed to in writing between the employee and the employer.

Schedule 1, item 71, page 102 (lines 26 to 37), omit “required” (twice occurring), substitute “required or requested”.

Schedule 1, item 71, page 103 (line 1), omit “requirement”, substitute “requirement or request”.

Schedule 1, item 71, page 103 (after line 4), at the end of section 91C, add:

Unreasonable hours

(6) An employee must not be requested or required by an employer to work unreasonable hours, whether as additional hours or otherwise.

(7) For the purpose of subsection (6), the factors to be taken into account in determining whether hours are unreasonable include:

(a) any risk to the employee’s, other employees, customers or clients health and safety; and

Note: For purposes of this paragraph, an example is where truck drivers or doctors in hospitals are given unreasonable hours that endanger the health and safety of others.

(b) the employee’s personal circumstances (including family responsibilities); and

(c) any notice given by the employer of the requirement or request to work the hours in question.

Note: For example, hours may be unreasonable because the employee is asked to work excessively long hours, or an unreasonably short shift, or shifts broken by an unreasonably short period, or at unreasonably short notice.

Schedule 1, item 71, page 108 (lines 9 to 11), omit subsection 92H(2), substitute:

(2) To avoid doubt, there is no maximum or minimum limit on the amount of annual leave that an employer may authorise an employee to take, provided that an employee shall be entitled to take at least one period of 14 consecutive days of annual leave in each 52 week period.

Schedule 1, item 71, page 110 (lines 15 to 18), omit the definition of *de facto spouse*, substitute:

de facto spouse, of an employee, means a person who lives with the employee on a genuine domestic basis although not legally married to the employee.

Schedule 1, item 71, page 122 (lines 15 to 18), omit the definition of *de facto spouse*, substitute:

de facto spouse, of an employee, means a person who lives with the employee on a genuine domestic basis although not legally married to the employee.

Schedule 1, item 71, page 126 (line 21), omit “52”, substitute “104”.

Schedule 1, item 71, page 135 (lines 7 to 10), omit subsection 94N(4), substitute:

(4) The day stated in the notice must be no earlier than the day that is 4 weeks after the day that the notice was given.

Schedule 1, item 71, page 137 (after line 30), at the end of section 94R, add:

(6) Despite anything in this section, the employee is entitled to return to part-time work until such time as the child of the employee reaches school age.

Schedule 1, item 71, page 140 (line 3), omit “52”, substitute “104”.

Schedule 1, item 71, page 140 (line 33), after “birth”, insert “and that leave may be taken to a maximum of eight weeks”.

Schedule 1, item 71, page 159 (after line 16), after Subdivision J, insert:

Subdivision JA—Parental leave variations and employment contact

94ZZAA Right to request variations

(1) In this Subdivision:

parental leave means any of the following:

- (a) maternity leave; or
- (b) paid leave under subparagraph 94F(2)(b)(i) or (ii); or
- (c) paternity leave; or
- (d) pre-adoption leave; or
- (e) adoption leave.

(2) An employee entitled to parental leave pursuant to the provisions of this Division may request the employer to allow the employee:

- (a) to extend the period of simultaneous unpaid maternity leave, paternity leave or adoption leave up to a maximum of 8 weeks;
- (b) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
- (c) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

(3) The employer shall consider the request having regard to the employee’s circumstances and, provided the request is genuinely based on the employee’s parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer’s business.

Note: The grounds for refusal might include cost, lack of adequate replacement staff, loss of efficiency and impact on customer service.

Schedule 1, item 71, after section 94ZZAA, insert:

94ZZAB Communication during parental leave

(1) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

(2) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee’s decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- (3) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with subsection (1).

Schedule 1, item 71, page 165 (line 22) to page 167 (line 26), omit Division 3, substitute:

Division 3—Representation and bargaining agents

97 Qualifications of bargaining agents

- (1) For the purposes of sections 97A and 97B, a person can be a bargaining agent in relation to a workplace agreement at a particular time only if the person meets the requirements in this section at that time.
- (2) The person must meet the requirements (if any) specified in the regulations.
- (3) If the person is an organisation of employees:
- (a) at least one person whose employment is or will be subject to the agreement must be a member of the organisation; and
 - (b) the organisation must be entitled to represent the person's industrial interests in relation to work that is or will be subject to the agreement.

97A Bargaining agents—AWAs

- (1) An employer or employee may appoint a person to be his or her bargaining agent in relation to the making, variation or termination of an AWA. The appointment must be made in writing.
- Note: Subsection 104(3) provides a civil remedy for coercion in relation to appointments under this subsection.
- (2) Subject to subsection (3), an employer or employee must not refuse to recognise a bargaining agent duly appointed by the other party for the purposes of subsection (1).
- (3) Subsection (2) does not apply if the person refusing has not been given a copy of the bargaining agent's instrument of appointment before the refusal.
- (4) Subsection (2) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

97B Bargaining agents—employee collective agreements

- (1) An employer, or an employee whose employment is or will be subject to an employee collective agreement, may appoint a person as his or her bargaining agent in relation to the making, variation or termination of the agreement.
- Note: Subsection 104(4) provides a civil remedy for coercion in relation to requests under this subsection.
- (2) An employee whose employment is or will be subject to an employer greenfields agreement may request another person (the *bargaining agent*) to represent the employee in meeting and conferring with the employer about the variation of the agreement for a period:
- (a) beginning 7 days before the agreement or variation is approved in accordance with section 98C or section 102F; and

(b) ending when the agreement or variation is approved.

Note: Subsection 104(4) provides a civil remedy for coercion in relation to requests under this subsection.

- (3) Subject to subsection (5), an employer or employee must not refuse to recognise a bargaining agent duly appointed by the other party for the purposes of subsection (1) or (2).
- (4) Subsection (3) is a civil remedy provision.
Note: See Division 11 for provisions on enforcement.
- (5) The requirement in subsection (3) ceases to apply to the employer if at any time after the request is made the employee withdraws the request.
- (6) The Employment Advocate may issue a certificate that he or she is satisfied of one of the following matters if he or she is so satisfied:
 - (a) on application by a bargaining agent—that the employee has made a request in accordance with subsection (1) or (2) for the bargaining agent to represent the employee in making, varying or terminating the agreement;
 - (b) on application by the employer—that, after the making of the request, the requirement in subsection (3) for the employer to recognise the bargaining agent, has, because of subsection (5) or section 97, ceased to apply to the employer.
- (7) The certificate must not identify any of the employees concerned. However, it must identify the bargaining agent, the employer and the agreement.
- (8) The certificate is, for all purposes of this Act, prima facie evidence that the employee or employees made the request or that the requirement has ceased to apply.

97BA Recognition of union in union collective agreements

- (1) The majority of employees whose employment is or will be subject to a union collective agreement may authorise an organisation or organisations to represent them in relation to the making, variation or termination of a union collective agreement.
- (2) For the purpose of subsection (1), an employer may, in response to a written request from an organisation or organisations to represent employees in relation to the making of a union collective agreement, voluntarily recognise the organisation or organisations, provided that the organisation or each organisation:
 - (a) has at least one member whose employment in a single business (or part of a single business) of the employer will be subject to the agreement; and
 - (b) is entitled to represent the industrial interests of the member in relation to work that will be subject to the agreement;
- (3) For the purpose of subsection (1), an employer must, in response to a written request from an organisation or organisations to represent employees in relation to the making of a union collective agreement, give all of the persons employed at the time whose employment will be subject to the agreement a reasonable opportunity to decide whether they want to authorise the organisation or organisations to represent them, provided that the organisation (or organisations):

- (a) has (or have) as its (or their) members the prescribed number of employees whose employment in a single business (or part of a single business) of the employer will be subject to the agreement; and
 - (b) is (or are) entitled to represent the industrial interests of the members in relation to work that will be subject to the agreement.
- (3A) For the purpose of paragraph (3)(a), prescribed number, in relation to relevant employees, is:
- (a) if there are fewer than 80 relevant employees—4; or
 - (b) if there are at least 80, but not more than 5,000, relevant employees—5% of the number of such employees; or
 - (c) if there are more than 5,000 relevant employees—250;
- that will be subject to the agreement.
- (4) A majority of employees is deemed to have authorised an organisation or organisations to represent them if:
- (a) the employer has given all of the persons employed at the time whose employment will be subject to the agreement a reasonable opportunity to decide whether they want to authorise the organisation or organisations; and
 - (b) either:
 - (i) if the decision is made by a vote—a majority of those persons who cast a valid vote decide that they want to authorise the organisation or organisations; or
 - (ii) otherwise—a majority of those persons decide that they want to authorise the organisation or organisations.
- (5) An employer must not refuse to recognise an organisation that has been authorised by the majority of employees for the purpose of subsection (1).
- (6) Subsections (3) and (5) are civil remedy provisions.

Note: See Division 11 for provisions on enforcement.

Schedule 1, item 71, page 168 (line 27) to page 169 (line 2), omit subsection 98(4), substitute:

- (4) The information statement mentioned in subsection (2) and paragraph (3)(a) must contain:
- (a) information about the time at which and the manner in which the approval will be sought under section 98C; and
 - (b) if the agreement is an AWA—information about the effect of sections 97 and 97A (which deal with bargaining agents); and
 - (c) if the agreement is an employee collective agreement—information about the effect of sections 97 and 97B (which deal with bargaining agents); and
 - (d) must be appropriate, having regard to the person's particular circumstances and needs, especially if the employee(s) whose employment will be covered by the agreement are women, persons from a non-English speaking background or young persons; and

- (e) any other information that the Employment Advocate requires by notice published in the *Gazette*.

Schedule 1, item 71, page 172 (lines 30 to 33), omit subsection 99B(5), substitute:

- (5) The Employment Advocate is required to consider and determine whether all of the requirements of this Part have been met in relation to the making or content of anything annexed to a declaration lodged in accordance with subsection (2).

Schedule 1, item 71, page 173 (lines 1 to 10), omit section 99C, substitute:

99C Employment Advocate must review workplace agreement to ensure compliance with minimum content and issue a receipt for lodgment

- (1) If a declaration is lodged under subsection 99B(2), the Employment Advocate must, within 14 days of the lodgment of a workplace agreement, review the agreement and determine whether the agreement meets the requirements of Division 7 (relating to the content of agreements).
- (2) Where the Employment Advocate has determined that the workplace agreement does not meet the requirements of Division 7, the Employment Advocate must issue a notice to the employer.
- (3) For the purpose of subsection (2), the notice must identify the requirements of Division 7 that the Employment Advocate has determined are not met and the grounds upon which the Employment Advocate has determined that the agreement does not meet the requirements of Division 7. Where the Employment Advocate has determined that the workplace agreement fails to meet the no-disadvantage test, the Employment Advocate must identify the relevant or designated award that applies to the agreement to which the notice relates.
- (4) The notice must identify a monetary amount, calculated by the Employment Advocate, that represents the value of the entitlements to which the employee would have been entitled under the relevant or designated award if the workplace agreement had not been made, in respect of the employment to which the agreement relates.
- (5) Provided that the requirements of Division 7 have been complied with, the Employment Advocate must issue a receipt for the lodgment.
- (6) The Employment Advocate must give a copy of any notice issued pursuant to subsection (2) or receipt issued pursuant to subsection (5) to:
 - (a) the employer in relation to the workplace agreement; and
 - (b) if the workplace agreement is an AWA—the employee; and
 - (c) if the agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

99CA Employer obliged to meet shortfall where the requirements of Division 7 (content of agreements) are not met

- (1) If a workplace agreement has commenced operation under subsection 100(2), and the agreement does not meet the requirements of Division 7, the employer must compensate the employee(s) for the total value of the entitlements to which the employee(s) would have been entitled for that period under the relevant or designated award, if the workplace agreement had not been made, in respect of the employment to which the agreement relates.

Schedule 1, item 71, page 173 (line 23) to page 175 (line 7), omit section 100, substitute:

100 When a workplace agreement is in operation

- (1) A workplace agreement comes into operation on the day the agreement is lodged.
- (2) A workplace agreement comes into operation even if the requirements in Divisions 3, 4 and 7 have not been met in relation to the agreement.
- (3) A multiple-business agreement comes into operation only if it has been authorised under section 96F.
- (4) A workplace agreement ceases to be in operation if:
- it is terminated in accordance with Division 9; or
 - the Court declares it to be void under paragraph 105F(a).
- (5) A workplace agreement ceases to be in operation in relation to an employee if it has:
- passed its nominal expiry date; and
 - been replaced by another workplace agreement in relation to that employee.

Note: Part VIAA sets out the circumstances in which a workplace agreement binding an employer because of transmission of business will cease to operate.

- (6) A multiple-business agreement ceases to operate in relation to a single business (or a part of a single business) if:
- the multiple-business agreement came into operation on a particular day; and
 - an AWA or collective agreement (other than a multiple-business agreement) was lodged on a later day; and
 - the multiple-business agreement and the AWA or collective agreement apply in relation to the same single business (or the same part of the single business).

Example: Employers A, B and C lodge a multiple-business agreement which has a nominal expiry date 5 years after it is lodged. Six months later employer B lodges a collective agreement that applies in relation to its single business. This means that the multiple-business agreement ceases to operate in relation to that single business.

- (7) If a workplace agreement has ceased operating under subsection (4), it can never operate again.

- (8) If a workplace agreement has ceased operating in relation to an employee because of subsection (5), the agreement can never operate again in relation to that employee.
- (9) If a multiple-business agreement has ceased operating in relation to a single business (or a part of a single business), the agreement can never operate again in relation to that single business (or part of a business).
- (10) If:
 - (a) a person or entity is the employer bound by a workplace agreement; and
 - (b) the person or entity ceases to be an employer within the meaning of subsection 4AB(1);the agreement ceases to be in operation.
- (11) Despite subsection (10), if the agreement mentioned in that subsection is a multiple-business agreement, it ceases to be in operation only in relation to a single business or part of a single business carried on by the person or entity.

Schedule 1, item 71, page 175 (lines 8 to 23), omit section 100A, substitute:

100A Relationship between overlapping workplace agreements

- (1) Only one workplace agreement can have effect at a particular time in relation to a particular employee.
- (2) If:
 - (a) a workplace agreement (the first agreement) binding an employee is in operation; and
 - (b) another workplace agreement (the later agreement) binding the employee is lodged before the nominal expiry date of the first agreement;

the later agreement has no effect in relation to the employee until the nominal expiry date of the first agreement.

Note: After that date, the first agreement ceases operating in relation to the employee (see subsection 100(5)), and the later agreement takes effect in relation to the employee.

Schedule 1, item 71, page 177 (lines 14 to 24), omit section 101A, substitute:

101A Workplace agreement to include anti-discrimination and dispute settlement procedures

- (1) A workplace agreement must include procedures for settling disputes (dispute settlement procedures) about matters arising under the agreement between:
 - (a) the employer; and
 - (b) the employees whose employment will be subject to the agreement.
- (2) If a workplace agreement does not include dispute settlement procedures, the agreement is taken to include the model dispute resolution process mentioned in Part VIIA.

- (3) The employer must ensure that the workplace agreement includes the provisions relating to discrimination that are prescribed by the regulations. If the workplace agreement does not include those provisions, the workplace agreement is taken to include those provisions.

Schedule 1, item 71, page 177 (line 25) to page 179 (line 6), omit section 101B, substitute:

101B No-disadvantage test

- (1) In this section:

designated award, in relation to a person to whom a workplace agreement will apply, means an award that the Employment Advocate or the Commission has determined under subsection (5) to be appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

relevant award, in relation to a person to whom an agreement will apply, means an award:

- (a) regulating any term or condition of employment of persons engaged in the same kind of work as that of the person under the agreement; and
- (b) that, immediately before the initial day of the agreement, is binding on the person's employer.
- (2) A workplace agreement must not disadvantage employees in relation to their terms and conditions of employment.
- (3) An agreement disadvantages employees in relation to their terms and conditions of employment only if its operation would result, on balance, in a reduction in the overall terms and conditions of employment of those employees under:
- (a) relevant awards or designated awards; and
- (b) any law of the Commonwealth, or of a State or Territory, that the Employment Advocate or the Commission (as the case may be) considers relevant.
- (4) If:
- (a) an employer proposes to make a workplace agreement with a person; and
- (b) there is no relevant award in relation to the person;
- the employer must apply in writing to the Employment Advocate for the making of a determination under subsection (5) or (6).
- (5) Upon application, the Employment Advocate must determine, and inform the employer in writing, that an award or awards are appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.
- (6) For the purposes of subsection (4), the Employment Advocate must determine:
- (a) an award or awards under this Act regulating terms or conditions of employment of employees engaged in the same kind of work as that of the person under the agreement; or

- (b) if the Employment Advocate is satisfied that there is no such award under this Act—a State award or State awards regulating terms or conditions of employment of employees engaged in the same kind of work as that of the person under the agreement.

Schedule 1, item 71, page 179 (line 7) to page 180 (line 18), omit section 101C, substitute:

101C Calling up content of other documents

- (1) A workplace agreement may incorporate by reference terms from a workplace agreement or an award.

Schedule 1, item 71, page 180 (lines 20 to 22), omit section 101D, substitute:

101D Prohibited content

- (1) An agreement must not contain terms that discriminate against an employee whose employment will be subject to the agreement, because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (2) For the purposes of subsection (1), a provision of an agreement does not discriminate against an employee merely because:
 - (a) it provides for a junior rate of pay; or
 - (b) it provides:
 - (i) for a rate of pay worked out by applying (whether directly or otherwise) the wage criteria set out in the award providing for the national training wage or wage criteria of that kind; or
 - (ii) for different rates of pay for adult and non-adult employees participating in an apprenticeship, cadetship or other similar work-based training arrangement; or
 - (c) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
 - (d) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed:
 - (i) on the basis of those teachings or beliefs; and
 - (ii) in good faith.
- (3) The employer must ensure that the workplace agreement does not include any provisions that prohibit or restrict disclosure of details of the agreement by either party to another person.

Schedule 1, item 71, page 202 (line 30), omit paragraph 103R(3)(b).

Schedule 1, item 71, page 203 (lines 25 to 28), omit subsection 104(6), substitute:

- (6) To avoid doubt, an employer is considered to have applied duress to an employee for the purposes of subsection (5) if the employer requires the employee to make an AWA with the employer as a condition of employment.

Schedule 1, item 71, page 206 (line 26), after paragraph 105D(2)(b), insert:

- (ba) for subsection 97BA(3)—60 penalty units;
- (bb) for subsection 97BA(5)—60 penalty units;

Schedule 1, item 71, page 211 (line 30) to page 213 (line 5), omit section 106B, substitute:

106B Meaning of *pattern bargaining*

What is pattern bargaining?

- (1) For the purposes of this Part, a course of conduct by a person is ***pattern bargaining*** if:
- (a) the person is a negotiating party to 2 or more proposed collective agreements; and
 - (b) the course of conduct involves seeking common wages or conditions of employment for 2 or more of those proposed collective agreements; and
 - (c) the course of conduct extends beyond a single business.

Exception: terms or conditions determined as national standards

- (2) The course of conduct is not pattern bargaining to the extent that the negotiating party is seeking, for 2 or more of the proposed collective agreements, terms or conditions of employment determined by the Full Bench in a decision establishing national standards.

Exception: genuinely trying to reach an agreement for a single business or part of a single business

- (3) The course of conduct, to the extent that it relates to a particular single business or part of a single business, is not pattern bargaining if the negotiating party is genuinely trying to reach an agreement for the business or part.
- (4) For the purposes of subsection (3), factors relevant to working out whether the negotiating party is genuinely trying to reach an agreement for a single business or part of a single business include (but are not limited to) the following:
- (a) demonstrating a preparedness to negotiate an agreement which takes into account the individual circumstances of the business or part; or
 - (b) demonstrating a preparedness to negotiate a workplace agreement with a nominal expiry date which takes into account the individual circumstances of the business or part; or
 - (c) negotiating in a manner consistent with wages and conditions of employment being determined as far as possible by agreement between the employer and its employees at the level of the single business or part; or
 - (d) agreeing to meet face-to-face at reasonable times proposed by another negotiating party; or
 - (e) considering and responding to proposals made by another negotiating party within a reasonable time; or
 - (f) not capriciously adding or withdrawing items for bargaining.
- (5) Whenever a person asserts that a person is engaged in pattern bargaining, the person has the burden of proving that subsection (3) does not apply.

Exception: claims seeking equal pay for work of equal value

- (6) The course of conduct is not pattern bargaining to the extent that the negotiating party is seeking, for 2 or more of the proposed collective agreements, terms or conditions of employment that are claimed to ensure equal pay for work of equal value.
- (7) This section does not affect, and is not affected by, the meaning of the term “genuinely trying to reach an agreement“, or any variant of the term, as used elsewhere in this Act.

Schedule 1, item 71, Division 4, page 240 (line 10) to page 266 (line 22), omit the Division, substitute:

Division 4—Secret ballots on proposed protected action

Subdivision A—General

109 Object of Division and overview of Division

Object

- (1) The object of this Division is to establish a transparent process which allows union members directly concerned to choose, by means of a fair and democratic secret ballot, whether to authorise industrial action supporting or advancing claims by unions.

Overview of Division

- (2) Under Division 8, industrial action by union members is not protected action unless it has been authorised by:
 - (a) the relevant union; or
 - (b) a secret ballot of relevant union members; or
 - (c) the Commission.
- (3) A secret ballot is required if it has been:
 - (a) requested by a relevant union member; or
 - (b) ordered by the Commission.
- (4) A secret ballot is conducted according to:
 - (a) the rules of the relevant union; or
 - (b) if there are no union rules, the model rules established by the Commission;
 and, in any case, union rules must be adopted within 9 months of the commencement of this provision.
- (5) The rule that industrial action by employees is not protected action unless it has been authorised does not apply to action in response to an employer lockout (see section 170MO).

109A Definitions

In this Division:

ballot order means an order made under section 109H requiring a protected action ballot to be held.

bargaining period has the same meaning as in subsection 170MI(1).

negotiating party has the same meaning as in subsection 170MI(3).

party, in relation to an application for a ballot order, means either of the following:

- (a) the applicant;

(b) the employer of the relevant union members.

proposed agreement, in respect of a bargaining period, means the proposed agreement in respect of whose negotiation the bargaining period has been initiated.

protected action ballot means a secret ballot under this Division.

relevant union, in relation to proposed industrial action against an employer in respect of a proposed agreement, means any union which is a negotiating party to the agreement.

relevant union member, in relation to proposed industrial action against an employer in respect of a proposed agreement, means any member of the relevant union who is employed by the employer and whose employment will be subject to the agreement but does not include a union member who is a party to an AWA whose nominal expiry date has not passed.

Subdivision B—Authorising protected action

109B How is protected action authorised

Industrial action by employees is not protected action unless it has been authorised by:

- (a) the relevant union; or
- (b) a secret ballot of relevant union members; or
- (c) the Commission.

109C How and when a union can authorise protected action

- (1) A relevant union may, subject to subsection (3), make a declaration to authorise industrial action by relevant union members as protected action in accordance with its rules, provided that:
 - (a) if there is only one existing agreement—the action commences during the 30-day period beginning on whichever is the later of the following:
 - (i) the date of the declaration; or
 - (ii) the nominal expiry date of the existing agreement; or
 - (b) if there are 2 or more existing agreements—the action commences during the 30-day period beginning on whichever is the later of the following:
 - (i) the date of the declaration; or
 - (ii) whichever is the last occurring of the nominal expiry dates of those existing agreements; or
 - (c) if there is no existing agreement—the action commences during the 30-day period beginning on the date of the declaration.

Note: Industrial action must be authorised under this Division if it is to be protected action under Division 8—see section 170MR.

- (2) However, the action is not authorised to the extent that it occurs after the end of the bargaining period.

Note: If another bargaining period is initiated later, and industrial action is proposed for that later period, it can only be authorised if a fresh application for a ballot order is granted, and the other steps required by this Division are completed, during that later period.

- (3) If a relevant union does not have in place rules that establish how protected action may be authorised, then protected action requested by a relevant union member may only be authorised according to a secret ballot conducted under the Commission's model rules according to section 109L.
- (4) A relevant union may not authorise protected action under subsection (1) if a secret ballot is required under section 109D.

109D When is a secret ballot required to authorise protected action

A secret ballot is required, and no protected action will be otherwise authorised, if it has been:

- (a) requested by a relevant union member as provided by the rules; or
- (b) ordered by the Commission.

109E Secret ballot may be requested by relevant union member

A relevant union member may, during a bargaining period for the negotiation of a proposed agreement under Division 2 of this Part, request the relevant union to which the member belongs to hold a protected action ballot to determine whether proposed industrial action has the support of the majority of relevant union members.

109F Secret ballot may be ordered by Commission

- (1) A party referred to in subsection (2) may, during a bargaining period for the negotiation of a proposed agreement under Division 2 of this Part, apply to the Commission for an order for a ballot to be held to determine whether proposed industrial action has the support of a majority of relevant union members.

Note: For the duration of a bargaining period, see sections 170MK (when it begins) and 170MV (when it ends).

- (2) The following parties may apply:
 - (a) the relevant union to which the relevant union members mentioned in subsection (1) belong; or
 - (b) any employer or organisation of employers who is a negotiating party to the proposed agreement.

190G Commission must be satisfied of various matters

The Commission may grant an application for a ballot order, but must not grant the application unless it is satisfied that:

- (a) any court, judicial inquiry or Royal Commission findings justify such an order; or
- (b) any other particular and significant circumstances exist that mean such an order is appropriate.

109H Grant of application—order for ballot to be held

If the Commission grants the application, the Commission must order a protected action ballot to be held by the relevant union.

Note: The Commission may make an order requiring a secret ballot to be held for one or more bargaining periods.

Subdivision C—Conduct and results of protected action ballot

109I Ballot must be secret

A protected action ballot must be a secret ballot.

109J How is a secret ballot to be conducted

- (1) Subject to subsection (2), a secret ballot is conducted according to:
 - (a) the rules of the relevant union; or
 - (b) if there are no union rules, the model rules established by the Commission.
- (2) Before conducting a secret ballot a union must give its relevant union members:
 - (a) reasonable notice that the secret ballot will be held; and
 - (b) information as to the matters which are to be dealt with in the proposed agreement and the general nature of the proposed industrial action.

109K Union rules for conduct of secret ballot

- (1) A secret ballot is to be conducted according to the rules of the relevant union.
- (2) If the relevant union does not have rules in place in accordance with subsection (1) for the conduct of a secret ballot to authorise protected action then the secret ballot is to be conducted in accordance with the model rules established by the Commission under section 109L.
- (3) A union must adopt its own rules or the Commission's model rules within 9 months of the commencement of this Division.

109L Commission model rules for conduct of secret ballot

The Commission must issue model rules for the conduct of secret ballots.

109M Declaration of ballot results

As soon as practicable after the end of the voting, the union must, in writing:

- (a) make a declaration of the result of the ballot; and
- (b) inform the relevant union members, negotiating parties and the Industrial Registrar of the result.

109N Effect of ballot

- (1) Industrial action is authorised under this Division if more than 50% of the votes validly cast were votes approving the action and:
 - (a) if there is only one existing agreement—the action commences during the 30-day period beginning on whichever is the later of the following:
 - (i) the date of the declaration of the results of the ballot; or
 - (ii) the nominal expiry date of the existing agreement; or
 - (b) if there are 2 or more existing agreements—the action commences during the 30-day period beginning on whichever is the later of the following:
 - (i) the date of the declaration of the results of the ballot; or
 - (ii) the last occurring of the nominal expiry dates of those existing agreements; or
 - (c) if there is no existing agreement—the action commences during the 30-day period beginning on the date of the declaration of the results of the ballot.

Note: Industrial action must be authorised under this Division if it is to be protected action under Division 8—see section 170MR.

- (2) However, the action is not authorised to the extent that it occurs after the end of the bargaining period.

Note: If another bargaining period is initiated later, and industrial action is proposed for that later period, it can only be authorised if a fresh application for a ballot order is granted, and the other steps required by this Division are completed, during that later period.

- (3) The Commission may, by order, extend the 30-day period mentioned in paragraph (1)(a), (b) or (c) by up to 30 days if the employer and the applicant for the ballot order jointly apply to the Commission for the period to be extended.
- (4) The Commission must not make an order under subsection (3) extending the 30-day period if that period has been extended previously.
- (5) If industrial action commences during the 30-day period, stops and re-starts within a reasonable period after the 30-day period, no new authorisation is required if the industrial action is substantially the same.
- (6) Industrial action is taken, for the purposes of this Division, to be duly authorised even though a technical breach has occurred in authorising the industrial action, so long as the person or persons who committed the breach acted in good faith.

Subdivision D—Funding of ballots

109O Liability for cost of ballot

Union member initiated ballot

- (1) The relevant union is the party liable for the cost of holding the protected action ballot, if a relevant union member initiated that ballot under section 109E.

Commission ordered ballot

- (2) If the Commission ordered the ballot to be conducted, the applicant for a ballot order is the party liable for the cost of holding the ballot.
- (3) Subsections (1) and (2) have effect subject to subsection 109P(3).

190P Commonwealth has partial liability for cost of ballot

- (1) If:
- (a) the liable party notifies the Industrial Registrar of the cost incurred by the relevant union in relation to the holding of the ballot; and
 - (b) does so within a reasonable time after the completion of the ballot;

the Industrial Registrar must determine how much (if any) of that cost was reasonably and genuinely incurred by the relevant union in holding the ballot. The amount determined by the Industrial Registrar is the *reasonable ballot cost*.

- (2) The Commonwealth is liable to pay to the liable party 80% of the reasonable ballot cost.

- (3) If the Commonwealth becomes liable to pay to the liable party 80% of the reasonable ballot cost, the liable party for the ballot order is:
 - (a) to the extent of the Commonwealth's liability, discharged from liability under section 109O for the cost of holding the ballot; and
 - (b) liable to pay 20% of the reasonable ballot cost within 30 days after the Industrial Registrar's determination.
- (4) The regulations may prescribe matters to be taken into account by the Industrial Registrar in determining whether costs are reasonable and genuinely incurred.

Schedule 1, item 71, page 288 (lines 19 and 20), omit paragraph 116B(1)(e).

Schedule 1, item 112, page 355 (lines 27 and 28), omit "employee's employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons", substitute "employee was made redundant for genuine operational reasons".

Schedule 1, item 113, page 356 (line 8), omit "employer employed", substitute "employer and any related employers collectively employed".

Schedule 1, item 113, page 356 (line 21), at the end of subsection 170CE(5F), add:

- (c) employers are taken to be related if:
 - (i) they carry on a business, project or undertaking as a joint venture or common enterprise; or
 - (ii) they are related corporations within the meaning of the *Corporations Act 2001*; or
 - (iii) one supplies labour for use in the other's business or undertaking, other than as part of a business of supplying labour to employers generally.

Schedule 1, item 115, page 357 (line 11) to page 360 (line 5), omit the item, substitute:

115 After section 170CEA

Insert:

170CEB Dismissal of applications relating to vexatious and frivolous claims

- (1) This section applies if an application is made, or is purported to have been made, under subsection 170CE(1):
 - (a) on the ground referred to in paragraph 170CE(1)(a); or
 - (b) on grounds that include that ground.
- (2) If the Commission is satisfied that, because of another provision in this Division, the application cannot be made under subsection 170CE(1) on the ground referred to in paragraph 170CE(1)(a), the Commission must:
 - (a) if paragraph (1)(a) of this section applies—make an order that the application is not a valid application; or
 - (b) if paragraph (1)(b) of this section applies—make an order that the application is not a valid application to the extent that it is made on that ground.

Note 1: The Commission is not required to hold a hearing in relation to the making of such an order. See subsection (4).

Note 2: Where the Commission is satisfied that the application can be made, the Commission may continue to deal with the application as provided elsewhere in this Act, including by holding a hearing.

- (3) If the Commission is satisfied that the application can be made under subsection 170CE(1), but is frivolous, vexatious or lacking in substance, in relation to the ground referred to in paragraph 170CE(1)(a), the Commission must:
- (a) if paragraph (1)(a) of this section applies—make an order dismissing the application; or
 - (b) if paragraph (1)(b) of this section applies—make an order dismissing the application to the extent that it is made on that ground.

Note 1: The Commission is not required to hold a hearing in relation to the making of such an order. See subsection (4).

Note 2: Where the Commission is satisfied that the application is not frivolous, vexatious or lacking in substance, the Commission may continue to deal with the application as provided elsewhere in this Act, including by holding a hearing.

- (4) The Commission is not required to hold a hearing in relation to the making of an order under this section. In deciding whether to hold a hearing, the Commission must take into account the cost that would be caused to the employer's business by requiring the employer to attend a hearing.

Note: It would be expected that the relative cost of attending a hearing would be greater for a small business employer. Consequently the Commission would be expected to give greater weight to this factor where the employer is a small business.

- (5) Before the Commission makes an order under this section in relation to an application, the Commission:
- (a) must, by notice in writing to the employee and the employer, invite the employee and the employer to provide, by the time specified in the notice, further information that relates to the application and that is relevant to whether subsection (4) requires the order to be made; or
 - (b) may invite the employee, in the time specified in the notice, to be heard before the Registrar or Commissioner without the need for the employer to be present, so long as the employer has the right to provide any further information that is relevant to whether this section requires the order to be made; and
 - (c) must take account of any such information so provided by the employee and/or the employer.

Note: An employer shall not be required to attend before the Commission merely because an election is made by an employee under this section.

Schedule 1, item 115, page 359 (lines 16 to 18), omit "employee's employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons", substitute "employee was made redundant for genuine operational reasons".

Schedule 1, item 115, page 359 (lines 20 to 23), omit “employee’s employment may have been terminated for genuine operational reasons or for reasons that include genuine operational reasons”, substitute “employee may have been made redundant for genuine operational reasons”.

Schedule 1, page 371 (after line 17), after item 167, insert:

167A After subsection 170MW(2)

Insert:

(2A) Genuinely trying to reach agreement includes bargaining in good faith.

Schedule 1, page 371 (after line 17), after item 167, insert:

167B After subsection 170MW(2)

Insert:

- (2B) In considering whether or not a negotiating party has met or is meeting its obligation to genuinely try to reach an agreement with the other negotiating parties, the Commission must consider whether or not the party has bargained or is bargaining in good faith. Bargaining in good faith includes:
- (a) agreeing to meet face-to-face at reasonable times proposed by another party;
 - (b) attending meetings that the party has agreed to attend;
 - (c) complying with negotiating procedures agreed to by the parties;
 - (d) disclosing relevant information, subject to appropriate undertakings as to confidentiality, for the purposes of negotiations;
 - (e) stating a position on matters at issue, and explaining that position;
 - (f) considering and responding to proposals made by another negotiating party;
 - (g) adhering to commitments given to another negotiating party or parties in respect of meetings and responses to matters raised during negotiations;
 - (h) dedicating sufficient resources and personnel to ensure genuine bargaining;
 - (i) not capriciously adding or withdrawing items for negotiation;
 - (j) not refusing or failing to negotiate with one or more of the parties;
 - (k) in or in connection with the negotiations, not refusing or failing to negotiate with a person who is entitled under this Part to represent an employee, or with a person who is a representative chosen by a negotiating party to represent it in the negotiations;
 - (l) in or in connection with the negotiations, not bargaining with, attempting to bargain with, or making offers to persons other than another negotiating party, about matters which are the subject of the negotiations;
 - (m) any other matters which the Commission considers relevant.

Schedule 1, item 193, page 403 (line 23) to page 404 (line 11), omit section 208, substitute:

208 Right of entry to investigate breach

Right of entry for breach of Commonwealth industrial law etc.

If a permit holder for an organisation suspects, on reasonable grounds, that a breach has occurred, or is occurring, of:

- (a) this Act; or
- (b) an AWA; or
- (c) an award or collective agreement or an order of the Commission under this Act;

then, for the purpose of investigating the suspected breach, the permit holder may, during working hours, enter premises if:

- (d) work is being carried out on the premises by one or more employees who are members of the permit holder's organisation; and
- (e) the suspected breach relates to, or affects, that work or any of those employees.

Schedule 1, item 193, page 412 (lines 7 to 16), omit section 221, substitute:

221 Right of entry to hold discussions with employees

A permit holder for an organisation may enter premises for the purposes of holding discussions with any eligible employees who wish to participate in those discussions. For this purpose, *eligible employee* means any employee who carries out work on the premises, and is a member of the permit holder's organisation or is eligible to become a member of that organisation.

Schedule 1, item 2, page 12 (lines 30 and 31), omit the definition of *organisation*, substitute:

organisation means an organisation registered under the Registration and Accountability of Organisations Schedule and includes any entity recognised as having the right to represent industrial interests of employees in any of the State Acts identified in paragraph (a) of the definition of State or Territory industrial law immediately before the commencement of Schedule 1 of the *Workplace Relations Amendment (Work Choices) Act 2005* which were not registered as employee associations for the purposes of those State Acts.

Schedule 2, item 2, page 660 (after line 28), after paragraph (c) of the definition of *State-registered association*, insert:

Note: This paragraph applies to the Western Australian Branch of the Australian Medical Association Incorporated as if it were an organisation of employees for the purposes of the *Industrial Relations Act 1979* of Western Australia—see section 72B.

Schedule 2, item 2, page 660 (line 28), after "Australia", insert "and includes an association recognised by that Act".

Schedule 1, item 113, omit subsection 170CE(5EA), substitute:

(5EA) For the purposes of calculating the number of employees employed by an employer as mentioned in subsection (5E), bodies are taken to be one entity if:

- (a) they are related bodies corporate (within the meaning of section 50 of the *Corporations Act 2001*); or
- (b) they carry on a business, project or undertaking as a joint venture or common enterprise.

Clause 2, page 2 (after table item 4), insert:

4A. Schedule 3A A single day to be fixed by Proclamation.

However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

Schedule 1, item 2, page 13 (after line 6), after the definition of **organisation**, insert:

outworker means:

- (a) a person directly or indirectly engaged to perform work in the textile, clothing and footwear industry and who performs the work in or about a private residence or other premises that are not necessarily the business or commercial premises of anyone who is obliged to pay for the work performed;
- (b) a person is an outworker notwithstanding the nature or form of any contractual arrangement under which the person is engaged to perform work;
- (c) a person is an outworker notwithstanding that the person performs work as, through or for a business entity of any description.

Note: A **business entity** includes:

- (a) an Australian Business Number;
- (b) a company;
- (c) a trust;
- (d) a business partnership;
- (e) a corporation sole.

Schedule 1, item 2, page 17 (after line 2), after the definition of **State or Territory industrial law**, insert:

State or Territory outworkers industry provision means any provision or entitlement that applies in relation to an outworker, the performance of outwork or the contracting of work in the textile, clothing and footwear industry, and any provision or entitlement which is expressed to have general application to employees insofar as it applies in relation to an outworker, the performance of outwork or the contracting of work, found in:

- (a) the *Victorian Outworkers (Improved Protection) Act 2003* (including any regulation or other instruments made pursuant to that Act); or

- (b) the *Industrial Relations Act 1996* of New South Wales (including any regulations or other instruments made pursuant to that Act); or
- (c) the *Industrial Relations (Ethical Clothing Trades) Act 2001* of New South Wales (including any regulations or other instruments made pursuant to that Act); or
- (d) the *Industrial Relations Act 1999* of Queensland (including any regulations or other instruments made pursuant to that Act); or
- (e) the *Fair Work Act 1994* of South Australia (including any regulations or other instruments made pursuant to that Act); or
- (f) any other State or Territory industrial law (including any regulation or other instruments made pursuant to any such law) or State or Territory industrial instruments; or
- (g) any other document or instrument.

Schedule 1, item 3, page 19 (after line 31), at the end of section 4AA, add:

- (5) In this Act, **employee** includes an outworker and an outworker is an employee. A reference to an employee includes a reference to an outworker.

Schedule 1, item 3, page 21 (after line 3), at the end of section 4AB, add:

- (4) In this Act, a person or entity who directly or indirectly engages an outworker is an employer and the contract between an outworker and a person or entity who directly or indirectly engages him or her is a contract of employment.

Schedule 1, item 3, page 21 (after line 15), at the end of section 4AC, add:

- (3) The conditions on or under which an outworker performs work are conditions of employment.
- (4) The relationship between an outworker and a person or entity who directly or indirectly engages him or her is an employment relationship.

Schedule 1, item 9, page 26 (after line 8), at the end of section 7C, add:

- (6) Subsection (1) does not apply to a law of a State or Territory insofar as the law is a State or Territory outworkers industry provision.

Schedule 1, item 170, page 385 (line 27), after “award”, insert “including the Clothing Trades Award 1999 as it operates pursuant to Division 1A of Part XVI”.

Schedule 1, item 170, page 385 (after line 30), at the end of paragraph (a) of the definition of **applicable provision**, add:

- (vi) a breach of a provision of Division 1D of Part XVI which provides that a person or entity is liable for unpaid remuneration; and

Schedule 1, item 171, page 389 (after line 3), at the end of section 177AA, add:

- (4) Notwithstanding anything contained in subsection (1), (2) or (3), the Textile, Clothing and Footwear Union of Australia has standing to apply for penalties and remedies under this Division in relation to:
 - (a) a breach of any outworkers industry provision of the Clothing Trades Award 1999;

- (b) a breach of a term of the Australian Fair Pay and Conditions Standard when the term applies pursuant to the provisions of section 537H of Division 1A of Part XVI of the Act;
- (c) a breach of a provision of Division 1D of Part XVI which provides that a person or entity is liable for unpaid remuneration.

Page 673 (after line 27), after Schedule 3, insert:

Schedule 3A—Outworkers in the textile, clothing and footwear industry

Workplace Relations Act 1996

1 Part XVI

Repeal the Part, substitute:

Part XVI—Outworkers in the textile, clothing and footwear industry

Division 1—Preliminary

Repeal the section, substitute:

537 Objects of Part

The objects of this Part are to:

- (a) ensure that all existing protections for outworkers will be reflected in and provided for by this Act; and
- (b) eliminate the exploitation of outworkers in the textile, clothing and footwear industry and provide protection for these extremely vulnerable workers; and
- (c) provide for consistent rights for outworkers and impose consistent obligations upon those who engage outworkers, irrespective of the form or structure of the particular contractual arrangement by which the work of an outworker is managed or controlled and irrespective of which State or Territory the work is performed in; and
- (d) provide for the continuation of existing regulation, inspection and enforcement provisions, right of entry powers and prosecution rights of unions in respect of outworkers; and
- (e) prevent the avoidance of obligations to outworkers through non bona fide contractual arrangements by making provision for outworkers to recover unpaid monies from parties in the contractual chain.

537A Application of Part

Without affecting its operation apart from this section, this Part applies to:

- (a) a constitutional corporation which wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry; and

- (b) a person or entity who is a party to a contract of service or a contract for services with a constitutional corporation where the person or entity or the constitutional corporation wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry; and
- (c) a person or entity who directly or indirectly supplies or receives products, materials or labour to or from a constitutional corporation, where the person or entity or the constitutional corporation wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry; and
- (d) an outworker who performs work directly or indirectly for a constitutional corporation where the outworker or the constitutional corporation wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry; and
- (e) an employer as described in section 4AB or an employee as described in section 4AA, who wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry; and
- (f) as far as the referral of certain matters to the Parliament of the Commonwealth by the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria permits:
 - (i) a person or entity who wholly or partly operates or usually operates in or in connection with the textile, clothing and footwear industry in Victoria; or
 - (ii) an outworker in Victoria.

537B Effect of Part in relation to other provisions in Act and other Acts

- (1) A provision contained in this Part prevails over any other provision of this Act (including any regulations or other instrument made pursuant to this Act) to the extent of any inconsistency.
- (2) A provision contained in this Part prevails over any other provision of any other law of the Commonwealth (including any regulations or other instruments) to the extent of any inconsistency.
- (3) Those parts of the definition of employee, employer and employment in this Act which relate to an outworker apply in respect of all Commonwealth laws (including regulations and other instruments) which apply to employees, employers or employment.
- (4) Those parts of the definition of employee, employer and employment in this Act which relate to an outworker apply in respect of all State and Territory laws (including regulations and other instruments) which apply to employees, employers or employment unless the same kind of provision is contained in a State or Territory outworkers industry provision.

537C Relationship of Part to state laws, awards etc.

An entitlement conferred by this Part or an obligation imposed by this Part does not apply if the same kind of entitlement or obligation is conferred or imposed by a law of a State or Territory outworkers industry provision.

537D Definitions

In this Part:

outworker means:

- (a) a person directly or indirectly engaged to perform work in the textile, clothing and footwear industry and who performs the work in or about a private residence or other premises that are not necessarily the business or commercial premises of anyone who is obliged to pay for the work performed;
- (b) A person is an outworker notwithstanding the nature or form of any contractual arrangement under which the person is engaged to perform work;
- (c) A person is an outworker notwithstanding that the person performs work as, through or for a business entity of any description.

Note: A **business entity** includes:

- (a) an Australian Business Number
- (b) a company;
- (c) a trust;
- (d) a business partnership;
- (e) a corporation sole.

outworker industry provision means any provision or entitlement that applies in relation to an outworker, the performance of outwork or the contracting of work in the textile, clothing and footwear industry, and any provision or entitlement which is expressed to have general application to employees insofar as it applies in relation to an outworker, the performance of outwork or the contracting of work.

Division 1A—Clothing Trades Award 1999**537E Application of Clothing Trades Award**

- (1) In addition to its operation pursuant to any other provisions of this Act, the provisions of the Federal Clothing Trades Award 1999 as at the date of commencement of this section which are outworkers industry provisions, other than clauses 5, 6, 7, 8 and 45, apply to and bind:
 - (a) all persons and entities to which this Part applies; and
 - (b) the Textile, Clothing and Footwear Union of Australia and its members.
- (2) For the purposes of the provisions of the Clothing Trades Award 1999 in operation pursuant to subsection (1):

employer has the meaning given in section 4AB.

outworker has the meaning given in section 537D.

work means work in the textile, clothing and footwear industry.

respondent means a person or entity bound by the Clothing Trades Award 1999.

non-respondent means a person or entity not bound by the Clothing Trades Award 1999.

ordinary working week means the hours and days occurring between midnight on Sunday and midnight on Friday.

- (3) A person or entity bound by the Clothing Trades Award 1999 must not enter into any contract, agreement, deed, memorandum of understanding or arrangement for the performance of work in the textile, clothing and footwear industry which contains any term or condition which is less favourable than an outworker industry provision of the Clothing Trades Award 1999 in relation to an outworker.

Note: This subsection is a civil penalty provision.

537F Operation of Act in relation to Clothing Trades Award

Without limiting the generality of subsections 537B(1) and (2):

- (a) nothing contained in Division 2 or Division 3 of Part VI of this Act shall be taken to limit or alter any outworker industry provision of the Clothing Trades Award 1999; and
- (b) the provisions contained in Division 4 of Part VI of this Act do not apply in relation to any outworker industry provision in the Clothing Trades Award 1999; and
- (c) the provisions contained in Division 5 of Part VI of this Act do not apply in relation to any outworker industry provision in the Clothing Trades Award 1999, except that:
 - (i) the provisions of subsections 119A(1), (2) and (3) and paragraph 119A(4)(a) apply, however they are not subject to the conditions set out in paragraph 119A(4)(b); and
 - (ii) the provisions of section 119B apply; and
- (d) subsection 121A(1) and paragraphs 121A(2)(a) and (b) do not apply in relation to any outworker industry provision in the Clothing Trades Award 1999; and
- (e) Part VIAA does not apply in relation to any outworker industry provision in the Clothing Trades Award 1999; and
- (f) Schedules 13, 14, 15, and 16 do not apply in relation to any outworker industry provision in the Clothing Trades Award 1999; and
- (g) Part VIIA does not apply in relation to any outworkers industry provision in the Clothing Trades Award 1999; and
- (h) Part XV does not apply in relation to any outworkers industry provision in the Clothing Trades Award 1999; and
- (i) the Industrial Relations Commission may continue to perform any function required, allowed or permitted by the Clothing Trades Award 1999 notwithstanding any other provision of this Act.

537G Relationship between Clothing Trades Award 1999 and Australian Fair Pay and Conditions Standard

- (1) Subject to subsection (2), Parts IA and VA do not apply insofar as a person or entity is bound by any outworker industry provision of the Clothing Trades Award 1999.

- (2) In the event that any of the minimum entitlements under the Australian Fair Pay and Conditions Standard provided for in section 89 is more generous to an outworker than any corresponding entitlement under an outworker industry provision in the Clothing Trades Award 1999:
- (a) an outworker's entitlement under the Clothing Trades Award 1999 ceases to have effect and the corresponding more generous entitlement under the Australian Fair Pay and Conditions Standard has effect; and
 - (b) a person or entity bound by the Clothing Trades Award 1999 which otherwise would have been required to comply with the entitlement under the Clothing Trades Award 1999 is required to comply with the corresponding more generous Australian Fair Pay and Conditions Standard; and
 - (c) a person or entity bound by the Clothing Trades Award 1999 must not enter into any contract, agreement, deed, memorandum of understanding or arrangement for the performance of work in the textile, clothing and footwear industry which contains any term or condition which is less favourable than the corresponding more generous provision of the Australian Fair Pay and Conditions Standard.

Note: This paragraph is a civil penalty provision.

- (3) In this section, more generous has the same meaning as in section 117C.

Division 1B—AWAs and workplace agreements for outworkers

537H Workplace agreements or AWAs for outworkers prohibited

- (1) The provisions contained in Part VB of this Act insofar as they relate to AWAs and ancillary documents do not apply in relation to an outworker.
- (2) An AWA or ancillary document has no effect where it is made with or for an outworker.
- (3) A person or entity is prohibited from making an AWA or ancillary document with or for an outworker.
- (4) The provisions contained in Part VB of this act insofar as they relate to a workplace agreement other than a collective union agreement do not apply in relation to an outworker.
- (5) A workplace agreement other than a collective union agreement has no effect where it is made with or for an outworker.
- (6) A person or entity is prohibited from making a workplace agreement other than a union collective agreement with or for an outworker.
- (7) Subsections (3) and (6) above are civil remedy provisions.

537I Misrepresentation about workplace agreements or AWAs to an outworker

- (1) In the circumstances set out in subsection (2), a person or entity must not engage in conduct:
 - (a) with the intention of giving a second person the impression; or
 - (b) reckless as to whether a second person would get the impression;

that the person or entity, or a third person or entity, is authorised to make a workplace agreement other than a collective union agreement, AWA or ancillary document with an outworker.

Note: This subsection is a civil penalty provision.

- (2) For the purposes of subsection (1), the circumstances are that the first person or entity or the third person or entity knows, or has reasonable grounds to believe that the person or entity is not authorised, or is reckless as to whether the person or entity is authorised, to make a workplace agreement other than a collective union agreement, AWA or ancillary document with an outworker

Division 1C—Entry and inspection by organisations

537J Entry and inspection by organisations

- (1) Part IX (entry and inspection) does not apply in relation to entry and inspection by an organisation in connection with any person or entity to which this Part applies.
- (2) Part IX (entry and inspection) as in force immediately before the commencement of this Part continues to apply in relation to entry and inspection by an organisation in connection with any person or entity to which this Part applies.

Division 1D—Recovery of unpaid remuneration

537K Definitions

In this Division:

remuneration includes:

- (a) any remuneration or other amount, including commission, payable in relation to work done by an outworker; and
- (b) amounts payable to an outworker in respect of annual leave or long service leave; and
- (c) amounts payable on behalf of an outworker in respect of superannuation contributions; and
- (d) an amount for which an outworker is entitled to be reimbursed or compensated, for an expense incurred or loss sustained by the outworker.

unpaid remuneration claim means a claim for unpaid remuneration under section 537L.

superannuation contributions means contributions to an approved superannuation fund to which an outworker is entitled under any law or industrial instrument.

537L Claims by outworkers for unpaid remuneration

- (1) An outworker may make a claim under this section for any unpaid remuneration against the person the outworker believes is his or her employer (the **apparent employer**) if the employer:
 - (a) has not paid the outworker all or any of the remuneration for work done by the outworker for the employer; or
 - (b) has not paid all or any of the superannuation contributions payable for an outworker (the **unpaid remuneration**).
- (2) The claim must be made within 6 months after the work is completed.

- (3) The claim is to be made by serving a written notice on the apparent employer that:
 - (a) claims payment of the unpaid remuneration; and
 - (b) sets out the following particulars:
 - (i) the name of the outworker;
 - (ii) the address at which the outworker may be contacted;
 - (iii) a description of the work done;
 - (iv) the date on which the work was done;
 - (v) the amount of unpaid remuneration claimed in respect of the work, including the amount of superannuation contributions (if any).
- (4) The particulars set out in the unpaid remuneration claim must be verified by statutory declaration.
- (5) This section applies only in respect of remuneration for work carried out after the commencement of this section.

537M Liability of apparent employer for unpaid remuneration for which an unpaid remuneration claim has been made

- (1) Except as provided by subsection (4), an apparent employer served with an unpaid remuneration claim under section 537L is liable (subject to any proceedings as referred to in section 537O) for the amount of unpaid remuneration claimed.
- (2) An apparent employer may, within 14 days after being served with an unpaid remuneration claim, refer the claim in accordance with this section to another person the apparent employer knows or has reasonable grounds to believe is the person for whom the work was done (the *actual employer*).
- (3) An apparent employer refers an unpaid remuneration claim in accordance with this section by:
 - (a) advising the outworker concerned in writing of the name and address of the actual employer; and
 - (b) serving a copy of the claim (a *referred claim*) on the actual employer.
- (4) The apparent employer is not liable for the whole or any part of an amount of unpaid remuneration claimed for which the actual employer served with a referred claim accepts liability in accordance with section 537N.
- (5) An apparent employer cannot refer an unpaid remuneration claim under this section to a person that is a business entity owned or managed by the outworker who made the claim.

537N Liability of actual employer for unpaid remuneration for which an unpaid remuneration claim has been made

- (1) An actual employer served with a referred claim under section 537M may, within 14 days after the service, accept liability for the whole or any part of the amount of unpaid remuneration claimed by paying it to the outworker concerned, or in the case of superannuation contributions;
- (2) An actual employer who accepts liability must serve notice in writing on the apparent employer of that acceptance and of the amount paid.

- (3) If the apparent employer has paid to the outworker concerned any part of the amount of unpaid remuneration claimed for which the actual employer served with the referred claim has not accepted liability, the apparent employer may deduct or set-off the amount the apparent employer has paid to the outworker from any amount that the apparent employer owes to the actual employer (whether or not in respect of work the subject of the referred claim).

537O Recovery of amount of unpaid remuneration

- (1) Division 1 of Part VIII applies to recovery of an amount payable to or for an outworker from an apparent employer who fails to make a payment in respect of an amount of unpaid remuneration for which the employer is liable under section 537M.
- (2) In proceedings referred to in subsection (1), an order for the apparent employer to pay the amount concerned must be made unless the apparent employer proves that the work was not done or that the amount claimed for the work in the unpaid remuneration claim is not the correct amount in respect of the work.

537P Offences relating to unpaid remuneration claims and referred claims

- (1) A person must not:
 - (a) make any statement that the person knows is false or misleading in a material particular in any notice given for the purposes of section 537M or 537N; or
 - (b) serve a referred claim on a person under section 537M that the person does not know, or have reasonable grounds to believe, is an actual employer.
- (2) Subsection (1) is a civil remedy provision.

537Q Effect of sections 537K to 537P

- (1) Sections 537K to 537P do not limit or exclude any other rights of recovery of remuneration of an outworker, or any liability of any person with respect to the remuneration of an outworker, whether or not arising under this Act or any other law (including any regulation or other delegated instrument).
- (2) Nothing in subsection 537N(3) limits or excludes any right of recovery arising under any other law with respect to any amount of money owed by the apparent employer to the actual employer.

537R Liability of first person for remuneration payable to outworkers of second person

- (1) This section applies where:
 - (a) a person or entity (the *first person*) has entered into a contract for the carrying out of work by another person (the *second person*); and
 - (b) outworkers employed or engaged by the second person are engaged in carrying out the work (the *relevant outworkers*); and
 - (c) the work is carried out in connection with a business undertaking of the first person.

- (2) The first person is liable for the payment of any remuneration of the relevant outworkers that has not been paid for work done in connection with the contract during any period of the contract unless the first person has a written statement given by the second person under section 537S for that period of the contract.
- (3) The first person may withhold any payment due to the second person under the contract until the second person gives a written statement under section 537S for any period up to the date of the statement. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection.
- (4) Division 1 of Part VIII applies to the recovery of remuneration payable by the first person under this section as if a reference in those sections to an employer were a reference to the first person.

537RA Prohibition on joinder of parties

Notwithstanding any other provision to the contrary in any other law, in any proceeding under Division 1 Part VIII of this Act for breach of a provision of Division 1D of this Part which provides that a person or entity is liable for unpaid remuneration, the respondent or defendant to the proceeding is prohibited from joining any other party as a respondent or defendant to the proceeding.

537RB Interest on unpaid remuneration

- (1) In any proceeding under Division 1 of Part VIII of this Act for breach of a provision of Division 1D of this Part which provides that a person or entity is liable for unpaid remuneration, if the Court is satisfied that the person or entity:
 - (a) had reasonable notice of the claim; and
 - (b) had no reasonable grounds on which to dispute the claim; and
 - (c) in the circumstances, should have paid the claim without the need for proceedings being taken to establish the validity of the claim;despite anything to the contrary in any other law, the Court may order the employer to pay interest to the party bringing the proceeding on top of any other amount to which the outworker is entitled.
- (2) The interest must not be greater than the rate fixed under section 2 of the *Penalty Interest Rates Act 1983* that applies at the time the Court makes the order.

537S Written statements for the purposes of section 537R

- (1) The written statement referred to in section 537R is a statement by the second person that all remuneration payable to relevant outworkers for work under the contract done during that period has been paid.
- (2) The regulations may prescribe the form and content of the written statement.
- (3) The second person must keep a copy of any written statement under this section for at least 6 years after it is given.
- (4) The written statement is not effective to relieve the first person of liability under section 537R if the first person, when given the statement, had reason to believe it was false.

- (5) The second person must not give the first person a written statement knowing it to be false.
- (6) Subsection (5) is a civil remedy provision.

537T Operation of section 537R

- (1) Section 537R does not apply in relation to a contract if the second person is in receivership or in the course of being wound up or, in the case of an individual, is bankrupt, and if payments made under the contract are made to the receiver, liquidator or trustee in bankruptcy.
- (2) Nothing in section 537R or this section limits or excludes any other rights of recovery of remuneration of an outworker, or any liability of any person with respect to the remuneration of an outworker, whether or not arising under this Act or any other law including any regulation or delegated instrument.
- (3) The first person is not excluded from liability for the payment of any remuneration of a relevant outworker under section 537R only because the second person is a business entity owned or managed by the relevant outworker.

Division 1E—Contravention of civil remedy provisions

Note: For other rules about civil remedy provisions, see Division 4 of Part VIII.

Subdivision A—General

537U General powers of Court not affected by this Division

This Division does not affect the following:

- (a) the powers of the Court under Part XIV;
- (b) any other powers of the Court.

537V Standing for civil remedies

- (1) Any of the following persons may apply to the Court for an order under this Division in relation to a civil remedy provision in this Part:
 - (a) an outworker;
 - (b) the Textile, Clothing and Footwear Union of Australia;
 - (c) a workplace inspector;
 - (d) a person or entity who receives a notice given under section 537M or 537N, but only in respect of section 537P;
 - (e) a person or entity who receives a referred claim pursuant to section 537M, but only in respect of section 537P;
 - (f) a person or entity who relies upon a written statement provided in accordance with sections 537R and 537S, but only in respect of subsection 537S(5).
- (2) The civil remedy provisions in this Part are as follows:
 - (a) subsection 537E(3);
 - (b) paragraph 537G(2)(c);
 - (c) subsection 537H(3);
 - (d) subsection 537H(6);
 - (e) subsection 537I(1);
 - (f) paragraph 537P(1)(a);
 - (g) paragraph 537P(1)(b);
 - (h) subsection 537S(5).

Subdivision B—Pecuniary penalties and other remedies for contravention of civil remedy provisions

537W Application of Subdivision

This Subdivision applies to a contravention by a person of a civil remedy provision in this Part.

537X Court may order pecuniary penalty

- (1) The Court may order a person who contravenes a civil remedy provision to pay a pecuniary penalty of up to:
 - (a) if the person is an individual—the maximum number of penalty units specified in subsection (2); or
 - (b) if the person is a body corporate—5 times the maximum number of penalty units specified in subsection (2).
- (2) The maximum number of penalty units is as follows:
 - (a) subsection 537E(3)—60 penalty units;
 - (b) subparagraph 537G(2)(c)—60 penalty units;
 - (c) subsection 537H(3)—60 penalty units;
 - (d) subsection 537H(6)—60 penalty units;
 - (e) subsection 537I(1)—60 penalty units;
 - (f) paragraph 637P(1)(a)—60 penalty units;
 - (g) paragraph 537P(1)(b)—60 penalty units;
 - (h) subsection 537S(5)—60 penalty units.

537Y Other powers of Court when dealing with a civil remedy provision

In addition to the powers set out in section 537X, the Court may:

- (a) declare a term or the terms of any agreement void;
- (b) vary a term or terms of any agreement;
- (c) order that compensation of such amount as the Court considers appropriate for any loss or damage resulting from the breach of the agreement be paid to the party bringing the proceeding;
- (d) grant an injunction requiring the person mentioned in section 537W to cease contravening (or not to contravene) the civil remedy provision.

The following amendment circulated by the Australian Democrats and the Opposition was negatived:

Page 3 (after line 8), after clause 3, add:

4 Accountability for advertising expenditure

- (1) Money must not be expended for any advertising project in relation to workplace relations or any like-program established under this Act, where the cost of the project is estimated or contracted to be \$100,000 or more, unless a statement has been presented to the Senate in accordance with this section.
- (2) The statement must be presented by the minister to the Senate or, if the Senate is not sitting when the statement is ready for presentation, to the President of the Senate in accordance with the procedures of the Senate.
- (3) The statement must indicate in relation to the proposed project:
 - (a) the purpose and nature of the project; and

- (b) the intended recipients of the information to be communicated by the project; and
 - (c) who authorised the project; and
 - (d) the manner in which the project is to be carried out; and
 - (e) who is to carry out the project; and
 - (f) whether the project is to be carried out under a contract; and
 - (g) whether such contract was let by tender; and
 - (h) the estimated or contracted cost of the project; and
 - (i) whether every part of the project conforms with the Audit and JCPAA guidelines; and
 - (j) if the project in any part does not conform with those guidelines, the extent of, and reasons for, the non-conformity.
- (4) In subsection (3), *Audit and JCPAA guidelines* means the guidelines set out respectively in Report No. 12 of 1998-99 of the Auditor-General, entitled *Taxation Reform: Community Education and Information Programme*, and Report No. 377 of the Joint Committee of Public Accounts and Audit, entitled *Guidelines for government advertising*.

The following amendments circulated by the Australian Greens were negated:

Schedule 1, item 43, page 58 (line 8), after “agreements”, insert “and ensure their compliance with this Act”.

Schedule 1, item 71, page 121 (line 2) to page 160 (line 3), omit “paternity” (wherever occurring), substitute “partner”.

Schedule 1, item 71, page 123 (after line 24), after the definition of *primary care giver*, insert:

same-sex partner, of an employee, means a person with whom the employee is living as a couple on a genuine domestic basis.

Schedule 1, item 71, page 123 (line 31) to page 124 (line 2), omit the definition of *spouse*, substitute:

spouse includes the following:

- (a) a former spouse;
- (b) a de facto spouse;
- (c) a former de facto spouse;
- (d) a same-sex partner;
- (e) a former same-sex partner.

Schedule 1, item 71, page 138 (lines 19 to 27), omit “a male employee” (twice occurring), substitute “an employee”.

Schedule 1, item 71, page 203 (lines 25 to 28), omit subsection 104(6).

Schedule 2, item 2, page 661 (after line 7), after clause 1, insert:

1A Automatic transitional registration

A State-registered association, registered in accordance with the requirements of the State in which the association was registered at the time of the commencement of this Schedule, which complies with the requirements of subclauses 2(1) and (2) of this Schedule, is deemed to be transitionally registered.

Schedule 2, item 2, page 661 (line 9), omit “A”, substitute “In the event that registration does not occur in accordance with clause 1A, a”.

The following amendments circulated by the Family First Party were negatived:

Schedule 1, item 71, page 102 (line 7), omit “the employment period”, substitute “a period of one month or such longer period as may be agreed to in writing between the employee and the employer”.

Schedule 1, item 71, page 163 (after line 9), after section 96B, insert:

96BA Where employers and employees recognise a union for collective bargaining

- (1) Where a union applies to an employer for recognition by the employer for the purpose of collective bargaining on behalf of employees of the employer, an employer may, subject this section, recognise the union for that purpose.
- (2) Where a union applies for recognition in accordance with subsection (1), the following conditions must be met:
 - (a) subject to paragraph (b), more than 50% of employees must be members of the union;
 - (b) if less than 50% of employees are members of the union then a ballot for applying for recognition must be conducted by an authorised ballot agent;
 - (c) where a ballot is held in accordance with paragraph (b), recognition is achieved if:
 - (i) a majority of employee union members voting vote in favour of recognition; and
 - (ii) not less than 40% of all employees of the employer vote in favour of recognition;
- (3) Before a ballot may be held in accordance with paragraph (b):
 - (a) the union must have not less than 10% membership amongst employees; and
 - (b) there must be an expectation that a majority of employees will vote in favour of recognition of the union as the bargaining agent.
- (4) Where a union is recognised in accordance with this section, the union has exclusive rights to bargain on behalf of all employees.
- (5) A union may not be recognised for the purposes of this section in relation to an employer with 20 employees or less.
- (6) Where a union applies for recognition in accordance with this section and is unsuccessful, the union may not make a further application for recognition until after the expiration of 3 years from the date of the unsuccessful application.
- (7) Where two or more unions apply separately for recognition to represent the same group of employees in accordance with this section, the unions have an obligation to cooperate with each other.
- (8) Where two or more unions apply separately for recognition to represent the same group of employees in accordance with this section and each of the unions has 10% or more of employees as members, then each application for recognition is invalid.

Schedule 1, item 71, page 180 (lines 20 to 22), omit section 101D, substitute:

101D Prohibited content

For the purposes of this Act, *prohibited content* is content that:

- (a) prohibits AWAs; or
- (b) restricts the use of independent contractors or on-hire arrangements; or
- (c) allows for industrial action during the term of an agreement; or
- (d) provides for trade union training leave or for bargaining fees to be paid to trade unions; or
- (e) provides that any future agreement must be a union collective agreement; or
- (f) mandates union involvement in dispute resolution.

Schedule 1, item 71, page 203 (lines 25 to 28), omit subsection 104(6).

Schedule 1, item 71, page 224 (line 16), omit “contrary to”, substitute “in”.

Schedule 1, item 71, page 226 (line 12), omit “contrary to”, substitute “in”.

Schedule 1, item 71, page 260 (line 1), omit “**partial**”.

Schedule 1, item 71, page 260 (line 15), omit “80%”, substitute “100%”.

Schedule 1, item 71, page 260 (lines 31 to 33), omit subsection 109ZH(6).

Schedule 1, item 71, page 261 (lines 3 and 4), omit “has the same meaning as in section 109ZG”, substitute:

means:

- (a) if the applicant, or one of the applicants, is the authorised ballot agent—the costs incurred by the authorised ballot agent in relation to the holding of the ballot; or
- (b) otherwise—the amount the authorised ballot agent charges to the applicant or applicants in relation to the holding of the ballot.

Schedule 1, item 71, page 287 (line 9), omit “operational requirements”, substitute “retrenchment”.

Schedule 1, item 71, page 288 (line 34), omit paragraph 116B(1)(m).

Schedule 1, item 112, page 355 (lines 27 to 29), omit “employee’s employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons”, substitute “employee was retrenched”.

Schedule 1, item 112, page 355 (line 30) to page 356 (line 3), omit subsection 170CE(5D).

Schedule 1, item 113, page 356 (line 8), omit “100”, substitute “20”.

Schedule 1, item 358, page 532 (line 24), omit “operational requirements”, substitute “retrenchment”.

Schedule 1, item 360, page 631 (after line 5), after clause 54, insert:

54A Report by Minister

- (1) The Minister must cause to be prepared during the first six months of the fifth year of operation of this Act as amended by the *Workplace Relations Amendment (Work Choices) Act 2005*, a report detailing the number of unincorporated employers still employing persons under federal awards.

- (2) The Minister must table a copy of a report prepared under subsection (1) in each House of the Parliament within 5 sitting days of that House after the day on which the Minister receives the report.

Question—That Schedule 1, item 71, sections 94K, 96D, 103L and 109ZG; items 81 to 114, 116 to 166 and 168; and item 115, section 170CEE stand as printed—put and passed.

The following amendments circulated by the Government were agreed to:

Clause 2, page 2 (after table item 2), insert:

- 2A. Schedule 1A The day on which this Act receives the Royal Assent.

Clause 2, page 2 (cell at table item 4, 2nd column), omit the cell, substitute:

The day on which this Act receives the Royal Assent.

Clause 2, page 2 (after table item 4), insert:

- 4A. Schedule 3A The day on which this Act receives the Royal Assent.

Clause 3, page 3 (lines 4 to 8), omit the clause, substitute:

3 Schedule(s)

- (1) Each Act, and each set of regulations, 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.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

Schedule 1, item 6, page 22 (after line 10), after section 7, insert:

7AAA Exclusion of persons insufficiently connected with Australia

- (1) A provision of this Act prescribed by the regulations does not apply to a person or entity in Australia prescribed by the regulations as a person to whom, or an entity to which, the provision does not apply.

Note 1: In this context, *Australia* includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the *Acts Interpretation Act 1901*.

Note 2: The regulations may prescribe the person or entity by reference to a class. See subsection 13(3) of the *Legislative Instruments Act 2003*.

- (2) Before the Governor-General makes regulations for the purposes of subsection (1) prescribing either or both of the following:
 - (a) a provision of this Act that is not to apply to a person or entity;
 - (b) a person to whom, or an entity to which, a provision of this Act is not to apply;

the Minister must be satisfied that the provision should not apply to the person or entity in Australia because there is not a sufficient connection between the person or entity and Australia.

(3) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.

Schedule 1, item 15, page 43 (line 27), at the end of subsection 42(3C), add:

- ; (d) if the party applies to be represented by an agent—whether the agent is a person or body, or an officer or employee of a person or body, that is able to represent the interests of the party under a State or Territory industrial relations law.

Schedule 1, item 43, page 57 (line 17), after “small business”, insert “and organisations”.

Schedule 1, item 43, page 57 (lines 19 and 20), omit “and employers”, substitute “, employers and organisations”.

Schedule 1, item 43, page 57 (line 26), omit “and employers”, substitute “, employers and organisations”.

Schedule 1, item 43, page 58 (lines 22 and 23), omit “on the grounds of”, substitute “because of, or for reasons including,”.

Schedule 1, item 71, page 64 (line 28), omit “**and VI**”, substitute “, **VI and VIAAA**”.

Schedule 1, item 71, page 65 (after line 23), after subsection 89A(2), insert:

(2A) A dispute about:

- (a) whether the Australian Fair Pay and Conditions Standard provides a more favourable outcome for an employee in a particular respect than a workplace agreement that operates in relation to that employee; or
 - (b) what the outcome is for an employee in a particular respect under the Australian Fair Pay and Conditions Standard, where a workplace agreement operates in relation to that employee;
- is to be resolved using the dispute settlement procedure included (or taken to be included) in the agreement.

Schedule 1, item 71, page 65 (line 26), omit “(2)”, substitute “(2) or (2A)”.

Schedule 1, item 71, page 70 (after line 29), after the definition of *FMW for an employee* in section 90B, insert:

frequency of payment provisions means:

- (a) for a pre-reform wage instrument—provisions (whether of that instrument or of another instrument or law), as in force on the reform comparison day, that would have determined the frequency with which an employee covered by the instrument had to be paid; or
- (b) for an APCS, a workplace agreement or a contract of employment—provisions of the APCS, workplace agreement or contract that determine the frequency with which an employee covered by the APCS, workplace agreement or contract must be paid.

Note: For a preserved APCS, the frequency of payment provisions will (at least initially) be the frequency of payment provisions (if any) for the pre-reform wage instrument from which the APCS is derived (see paragraph 90ZD(1)(ea)).

Schedule 1, item 71, page 75 (line 16), omit “hour worked (pro-rated for parts of hours worked)”, substitute “of the employee’s guaranteed hours (pro-rated for part hours)”.

Schedule 1, item 71, page 75 (lines 20 and 21), omit the note, substitute:

Note: For what are the employee’s guaranteed hours, see section 90G.

Schedule 1, item 71, page 76 (line 5), omit “hour worked (pro-rated for parts of hours worked)”, substitute “of the employee’s guaranteed hours (pro-rated for part hours)”.

Schedule 1, item 71, page 76 (lines 8 and 9), omit the note, substitute:

Note: For what are the employee’s guaranteed hours, see section 90G.

Schedule 1, item 71, page 76 (line 19), omit “hour worked (pro-rated for parts of hours worked)”, substitute “of the employee’s guaranteed hours (pro-rated for part hours)”.

Schedule 1, item 71, page 76 (lines 22 and 23), omit the note, substitute:

Note: For what are the employee’s guaranteed hours, see section 90G.

Schedule 1, item 71, page 76 (line 24) to page 77 (line 26), omit section 90G, substitute:

90G An employee’s *guaranteed hours* for the purpose of section 90F

Employees employed to work a specified number of hours

- (1) For the purposes of section 90F, if an employee is employed to work a specified number of hours per week, the ***guaranteed hours*** for the employee, for each week, are to be worked out as follows:
 - (a) start with that specified number of hours (subject to subsection (4));
 - (b) deduct all of the following:
 - (i) any hours in the week when the employee is absent from work on deductible authorised leave (as defined in subsection (6));
 - (ii) any hours in the week in relation to which the employer is prohibited by section 114 from making a payment to the employee;
 - (iii) any other hours of unauthorised absence from work by the employee in the week;
 - (c) if, during the week, the employee works, and is required or requested to work, additional hours that are, under the terms and conditions of the employee’s employment, not counted towards the specified number of hours—add on those additional hours.

Note: The actual hours worked from week to week by an employee who is employed to work a specified number of hours per week may vary, due to averaging as mentioned in section 91C or to some other kind of flexible working hours scheme that applies to the employee’s employment.

- (2) If an employee is employed on a full-time basis, but the terms and conditions of the employee's employment do not determine the number of hours in a period that is to constitute employment on a full-time basis for the employee, the employee is, for the purpose of subsection (1), taken to be employed to work 38 hours per week.
- (3) If an employee is employed to work a specified number (the **number of non-week specified hours**) of hours per period (the **non-week period**), but that period is not a week (for example, it is a fortnight), then, for the purpose of subsection (1), the employee is taken to be employed to work the number of hours per week determined, subject to the regulations (if any), in accordance with the formula:

$$\text{Number of non-week specified hours} \times \frac{7}{\text{Number of days in non-week period}}$$

- (4) If:
- subsection (1) applies to the employment of an employee to whom a training arrangement applies; and
 - an APCS includes provisions that determine, in relation to the employee's employment, that hours attending off-the-job training (including hours attending an educational institution) are hours for which a basic periodic rate of pay is payable; and
 - the hours that would otherwise be the specified number of hours referred to in subsection (1) for the employee for a week do not include all the hours (the **paid training hours**) in the week that the APCS so determines are hours for which a basic periodic rate of pay is payable;

subsection (1) applies as if the specified number of hours were increased to such number of hours as includes all the paid training hours.

Employees not employed to work a specified number of hours

- (5) For the purpose of section 90F, if subsection (1) of this section does not apply to the employment of an employee, the **guaranteed hours** for the employee are the hours that the employee both is required or requested to work, and does work, for the employer, less any period in relation to which the employer is prohibited by section 114 from making a payment to the employee.

Definitions

- (6) In this section:
- deductible authorised leave** means leave, or an absence, whether paid or unpaid, that is authorised:
- by an employee's employer; or
 - by or under a term or condition of an employee's employment; or
 - by or under a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory;
- but not including any leave or absence:

- (d) that is on a public holiday and that is so authorised because the day is a public holiday; or
- (e) any leave or absence that is authorised in order for the employee to attend paid training hours (within the meaning of paragraph (4)(c)) of off-the-job training.

hour includes a part of an hour.

Note: An employee's guaranteed hours may therefore be a number of hours and part of an hour.

public holiday means:

- (a) a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:
 - (i) a union picnic day; or
 - (ii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday; or
- (b) a day that, under (or in accordance with a procedure under) a law of a State or Territory, or an award or workplace agreement, is substituted for a day referred to in paragraph (a).

Schedule 1, item 71, page 77 (after line 26), at the end of Subdivision B, add:

90GA Modified operation of section 90F to continue effect of Supported Wage System for certain employees with a disability

- (1) This section applies to the employment of an employee with a disability if:
 - (a) subsection 90F(1) applies (disregarding this section) to the employment of the employee; and
 - (b) the APCS that covers the employee's employment does not determine the basic periodic rate of pay for the employee as a rate that is specific to employees with disabilities; and
 - (c) the employee is eligible for the Supported Wage System; and
 - (d) the employee's employment is covered by a workplace agreement; and
 - (e) the workplace agreement provides for the payment of a basic periodic rate of pay to the employee at a rate that is not less than the rate (the ***SWS-compliant rate of pay***) set in accordance with the Supported Wage System.

Note: The Supported Wage System was endorsed by the Commission in the Full Bench decision dated 10 October 1994 (print L5723).

- (2) If this section applies to the employment of the employee, subsection 90F(1) has effect as if the guaranteed basic periodic rate of pay under that subsection for the employment of the employee were instead a rate equal to the SWS-compliant rate of pay.

Schedule 1, item 71, page 78 (lines 4 and 5), omit "collective agreement or an AWA", substitute "workplace agreement".

Schedule 1, item 71, page 78 (lines 12 to 27), omit subsection 90H(3), substitute:

- (3) The *guaranteed casual loading percentage* is as set out in the following table:

Item	In this situation ...	the guaranteed casual loading percentage is ...
1	if: (a) subsection 90F(1) applies to the employment of the employee; and (b) the employee's employment is not covered by a workplace agreement; and (c) subsection 103R(1) is not operating in relation to the employee's employment;	the percentage that is the casual loading payable to the employee under casual loading provisions of the APCS referred to in subsection 90F(1).
2	if: (a) subsection 90F(1) applies to the employment of the employee; and (b) the employee's employment is not covered by a workplace agreement; and (c) subsection 103R(1) is operating in relation to the employee's employment;	the higher of: (a) the percentage that is the casual loading payable to the employee under casual loading provisions of the APCS referred to in subsection 90F(1); and (b) the default casual loading percentage.
3	if: (a) subsection 90F(1) applies to the employment of the employee; and (b) the employee's employment is covered by a workplace agreement;	the default casual loading percentage.
4	if subsection 90F(3) or (4) applies to the employment of the employee	the default casual loading percentage.

Schedule 1, item 71, page 79 (after line 10), after Subdivision C, insert:

Subdivision CA—Guarantee of frequency of payment

90KA The guarantee

APCS applies and contains frequency of payment provisions

- (1) If:
- (a) the employment of an employee is covered by an APCS; and
 - (b) the APCS contains frequency of payment provisions that apply in relation to the employee's employment;

the employer must comply with those provisions in relation to the employee.

APCS applies but does not contain frequency of payment provisions

- (2) If:
- (a) the employment of an employee is covered by an APCS; but
 - (b) the APCS does not contain frequency of payment provisions that apply in relation to the employee's employment;
- then:
- (c) if a workplace agreement that covers the employment of the employee contains frequency of payment provisions that apply in relation to the employee's employment—the employer must comply with those provisions in relation to the employee; or
 - (d) if paragraph (c) does not apply, and the employee's contract of employment contains frequency of payment provisions that apply in relation to the employee's employment—the employer must comply with those provisions in relation to the employee; or
 - (e) if neither paragraph (c) nor (d) applies—the employer must pay the employee on the basis of fortnightly payments in arrears.

Other situations

- (3) If the employment of an employee is not covered by an APCS, then:
- (a) if a workplace agreement that covers the employment of the employee contains frequency of payment provisions that apply in relation to the employee's employment—the employer must comply with those provisions in relation to the employee; or
 - (b) if paragraph (a) does not apply, and the employee's contract of employment contains frequency of payment provisions that apply in relation to the employee's employment—the employer must comply with those provisions in relation to the employee; or
 - (c) if neither paragraph (a) nor (b) applies—the employer must pay the employee on the basis of fortnightly payments in arrears.

Schedule 1, item 71, page 82 (lines 6 and 7), omit "subsection 90H(3)", substitute "item 3 of the table in subsection 90H(3)".

Schedule 1, item 71, page 86 (line 32), omit "count as", substitute "are".

Schedule 1, item 71, page 86 (after line 33), after paragraph 90X(2)(c), insert:

- (ca) frequency of payment provisions; and

Schedule 1, item 71, page 87 (line 1), omit "Rate provisions", substitute "Subject to subsection 90ZD(3A), rate provisions".

Schedule 1, item 71, page 91 (after line 15), after paragraph 90ZD(1)(e), insert:

- (ea) any frequency of payment provisions for the instrument; and

Schedule 1, item 71, page 91 (line 19), after "Subject to", insert "subsection (3A) and".

Schedule 1, item 71, page 91 (after line 25), after subsection 90ZD(3), insert:

(3A) If:

- (a) the rate provisions referred to in paragraph (1)(a) include pay increases for particular employees, determined before the reform commencement, that are expressed to take effect at a time or times after the reform commencement; and
- (b) those increases were determined by the Commission, or by a State industrial authority, wholly or partly on the ground of work value change or pay equity;

then (despite subsection 90X(3)), the preserved APCS is taken to include provisions under which those increases will take effect for those employees at that time or those times.

Schedule 1, item 71, page 97 (line 3), at the end of subsection 90ZN(2), add “, except to the extent that the AFPC is satisfied it is not appropriate to do so because of the effect of subsection 90ZD(3A)”.

Schedule 1, item 71, page 100 (line 4), omit “on the grounds of”, substitute “because of, or for reasons including”.

Schedule 1, item 71, page 101 (line 18), after “required”, insert “or requested”.

Schedule 1, item 71, page 101 (lines 20 and 21), omit paragraph 91C(1)(a), substitute:

(a) either:

- (i) 38 hours per week; or
- (ii) subject to subsection (3), if the employee and the employer agree in writing that the employee’s hours of work are to be averaged over a specified averaging period that is no longer than 12 months—an average of 38 hours per week over that averaging period; and

Schedule 1, item 71, page 101 (line 23), after “work”, insert “less than 38 hours per week, or”.

Schedule 1, item 71, page 101 (line 25), omit “applicable”.

Schedule 1, item 71, page 101 (line 26), omit “The requirement”, substitute “A requirement”.

Schedule 1, item 71, page 101 (line 29) to page 102 (line 23), omit subsections 91C(2) to (4), substitute:

Calculating the number of hours worked

- (2) For the purposes of paragraph (1)(a), in calculating the number of hours that an employee has worked in a particular week, or the average number of hours that an employee has worked per week over an averaging period, the hours worked by the employee are taken to include any hours of authorised leave taken by the employee during the week, or during that period.

Start of averaging period

- (3) For the purpose of subparagraph (1)(a)(ii), if an employee starts to work for an employer after the start of a particular averaging period that applies to the employee, that averaging period is taken, in relation to the employee, not to include the period before the employee started to work for the employer.

Schedule 1, item 71, page 102 (line 26), after “required”, insert “or requested”.

Schedule 1, item 71, page 102 (line 36), after “required”, insert “or requested”.

Schedule 1, item 71, page 103 (line 1), after “requirement”, insert “or request”.

Schedule 1, item 71, page 103 (line 4), omit “hours.”, substitute “hours;”.

Schedule 1, item 71, page 103 (after line 4), at the end of subsection 91C(5), add:

(f) whether any of the additional hours are on a public holiday;

(g) the employee’s hours of work over the 4 weeks ending immediately before the employee is required or requested to work the additional hours.

Note: An employee and an employer may agree that the employee may take breaks during any additional hours worked by the employee.

Schedule 1, item 71, page 103 (after line 4), at the end of section 91C, add:

Definition

(6) In this section:

public holiday means:

(a) a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:

(i) a union picnic day; or

(ii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday; or

(b) a day that, under (or in accordance with a procedure under) a law of a State or Territory, or an award or workplace agreement, is substituted for a day referred to in paragraph (a).

Schedule 1, item 71, page 103 (line 29) to page 104 (line 22), omit the definition of **nominal hours worked** in section 92A, substitute:

nominal hours worked has the meaning given by section 92AA.

Note: See also section 92C.

Schedule 1, item 71, page 104 (line 39), omit “a Sunday or public holiday”, substitute “Sundays and public holidays”.

Schedule 1, item 71, page 105 (after line 2), after section 92A, insert:

92AA Meaning of *nominal hours worked*

Employees employed to work a specified number of hours

(1) For the purposes of this Division, if an employee is employed by an employer to work a specified number of hours per week, the number of **nominal hours worked**, by the employee for the employer during a week, is to be worked out as follows:

(a) start with that specified number of hours;

(b) deduct all of the following:

(i) the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave which does not count as service;

- (ii) the number of hours (if any) in the week (other than hours mentioned in subparagraph (i)) in relation to which the employer is prohibited by section 114 from making a payment to the employee.

Note: The actual hours worked from week to week by an employee who is employed to work a specified number of hours per week may vary, due to averaging as mentioned in section 91C or to some other kind of flexible working hours scheme that applies to the employee's employment.

- (2) If an employee is employed on a full-time basis, but the terms and conditions of the employee's employment do not determine the number of hours in a week that is to constitute employment on a full-time basis for the employee, the employee is, for the purpose of subsection (1), taken to be employed to work 38 hours per week.
- (3) If an employee is employed to work a specified number (the **number of non-week specified hours**) of hours over a period (the **non-week period**) that is not a week (for example, a fortnight), then, for the purpose of subsection (1), the employee is taken to be employed to work the number of hours per week determined, subject to the regulations (if any), in accordance with the formula:

$$\text{Number of non-week specified hours} \times \frac{7}{\text{Number of days in non-week period}}$$

Employees not employed to work a specified number of hours

- (4) For the purposes of this Division, if subsection (1) does not apply to the employment of an employee by an employer, the number of **nominal hours worked**, by the employee for the employer during a week, is the lesser of the following:
- (a) the number worked out as follows:
- (i) start with the number of hours (if any) in the week that the employee both works, and is required or requested to work, for the employer;
 - (ii) add the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave that counts as service;
 - (iii) deduct the number of hours (if any) in the week in relation to which the employer is prohibited by section 114 from making a payment to the employee;
- (b) the number of nominal hours the employee would be taken to have worked for the employer under subsection (1) during the week if the employee were employed to work 38 hours per week.

Definition

- (5) In this section:

hour includes a part of an hour.

Note 1: The regulations may prescribe a different definition of **nominal hours worked** for piece rate employees (see section 92C).

- Note 2: An employee's hours of work may be varied (by number or time) in accordance with a workplace agreement, award or contract of employment that binds the employee and his or her employer.
- Note 3: For whether leave guaranteed under this Part counts as service, see subsections 92I(2) (annual leave), 93T(2) (paid personal leave), 93U(2) (unpaid carer's leave) and 94ZZB(2) (parental leave).
- Note 4: Because of the definition of *hour* in subsection (5), an employee's nominal hours worked may be a number of hours and part of an hour.

Schedule 1, item 71, page 106 (after line 30), at the end of subsection 92E(1), add:

- Note: If, under this section, an employee forgoes an entitlement to take an amount of annual leave, the employee's employer may deduct that amount from the amount of accrued annual leave credited to the employee.

Schedule 1, item 71, page 107 (after line 4), at the end of section 92E, add:

- (4) If, under this section, an employee forgoes an entitlement to take an amount of annual leave, the employer must, within a reasonable period, give the employee the amount of pay that the employee is entitled to receive in lieu of the amount of annual leave.

Schedule 1, item 71, page 109 (after line 9), at the end of Subdivision C, add:

92HA Annual leave and workers' compensation

This Division does not apply to the extent that it is inconsistent with a provision of a law of the Commonwealth, a State or a Territory relating to workers' compensation if the provision would (apart from this Division):

- (a) prevent an employee from taking or accruing annual leave during a period while the employee is receiving compensation under such a law; or
- (b) restrict the amount of annual leave an employee may take or accrue during such a period.

Schedule 1, item 71, page 110 (lines 27 and 28), omit "medical practitioner", substitute "registered health practitioner".

Schedule 1, item 71, page 110 (lines 29 to 31), omit the definition of *medical practitioner* in section 93A.

Schedule 1, item 71, page 110 (line 32) to page 111 (line 22), omit the definition of *nominal hours worked* in section 93A, substitute:

nominal hours worked has the meaning given by section 93AA.

Note: See also section 93C.

Schedule 1, item 71, page 111 (after line 27), after the definition of *piece rate employee* in section 93A, insert:

registered health practitioner means a health practitioner registered, or licensed, as a health practitioner (or as a health practitioner of a particular type) under a law of a State or Territory that provides for the registration or licensing of health practitioners (or health practitioners of that type).

Schedule 1, item 71, page 111 (after line 32), after section 93A, insert:

93AA Meaning of *nominal hours worked*

Employees employed to work a specified number of hours

- (1) For the purposes of this Division, if an employee is employed by an employer to work a specified number of hours per week, the number of ***nominal hours worked***, by the employee for the employer during a week, is to be worked out as follows:
- (a) start with that specified number of hours;
 - (b) deduct all of the following:
 - (i) the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave which does not count as service;
 - (ii) the number of hours (if any) in the week (other than hours mentioned in subparagraph (i)) in relation to which the employer is prohibited by section 114 from making a payment to the employee.

Note: The actual hours worked from week to week by an employee who is employed to work a specified number of hours per week may vary, due to averaging as mentioned in section 91C or to some other kind of flexible working hours scheme that applies to the employee's employment.

- (2) If an employee is employed on a full-time basis, but the terms and conditions of the employee's employment do not determine the number of hours in a week that is to constitute employment on a full-time basis for the employee, the employee is, for the purpose of subsection (1), taken to be employed to work 38 hours per week.
- (3) If an employee is employed to work a specified number (the ***number of non-week specified hours***) of hours over a period (the ***non-week period***) that is not a week (for example, a fortnight), then, for the purpose of subsection (1), the employee is taken to be employed to work the number of hours per week determined, subject to the regulations (if any), in accordance with the formula:

$$\text{Number of non-week specified hours} \times \frac{7}{\text{Number of days in non-week period}}$$

Employees not employed to work a specified number of hours

- (4) For the purposes of this Division, if subsection (1) does not apply to the employment of an employee by an employer, the number of ***nominal hours worked***, by the employee for the employer during a week, is the lesser of the following:
- (a) the number worked out as follows:
 - (i) start with the number of hours (if any) in the week that the employee both works, and is required or requested to work, for the employer;
 - (ii) add the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave that counts as service;

- (iii) deduct the number of hours (if any) in the week in relation to which the employer is prohibited by section 114 from making a payment to the employee;
- (b) the number of nominal hours the employee would be taken to have worked for the employer under subsection (1) during the week if the employee were employed to work 38 hours per week.

Definition

- (5) In this section:

hour includes a part of an hour.

Note 1: The regulations may prescribe a different definition of **nominal hours worked** for piece rate employees (see section 93C).

Note 2: An employee's hours of work may be varied (by number or time) in accordance with a workplace agreement, award or contract of employment that binds the employee and his or her employer.

Note 3: For whether leave guaranteed under this Part counts as service, see subsections 92I(2) (annual leave), 93T(2) (paid personal leave), 93U(2) (unpaid carer's leave) and 94ZZB(2) (parental leave).

Note 4: Because of the definition of **hour** in subsection (5), an employee's nominal hours worked may be a number of hours and part of an hour.

Schedule 1, item 71, page 113 (line 35), omit "2 weeks", substitute "10 days".

Schedule 1, item 71, page 114 (lines 15 and 16), omit the heading to section 93H, substitute:

93H Paid personal/carer's leave—workers' compensation

Schedule 1, item 71, page 114 (line 17), before "An employee", insert "(1)".

Schedule 1, item 71, page 114 (after line 21), at the end of section 93H, add:

- (2) Subject to subsection (1), this Division does not apply to the extent that it is inconsistent with a provision of a law of the Commonwealth, a State or a Territory relating to workers' compensation if the provision would (apart from this Division):
 - (a) prevent an employee from taking or accruing paid personal/carer's leave during a period while the employee is receiving compensation under such a law; or
 - (b) restrict the amount of paid personal/carer's leave an employee may take or accrue during such a period.

Schedule 1, item 71, page 115 (line 8), omit "2 weeks", substitute "10 days".

Schedule 1, item 71, page 117 (lines 8 to 25), omit section 93N, substitute:

93N Sick leave—documentary evidence

- (1) This section applies if an employer requires an employee of the employer to give the employer documentary evidence in relation to a period of sick leave taken (or to be taken) by the employee.
- (2) To be entitled to sick leave during the period, the employee must, in accordance with this section, give the employer a document (the **required document**) of whichever of the following types applies:
 - (a) if it is reasonably practicable to do so—a medical certificate from a registered health practitioner;

- (b) if it is not reasonably practicable for the employee to give the employer a medical certificate—a statutory declaration made by the employee.
- (3) The required document must be given to the employer as soon as reasonably practicable (which may be at a time before or after the sick leave has started).
- (4) The required document must include a statement to the effect that:
 - (a) if the required document is a medical certificate—in the registered health practitioner’s opinion, the employee was, is, or will be unfit for work during the period because of a personal illness or injury; or
 - (b) if the required document is a statutory declaration—the employee was, is, or will be unfit for work during the period because of a personal illness or injury.
- (5) This section does not apply to an employee who could not comply with it because of circumstances beyond the employee’s control.

Note: The use of personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

Schedule 1, item 71, page 118 (line 10) to page 119 (line 11), omit section 93P, substitute:

93P Carer’s leave—documentary evidence

- (1) This section applies if an employer requires an employee of the employer to give the employer documentary evidence in relation to a period of carer’s leave taken (or to be taken) by the employee to provide care or support to a member of the employee’s immediate family or a member of the employee’s household.
- (2) To be entitled to carer’s leave during the period, the employee must, in accordance with this section, give the employer a document (the **relevant document**) that is:
 - (a) if the care or support is required because of a personal illness, or injury, of the member—a medical certificate from a registered health practitioner, or a statutory declaration made by the employee; or
 - (b) if the care or support is required because of an unexpected emergency affecting the member—a statutory declaration made by the employee.
- (3) The relevant document must be given to the employer as soon as reasonably practicable (which may be at a time before or after the carer’s leave has started).
- (4) If the relevant document is a medical certificate, it must include a statement to the effect that, in the opinion of the registered health practitioner, the member had, has, or will have a personal illness or injury during the period.
- (5) If the relevant document is a statutory declaration, it must include a statement to the effect that the employee requires (or required) leave during the period to provide care or support to the member because the member requires (or required) care or support during the period because of:

- (a) a personal illness, or injury, of the member; or
 - (b) an unexpected emergency affecting the member.
- (6) This section does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.

Note: The use of personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

Schedule 1, item 71, page 119 (lines 23 to 33), omit subsection 93Q(2) (not including the note), substitute:

- (2) Subject to this Subdivision, an employee is entitled to a period of 2 days of compassionate leave for each occasion (a *permissible occasion*) when a member of the employee's immediate family or a member of the employee's household:
- (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
 - (b) sustains a personal injury that poses a serious threat to his or her life; or
 - (c) dies.
- (3) However, the employee is entitled to compassionate leave only if the employee gives his or her employer any evidence that the employer reasonably requires of the illness, injury or death.

Schedule 1, item 71, page 120 (line 2), before "An employee", insert "(1)".

Schedule 1, item 71, page 120 (line 3), after "93Q", insert "for a particular permissible occasion".

Schedule 1, item 71, page 120 (after line 7), at the end of section 93R, add:

- (2) An employee who is entitled to a period of compassionate leave under section 93Q because a member of the employee's immediate family or a member of the employee's household has contracted or developed a personal illness, or sustained a personal injury, is entitled to start to take the compassionate leave at any time while the illness or injury persists.

Schedule 1, item 71, page 129 (line 8), omit "(or was)", substitute ", was, or will be".

Schedule 1, item 71, page 129 (line 25), omit "(or was)", substitute ", was, or will be".

Schedule 1, item 71, page 160 (after line 3), at the end of Part VA, add:

Division 7—Civil remedies

94ZZC Definition

In this Division:

Court means the Federal Court of Australia or the Federal Magistrates Court.

94ZZD Civil remedies

- (1) An employer must not contravene a term of the Australian Fair Pay and Conditions Standard contained in Division 3, 4, 5 or 6 of this Part in relation to an employee of the employer to whom that term applies.
- (2) Subsection (1) is a civil remedy provision.

- (3) The reference in subsection (1) to Division 6 of this Part includes a reference to that Division as it applies because of section 170KB.

94ZZE Standing for civil remedies

- (1) Any of the following persons may apply to the Court for an order under this Division in relation to a contravention referred to in subsection 94ZZD(1):
- (a) the employee concerned;
 - (b) an organisation of employees (subject to subsection (2));
 - (c) a workplace inspector.
- (2) An organisation of employees must not apply on behalf of an employee for a remedy under this Division in relation to a contravention unless:
- (a) a member of the organisation is employed by the respondent employer; and
 - (b) the contravention relates to, or affects, the member of the organisation or work carried on by the member for the employer.

94ZZF Court orders

The Court may, on application by a person in accordance with section 94ZZE, make one or more of the following orders in relation to an employer who has contravened a relevant term of the Australian Fair Pay and Conditions Standard:

- (a) an order requiring the employer to pay a specified amount to another person as compensation for damage suffered by the other person as a result of the contravention;
- (b) any other orders (including injunctions) that the Court considers necessary to stop the contravention or rectify its effects.

Schedule 1, item 71, page 160 (after line 12), after the definition of *undertakings* in section 95, insert:

verified copy, in relation to a document, means a copy that is certified as being a true copy of the document.

Schedule 1, item 71, page 165 (lines 28 and 29), omit subsection 97(2).

Schedule 1, item 71, page 173 (line 27), after “Divisions 3 and 4”, insert “and section 99”.

Schedule 1, item 71, page 176 (line 20), omit “a greenfields agreement”, substitute “an employer greenfields agreement”.

Schedule 1, item 71, page 177 (line 3), omit “a greenfields agreement”, substitute “an employer greenfields agreement”.

Schedule 1, item 71, page 178 (after line 3), after subsection 101B(2), insert:

- (2A) Despite paragraph (2)(c), those protected award conditions have effect in relation to the employment of that person to the extent that those protected award conditions are about outworker conditions, despite any terms of the workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

Schedule 1, item 71, page 178 (after line 24), after paragraph (d) of the definition of *protected allowable award matters* in subsection 101B(3), insert:

- (da) days to be substituted for, or a procedure for substituting, days referred to in paragraph (d);

Schedule 1, item 71, page 179 (line 3), omit paragraph (a) of the definition of *protected award conditions* in subsection 101B(3), substitute:

- (a) are:
- (i) about protected allowable award matters; or
 - (ii) terms that are incidental to protected allowable award matters and that may be included in an award as permitted by section 116I; or
 - (iii) machinery provisions that are in respect of protected allowable award matters and that may be included in an award as permitted by section 116I; and

Schedule 1, item 71, page 179 (line 5), omit subparagraph (b)(i) of the definition of *protected award conditions* in subsection 101B(3), substitute:

- (i) matters that are not allowable award matters because of section 116B; or

Schedule 1, item 71, page 179 (lines 25 to 30), omit paragraph 101C(3)(b), substitute:

- (b) if the industrial instrument is a workplace agreement—the instrument is binding on the employer in relation to the agreement mentioned in subsection (1) just before that agreement is made.

Schedule 1, item 71, page 185 (lines 23 and 24), omit paragraph 102A(e), substitute:

- (e) for an employer greenfields agreement—the time when the variation is approved in accordance with section 102F.

Schedule 1, item 71, page 188 (line 11), at the end of the heading to section 102E, add “**or union greenfields agreement**”.

Schedule 1, item 71, page 191 (line 27), omit “and Subdivision B of this Division”, substitute “, Subdivision B of this Division and section 102H”.

Schedule 1, item 71, page 191 (after line 28), at the end of section 102M, add:

- (3) A variation to a multiple-business agreement comes into operation only if the variation has been authorised under section 96F.

Schedule 1, item 71, page 194 (lines 1 and 2), omit “**variation to union collective agreement**”, substitute “**termination of union collective agreement or union greenfields agreement**”.

Schedule 1, item 71, page 197 (line 23), after “lodgment,”, insert “and after the nominal expiry date of the agreement has passed,”.

Schedule 1, item 71, page 198 (line 28), after “lodgment,”, insert “and after the nominal expiry date of the agreement has passed,”.

Schedule 1, item 71, page 202 (line 7), omit “103(2)(a)”, substitute “103(1)(a)”.

Schedule 1, item 71, page 202 (line 7), after “Subdivision B”, insert “and section 103G”.

Schedule 1, item 71, page 202 (lines 9 and 10), omit “103(2)(b) or (c)”, substitute “103(1)(b)”.

Schedule 1, item 71, page 202 (line 30), omit paragraph 103R(3)(b), substitute:

- (b) an award, except to the extent to which it contains protected award conditions as defined in section 101B (disregarding any exclusion or modification of those conditions made by the agreement that was terminated).

Schedule 1, item 71, page 203 (line 11), after “meaning of”, insert “section”.

Schedule 1, item 71, page 203 (lines 25 to 28), omit subsection 104(6), substitute:

- (6) To avoid doubt, a person does not apply duress for the purposes of subsection (5) merely because the person requires another person to make an AWA as a condition of engagement.

Schedule 1, item 71, page 209 (after line 15), at the end of Part VB, add:

Division 12—Miscellaneous

105L AWAs with Commonwealth employees

- (1) An Agency Head (within the meaning of the *Public Service Act 1999*) may act on behalf of the Commonwealth in relation to AWAs with persons in the Agency who are engaged under the *Public Service Act 1999*.
- (2) A Secretary of a Department (within the meaning of the *Parliamentary Service Act 1999*) may act on behalf of the Commonwealth in relation to AWAs with persons in the Department who are engaged under the *Parliamentary Service Act 1999*.

105M Evidence—verified copies

- (1) The Employment Advocate may issue a verified copy of any of the following:
 - (a) a declaration lodged under subsection 99B(2), 102J(2), 103H(2) or 103N(1) in relation to a workplace agreement;
 - (b) a document annexed to a declaration mentioned in paragraph (a);
 - (c) a receipt issued by the Employment Advocate under section 99C, 102K, 103I or 103O in relation to a workplace agreement;
 - (d) a written notice given by the Employment Advocate under subsection 101H(1) or paragraph 101K(4)(a) in relation to a workplace agreement;
 - (e) an authorisation granted by the Employment Advocate under section 96F for a workplace agreement that is a multiple-business agreement;
 - (f) a written advice in relation to a workplace agreement given by the Employment Advocate to an employer for the purposes of paragraph 101E(2)(a).

Note: For the definition of *verified copy*, see section 95.

- (2) The verified copy may only be issued to a person who is or was bound by the workplace agreement to which the verified copy relates.
- (3) In the Court and in proceedings in the Court, a verified copy issued by the Employment Advocate under subsection (1) is prima facie evidence of the document of which it is a verified copy.

- (4) A document that purports to be a verified copy issued by the Employment Advocate under subsection (1) is taken to be such a copy, unless evidence to the contrary is adduced.

105N Evidence—certificates

- (1) The Employment Advocate may issue a certificate stating any one or more of the following in relation to one or more workplace agreements:
- (a) that a particular person lodged a particular declaration under subsection 99B(2), 102J(2), 103H(2) or 103N(1) with the Employment Advocate on a particular day;
 - (b) if the certificate states that a declaration was lodged with the Employment Advocate as mentioned in paragraph (a)—that a particular document was annexed to the declaration;
 - (c) that particular declarations lodged with the Employment Advocate as mentioned in paragraph (a) in relation to a particular workplace agreement are the only such declarations that were so lodged in relation to that workplace agreement before a particular day;
 - (d) if the certificate states that particular documents were annexed to declarations lodged with the Employment Advocate as mentioned in paragraph (b)—that those documents were the only documents annexed to those declarations;
 - (e) that the Employment Advocate issued a receipt under section 99C, 102K, 103I or 103O to a particular person on a particular day for such a lodgment;
 - (f) if the certificate states that particular receipts were issued by the Employment Advocate as mentioned in paragraph (e) in relation to a particular workplace agreement—that those receipts were the only receipts so issued in relation to the workplace agreement before a particular day;
 - (g) that the Employment Advocate gave a particular advice for the purposes of paragraph 101E(2)(a) to a particular person on a particular day;
 - (h) if the certificate states that particular advices were given by the Employment Advocate as mentioned in paragraph (g) in relation to a particular workplace agreement—that those advices were the only advices so given in relation to the workplace agreement before a particular day;
 - (i) that the Employment Advocate granted an authorisation under section 96F on a particular day for a particular employer to make or vary a particular multiple-business agreement;
 - (j) if the certificate states that particular authorisations were granted by the Employment Advocate as mentioned in paragraph (i) in relation to a particular multiple-business agreement—that those authorisations were the only authorisations so granted in relation to the multiple-business agreement before a particular day;
 - (k) that the Employment Advocate gave a particular notice under subsection 101H(1) or paragraph 101K(4)(a) on a particular day to a particular employer;

- (l) if the certificate states that particular notices were given by the Employment Advocate as mentioned in paragraph (k) in relation to a particular workplace agreement—that those notices were the only notices so given in relation to that workplace agreement before a particular day.
- (2) The certificate may only be issued to a person who is or was bound by the workplace agreement or all of the workplace agreements to which the certificate relates.
- (3) In the Court and in proceedings in the Court, a certificate issued by the Employment Advocate under subsection (1) is prima facie evidence of the matters stated in the certificate.
- (4) A document that purports to be a certificate issued by the Employment Advocate under subsection (1) is taken to be such a certificate, unless evidence to the contrary is adduced.

1050 Regulations relating to workplace agreements

The regulations may make provision in relation to the following matters:

- (a) requiring an employer who is bound by a workplace agreement to supply copies of prescribed documents to the employee or employees bound by the workplace agreement;
- (b) the qualifications and appointment of bargaining agents;
- (c) the required form of workplace agreements (including a requirement that documents be in the English language);
- (d) the witnessing of signatures on AWAs;
- (e) the signing of workplace agreements by persons bound by those agreements, or representatives of those persons;
- (f) the retention by employers of signed workplace agreements (including the manner and period of retention);
- (g) prescribing fees for the issue by the Employment Advocate of certificates and verified copies.

Note: See section 359 for the types of sanctions that the regulations may provide for a breach of the regulations.

Schedule 1, item 71, page 211 (line 25), at the end of subsection 106A(3), add “(except to the extent that this would be an expansion of the ordinary meaning of that expression)”.

Schedule 1, item 71, page 216 (line 27), omit “Agt60”, substitute “96A”.

Schedule 1, item 71, page 218 (line 11), after “negotiating party”, insert “(not being the applicant for the order)”.

Schedule 1, item 71, page 232 (line 30), after “Engaging in”, insert “or organising”.

Schedule 1, item 71, page 249 (line 20), omit subparagraph 109N(1)(d)(ii), substitute:

- (ii) the day on which the ballot is to close, and the time (the **voting closing time**) on that day by which votes must be received (if the order specifies a postal ballot) or by which votes must be cast (if the order specifies an attendance ballot);

Schedule 1, item 71, page 250 (line 10), after “before”, insert “the voting closing time on”.

Schedule 1, item 71, page 250 (lines 11 to 13), omit subsection 109N(4), substitute:

- (4) If the order specifies an attendance ballot as the voting method, then:
 - (a) votes must be cast before the voting closing time on the day on which the ballot is to close; and
 - (b) subject to paragraph (a):
 - (i) the order must specify that the voting must take place during the voters’ meal-time or other breaks, or outside their hours of employment; and
 - (ii) the order may also specify other rules about the times when voters may vote.

Schedule 1, item 71, page 266 (line 33), omit “affecting the employer”.

Schedule 1, item 71, page 268 (line 5), omit paragraph 110(7)(c), substitute:

- (c) any person affected by the industrial action; or
- (d) any other person prescribed by the regulations.

Schedule 1, item 71, page 268 (line 16), omit paragraph 110(8)(d), substitute:

- (d) any person affected by the industrial action; or
- (e) any other person prescribed by the regulations.

Schedule 1, item 71, page 285 (after line 31), after paragraph 116(1)(d), insert:

- (da) leave for the purpose of seeking other employment after the giving of a notice of termination by an employer to an employee;

Schedule 1, item 71, page 286 (after line 6), after paragraph 116(1)(e), insert:

- (ea) days to be substituted for, or a procedure for substituting, days referred to in paragraph (e);

Schedule 1, item 71, page 287 (line 33), before “Each”, insert “(1)”.

Schedule 1, item 71, page 288 (after line 3), at the end of section 116A, add:

- (2) The dispute settling process included in an award may only be used to resolve disputes:
 - (a) about matters arising under the award; and
 - (b) between persons bound by the award.

Schedule 1, item 71, page 288 (lines 13 and 14), omit paragraph 116B(1)(b), substitute:

- (b) conversion from casual employment to another type of employment;

Schedule 1, item 71, page 288 (line 31), at the end of paragraph 116B(1)(j), add “in the meat industry”.

Schedule 1, item 71, page 288 (line 34), omit paragraph 116B(1)(m).

Schedule 1, item 71, page 289 (after line 5), after subsection 116B(2), insert:

- (2A) Paragraph (1)(g) does not limit the operation of paragraph 116(1)(m).

Schedule 1, item 71, page 291 (after line 13), after subsection 116I(2), insert:

- (2A) However, to avoid doubt, paragraph 116B(1)(g) does not limit the operation of subsections (1) and (3) to the extent that those subsections relate to the matter referred to in paragraph 116(1)(m).

Schedule 1, item 71, page 294 (line 3), after “a term”, insert “, or more than one term,”.

Schedule 1, item 71, page 294 (after line 24), after subsection 117(3), insert:

- (3A) If more than one term of an award is about a matter referred to in subsection (2), then those terms, taken together, constitute the preserved award term of that award about that matter.

Schedule 1, item 71, page 295 (lines 3 and 4), omit paragraph 117(7)(a), substitute:

- (a) the matter referred to in paragraph (2)(c) does not include one or both of the following:
- (i) special maternity leave (within the meaning of section 94C);
 - (ii) the entitlement under section 94F to transfer to a safe job or to take paid leave; and

Schedule 1, item 71, page 295 (lines 11 to 13), omit the note, substitute:

Note: The effect of excluding a form of leave or an entitlement in relation to a matter is that the entitlement in relation to that form of leave or matter under the Australian Fair Pay and Conditions Standard will automatically apply.

Schedule 1, item 71, page 302 (line 5), at the end of the note, add “and may bind eligible entities under Division 6A”.

Schedule 1, item 71, page 303 (after line 8), after subsection 118J(4), insert:

Note: An award may also be varied to bind eligible entities and employers under Division 6A.

Schedule 1, item 71, page 304 (line 8), omit “The Commission”, substitute “A Full Bench”.

Schedule 1, item 71, page 304 (line 11), omit “The Commission may establish principles relating”, substitute “Principles under subsection (1) may relate”.

Schedule 1, item 71, page 304 (line 17), omit “subsections (1) and (2)”, substitute “subsection (1)”.

Schedule 1, item 71, page 304 (after line 25), at the end of section 118N, add:

- (6) To avoid doubt, principles under subsection (1) must be consistent with, and cannot be such as to override, a provision of this Act that relates to the variation of awards.

Schedule 1, item 71, page 308 (line 14), omit “, employee”.

Schedule 1, item 71, page 308 (line 16), omit “, employee”.

Schedule 1, item 71, page 308 (line 18), omit “, employee”.

Schedule 1, item 71, page 308 (line 23), omit “, employee”.

Schedule 1, item 71, page 310 (after line 11), after note 2, insert:

Note 3: An award may also be varied to bind eligible entities and employers under Division 6A.

Schedule 1, item 71, page 313 (after line 22), after Division 6, insert:

Division 6A—Outworkers

120G Definitions

In this Division:

eligible entity means any of the following entities, other than in the entity's capacity as an employer:

- (a) a constitutional corporation;
- (b) the Commonwealth;
- (c) a Commonwealth authority;
- (d) a body corporate incorporated in a Territory;
- (e) a person or entity (which may be an unincorporated club) that carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, in connection with the activity carried on in the Territory.

outworker term means a term of an award that is:

- (a) about the matter referred to in paragraph 116(1)(m); or
- (b) incidental to such a matter, and included in the award as permitted by section 116I; or
- (c) a machinery provision in respect of such a matter included in the award as permitted by section 116I.

120H Outworker terms may bind eligible entities and employers

- (1) This section applies to an award made under section 118E or varied under section 118J if the award includes outworker terms.
- (2) In addition to the employers, organisations and persons that the award is expressed to bind under section 118I or 118J, as the case requires, the award may be expressed to bind, but only in relation to the outworker terms, an eligible entity or an employer that operates in an industry:
 - (a) to which the award relates; or
 - (b) in respect of which the outworker terms are applicable.

120I Binding additional eligible entities and employers

- (1) An organisation, an eligible entity or an employer may apply to the Commission for an order varying an award that includes outworker terms to bind an eligible entity or an employer to the award, but only in relation to the outworker terms.
- (2) If an application is made under subsection (1), the Commission must take such steps as it thinks appropriate to ensure that each employer, employee and organisation bound by the award, and any other interested persons and bodies, are made aware of the application.
- (3) The Minister may intervene in relation to the application.
- (4) If an application is made under subsection (1), the Commission may make the order if it is satisfied that:
 - (a) the eligible entity or employer operates in an industry to which the award relates; and

- (b) the eligible entity or employer is not already bound by an award that includes outworker terms in respect of such an industry in relation to those terms; and
- (c) making the order is consistent with the objective of protecting the overall conditions of employment of outworkers.

Schedule 1, item 71, page 318 (after line 11), after the definition of *Court* in section 122B, insert:

instrument means:

- (a) an AWA; or
- (b) a collective agreement; or
- (c) an award; or
- (d) an APCS.

Schedule 1, item 71, page 331 (lines 6 to 13), omit subsection 126A(2), substitute:

- (2) Despite section 100B but subject to subsection (3), a collective agreement that is in operation at the time of transmission does not have effect in relation to an employee's employment while the transmitted award operates, in accordance with subsection 126(1), in relation to that employment.

Note 1: But for subsection (2), section 100B would have the effect that the transmitted award would not have effect in relation to the employee's employment while a collective agreement operates in relation to that employment.

Note 2: Section 126B modifies the operation of section 100B in relation to AWAs and collective agreements that come into operation after the time of transmission.

- (3) Despite subsection 126(1), if the employee agrees that the collective agreement is to operate in relation to that employment:
 - (a) the collective agreement comes into operation in relation to that employment; and
 - (b) the transmitted award ceases to be in operation in relation to that employment in accordance with subsection 126B(3).

Schedule 1, item 71, page 336 (lines 32 to 35), omit paragraph 129(3)(f), substitute:

- (f) identify:
 - (i) any provisions of the Australian Fair Pay and Conditions Standard; or
 - (ii) any other instrument;
 that the employer intends to be the source for terms and conditions that will apply to the matters that are dealt with by the transmitted instrument when the transmitted instrument ceases to bind the employer; and

Schedule 1, item 71, page 337 (after line 5), after subsection 129(3), insert:

- (3A) Subject to subsection (3B), if the notice under subsection (3) identifies an instrument under paragraph (3)(g), the employer must give the transferring employee a copy of the instrument together with the notice.

Note: This is a civil remedy provision, see section 129C.

- (3B) Subsection (3A) does not apply if:

- (a) the transferring employee is able to easily access a copy of the instrument in a particular way; and
- (b) the notice under subsection (3) tells the transferring employee that a copy of the instrument is accessible in that way.

Note: Paragraph (a)—the copy may be available, for example, on the Internet.

Schedule 1, item 71, page 337 (lines 7 to 15), omit paragraph 129(4)(a), substitute:

- (a) the transmitted instrument is an award and the new employer and the transferring employee become bound by an AWA or a collective agreement at the time of transmission or within 14 days after the time of transmission; or

Schedule 1, item 71, page 339 (line 12), omit paragraph 129C(1)(b), substitute:

- (b) subsections 129(2) and (3A);

Schedule 1, item 74, page 344 (lines 25 and 26), omit “**orders, determinations or decisions of the AFPC**”, substitute “**AFPC decisions and the Australian Fair Pay and Conditions Standard**”.

Schedule 1, item 74, page 344 (line 29) to page 345 (line 4), omit subsections 170BAC(2) and (3), substitute:

- (2) The Commission must not deal with an application for an order under this Division, to the extent to which the application is for an order relating to a basic periodic rate of pay, a basic piece rate of pay or casual loading, if:
 - (a) the group of employees who would be covered by the order applied for; and
 - (b) the comparator group of employees;

are both entitled to a rate of pay that is equal to the applicable guaranteed rate of pay under the provisions of the Australian Fair Pay and Conditions Standard contained in Division 2 of Part VA.
- (3) To avoid doubt, subsection (2) does not apply if employees in one or both of the groups are entitled to a rate of pay higher than the applicable guaranteed rate.
- (4) The Commission must not deal with an application for an order under this Division, to the extent to which the application is for an order relating to a basic periodic rate of pay, a basic piece rate of pay or casual loading, if:
 - (a) the group of employees who would be covered by the order applied for is entitled to a rate of pay that is higher than the rate of pay the group would be entitled to under the provisions of the Australian Fair Pay and Conditions Standard contained in Division 2 of Part VA; and
 - (b) the comparator group of employees is entitled to a rate of pay that is equal to the applicable guaranteed rate of pay under the provisions of the Australian Fair Pay and Conditions Standard contained in Division 2 of Part VA.
- (5) To avoid doubt, subsection (4) does not apply if the comparator group of employees is entitled to a rate of pay higher than the applicable guaranteed rate.

(6) To avoid doubt, subsections (2) and (4) apply regardless of the source of the employee's entitlement to be paid the rate of pay.

(7) In this section:

basic periodic rate of pay has the same meaning as in Division 2 of Part VA.

basic piece rate of pay has the same meaning as in Division 2 of Part VA.

casual loading has the same meaning as in Division 2 of Part VA.

comparator group of employees means employees whom the applicant contends are performing work of equal value to the work performed by the employees to whom the application relates.

Schedule 1, page 355 (after line 2), after item 105, insert:

105A After subsection 170CD(1B)

Insert:

(1C) For the purposes of this Division, the resignation of an employee is taken to constitute the termination of the employment of that employee at the initiative of the employer if the employee can prove, on the balance of probabilities, that the employee did not resign voluntarily but was forced to do so because of conduct, or a course of conduct, engaged in by the employer.

Schedule 1, item 113, page 356 (after line 13), after subsection 170CE(5E), insert:

(5EA) For the purposes of calculating the number of employees employed by an employer as mentioned in subsection (5E), related bodies corporate (within the meaning of section 50 of the *Corporations Act 2001*) are taken to be one entity.

Schedule 1, item 114, page 357 (lines 4 and 5), omit "that the application is not a valid", substitute "dismissing the".

Schedule 1, item 114, page 357 (lines 6 and 7), omit "that the application is not a valid", substitute "dismissing the".

Schedule 1, item 114, page 357 (after line 8), after subsection 170CEA(5), insert:

(5A) If:

- (a) a respondent has moved for the dismissal of an application to which subsection (5) applies; and
- (b) the Commission is not satisfied as mentioned in paragraph (5)(a), (b) or (c) in relation to the application;

the Commission must make an order refusing the motion for dismissal.

Schedule 1, item 114, page 357 (line 10), at the end of subsection 170CEA(6), add "or (5A)".

Schedule 1, item 115, page 357 (line 20), omit "an", substitute "the".

Schedule 1, item 115, page 357 (after line 31), after subsection 170CEB(1), insert:

(1A) If:

- (a) an application is made, or purported to have been made, under subsection 170CE(1):
 - (i) on the ground referred to in paragraph 170CE(1)(a); or
 - (ii) on grounds that include that ground; and

- (b) the respondent moves for dismissal of the application on the ground that it is frivolous, vexatious or lacking in substance; and
- (c) the Commission is not satisfied that the application is frivolous, vexatious or lacking in substance, in relation to the ground referred to in paragraph 170CE(1)(a);

the Commission must:

- (d) if subparagraph (a)(i) applies—make an order refusing the motion for dismissal; or
- (e) if subparagraph (a)(ii) applies—make an order refusing the motion for dismissal, to the extent that the application is made on the ground referred to in paragraph 170CE(1)(a).

Schedule 1, item 115, page 357 (line 33), at the end of subsection 170CEB(2), add “or (1A)”.

Schedule 1, item 115, page 358 (lines 19 and 20), omit “or 170CEB(1)”, substitute “or (5A) or 170CEB(1) or (1A)”.

Schedule 1, item 115, page 359 (line 26), at the end of subsection 170CEE(1), add “, other than dealing with a matter on the papers as provided by section 170CEA, 170CEB, 170CEC or 170CED”.

Schedule 1, item 115, page 359 (lines 30 and 31), omit “that the application is not a valid”, substitute “dismissing the”.

Schedule 1, item 115, page 359 (lines 32 and 33), omit “that the application is not a valid”, substitute “dismissing the”.

Schedule 1, item 115, page 360 (after line 2), after subsection 170CEE(3), insert:

- (3A) To avoid doubt, this section does not require the Commission to hold a hearing in relation to an application that has been dismissed under subsection 170CEA(5) or 170CEB(1).

Schedule 1, page 360 (after line 11), after item 118, insert:

118A Paragraph 170CFA(6)(b)

Repeal the paragraph, substitute:

- (b) be lodged with the Commission:
 - (i) if the certificate given by the Commission under subsection 170CF(2) identifies the ground of an alleged contravention of section 170CK as a ground on which conciliation is, or is likely to be, unsuccessful (whether or not one or more other grounds are so identified)—not later than 28 days after the day of issue of the certificate; or
 - (ii) in any other case—not later than 7 days after the day of issue of the certificate.

Schedule 1, item 120, page 360 (lines 16 to 18), omit subsection 170CFA(8), substitute:

- (8) The Commission must not, under any provision of this Act, extend the period within which an election is required by subsection (6) to be lodged, other than as mentioned in subsection (8A).

- (8A) The Commission may accept an election referred to in subparagraph (6)(b)(i) that is lodged out of time if the Commission considers that it would be unfair not to do so, and, if the Commission accepts such an election, the original application is taken not to have been discontinued in spite of subsection (7).

Schedule 1, page 362 (after line 34), after item 131, insert:

131A After subsection 170CK(4)

Insert:

- (4A) To avoid doubt, if:
- (a) an employer terminates an employee's employment; and
 - (b) the reason, or a reason, for the termination is that the position held by the employee no longer exists, or will no longer exist; and
 - (c) the reason, or a reason, that the position held by the employee no longer exists, or will no longer exist, is the employee's absence, or proposed or probable absence, during maternity leave or other parental leave;
- the employee's employment is taken, for the purposes of paragraph (2)(h), to have been terminated for the reason, or for reasons including the reason, of absence from work during maternity leave or other parental leave.

Schedule 1, item 152, page 367 (after line 11), after subsection 170HB(3), insert:

- (3A) Without limiting subsection (3), ***other termination proceedings*** includes an inquiry in respect of a complaint (the ***HREOC complaint***):
- (a) made under the *Human Rights and Equal Opportunity Commission Act 1986*; and
 - (b) that relates to the termination of employment of an employee (whether or not as a result of an amendment of the complaint).
- (3B) For the purposes of this section, an employee commences other termination proceedings of a kind referred to in subsection (3A):
- (a) unless paragraph (b) applies—when the employee makes the HREOC complaint; or
 - (b) if the HREOC complaint constitutes, or would constitute, other termination proceedings only as a result of an amendment of the complaint—when the complaint is amended.

Schedule 1, item 153, page 368 (after line 26), at the end of section 170HC, add:

- (4) Without limiting subsection (3), ***other termination proceedings*** includes an inquiry in respect of a complaint (the ***HREOC complaint***):
- (a) made under the *Human Rights and Equal Opportunity Commission Act 1986*; and
 - (b) that relates to the termination of employment of an employee (whether or not as a result of an amendment of the complaint).
- (5) For the purposes of this section, an employee commences other termination proceedings of a kind referred to in subsection (4):

- (a) unless paragraph (b) applies—when the employee makes the HREOC complaint; or
- (b) if the HREOC complaint constitutes, or would constitute, other termination proceedings as a result of an amendment of the complaint—when the complaint is amended.

Schedule 1, item 168, page 372 (lines 1 to 3), omit section 172, substitute:

172 Court process

The fact that the model dispute resolution process, an alternative dispute resolution process or any other dispute resolution process applies in relation to a dispute does not affect any right of a party to the dispute to take court action to resolve it.

Schedule 1, item 168, page 372 (lines 5 to 20), omit section 173, substitute:

173 Model dispute resolution process

- (1) This Division sets out the *model dispute resolution process*.
- (2) The model dispute resolution process does not apply in relation to a particular dispute, unless it applies in relation to that dispute because of a provision of this Act, other than one contained in this Division, or a term of an award, a workplace agreement or a workplace determination.

Note: The model dispute resolution process applies in relation to a variety of disputes, including:

- (a) disputes about entitlements under the Australian Fair Pay and Conditions Standard (see section 89E); and
- (b) disputes about the terms of a workplace agreement, where the agreement itself includes the model dispute resolution process or is taken to include that process (see section 101A); and
- (c) disputes about the application of a workplace determination (see section 113D); and
- (d) disputes about the application of awards (see section 116A); and
- (e) disputes under Division 1 of Part VIA, which deals with meal breaks (see section 170AC); and
- (f) disputes under Division 1A of Part VIA, which deals with public holidays (see section 170AH); and
- (g) disputes under Division 5 of Part VIA, which deals with parental leave (see section 170KD).

Schedule 1, item 168, page 375 (lines 14 to 16), omit subsection 176C(1), substitute:

- (1) The Commission must refuse to conduct an alternative dispute resolution process under this Division in relation to a matter if:
 - (a) the dispute is not one that may be resolved using the model dispute resolution process; or
 - (b) the matter is the subject of proceedings or has already been settled as a result of proceedings, whether before a court or another body, under a law of the Commonwealth or of a State or Territory relating to the prevention of discrimination or to equal opportunity.

Schedule 1, item 168, page 381 (lines 21 and 22), omit paragraph 176L(2)(c), substitute:

- (c) be signed by the party to the dispute on that matter or those matters who is making the application; and

Schedule 1, item 168, page 385 (after line 15), at the end of Division 6, add:

176S Where anti-discrimination or equal opportunity proceedings in progress

A person must not conduct an alternative dispute resolution process in relation to a dispute on a matter if the matter is the subject of proceedings or has already been settled as a result of proceedings, whether before a court or another body, under a law of the Commonwealth or of a State or Territory relating to the prevention of discrimination or to equal opportunity.

Schedule 1, item 171, page 387 (table item 3, 3rd column), after paragraph (d), insert:

- (da) if the term is an outworker term (within the meaning of Division 6A of Part VI)—a person or eligible entity (within the meaning of Division 6A of Part VI) that is bound by the award;

Schedule 1, item 171, page 388 (line 1), omit “Note”, substitute “Note 1”.

Schedule 1, item 171, page 388 (after line 4), at the end of subsection 177AA(1), add:

Note 2: An outworker term is a protected award condition under section 101B.

Schedule 1, item 171, page 388 (after line 4), after subsection 177AA(1), insert:

- (1A) For the purposes of table items 2, 3, 4, 6, 6A and 7 in subsection (1), a reference to an employee is a reference to an employee who is affected by the breach of the applicable provision.
- (1B) For the purposes of table items 3 and 4 in subsection (1), a reference to an employer is a reference to an employer that is affected by the breach of the applicable provision.
- (1C) For the purposes of table item 5 in subsection (1), a reference to a person bound by the order is a reference to a person bound by the order who is affected by the breach of the order.

Schedule 1, item 193, page 403 (line 32), at the end of paragraph 208(1)(c), add “or”.

Schedule 1, item 193, page 403 (after line 32), after paragraph 208(1)(c), insert:

- (ca) an employee collective agreement, or an employer greenfields agreement, that is binding on an employee who is a member of the permit holder’s organisation;

Schedule 1, item 193, page 411 (lines 12 and 13), omit the definition of *employment record* in subsection 218(4), substitute:

employment record means a record relating to the employment of an employee:

- (a) that relates to any of the following matters:
 - (i) hours of work;

- (ii) overtime;
 - (iii) remuneration or other benefits;
 - (iv) leave;
 - (v) superannuation contributions;
 - (vi) termination of employment;
 - (vii) type of employment (for example, permanent, temporary, casual, full-time or part-time);
 - (viii) personal details of the employee;
 - (ix) any other matter prescribed by the regulations; or
- (b) that sets out the kind of industrial instrument that regulates the employment of the employee (for example, an AWA, a collective agreement, an award or a contract of employment).

Schedule 1, item 193, page 429 (line 20), omit “a registered”, substitute “an”.

Schedule 1, item 193, page 429 (lines 21 and 22), omit “a registered”, substitute “an”.

Schedule 1, item 193, page 430 (line 10), omit “a registered”, substitute “an”.

Schedule 1, item 193, page 430 (lines 11 and 12), omit “a registered”, substitute “an”.

Schedule 1, item 193, page 431 (line 7), omit “a registered”, substitute “an”.

Schedule 1, item 193, page 431 (lines 8 and 9), omit “a registered”, substitute “an”.

Schedule 1, item 193, page 433 (after line 18), after subsection 253(3), insert:

- (3A) An employer does not contravene subsection (1) because of paragraph 254(1)(i) unless the entitlement described in that paragraph is the sole or dominant reason for the employer doing any of the things described in paragraphs (1)(a), (b), (c), (d) and (e) of this section.

Schedule 1, item 193, page 434 (after line 3), at the end of section 253, add:

- (7) A person does not contravene subsection (4) because of paragraph 254(1)(i) unless the entitlement described in that paragraph is the sole or dominant reason for the person doing any of the things described in paragraphs (4)(a), (b), (c), (d) and (e) of this section.

Schedule 1, item 210, page 454 (lines 20 to 22), omit the item, substitute:

210 Paragraph 353A(1)(a)

Omit “persons under an award, a certified agreement or an AWA”, substitute “employees”.

210A Subsection 353A(2)

Omit “persons employed under an award, a certified agreement or an AWA to issue pay slips to those persons”, substitute “employees to issue pay slips to those employees”.

Schedule 1, item 221, page 457 (lines 5 and 6), omit the item, substitute:

221 Paragraphs 359(2)(fa) and (g)

Repeal the paragraphs, substitute:

- (g) penalties for offences against the regulations, not exceeding 10 penalty units; and
- (h) civil penalties for contraventions of the regulations, not exceeding:
 - (i) 5 penalty units for an individual; or

- (ii) 25 penalty units for a body corporate.

Schedule 1, item 240, page 461 (line 12), omit “7J(2)(d)”, substitute “7J(d)”.

Schedule 1, item 240, page 462 (line 8), omit subparagraph 492(1)(d)(iv), substitute:

- (iv) item 3 of the table in subsection 90H(3);
- (v) paragraph 90W(2)(b); and

Schedule 1, item 240, page 470 (line 36), at the end of subsection 503(4), add “(except to the extent that this would be an expansion of the ordinary meaning of that expression)”.

Schedule 1, item 240, page 475 (after line 18), after Division 8, insert:

Division 8A—Employee records and pay slips

512A Additional effect of Act—employee records and pay slips

Without affecting its operation apart from this section, section 353A also has effect in relation to the employment of any employee in Victoria, and for this purpose:

- (a) each reference in that section to an employer (within the meaning of that section) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and
- (b) each reference in that section to an employee (within the meaning of that section) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and
- (c) each reference in that section to employment (within the meaning of that section) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria.

Schedule 1, item 240, page 482 (line 26) to page 483 (line 14), omit section 527, substitute:

527 Additional effect of Act—exclusion of Victorian laws

- (1) This Act is intended to apply to the exclusion of all the following laws of Victoria so far as they would otherwise apply in relation to an employee or employer:
 - (a) a law of Victoria that applies to employment generally and relates to one or more of the following matters:
 - (i) agreements about matters pertaining to the relationship between an employer or employers in Victoria and an employee or employees in Victoria;
 - (ii) minimum terms and conditions of employment (other than minimum wages) for employees in Victoria;
 - (iii) setting and adjusting of minimum wages for employees in Victoria within a work classification;
 - (iv) termination, or proposed termination, of the employment of an employee in Victoria;
 - (v) freedom of association;
 - (b) a law of Victoria that is prescribed by regulations made for the purposes of this paragraph.

Victorian laws that are not excluded

- (2) However, subsection (1) does not apply to a law of Victoria so far as:

- (a) the law deals with the prevention of discrimination and is neither a State or Territory industrial law nor contained in such a law; or
- (b) the law is prescribed by the regulations as a law to which subsection (1) does not apply.

Definitions

- (3) In this section:

freedom of association has the same meaning as in subsection 4(6) of the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria.

minimum terms and conditions of employment has the same meaning as in subsection 4(4) of the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria.

minimum wage has the same meaning as in subsection 4(7) of the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria.

work classification has the same meaning as in section 496.

Note: See also clause 87 of Schedule 13 (common rules in Victoria), which has effect despite any other provision of this Act.

Schedule 1, item 287, page 492 (line 5), at the end of subsection 7(3), add “(except to the extent that this would be an expansion of the ordinary meaning of that expression)”.

Schedule 1, item 289, page 493 (lines 20 and 21), omit paragraphs 18A(3)(b) and (c), substitute:

- (b) a person who was an employer when admitted to membership, but who has not resigned or whose membership has not been terminated;
- (c) a person (other than an employee) who carries on business;
- (d) an officer of the association.

Schedule 1, page 502 (after line 20), after item 313, insert:

313A Subsection 93(1) of Schedule 1B (subparagraph (b)(i) of the definition of constituent part)

Omit “Part 4”, substitute “Part 2”.

313B Subsection 94(1) of Schedule 1B

Omit “Federal Court”, substitute “Commission”.

Note: The heading to section 94 is altered by omitting “**Federal Court**” and substituting “**Commission**”.

Schedule 1, page 502 (after line 33), after item 314, insert:

314A Paragraph 94(2)(a) of Schedule 1B

Omit “Court”, substitute “Commission”.

Schedule 1, page 503 (after line 17), after item 317, insert:

317A Paragraph 95(1)(b) of Schedule 1B

Repeal the paragraph, substitute:

- (b) address particulars of any proposal by the applicant for the apportionment of the assets and liabilities of the amalgamated organisation and the constituent part; and

(c) address such other matters as are prescribed.

317B Subsection 95(2) of Schedule 1B

Omit “Federal Court”, substitute “Commission”.

317C After subsection 95(3) of Schedule 1B

Insert:

(3A) If the applicant has insufficient information to prepare an outline that complies with subsection (3), the applicant may request the Industrial Registrar to:

- (a) give the applicant all information in the possession of the Industrial Registrar that may be relevant in the preparation of the outline; or
- (b) direct the amalgamated organisation to give the applicant all information in the possession of the organisation that may be relevant in the preparation of the outline.

(3B) The Industrial Registrar may provide that information, or direct the amalgamated organisation to provide that information.

(3C) The amalgamated organisation must comply with a direction of the Industrial Registrar under subsection (3B).

317D Subsection 95(4) of Schedule 1B

Omit “Federal Court”, substitute “Commission”.

317E Subsection 95(4) of Schedule 1B

Omit “the Court”, substitute “the Commission”.

317F Subsection 96(1) of Schedule 1B

Omit “Federal Court”, substitute “Commission”.

317G Paragraph 96(2)(b) of Schedule 1B

Omit “Court”, substitute “Commission”.

317H Subsection 96(3) of Schedule 1B

Omit “Court”, substitute “Commission”.

317I Subsection 97(1) of Schedule 1B

Omit “Federal Court”, substitute “Commission”.

317J Subsections 97(2) and (3) of Schedule 1B

Omit “Court” (wherever occurring), substitute “Commission”.

317K Subsection 98(1) of Schedule 1B

Omit “Federal Court”, substitute “Commission”.

317L Subsection 98(2) of Schedule 1B

Omit “Court” (wherever occurring), substitute “Commission”.

317M Subsection 99(1) of Schedule 1B

Omit “Registrar of the Federal Court”, substitute “Industrial Registrar”.

317N Subsection 100(1) of Schedule 1B

Omit “Federal Court”, substitute “Commission”.

317O Subsection 100(1) of Schedule 1B

Omit “the Court”, substitute “the Commission”.

317P Subparagraph 100(1)(b)(ii) of Schedule 1B

Omit “prescribed for the purposes of paragraph 95(1)(b)”, substitute “mentioned in paragraph 95(1)(b) or prescribed for the purposes of paragraph 95(1)(c)”.

317Q Subsections 100(2) and (3) of Schedule 1B

Omit “Court”, substitute “Commission”.

317R Paragraph 106(2)(a) of Schedule 1B

Repeal the paragraph.

317S Paragraph 107(1)(a) of Schedule 1B

Repeal the paragraph.

317T Subsection 108(1) of Schedule 1B

Omit “Federal Court”, substitute “Commission”.

317U Subsections 108(1), (2) and (3) of Schedule 1B

Omit “the Court” (wherever occurring), substitute “the Commission”.

317V At the end of Division 2 of Part 3 of Chapter 3 of Schedule 1B

Add:

108A Powers of the Commission to be exercised by President or Full Bench

The powers of the Commission under this Division are exercisable by:

- (a) the President; or
- (b) if the President directs—a Full Bench of which the President is a member.

Schedule 1, page 503 (after line 23), after item 319, insert:

319A Paragraph 109(2)(c) of Schedule 1B

Repeal the paragraph, substitute:

- (c) any proposal for the apportionment of the assets and liabilities of the amalgamated organisation and the constituent part contained in the outline under section 95 relating to the application for the ballot; and
- (d) if the constituent part is a separately identifiable constituent part—the proportion of the members of the amalgamated organisation that are included in the constituent part; and
- (e) the interests of the creditors of the amalgamated organisation.

319B Subsection 111(2) of Schedule 1B

Omit “the amalgamated organisation” (first occurring), substitute “a Registrar”.

319C Subsection 111(2) of Schedule 1B

Omit all the words after “was”, substitute “a constituent member of the constituent part.”.

319D Paragraph 111(6)(a) of Schedule 1B

After “effect from”, insert “the end of”.

319E Subsection 111(7) of Schedule 1B

Repeal the subsection, substitute:

- (7) If a person referred to in subsection (2) gives written notice in accordance with paragraph (3)(b), within the notice period, that he or she wants to remain a member of the amalgamated organisation, he or she remains a member of the amalgamated organisation.
- (7A) If a person referred to in subsection (2) fails to give written notice in accordance with paragraph (3)(b), he or she:
 - (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the end of the day after the end of the notice period; and
 - (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a).

319F Subsection 111(9) of Schedule 1B

Omit “Notwithstanding paragraph (7)(b), if a person to whom that paragraph”, substitute “Despite subsection (7A), if a person to whom that subsection”.

319G Subsection 111(9) of Schedule 1B

Omit all the words after “wishes to”, substitute “remain a member of the amalgamated organisation after the registration of the constituent part as an organisation under section 110, that person remains a member of the amalgamated organisation.”.

Schedule 1, page 511 (after line 17), after item 341, insert:

341A After paragraph 305(2)(b) of Schedule 1B

Insert:

- (ba) subsection 95(3C) (direction to provide information);

Schedule 1, page 512 (after line 21), after item 346, insert:

346A After paragraph 324(2)(o) of Schedule 1B

Insert:

- (oa) a person who was a party to a proceeding under Part 3 of Chapter 3;

Schedule 1, page 515 (after line 18), after item 348, insert:

348A After paragraph 340(1)(a) of Schedule 1B

Insert:

- (aa) matters in relation to which applications are made to the Court under subsection 109(1) (giving effect to withdrawal of constituent part from amalgamated organisation); and
- (ab) matters in relation to which applications are made to the Court under subsection 118(2) (giving effect to requirement to take necessary steps in relation to withdrawal from amalgamation); and
- (ac) matters in relation to which applications are made to the Court under subsection 125(1) (resolving difficulties in relation to application of Part 3 of Chapter 3 to a matter); and

- (ad) matters in relation to which applications are made to the Court under subsection 128(1) (validation of certain acts done for purposes of proposed or completed withdrawal from amalgamation); and
- (ae) matters in relation to which applications are made to the Court under subsection 129(1) (invalidity in proposed or completed withdrawal from amalgamation); and

Schedule 1, item 358, page 516 (line 29), omit paragraph 2(e).

Schedule 1, item 359, page 521 (lines 6 to 10), omit all the words from and including “For” to the end of the definition of *industrial dispute* in subclause 2(1).

Schedule 1, item 359, page 524 (line 36), at the end of subclause 3(3), add “(except to the extent that this would be an expansion of the ordinary meaning of that expression)”.

Schedule 1, item 359, page 525 (lines 9 to 12), omit all the words from and including “To” to and including “and”, substitute “An award that is continued in force by this clause”.

Schedule 1, item 359, page 525 (lines 15 to 20), omit paragraph 4(2)(b), substitute:
 (b) any transitional employer bound by the award under Part 6A of this Schedule (transmission of business);

Schedule 1, item 359, page 525 (line 25), at the end of subclause 4(2), add:

- ; (e) each other entity that:
 - (i) is not an employer within the meaning of subsection 4AB(1) or an eligible entity within the meaning of Division 6A of Part VI; and
 - (ii) was bound by the award immediately before the reform commencement;
 but only in relation to outworker terms.

Schedule 1, item 359, page 525 (line 27), after “employer”, insert “or other entity”.

Schedule 1, item 359, page 525 (line 29), after “employer”, insert “or other entity”.

Schedule 1, item 359, page 525 (line 35), omit “that” (second occurring).

Schedule 1, item 359, page 525 (after line 36), at the end of clause 4, add:

- (5) In this clause:
 - outworker term* means a term of a transitional award that is:
 - (a) about the matter referred to in paragraph 17(1)(q); or
 - (b) incidental to such a matter, and included in the award as permitted by clause 24; or
 - (c) a machinery provision in respect of such a matter included in the award as permitted by clause 24.

Schedule 1, item 359, page 528 (line 20), omit “on the grounds of”, substitute “because of, or for reasons including,”.

Schedule 1, item 359, page 531 (after line 18), after paragraph 17(1)(g), insert:

- (ga) leave for the purpose of seeking other employment after the giving of a notice of termination by an employer to an employee;

Schedule 1, item 359, page 531 (after line 25), after paragraph 17(1)(i), insert:

- (ia) days to be substituted for, or a procedure for substituting, days referred to in paragraph (i);

Schedule 1, item 359, page 533 (lines 14 and 15), omit paragraph 18(1)(b), substitute:

- (b) conversion from casual employment to another type of employment;

Schedule 1, item 359, page 533 (line 34), at the end of paragraph 18(1)(j), add “in the meat industry”.

Schedule 1, item 359, page 533 (line 37), omit paragraph 18(1)(m).

Schedule 1, item 359, page 534 (after line 7), after subclause 18(2), insert:

- (2A) Paragraph (1)(g) does not limit the operation of paragraph 17(1)(q).

Schedule 1, item 359, page 535 (line 15), after “a term”, insert “, or more than one term,”.

Schedule 1, item 359, page 535 (after line 28), after subclause 22(4), insert:

- (4A) If more than one term of a transitional award is about a matter referred to in subclause (3), then those terms, taken together, constitute the preserved transitional award term of that transitional award about that matter.

Schedule 1, item 359, page 536 (after line 31), after subclause 24(2), insert:

- (2A) However, to avoid doubt, paragraph 18(1)(g) does not limit the operation of subclauses (1) and (3) to the extent that those subclauses relate to the matter referred to in paragraph 17(1)(q).

Schedule 1, item 359, page 546 (lines 13 and 14), omit the heading to clause 40, substitute:

40 Principles for varying transitional awards

Schedule 1, item 359, page 546 (line 18), after “established”, insert “under subclause (1)”.

Schedule 1, item 359, page 546 (after line 31), at the end of clause 40, add:

- (5) To avoid doubt, principles established under subclause (1) must be consistent with, and cannot be such as to override, a provision of this Act that relates to the variation of transitional awards.

Schedule 1, item 359, page 564 (lines 22 to 27), omit paragraph 69(1)(d), substitute:

- (d) any transitional employer bound by the award under Part 6A of this Schedule (transmission of business);

Schedule 1, item 359, page 565 (after line 23), after Part 6, insert:

Part 6A—Transmission of transitional awards

Division 1—Introductory

72A Object

The object of this Part is to provide for the transfer of obligations under transitional awards when the whole, or a part, of a transitional employer’s business is transmitted to another transitional employer.

72B Simplified outline

- (1) Division 2 describes the transmission of business situation this Part is designed to deal with. It identifies the *old transitional employer*, the *new transitional employer*, the *business being transferred*, the *time of transmission* and the *transferring transitional employees*.

- (2) Division 3 deals with the transmission of certain transitional awards.
- (3) Division 4 deals with notification requirements, the lodgment of notices with the Employment Advocate and the enforcement of the new transitional employer's obligations by pecuniary penalties.
- (4) Division 5 allows regulations to be made to deal with other transmission of business issues in relation to transitional awards.

72C Definitions

In this Part:

business being transferred has the meaning given by subclause 72D(2).

Court means the Federal Court of Australia or the Federal Magistrates Court.

new transitional employer has the meaning given by subclause 72D(1).

old transitional employer has the meaning given by subclause 72D(1).

operational reasons has the meaning given by subsection 170CE(5D).

time of transmission has the meaning given by subclause 72D(3).

transferring transitional employee has the meaning given by clauses 72E and 72F.

transmission period has the meaning given by subclause 72D(4).

Division 2—Application of Part

72D Application of Part

- (1) This Part applies if a person (the ***new transitional employer***) becomes the successor, transmittee or assignee of the whole, or a part, of a business of another person (the ***old transitional employer***).
- (2) The business, or the part of the business, to which the new transitional employer is successor, transmittee or assignee is the ***business being transferred*** for the purposes of this Part.
- (3) The time at which the new transitional employer becomes the successor, transmittee or assignee of the business being transferred is the ***time of transmission*** for the purposes of this Part.
- (4) The period of 12 months after the time of transmission is the ***transmission period*** for the purposes of this Part.

72E Transferring transitional employees

- (1) A person is a ***transferring transitional employee*** for the purposes of this Part if:
 - (a) the person is employed by the old transitional employer immediately before the time of transmission; and
 - (b) the person:
 - (i) ceases to be employed by the old transitional employer; and
 - (ii) becomes employed by the new transitional employer in the business being transferred; within 2 months after the time of transmission.

- (2) A person is also a ***transferring transitional employee*** for the purposes of this Part if:
- (a) the person is employed by the old transitional employer at any time within the period of 1 month before the time of transmission; and
 - (b) the person's employment with the old transitional employer is terminated by the old transitional employer before the time of transmission for genuine operational reasons or for reasons that include genuine operational reasons; and
 - (c) the person becomes employed by the new transitional employer in the business being transferred within 2 months after the time of transmission.
- (3) In applying clause 72F and Division 3 in relation to a person who is a transferring transitional employee under subclause (2) of this clause, a reference in those provisions to a particular state of affairs existing immediately before the time of transmission is to be read as a reference to that state of affairs existing immediately before the person last ceased to be an employee of the old transitional employer.

72F Transferring transitional employees in relation to particular transitional award

- (1) A transferring transitional employee is a ***transferring transitional employee*** in relation to a particular transitional award if:
- (a) the transitional award applied to the transferring transitional employee's employment with the old transitional employer immediately before the time of transmission; and
 - (b) when the transferring transitional employee becomes employed by the new transitional employer, the nature of the transferring transitional employee's employment with the new transitional employer is such that the transitional award is capable of applying to employment of that nature.
- (2) The transferring transitional employee ceases to be a ***transferring transitional employee*** in relation to the transitional award if:
- (a) the transferring transitional employee ceases to be employed by the new transitional employer after the time of transmission; or
 - (b) the nature of the transferring transitional employee's employment with the new transitional employer changes so that the transitional award is no longer capable of applying to employment of that nature; or
 - (c) the transmission period ends.

Division 3—Transmission of transitional award

72G Transmission of transitional award

New transitional employer bound by transitional award

- (1) If:
- (a) the old transitional employer was, immediately before the time of transmission, bound by a transitional award that regulated the employment of employees of the old transitional employer; and

- (b) there is at least one transferring transitional employee in relation to the transitional award; and
- (c) but for this clause, the new transitional employer would not be bound by the transitional award in relation to the transferring transitional employees in relation to the transitional award; and
- (d) the new transitional employer is a transitional employer at the time of transmission;

the new transitional employer is bound by the transitional award by force of this clause.

Note 1: Paragraph (c)—the transitional award might already bind the new transitional employer, for example, because the new transitional employer happens to be a respondent to the transitional award.

Note 2: The new transitional employer must notify transferring transitional employees and lodge a copy of a notice with the Employment Advocate (see clauses 72J and 72K).

Period for which new transitional employer remains bound

- (2) The new transitional employer remains bound by the transitional award, by force of this clause, until whichever of the following first occurs:
 - (a) the transitional award is revoked;
 - (b) there cease to be any transferring transitional employees in relation to the transitional award;
 - (c) the new transitional employer ceases to be bound by the transitional award under Part 5;
 - (d) the transmission period ends;
 - (e) the transitional period ends.

New transitional employer bound only in relation to employment of transferring transitional employees

- (3) The new transitional employer is bound by the transitional award, by force of this clause, only in relation to the employment of employees who are transferring transitional employees in relation to the transitional award.

Commission order

- (4) Subclauses (1) and (2) have effect subject to any order of the Commission.
- (5) To avoid doubt, the Commission cannot make an order under subclause (4) that would have the effect of extending the transmission period.

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

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

72H Interaction rules

Transmitted award

- (1) This clause applies if subclause 72G(1) applies to a transitional award (the *transmitted award*).

Division 3 pre-reform certified agreement

- (2) If:
- (a) the new transitional employer is bound by a Division 3 pre-reform certified agreement (within the meaning of Schedule 14); and
 - (b) a transferring transitional employee in relation to the transmitted award was not bound by that certified agreement immediately before the time of transmission; and
 - (c) that certified agreement would, but for this subclause, apply to the transferring transitional employee's employment with the new transitional employer and would prevail over the transmitted award to the extent of any inconsistency with the transmitted award;
- the transmitted award, to the extent to which it relates to the transferring transitional employee's employment with the new transitional employer, prevails over that certified agreement to the extent of any inconsistency with that certified agreement.
- (3) Subclause (2) has effect despite section 170LY of the pre-reform Act (as applied by clause 2 of Schedule 14).

Division 4—Notice requirements and enforcement

72J Informing transferring transitional employees about transmitted award

- (1) This clause applies if:
- (a) a transitional employer is bound by a transitional award (the *transmitted award*) in relation to a transferring transitional employee by force of clause 72G; and
 - (b) a person is a transferring transitional employee in relation to the transmitted award.
- (2) Within 28 days after the transferring transitional employee starts being employed by the transitional employer, the transitional employer must take reasonable steps to give the transferring transitional employee a written notice that complies with subclause (3).

Note: This is a civil remedy provision, see clause 72M.

- (3) The notice must:
- (a) identify the transmitted award; and
 - (b) state that the transitional employer is bound by the transmitted award; and
 - (c) specify the date on which the transmission period for the transmitted award ends; and
 - (d) state that the transitional employer will remain bound by the transmitted award until the end of the transmission period unless the transmitted award is revoked, or otherwise ceases to be in operation, before the end of that period.

72K Lodging copy of notice with Employment Advocate

Only one transferring transitional employee

- (1) If a transitional employer gives a notice under subclause 72J(2) to the only person who is a transferring transitional employee in relation to a transitional award, the transitional employer must lodge a copy of the notice with the Employment Advocate within 14 days after the notice

is given to the transferring transitional employee. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 72M.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

Multiple transferring transitional employees and notices all given on the one day

- (2) If:
- (a) a transitional employer gives a number of notices under subclause 72J(2) to people who are transferring transitional employees in relation to a transitional award; and
 - (b) all of those notices are given on the one day;

the transitional employer must lodge a copy of one of those notices with the Employment Advocate within 14 days after that notice is given. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 72M.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

Multiple transferring transitional employees and notices given on different days

- (3) If:
- (a) a transitional employer gives a number of notices under subclause 72J(2) to people who are transferring transitional employees in relation to a transitional award; and
 - (b) the notices are given on different days;

the transitional employer must lodge a copy of the notice, or one of the notices that was given on the earliest of those days, with the Employment Advocate within 14 days after that notice is given. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 72M.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

Lodgment with Employment Advocate

- (4) A notice is lodged with the Employment Advocate in accordance with this subclause only if it is actually received by the Employment Advocate.

Note: This means that section 29 of the *Acts Interpretation Act 1901* (to the extent that it deals with the time of service of documents) does not apply to lodgment of a notice.

72L Employment Advocate must issue receipt for lodgment

- (1) If a notice is lodged under clause 72K, the Employment Advocate must issue a receipt for the lodgment.
- (2) The receipt must state that the notice was lodged under clause 72K on a particular day.
- (3) The Employment Advocate must give a copy of the receipt to the person who lodged the notice under clause 72K.

72M Civil penalties

- (1) The following are *civil remedy provisions* for the purposes of this section:
 - (a) subclause 72J(2);
 - (b) subclauses 72K(1), (2) and (3).

Note: Division 4 of Part VIII contains other provisions relevant to civil remedies.
- (2) The Court may order a person who has contravened a civil remedy provision to pay a pecuniary penalty.
- (3) The penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in other cases.
- (4) An application for an order under subclause (2) in relation to a transitional award may be made by:
 - (a) a transferring transitional employee; or
 - (b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring transitional employee; or
 - (c) a workplace inspector.

Division 5—Miscellaneous**72N Regulations**

The regulations may make provision in relation to the effects that the succession, transmission or assignment of a business, or a part of a business, have on the obligations of transitional employers, and the terms and conditions of transitional employees, under transitional awards.

Schedule 1, item 359, page 567 (lines 15 to 19), omit all the words from and including “For” to the end of the definition of *industrial dispute* in subclause 75(1).

Schedule 1, item 359, page 568 (after line 11), at the end of clause 77, add:

- (3) The regulations may provide that for the purposes of subclause (1):
 - (a) *parental leave* does not include one or both of the following:
 - (i) special maternity leave (within the meaning of section 94C);
 - (ii) paid leave under subparagraph 94F(2)(b)(i) or (ii); and
 - (b) *personal/carer’s leave* does not include one or both of the following:
 - (i) compassionate leave (within the meaning of section 93Q (as that section applies to an employee in Victoria because of section 492));
 - (ii) unpaid carer’s leave (within the meaning of section 93D (as that section applies to an employee in Victoria because of section 492)).
- (4) Regulations under subclause (3) may be expressed to apply generally or in respect of employees engaged in specified types of employment, such as full-time employment, part-time employment, casual employment, regular part-time employment or shift work.

Schedule 1, item 359, page 575 (line 29), after “100B,”, insert “101B, 103R,”.

Schedule 1, item 359, page 576 (line 22) to page 577 (line 2), omit clause 94, substitute:

94 Transmission of business

Subclause 72J(3) has effect, in relation to a transitional Victorian reference award, as if the following paragraphs were added at the end:

- (e) specify the kinds of instruments (if any) that can replace, or exclude the operation of, the transmitted award; and
- (f) set out the source for the terms and conditions that the employer intends to apply to the matters that are dealt with by the transmitted award when the transmitted award ceases to bind the employer; and
- (g) identify any collective agreement or award that binds:
 - (i) the employer; and
 - (ii) employees of the employer who are not transferring employees in relation to the transmitted award.

Schedule 1, item 359, page 577 (line 7), after “100B,” insert “101B, 103R,”.

Schedule 1, item 359, page 577 (after line 8), at the end of Division 1, add:

Subdivision H—Ceasing to be bound by transitional Victorian reference award

**95A Ceasing to be bound by transitional Victorian reference award—
inability to resolve industrial dispute under this Schedule**

Clause 59 has effect, in relation to a transitional Victorian reference award, as if the reference in subclause 59(3) to must were read as a reference to may.

Schedule 1, item 359, page 577 (after line 28), at the end of clause 97, add:

- (3) In this clause:
 - personal/carer’s leave* includes war service sick leave, infectious diseases sick leave and other like forms of sick leave.
- (4) The regulations may provide that for the purposes of subclause (2):
 - (a) *parental leave* does not include one or both of the following:
 - (i) special maternity leave (within the meaning of section 94C);
 - (ii) paid leave under subparagraph 94F(2)(b)(i) or (ii); and
 - (b) *personal/carer’s leave* does not include one or both of the following:
 - (i) compassionate leave (within the meaning of section 93Q);
 - (ii) unpaid carer’s leave (within the meaning of section 93D).
- (5) Regulations under subclause (4) may be expressed to apply generally or in respect of employees engaged in specified types of employment, such as full-time employment, part-time employment, casual employment, regular part-time employment or shift work.

Schedule 1, item 359, page 580 (after line 27), after Subdivision B, insert:

Subdivision BA—Transmission of business

101A Transmission of business

- (1) This clause applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.
- (2) Subclause 72J(3) has effect, in relation to the award, as if the following paragraphs were added at the end:
 - (e) specify the kinds of instruments (if any) that can replace, or exclude the operation of, the transmitted award; and
 - (f) set out the source for the terms and conditions that the employer intends to apply to the matters that are dealt with by the transmitted award when the transmitted award ceases to bind the employer; and
 - (g) identify any collective agreement or award that binds:
 - (i) the employer; and
 - (ii) employees of the employer who are not transferring employees in relation to the transmitted award.

Schedule 1, item 359, page 580 (line 34), after “100B,” insert “101B, 103R,”.

Schedule 1, item 359, page 580 (after line 35), at the end of Division 2, add:

Subdivision D—Ceasing to be bound by transitional award

102A Ceasing to be bound by transitional award—inability to resolve industrial dispute under this Schedule

- (1) This clause applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.
- (2) Clause 59 has effect, in relation to the award, as if the reference in subclause 59(3) to must were read as a reference to may.

Schedule 1, item 359, page 581 (before line 3), before clause 103, insert:

102A Continuation of hearing by Commission

For the purposes of this Schedule, subsection 34(4) applies as if the reference to any award were a reference to any transitional award.

Schedule 1, item 359, page 581 (line 8), at the end of clause 103, add:

; and (c) “award or” were omitted from paragraph (4)(c).

Schedule 1, item 359, page 582 (line 14), omit “4A”, substitute “5”.

Schedule 1, item 359, page 582 (line 30), at the end of clause 107, add:

; and (e) paragraph (da) of table item 3 of subsection 177AA(1) were replaced by the following paragraph:

- (da) if the term is an outworker term (within the meaning of subclause 4(5) of Schedule 13)—a person, or an entity referred to in paragraph 4(2)(e) of that Schedule, that is bound by the transitional award;

Schedule 1, item 359, page 582 (after line 30), after clause 107, insert:

107A Application of provisions of Act relating to freedom of association

For the purposes of this Schedule, Part XA (Freedom of association) applies, to the extent possible, as if:

- (a) a reference to an award were a reference to a transitional award; and
- (b) a reference to an employee were a reference to a transitional employee; and
- (c) a reference to an employer were a reference to a transitional employer; and
- (d) section 241 had not been enacted; and
- (e) the following section were inserted after section 244:

244A Industrial action

This Part applies to conduct carried out with a purpose or intent relating to a person's participation or non-participation in industrial action within the meaning of clause 3 of Schedule 13.

107B Contracts entered into by agents of transitional employees

For the purposes of this Schedule, section 338 applies, to the extent possible, as if:

- (a) a reference to an employee were a reference to a transitional employee; and
- (b) a reference to an employer were a reference to a transitional employer; and
- (c) a reference to an award were a reference to a transitional award.

107C Records relating to transitional employees

For the purposes of this Schedule, section 353A applies, to the extent possible, as if:

- (a) a reference to an employee were a reference to a transitional employee; and
- (b) a reference to an employer were a reference to a transitional employer; and
- (c) a reference to employment were a reference to employment within the meaning of this Schedule.

107D Interpretation of transitional awards

For the purposes of this Schedule, section 413 applies as if a reference to an award were a reference to a transitional award.

Schedule 1, item 359, page 582 (line 33), after "matters", insert "or persons".

Schedule 1, item 360, page 593 (lines 4 to 6), omit clause 22, substitute:

22 Application of Part

This Part applies in relation to a section 170MX award that:

- (a) was in force just before the reform commencement; or
- (b) was made after the reform commencement because of Part 8 of this Schedule.

Schedule 1, item 360, page 596 (after line 19), at the end of Part 8, add:

32A Approvals of section 170MX awards under pre-reform Act after the reform commencement

- (1) This clause applies if the Commission has started to exercise arbitration powers in accordance with subsection 170MX(3) of the pre-reform Act before the reform commencement to make an award under that subsection.
- (2) The pre-reform Act continues to apply, despite the repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*, in relation to the making of the award.

Schedule 1, item 360, page 597 (lines 13 to 15), omit the definition of *Victorian reference section 170MX award* in clause 33, substitute:

Victorian reference section 170MX award means a section 170MX award that:

- (a) was made before the reform commencement under this Act in its operation in accordance with repealed Division 2 of Part XV; or
- (b) was made after the reform commencement because of clause 32A of this Schedule (as that clause applies because of clause 38A of this Schedule).

Schedule 1, item 360, page 598 (after line 23), after clause 38, insert:

38A Approvals of section 170MX awards under pre-reform Act after the reform commencement

Clause 32A has effect, in relation to the making of a section 170MX award under this Act in its operation in accordance with repealed Division 2 of Part XV, as if the reference in subclause 32A(1) to subsection 170MX(3) of the pre-reform Act were read as a reference to that subsection as it had effect because of repealed Division 2 of Part XV.

Schedule 1, item 360, page 599 (after line 17), after the definition of *notional agreement preserving State awards* in subclause 1(1), insert:

preserved collective State agreement is an agreement that is taken to come into operation under clause 10.

preserved individual State agreement is an agreement that is taken to come into operation under clause 3.

Schedule 1, item 360, page 599 (lines 21 and 22), omit the definition of *preserved State agreement* in subclause 1(1), substitute:

preserved State agreement means:

- (a) a preserved individual State agreement; or
- (b) a preserved collective State agreement.

Schedule 1, item 360, page 610 (lines 8 to 16), omit subclause 23(1), substitute:

- (1) During the period beginning on the reform commencement day and ending on the nominal expiry date of a preserved collective State agreement, an employee, organisation or officer covered by subclause (2) must not organise or engage in industrial action (whether or not that action relates to a matter dealt with in the agreement).

Note 1: This subclause is a civil remedy provision: see subclause (4).

Note 2: Action that contravenes this subclause is not protected action (see clause 25).

Schedule 1, item 360, page 611 (line 13), omit paragraph 23(7)(c), substitute:

- (c) any person affected by the industrial action; or
- (d) any other person prescribed by the regulations.

Schedule 1, item 360, page 611 (line 24), omit paragraph 23(8)(d), substitute:

- (d) any person affected by the industrial action; or
- (e) any other person prescribed by the regulations.

Schedule 1, item 360, page 613 (line 16), after “Engaging in”, insert “or organising”.

Schedule 1, item 360, page 613 (after line 17), after Division 6, insert:

Division 6A—Protected conditions

25A Protected conditions where employment was subject to preserved State agreement

- (1) This clause applies if:
 - (a) a person’s employment was subject to a preserved State agreement; and
 - (b) the agreement ceased to operate because a workplace agreement came into operation in relation to the employee.
- (2) Protected preserved conditions:
 - (a) are taken to be included in the workplace agreement; and
 - (b) have effect in relation to the employment of that person; and
 - (c) have that effect subject to any terms of the workplace agreement that expressly exclude or modify all or part of them.
- (3) Despite paragraph (2)(c), those protected preserved conditions have effect in relation to the employment of that person to the extent that those protected preserved conditions are about outworker conditions, despite any terms of the workplace agreement that provide, in a particular respect, a less favourable outcome for that person.
- (4) In this clause:

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

outworker conditions means conditions (other than pay) for outworkers, but only to the extent necessary to ensure that their overall conditions of employment are fair and reasonable in comparison with the conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer’s business or commercial premises.

protected allowable award matters means the following matters:

- (a) rest breaks;
- (b) incentive-based payments and bonuses;
- (c) annual leave loadings;
- (d) observance of days declared by or under a law of a State or Territory to be observed generally within that State or Territory,

- or a region of that State or Territory, as public holidays by employees who work in that State, Territory or region, and entitlements of employees to payment in respect of those days;
- (e) days to be substituted for, or a procedure for substituting, days referred to in paragraph (d);
 - (f) monetary allowances for:
 - (i) expenses incurred in the course of employment; or
 - (ii) responsibilities or skills that are not taken into account in rates of pay for employees; or
 - (iii) disabilities associated with the performance of particular tasks or work in particular conditions or locations;
 - (g) loadings for working overtime or for shift work;
 - (h) penalty rates;
 - (i) outworker conditions;
 - (j) any other matter specified in the regulations.

Note: These matters are the same as certain allowable award matters mentioned in section 116.

protected preserved condition, in relation to the employment of a person, means a term of a State award or a provision of a State or Territory industrial law, as in force immediately before the reform commencement, that would have determined a term or condition of that employment, had the person been employed at that time and that employment not been subject to a State employment agreement, to the extent that the term or provision:

- (a) is:
 - (i) about protected allowable award matters; or
 - (ii) incidental to a protected allowable award matter and may be included in an award as permitted by section 116I; or
 - (iii) a machinery provision that is in respect of a protected allowable award matter and may be included in an award as permitted by section 116I; and
- (b) is not about:
 - (i) matters that are not allowable award matters because of section 116B; or
 - (ii) any other matters specified in the regulations.

Schedule 1, item 360, page 614 (line 27) to page 619 (line 26), omit Divisions 1 and 2, substitute:

Division 1—What is a notional agreement preserving State awards?

Subdivision A—What is a notional agreement preserving State awards?

31 Notional agreements preserving State awards

If, immediately before the reform commencement, the terms and conditions of employment of one or more employees in a single business or a part of a single business:

- (a) were not determined under a State employment agreement; and
- (b) were determined, in whole or in part, under a State award (the ***original State award***) or a State or Territory industrial law (the ***original State law***);

a *notional agreement preserving State awards* is taken to come into operation on the reform commencement in respect of the business or that part of the business.

Subdivision B—Who is bound by or subject to a notional agreement preserving State awards?

32 Who is bound by a notional agreement preserving State awards?

Current employees

- (1) Any person who:
- (a) immediately before the reform commencement, was bound by, or a party to, the original State award or original State law; and
 - (b) is one of the following:
 - (i) an employer in the business, or that part of the business;
 - (ii) an employee who is employed in the business, or that part of the business, who was so employed immediately before the reform commencement, who was not bound by, or a party to, a State employment agreement at that time and whose employment was not subject to such an agreement at that time;
 - (iii) an organisation that has at least one member who is such an employee, and that is entitled to represent the industrial interests of at least one such employee;

is bound by the notional agreement.

Future employees

- (2) If:
- (a) a person is employed in the business or that part of the business after the reform commencement; and
 - (b) under the terms of the original State award or the original State law, as in force immediately before the reform commencement, the person would have been bound by that award or law; and
 - (c) the person is not bound by a preserved State agreement;
- the person is bound by the notional agreement.

33 Whose employment is subject to a notional agreement preserving State awards?

Current employees

- (1) The employment of a person in the business or that part of the business is subject to the notional agreement, if:
- (a) that employment was, immediately before the reform commencement, subject to the original State award or the original State law; and
 - (b) that employment was not subject to a State employment agreement at that time.

Future employees

- (2) If:
- (a) a person is employed in the business, or that part of the business, after the reform commencement; and

- (b) under the terms of the original State award or the original State law, that employment would have been subject to that award or that law; and
- (c) that employment is not subject to a preserved State agreement; that employment is subject to the notional agreement.

Subdivision C—Terms of a notional agreement preserving State awards

34 Terms of a notional agreement preserving State awards

- (1) If, immediately before the reform commencement, a term of the original State award would have determined, in whole or in part, a term or condition of employment in the business or that part of the business of a person who was not bound by or a party to a State employment agreement, or whose employment was not subject to such an agreement, then to that extent, that term, as in force at that time, is taken to be a term of the notional agreement.
- (2) If, immediately before the reform commencement, a provision of a State or Territory industrial law would have determined, in whole or in part, a preserved entitlement of a person employed in the business or that part of the business who was not bound by or a party to a State employment agreement, or whose employment was not subject to such an agreement, then to that extent, that provision, as in force at that time, is taken to be a term of the notional agreement.
- (3) In this clause:

preserved entitlement means:

- (a) an entitlement to:
 - (i) annual leave and annual leave loadings; or
 - (ii) parental leave, including maternity leave and adoption leave; or
 - (iii) personal/carer's leave; or
 - (iv) leave relating to bereavement; or
 - (v) ceremonial leave; or
 - (vi) notice of termination; or
 - (vii) redundancy pay; or
 - (viii) loadings for working overtime or shift work; or
 - (ix) penalty rates, including the rate of payment for work on a public holiday; or
 - (x) rest breaks; or
- (b) another prescribed entitlement.

35 Powers of State industrial authorities

- (1) If a notional agreement preserving State awards confers a function or power on a State industrial authority, that function must not be performed and that power must not be exercised by the State industrial authority on or after the reform commencement.
- (2) However, the employer and the persons bound by the notional agreement may, by agreement, confer such a function or power on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

36 Dispute resolution processes

- (1) A notional agreement preserving State awards is taken to include a term requiring disputes about the application of the agreement to be resolved in accordance with the model dispute resolution process.
- (2) Any term of the notional agreement that would otherwise deal with the resolution of those disputes is void to that extent.

37 Prohibited content

A term of a notional agreement preserving State awards is void to the extent that it contains prohibited content of a prescribed kind.

Division 2—Effect and operation of a notional agreement preserving State awards**38 Effect of a notional agreement preserving State awards**

- (1) Except as provided in or under this Part, or otherwise in or under this Act, a notional agreement preserving State awards has effect according to its terms.
- (2) This Part has effect despite the terms of the original State award, the original State law or any other law of a State or Territory.
- (3) None of the terms and conditions of employment included in the notional agreement are enforceable under the law of a State or Territory.

38A Operation of a notional agreement preserving State awards

- (1) A notional agreement preserving State awards ceases to be in operation at the end of a period of 3 years beginning on the reform commencement.
- (2) A notional agreement preserving State awards ceases to be in operation in relation to an employee if a workplace agreement comes into operation in relation to the employee.
 Note: The reference in subsection (2) to a workplace agreement includes a reference to a workplace determination (see section 113F).
- (3) A notional agreement preserving State awards ceases to be in operation in relation to an employee if the employee becomes bound by an award.
- (4) If the notional agreement has ceased operating in relation to an employee because of subclause (2) or (3), the agreement can never operate again in relation to that employee.

Schedule 1, item 360, page 624 (line 9), after “term”, insert “, or more than one term,”.

Schedule 1, item 360, page 624 (after line 25), after subclause 45(3), insert:

- (3A) If more than one term of a notional agreement preserving State awards is about a matter referred to in subclause (2), then those terms, taken together, constitute the preserved notional term of that notional agreement about that matter.

Schedule 1, item 360, page 624 (lines 30 and 31), omit paragraph 45(5)(a), substitute:

- (a) the matter referred to in paragraph (1)(c) does not include one or both of the following:
 - (i) special maternity leave (within the meaning of section 94C);
 - (ii) the entitlement under section 94F to transfer to a safe job or to take paid leave; and

Schedule 1, item 360, page 625 (lines 5 to 7), omit the note, substitute:

Note: The effect of excluding a form of leave or an entitlement in relation to a matter is that the entitlement in relation to that form of leave or matter under the Australian Fair Pay and Conditions Standard will automatically apply.

Schedule 1, item 360, page 629 (after line 14), after subclause 52(2), insert:

- (2A) Despite paragraph (2)(c), those protected notional conditions have effect in relation to the employment of that person to the extent that those protected notional conditions are about outworker conditions, despite any terms of the workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

Schedule 1, item 360, page 629 (after line 35), after paragraph (d) of the definition of *protected allowable award matters* in subclause 52(3), insert:

- (da) days to be substituted for, or a procedure for substituting, days referred to in paragraph (d);

Schedule 1, item 360, page 630 (line 15), omit paragraph (a) of the definition of *protected notional conditions* in subclause 52(3), substitute:

- (a) are:
 - (i) about protected allowable award matters; or
 - (ii) incidental to protected allowable award matters and may be included in an award as permitted by section 116I; or
 - (iii) machinery provisions that are in respect of protected allowable award matters and may be included in an award as permitted by section 116I; and

Schedule 1, item 360, page 630 (line 17), omit subparagraph (b)(i) of the definition of *protected notional conditions* in subclause 52(3), substitute:

- (i) matters that are not allowable award matters because of section 116B; or

Schedule 1, item 360, page 630 (after line 18), after Division 6, insert:

Division 6A—Industrial action during the life of an enterprise award

52AA Action taken during life of enterprise award not protected

- (1) Engaging in or organising industrial action is not protected action if:
 - (a) either:
 - (i) the person engaging in the industrial action is bound by a notional agreement preserving State awards that includes terms and conditions from an enterprise award; or
 - (ii) the employment of the person engaging in the industrial action is subject to such a notional agreement; and
 - (b) a term or condition of the enterprise award included in the notional agreement relates to industrial action; and

- (c) engaging in the industrial action would breach that term or condition; and
- (d) the nominal expiry date of the enterprise award has not yet passed.

(2) In this clause:

enterprise award means a State award:

- (a) that regulates a term or condition of employment of a person or persons by an employer in a single business or a part of a single business specified in the award; and
- (b) that is specified to have effect for a period, either by reference to an actual or nominal expiry date or by reference to an actual or nominal period; and
- (c) a term of which provides that one or more of the parties will not make further claims before the nominal expiry date for the award.

nominal expiry date for an enterprise award, means the last day of the actual or nominal period during which the enterprise award is specified to have effect.

Schedule 1, item 360, page 632 (line 10), omit “Division 2”.

Schedule 1, item 360, page 632 (line 31), omit “(within the meaning of Schedule 14)”.

Schedule 1, item 360, page 632 (after line 33), after the definition of **Division 2 pre-reform certified agreement** in clause 3, insert:

Division 3 pre-reform certified agreement means a pre-reform certified agreement that was made under Division 3 of Part VIB of this Act before the reform commencement.

Schedule 1, item 360, page 633 (after line 10), after the definition of **pre-reform AWA** in clause 3, insert:

pre-reform certified agreement has the same meaning as in Schedule 14.

Schedule 1, item 360, page 633 (after line 10), after the definition of **pre-reform AWA** in clause 3, insert:

preserved collective State agreement has the same meaning as in Schedule 15.

preserved individual State agreement has the same meaning as in Schedule 15.

Schedule 1, item 360, page 633 (line 21), omit “Division 2”.

Schedule 1, item 360, page 633 (after line 25), after the definition of **transitional industrial instrument** in clause 3, insert:

transitional instrument means:

- (a) a pre-reform AWA; or
- (b) a pre-reform certified agreement; or
- (c) a notional agreement preserving State awards; or
- (d) a preserved State agreement.

Schedule 1, item 360, page 634 (after line 24), at the end of subclause 5(1), add:

Note: Clause 6A of this Schedule provides that references to *employees* and *employment* have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 4AB(1)).

Schedule 1, item 360, page 635 (after line 3), at the end of subclause 5(2), add:

Note: Clause 6A of this Schedule provides that references to *employees* and *employment* have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 4AB(1)).

Schedule 1, item 360, page 635 (after line 18), at the end of subclause 6(1), add:

Note: Clause 6A of this Schedule provides that references to *employees* and *employment* have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 4AB(1)).

Schedule 1, item 360, page 635 (after line 26), at the end of subclause 6(2), add:

Note: Clause 6A of this Schedule provides that references to *employees* and *employment* have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 4AB(1)).

Schedule 1, item 360, page 635 (after line 28), at the end of Part 2, add:

6A Application of Schedule to certain Division 3 pre-reform certified agreements

- (1) This clause applies if the old employer in relation to a Division 3 pre-reform certified agreement is not an employer (within the meaning of subsection 4AB(1)).
- (2) In applying this Schedule to the Division 3 pre-reform certified agreement, references in this Schedule to:
 - (a) an employee; or
 - (b) employment;
 have their ordinary meanings.

Schedule 1, item 360, page 637 (line 13) to page 643 (line 34), omit Part 4, substitute:

Part 4—Transmission of pre-reform certified agreements

Division 1—General

10 Transmission of pre-reform certified agreement

New employer bound by Division 2 pre-reform certified agreement

- (1) If:
 - (a) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) employees of the old employer;
 were bound by a Division 2 pre-reform certified agreement; and
 - (b) there is at least one transferring employee in relation to the Division 2 pre-reform certified agreement;
 the new employer is bound by the Division 2 pre-reform certified agreement by force of this subclause.

Note 1: The new employer must notify transferring employees and lodge a copy of the notices with the Employment Advocate (see clauses 28 and 29).

Note 2: See also clause 11 for the interaction between the Division 2 pre-reform certified agreement and other industrial instruments.

New employer bound by Division 3 pre-reform certified agreement

(2) If:

- (a) the old employer is an employer (within the meaning of subsection 4AB(1)); and
- (b) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) employees of the old employer;
 were bound by a Division 3 pre-reform certified agreement; and
- (c) there is at least one transferring employee in relation to the Division 3 pre-reform certified agreement;

the new employer is bound by the Division 3 pre-reform certified agreement by force of this subclause.

Note 1: The new employer must notify transferring employees and lodge a copy of the notices with the Employment Advocate (see clauses 28 and 29).

Note 2: See also clause 11 for the interaction between the Division 3 pre-reform certified agreement and other industrial instruments.

(3) If:

- (a) the old employer is not an employer (within the meaning of subsection 4AB(1)); and
- (b) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) employees of the old employer;
 were bound by a Division 3 pre-reform certified agreement; and
- (c) there is at least one transferring employee in relation to the Division 3 pre-reform certified agreement; and
- (d) one or more of the following are satisfied:
 - (i) the new employer is an employer (within the meaning of subsection 4AB(1)) at the time of transmission;
 - (ii) the new employer is bound by another Division 3 pre-reform certified agreement at the time of transmission;

the new employer is bound by the Division 3 pre-reform certified agreement referred to in paragraph (b) by force of this subclause.

Note 1: Clause 6A of this Schedule provides that references to *employees* and *employment* have their ordinary meanings in relation to the Division 3 pre-reform certified agreement. This is because the old employer is not an employer (within the meaning of subsection 4AB(1)).

Note 2: The new employer must notify transferring employees and lodge a copy of the notices with the Employment Advocate (see clauses 28 and 29).

Note 3: See also clause 11 for the interaction between the Division 3 pre-reform certified agreement and other industrial instruments.

Period for which new employer remains bound

- (4) The new employer remains bound by the pre-reform certified agreement, by force of subclause (1), (2) or (3), until whichever of the following first occurs:
- (a) the pre-reform certified agreement ceases to be in operation because it is terminated under section 170MG of the pre-reform Act (as applied by subclause 2(1) of Schedule 14);
 - (b) there cease to be any transferring employees in relation to the pre-reform certified agreement;
 - (c) the new employer ceases to be bound by the pre-reform certified agreement in relation to all the transferring employees in relation to the agreement;
 - (d) the transmission period ends;
 - (e) if:
 - (i) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and
 - (ii) the new employer is an excluded employer (within the meaning of Schedule 13) when the period of 5 years beginning on the reform commencement ends;

the period referred to in subparagraph (ii) ends.

Note: Paragraph (c)—see subclause (6).

- (5) Paragraph (4)(d) does not apply if:
- (a) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and
 - (b) the old employer is not an employer within the meaning of subsection 4AB(1) immediately before the time of transmission; and
 - (c) the new employer is an employer within the meaning of subsection 4AB(1) at the time of transmission; and
 - (d) the transmission occurs as part of the process of the employer in relation to the business being transferred becoming an employer within the meaning of subsection 4AB(1).

Period for which new employer remains bound in relation to particular transferring employee

- (6) The new employer remains bound by the pre-reform certified agreement in relation to a particular transferring employee, by force of subclause (1), (2) or (3), until whichever of the following first occurs:
- (a) the pre-reform certified agreement ceases to be in operation in relation to the transferring employee's employment with the new employer because the new employer makes an AWA with the transferring employee (see subclause 12(2));
 - (b) the pre-reform certified agreement ceases to be in operation in relation to the transferring employee's employment with the new employer because a collective agreement comes into operation in relation to the transferring employee in relation to that employment (see subclause 3(1) of Schedule 14);
 - (c) the employer ceases to be bound by the pre-reform certified agreement under subclause (4).

New employer bound only in relation to employment of transferring employees in business being transferred

- (7) The new employer is bound by the pre-reform certified agreement, by force of subclause (1), (2) or (3), only in relation to the employment, in the business being transferred, of employees who are transferring employees in relation to the pre-reform certified agreement.

New employer bound subject to Commission order

- (8) Subclauses (1), (2), (3), (4) and (6) have effect subject to any order of the Commission under clause 14.

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

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

11 Interaction rules

Transmitted certified agreement

- (1) This clause applies if subclause 10(1), (2) or (3) applies to a pre-reform certified agreement (the **transmitted certified agreement**).

Existing collective agreements

- (2) If:
- (a) the new employer is bound by a collective agreement (the **existing collective agreement**); and
 - (b) the existing collective agreement would, but for this subclause, apply, according to its terms, to a transferring employee in relation to the transmitted certified agreement when the transferring employee becomes employed by the new employer; the existing collective agreement does not apply to the transferring employee.
- (3) Subclause (2) ceases to apply when whichever of the following first occurs:
- (a) the transmission period ends;
 - (b) if:
 - (i) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and
 - (ii) the new employer is an excluded employer (within the meaning of Schedule 13) when the period of 5 years beginning on the reform commencement ends; the period referred to in subparagraph (ii) ends.
- (4) Subclause (3) does not apply if:
- (a) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and
 - (b) the old employer is not an employer within the meaning of subsection 4AB(1) immediately before the time of transmission; and
 - (c) the new employer is an employer within the meaning of subsection 4AB(1) at the time of transmission; and

- (d) the transmission occurs as part of the process of the employer in relation to the business being transferred becoming an employer within the meaning of subsection 4AB(1).

Transitional industrial instruments not to apply

- (5) From the time of transmission, a transitional industrial instrument (other than the transmitted certified agreement) does not apply to the transferring employee's employment with the new employer.
- (6) Subclause (5) has effect despite section 170LY of the pre-reform Act (as applied by subclause 2(1) of Schedule 14).

12 Termination of transmitted pre-reform certified agreement

Transmitted agreement

- (1) This clause applies if subclause 10(1), (2) or (3) applies to a pre-reform certified agreement (the *transmitted certified agreement*).

AWA

- (2) Despite subclause 3(2) of Schedule 14, the transmitted certified agreement ceases to be in operation in relation to a transferring employee's employment with the new employer if an AWA between the new employer and the transferring employee comes into operation in relation to that employment after the time of transmission.

Note: Subclause 3(2) of Schedule 14 provides that a pre-reform certified agreement is normally only suspended while an AWA operates. The effect of subclause (2) of this clause is to terminate the operation of the transmitted certified agreement in relation to the transferring employee's employment when the AWA is made.

Modified operation of sections 170MH and 170MHA of the pre-reform Act

- (3) The transmitted certified agreement cannot be terminated under section 170MH or 170MHA of the pre-reform Act during the transmission period (even if the transmitted certified agreement has passed its nominal expiry date).

Division 2—Commission's powers

13 Application and terminology

- (1) This Division applies if:
- (a) a person is bound by a pre-reform certified agreement; and
 - (b) another person:
 - (i) becomes at a later time; or
 - (ii) is likely to become at a later time;
 the successor, transmittee or assignee of the whole, or a part, of the business of the person referred to in paragraph (a).
- (2) For the purposes of this Division:
- (a) the *outgoing employer* is the person referred to in paragraph (1)(a); and
 - (b) the *incoming employer* is the person first referred to in paragraph (1)(b); and
 - (c) the *business concerned* is the business, or the part of the business, to which the incoming employer becomes, or is likely to become, the successor, transmittee or assignee; and

- (d) the *transfer time* is the time at which the incoming employer becomes, or is likely to become, the successor, transmittee or assignee of the business concerned.

14 Commission may make order

- (1) The Commission may make an order that the incoming employer:
- (a) is not, or will not be, bound by the pre-reform certified agreement; or
 - (b) is, or will be, bound by the pre-reform certified agreement, but only to the extent specified in the order.

The order must specify the day from which the order takes effect. That day must not be before the day on which the order is made or before the transfer time.

- (2) Without limiting paragraph (1)(b), the Commission may make an order under that paragraph that the incoming employer is, or will be, bound by the pre-reform certified agreement but only for the period specified in the order.
- (3) To avoid doubt, the Commission cannot make an order under subclause (1) that would have the effect of extending the transmission period.

15 When application for order can be made

An application for an order under subclause 14(1) may be made before, at or after the transfer time.

16 Who may apply for order

- (1) Before the transfer time, an application for an order under subclause 14(1) may be made only by the outgoing employer.
- (2) At or after the transfer time, an application for an order under subclause 14(1) may be made only by:
- (a) the incoming employer; or
 - (b) a transferring employee in relation to the pre-reform certified agreement; or
 - (c) an organisation of employees that is bound by the pre-reform certified agreement; or
 - (d) an organisation of employees that:
 - (i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee in relation to the pre-reform certified agreement; and
 - (ii) has been requested by the transferring employee to apply for the order on the transferring employee's behalf.

17 Applicant to give notice of application

The applicant for an order under subclause 14(1) must take reasonable steps to give written notice of the application to the persons who may make submissions in relation to the application (see clause 18).

18 Submissions in relation to application

- (1) Before deciding whether to make an order under subclause 14(1) in relation to the pre-reform certified agreement, the Commission must give the following an opportunity to make submissions:
- (a) the applicant;

- (b) before the transfer time—the persons covered by subclause (2);
 - (c) at and after the transfer time—the persons covered by subclause (3).
- (2) For the purposes of paragraph (1)(b), this subclause covers:
- (a) an employee of the outgoing employer:
 - (i) who is bound by the pre-reform certified agreement; and
 - (ii) who is employed in the business concerned; and
 - (b) the incoming employer; and
 - (c) an organisation of employees that is bound by the pre-reform certified agreement; and
 - (d) an organisation of employees that:
 - (i) is entitled, under its eligibility rules, to represent the industrial interests of an employee referred to in paragraph (a); and
 - (ii) has been requested by the employee to make submissions on the employee's behalf in relation to the application for the order under subclause 14(1).
- (3) For the purposes of paragraph (1)(c), this subclause covers:
- (a) the incoming employer; and
 - (b) a transferring employee in relation to the pre-reform certified agreement; and
 - (c) an organisation of employees that is bound by the pre-reform certified agreement; and
 - (d) an organisation of employees that:
 - (i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee in relation to the pre-reform certified agreement; and
 - (ii) has been requested by the transferring employee to make submissions on the transferring employee's behalf in relation to the application for the order under subclause 14(1).

Schedule 1, item 360, page 644 (line 29), omit “clauses 5 and 21”, substitute “clauses 15G and 21”.

Schedule 1, item 360, page 644 (line 33), omit “subclause 33(1)”, substitute “subclause 38A(1)”.

Schedule 1, item 360, page 645 (line 17), omit “subclause 5(2)”, substitute “subclause 15G(2)”.

Schedule 1, item 360, page 645 (line 24), omit “subclause 33(2)”, substitute “subclause 38A(2)”.

Schedule 1, item 360, page 645 (line 29), omit “subclause 33(3)”, substitute “subclause 38A(3)”.

Schedule 1, item 360, page 651 (lines 10 and 11), omit subparagraph 28(1)(a)(ii), substitute:

- (ii) subclause 10(1), (2) or (3) (pre-reform certified agreement); or

Schedule 1, item 360, page 651 (line 34) to page 652 (line 2), omit paragraph 28(3)(f), substitute:

- (f) identify:
 - (i) any provisions of the Australian Fair Pay and Conditions Standard; or
 - (ii) any other instrument;
 - that the employer intends to be the source for terms and conditions that will apply to the matters that are dealt with by the transmitted instrument when the transmitted instrument ceases to bind the employer; and

Schedule 1, item 360, page 652 (after line 8), after subclause 28(3), insert:

- (3A) Subject to subclause (3B), if the notice under subclause (3) identifies an instrument under paragraph (3)(g), the employer must give the transferring employee a copy of the instrument together with the notice.

Note: This is a civil remedy provision, see clause 31.

- (3B) Subclause (3A) does not apply if:
 - (a) the transferring employee is able to easily access a copy of the instrument in a particular way; and
 - (b) the notice under subclause (3) tells the transferring employee that a copy of the instrument is accessible in that way.

Note: Paragraph (a)—the copy may be available, for example, on the Internet.

Schedule 1, item 360, page 652 (line 23), omit “Division 2”.

Schedule 1, item 360, page 653 (line 3), omit “Division 2”.

Schedule 1, item 360, page 653 (line 17), omit “Division 2”.

Schedule 1, item 360, page 654 (line 8), omit paragraph 31(1)(a), substitute:

- (a) subclauses 28(2) and (3A);

Schedule 1, item 360, page 655 (table item 2, 2nd column), omit “Division 2”.

Schedule 1, item 360, page 656 (after line 11), after the definition of *this Schedule* in clause 32, insert:

Victorian reference Division 3 pre-reform certified agreement has the same meaning as in Part 9 of Schedule 14.

Schedule 1, item 360, page 657 (after line 23), after clause 33, insert:

33A Victorian reference Division 3 pre-reform certified agreements

- (1) Clause 6A, subclauses 10(2), (3) and (5), paragraph 11(3)(b) and subclause 11(4) do not apply to a Victorian reference Division 3 pre-reform certified agreement.
- (2) Division 1 of Part 4 of this Schedule applies to a Victorian reference Division 3 pre-reform certified agreement as if the agreement had been made under section 170LJ of the pre-reform Act in that section’s operation in accordance with repealed Division 2 of Part XV.

Schedule 1, item 360, page 658 (line 13), omit “clause 7”, substitute “clause 15D”.

Page 658 (after line 25), after Schedule 1, insert:

Schedule 1A—Establishment of Australian Fair Pay Commission

Workplace Relations Act 1996

1 After Part I

Insert:

Part IA—Australian Fair Pay Commission

Division 1—Preliminary

7F Definitions

In this Part:

AFPC means the Australian Fair Pay Commission established by section 7G.

AFPC Chair means the AFPC Chair appointed under section 7P.

AFPC Commissioner means an AFPC Commissioner appointed under section 7Y.

AFPC Secretariat means the AFPC Secretariat established under section 7ZG.

Director of the Secretariat means the Director of the Secretariat appointed under section 7ZK.

wage review means a review conducted by the AFPC to determine whether it should exercise any of its wage-setting powers.

wage-setting decision means a decision made by the AFPC in the exercise of its wage-setting powers.

wage-setting function has the meaning given by subsection 7I(1).

wage-setting powers means the powers of the AFPC under Division 2 of Part VA.

Division 2—Australian Fair Pay Commission

Subdivision A—Establishment and functions

7G Establishment

- (1) The Australian Fair Pay Commission is established by this section.
- (2) The AFPC is to consist of:
 - (a) the AFPC Chair; and
 - (b) 4 AFPC Commissioners.

7H Functions of the AFPC

The functions of the AFPC are as follows:

- (a) its wage-setting function as set out in subsection 7I(1);
- (b) any other functions conferred on the AFPC under this Act or any other Act;
- (c) any other functions conferred on the AFPC by regulations made under this Act or any other Act;

- (d) to undertake activities to promote public understanding of matters relevant to its wage-setting and other functions.

Subdivision B—AFPC’s wage-setting function

7I AFPC’s wage-setting function

The AFPC’s wage-setting function

- (1) The AFPC’s **wage-setting function** is to:
- (a) conduct wage reviews; and
 - (b) exercise its wage-setting powers as necessary depending on the outcomes of wage reviews.

Note: The main wage-setting powers of the AFPC cover the following matters (within the meaning of Division 2 of Part VA):

- (a) adjusting the standard FMW (short for Federal Minimum Wage);
 - (b) determining or adjusting special FMWs for junior employees, employees with disabilities or employees to whom training arrangements apply;
 - (c) determining or adjusting basic periodic rates of pay and basic piece rates of pay payable to employees or employees of particular classifications;
 - (d) determining or adjusting casual loadings.
- (2) During the period (the *interim period*) from the commencement of this Part to the commencement of Division 2 of Part VA, the AFPC has the function of gathering information (including by undertaking or commissioning research, or consulting with any person or body) for the purpose of assisting it to perform its wage-setting function after that Division has commenced. When performing its wage-setting function, the AFPC may have regard to any information so gathered during the interim period.

7J AFPC’s wage-setting parameters

The objective of the AFPC in performing its wage-setting function is to promote the economic prosperity of the people of Australia having regard to the following:

- (a) the capacity for the unemployed and low paid to obtain and remain in employment;
- (b) employment and competitiveness across the economy;
- (c) providing a safety net for the low paid;
- (d) providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.

7K Wage reviews and wage-setting decisions

- (1) The AFPC may determine the following:
- (a) the timing and frequency of wage reviews;
 - (b) the scope of particular wage reviews;
 - (c) the manner in which wage reviews are to be conducted;
 - (d) when wage-setting decisions are to come into effect.

- (2) For the purposes of performing its wage-setting function, the AFPC may inform itself in any way it thinks appropriate, including by:
 - (a) undertaking or commissioning research; or
 - (b) consulting with any other person, body or organisation; or
 - (c) monitoring and evaluating the impact of its wage-setting decisions.
- (3) Subsections (1) and (2) have effect subject to this Act and any regulations made under this Act.
- (4) The AFPC's wage-setting decisions must:
 - (a) be in writing; and
 - (b) be expressed as decisions of the AFPC as a body; and
 - (c) include reasons for the decisions, expressed as reasons of the AFPC as a body.

A wage-setting decision is not a legislative instrument.

7L Constitution of the AFPC for wage-setting powers

- (1) For the purposes of exercising its wage-setting powers, the AFPC must be constituted by:
 - (a) the AFPC Chair; and
 - (b) the 4 AFPC Commissioners.
- (2) However, if the AFPC Chair considers it necessary in circumstances where AFPC Commissioners are unavailable, the AFPC Chair may determine that, for the purposes of exercising its wage-setting powers in those circumstances, the AFPC is to be constituted by:
 - (a) the AFPC Chair; and
 - (b) no fewer than 2 AFPC Commissioners.

7M Publishing wage-setting decisions etc.

- (1) The AFPC must publish its wage-setting decisions.
- (2) The AFPC may, as it thinks appropriate, publish other information about wages or its wage-setting function.
- (3) Publishing under subsection (1) or (2) may be done in any way the AFPC thinks appropriate.

Subdivision C—Operation of the AFPC

7N AFPC to determine its own procedures

- (1) The AFPC may determine the procedures it will use in performing its functions.
- (2) Subsection (1) has effect subject to Subdivision B and any regulations made under subsection (3).
- (3) The regulations may prescribe procedures to be used by the AFPC for all or for specified purposes.

7O Annual report

The AFPC must, as soon as practicable after the end of each financial year, give to the Minister a report on the operation of the AFPC for presentation to the Parliament.

Subdivision D—AFPC Chair

7P Appointment

- (1) The AFPC Chair is to be appointed by the Governor-General by written instrument.

- (2) The AFPC Chair may be appointed on a full-time or part-time basis and holds office for the period specified in his or her instrument of appointment. The period must not exceed 5 years.
- (3) To be appointed as AFPC Chair, a person must have a high level of skills and experience in business or economics.

7Q Remuneration

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

7R Leave of absence

- (1) If the AFPC Chair is appointed on a full-time basis:
 - (a) the AFPC Chair has the recreation leave entitlements that are determined by the Remuneration Tribunal; and
 - (b) the Minister may grant the AFPC Chair leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (2) If the AFPC Chair is appointed on a part-time basis, the Minister may grant leave of absence to the AFPC Chair on the terms and conditions that the Minister determines.

7S Engaging in other paid employment

If the AFPC Chair is appointed on a full-time basis, the AFPC Chair must not engage in paid employment outside the duties of his or her office without the Minister's approval.

7T Disclosure of interests

The AFPC Chair must give written notice to the Minister of all interests (financial or otherwise) that the AFPC Chair has or acquires and that could conflict with the proper performance of his or her duties.

7U Resignation

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

7V Termination of appointment

- (1) The Governor-General may terminate the appointment of the AFPC Chair if:
 - (a) the AFPC Chair:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or

- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the AFPC Chair fails, without reasonable excuse, to comply with section 7T; or
 - (c) the AFPC Chair has or acquires interests (including by being an employer or employee) that the Minister considers conflict unacceptably with the proper performance of the AFPC Chair's duties; or
 - (d) if the AFPC Chair is appointed on a full-time basis:
 - (i) the AFPC Chair engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
 - (ii) the AFPC Chair is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (e) if the AFPC Chair is appointed on a part-time basis—the AFPC Chair is absent, except on leave of absence, to an extent that the Minister considers excessive.
- (2) Subject to subsections (3), (4) and (5), the Governor-General may terminate the appointment of the AFPC Chair for misbehaviour or physical or mental incapacity.
- (3) If the AFPC Chair:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- his or her appointment cannot be terminated for physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.
- (4) If the AFPC Chair:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- his or her appointment cannot be terminated for physical or mental incapacity unless the PSS Board has given a certificate under section 13 of that Act.
- (5) If the AFPC Chair:
- (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
 - (b) is under 60 years of age;
- his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.

7W Other terms and conditions

The AFPC Chair holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

7X Acting AFPC Chair

- (1) The Minister may appoint a person who meets the requirements set out in subsection 7P(3) to act as the AFPC Chair:
 - (a) during a vacancy in the office of the AFPC Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the AFPC Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Subdivision E—AFPC Commissioners**7Y Appointment**

- (1) An AFPC Commissioner is to be appointed by the Governor-General by written instrument.
- (2) An AFPC Commissioner holds office on a part-time basis for the period specified in his or her instrument of appointment. The period must not exceed 4 years.
- (3) To be appointed as an AFPC Commissioner, a person must have experience in one or more of the following areas:
 - (a) business;
 - (b) economics;
 - (c) community organisations;
 - (d) workplace relations.

7Z Remuneration

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

7ZA Leave of absence

The AFPC Chair may grant leave of absence to an AFPC Commissioner on the terms and conditions that the AFPC Chair determines.

7ZB Disclosure of interests

An AFPC Commissioner must give written notice to the Minister of all interests (financial or otherwise) that the AFPC Commissioner has or acquires and that could conflict with the proper performance of his or her duties.

7ZC Resignation

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

7ZD Termination of appointment

- (1) The Governor-General may terminate the appointment of an AFPC Commissioner if:
 - (a) the AFPC Commissioner:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the AFPC Commissioner fails, without reasonable excuse, to comply with section 7ZB; or
 - (c) the AFPC Commissioner has or acquires interests (including by being an employer or employee) that the Minister considers conflict unacceptably with the proper performance of the AFPC Commissioner's duties; or
 - (d) the AFPC Commissioner is absent, except on leave of absence, to an extent that the Minister considers excessive.
- (2) Subject to subsections (3), (4) and (5), the Governor-General may terminate the appointment of an AFPC Commissioner for misbehaviour or physical or mental incapacity.
- (3) If an AFPC Commissioner:
 - (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;

his or her appointment cannot be terminated for physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.
- (4) If an AFPC Commissioner:
 - (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;

his or her appointment cannot be terminated for physical or mental incapacity unless the PSS Board has given a certificate under section 13 of that Act.
- (5) If an AFPC Commissioner:
 - (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
 - (b) is under 60 years of age;

his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.

7ZE Other terms and conditions

An AFPC Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

7ZF Acting AFPC Commissioners

- (1) The Minister may appoint a person who meets the requirement set out in subsection 7Y(3) to act as an AFPC Commissioner:
 - (a) during a vacancy in the office of an AFPC Commissioner (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when an AFPC Commissioner is acting as AFPC Chair, is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Division 3—AFPC Secretariat

Subdivision A—Establishment and function

7ZG Establishment

- (1) The AFPC Secretariat is established by this section.
- (2) The AFPC Secretariat is to consist of:
 - (a) the Director of the Secretariat; and
 - (b) the staff of the Secretariat.

7ZH Function

The function of the AFPC Secretariat is to assist the AFPC in the performance of the AFPC's functions.

Subdivision B—Operation of the AFPC Secretariat

7ZI AFPC Chair may give directions

- (1) The AFPC Chair may give directions to the Director of the Secretariat about the performance of the function of the AFPC Secretariat.
- (2) The Director of the Secretariat must ensure that a direction given under subsection (1) is complied with.
- (3) To avoid doubt, the AFPC Chair must not give directions under subsection (1) in relation to the performance of functions, or exercise of powers, under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*.

7ZJ Annual report

The Director of the Secretariat must, as soon as practicable after the end of each financial year, give to the Minister a report on the operation of the AFPC Secretariat for presentation to the Parliament.

Subdivision C—The Director of the Secretariat**7ZK Appointment**

- (1) The Director of the Secretariat is to be appointed by the Minister by written instrument.
- (2) The Director of the Secretariat holds office on a full-time basis for the period specified in his or her instrument of appointment. The period must not exceed 5 years.

7ZL Remuneration

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

7ZM Leave of absence

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

7ZN Engaging in other paid employment

The Director of the Secretariat must not engage in paid employment outside the duties of his or her office without the Minister's approval.

7ZO Disclosure of interests

The Director of the Secretariat must give written notice to the Minister of all interests (financial or otherwise) that the Director of the Secretariat has or acquires and that could conflict with the proper performance of his or her duties.

7ZP Resignation

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

7ZQ Termination of appointment

- (1) The Minister may terminate the appointment of the Director of the Secretariat if:
 - (a) the Director of the Secretariat:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

- (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Director of the Secretariat fails, without reasonable excuse, to comply with section 7ZO; or
 - (c) the Director of the Secretariat has or acquires interests that the Minister considers conflict unacceptably with the proper performance of the Director of the Secretariat's duties; or
 - (d) the Director of the Secretariat engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
 - (e) the Director of the Secretariat is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.
- (2) The Minister must terminate the appointment of the Director of the Secretariat if the Minister is of the opinion that the performance of the Director of the Secretariat has been unsatisfactory for a significant period of time.
- (3) Subject to subsections (4), (5) and (6), the Minister may terminate the appointment of the Director of the Secretariat for misbehaviour or physical or mental incapacity.
- (4) If the Director of the Secretariat:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- his or her appointment cannot be terminated for physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.
- (5) If the Director of the Secretariat:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- his or her appointment cannot be terminated for physical or mental incapacity unless the PSS Board has given a certificate under section 13 of that Act.
- (6) If the Director of the Secretariat:
- (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
 - (b) is under 60 years of age;
- his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.

7ZR Other terms and conditions

The Director of the Secretariat holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

7ZS Acting Director of the Secretariat

- (1) The Minister may appoint a person to act as the Director of the Secretariat:
 - (a) during a vacancy in the office of the Director of the Secretariat (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Director of the Secretariat is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Subdivision D—Staff and consultants**7ZT Staff**

- (1) The staff of the AFPC Secretariat are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Director of the Secretariat and the staff of the AFPC Secretariat together constitute a Statutory Agency; and
 - (b) the Director of the Secretariat is the Head of that Statutory Agency.

7ZU Consultants

The Director of the Secretariat may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the AFPC or the AFPC Secretariat. The terms and conditions of the engagement of a person are those determined by the Director of the Secretariat in writing.

Financial Management and Accountability Regulations 1997**2 Part 1 of Schedule 1 (after table item 110)**

Insert:

- 110A Australian Fair Pay Commission Secretariat (the Director *AFPC Secretariat*), comprising:
- (a) the Director of the AFPC Secretariat; and
 - (b) the staff of the AFPC Secretariat; and
 - (c) consultants engaged by the Director of the AFPC Secretariat under section 7ZU of the *Workplace Relations Act 1996*

See Note B

Schedule 2, item 2, page 660 (line 5), after “clause 3”, insert “or 10”.

Schedule 2, item 2, page 661 (lines 11 to 13), omit paragraph 2(1)(a).

Schedule 2, item 2, page 661 (lines 16 and 17), omit “the State award, the State employment agreement”, substitute “a State award, a State employment agreement”.

Page 673 (after line 27), after Schedule 3, insert:

Schedule 3A—Redundancy pay by small business employers

Workplace Relations Act 1996

1 Paragraph 89A(2)(m)

Repeal the paragraph, substitute:

(m) redundancy pay by an employer of 15 or more employees;

2 Subsection 89A(7)

Omit “Subsection (1)”, substitute “Subject to subsection (7A), subsection (1)”.

3 After subsection 89A(7)

Insert:

(7A) In spite of subsection (7), subsection (1) excludes from an industrial dispute the matter of redundancy pay by an employer of fewer than 15 employees.

4 After subsection 89A(8)

Insert:

Interpretation—redundancy pay provisions

(8A) For the purposes of paragraph (2)(m) and subsection (7A):

(a) whether an employer employs 15 or more employees, or fewer than 15 employees, is to be worked out as at the time (the *relevant time*):

(i) when notice of the redundancy is given by the employer or by the employee who becomes redundant; or

(ii) when the redundancy occurs;

whichever happens first; and

(b) a reference to employees includes a reference to:

(i) the employee who becomes redundant and any other employee who becomes redundant at the relevant time; and

(ii) any casual employee who, at the relevant time, has been engaged by the employer on a regular and systematic basis for at least 12 months (but not including any other casual employee).

5 After Part VI

Insert:

Part VIAAA—State and Territory laws etc. about redundancy payments by small businesses

167 Certain small businesses not bound by requirement to pay redundancy pay

- (1) This section applies to a State law, a State award, a State authority order or a Territory law (each of which is an *eligible instrument*).
- (2) If an eligible instrument would, apart from this section, have the effect of requiring a relevant employer that employs fewer than 15 employees to pay redundancy pay, the eligible instrument does not have that effect.
- (3) For the purposes of subsection (2):
 - (a) whether a relevant employer employs fewer than 15 employees is to be worked out as at the time (the *relevant time*):
 - (i) when notice of the redundancy is given by the employer or by the employee who becomes redundant; or
 - (ii) when the redundancy occurs;
 whichever happens first; and
 - (b) a reference to employees includes a reference to:
 - (i) the employee who becomes redundant and any other employee who becomes redundant at the relevant time; and
 - (ii) any casual employee who, at the relevant time, has been engaged by the relevant employer on a regular and systematic basis for at least 12 months (but not including any other casual employee).

- (4) In this section:

relevant employer means:

- (a) in the case of a State law, a State award or a State authority order—a constitutional corporation; or
- (b) in the case of a Territory law—any employer.

State authority order means an order made, or any other thing done, by a State industrial authority.

State law means a law of a State (including any regulations or other instruments made under a law of a State), but does not include a State employment agreement.

Territory law means a law of a Territory (including any regulations or other instruments made under a law of a Territory).

6 At the end of section 170FA

Add:

- (3) In so far as an order is made for the purposes of Article 12 of that Convention, the Commission must not make an order in relation to the matter of redundancy pay by an employer of fewer than 15 employees.
- (4) For the purposes of subsection (3):
 - (a) whether an employer employs fewer than 15 employees is to be worked out as at the time (the *relevant time*):
 - (i) when notice of the redundancy is given by the employer or by the employee who becomes redundant; or
 - (ii) when the redundancy occurs;
 whichever happens first; and
 - (b) a reference to employees includes a reference to:

- (i) the employee who becomes redundant and any other employee who becomes redundant at the relevant time; and
- (ii) any casual employee who, at the relevant time, has been engaged by the employer on a regular and systematic basis for at least 12 months (but not including any other casual employee).

7 Application

- (1) The amendments made by items 1 to 4 apply to:
 - (a) dealing with an industrial dispute by arbitration after the commencement of this Schedule; and
 - (b) preventing or settling an industrial dispute by making an award or order after the commencement of this Schedule; and
 - (c) maintaining the settlement of an industrial dispute by varying an award or order after the commencement of this Schedule;
 whether the industrial dispute arose before or arises after the commencement of this Schedule.
- (2) The amendment made by item 5 applies to:
 - (a) an eligible instrument made after the commencement of this Schedule that has the effect mentioned in subsection 167(2) of the *Workplace Relations Act 1996* as inserted by that item; and
 - (b) an eligible instrument, made before or after the commencement of this Schedule, that is amended or varied after the commencement of this Schedule with the result that it has that effect.
- (3) The amendment made by item 6 applies to the making of orders after the commencement of this Schedule.

8 Transitional—awards and orders of the Commission

- (1) If, during the period from the start of 26 March 2004 until the commencement of this Schedule, the Commission:
 - (a) made an award or order that had the effect of requiring an employer of fewer than 15 employees to pay redundancy pay; or
 - (b) varied an award or order, made before or during that period, with the result that it had that effect;
 then, from the commencement of this Schedule, the award or order ceases to have that effect.
- (2) For the purposes of paragraph (1)(a):
 - (a) whether an employer employs fewer than 15 employees is to be worked out as at the time (the relevant time):
 - (i) when notice of the redundancy is given by the employer or by the employee who becomes redundant; or
 - (ii) when the redundancy occurs;
 whichever happens first; and
 - (b) a reference to employees includes a reference to:
 - (i) the employee who becomes redundant and any other employee who becomes redundant at the relevant time; and

- (ii) any casual employee who, at the relevant time, has been engaged by the employer on a regular and systematic basis for at least 12 months (but not including any other casual employee).

9 Transitional—eligible instruments

Item applies to eligible instruments with small business redundancy pay requirements just before commencement

- (1) This item applies if, just before the commencement of this Schedule, an eligible instrument contained provisions requiring some or all relevant employers (the *affected employers*) that employ fewer than 15 employees to pay redundancy pay.

Eligible instruments that began to provide for small business redundancy pay between 26 March 2004 and commencement

- (2) If:
 - (a) the eligible instrument was made before 26 March 2004 and just before 26 March 2004 the eligible instrument did not contain provisions requiring the affected employers to pay redundancy pay; or
 - (b) the eligible instrument was made on or after 26 March 2004;

then, from the commencement of this Schedule, the provisions do not have the effect of requiring any affected employers to pay redundancy pay.

Eligible instruments where Federal award suppressed a small business redundancy pay requirement that was present just before 26 March 2004

- (3) If:
 - (a) just before 26 March 2004, the eligible instrument contained provisions requiring the affected employers to pay redundancy pay; and
 - (b) only because of a Federal award, the provisions did not, just before the commencement of this Schedule, have the effect of requiring a particular affected employer to pay redundancy pay;

then the provisions do not, at or at any time after the commencement of this Schedule, have that effect in relation to the particular affected employer.

Eligible instruments where certified agreement or AWA suppressed a small business redundancy pay requirement that was present just before 26 March 2004, and a Federal award would also have had that effect

- (4) If:
 - (a) just before 26 March 2004, the eligible instrument contained provisions requiring the affected employers to pay redundancy pay; and
 - (b) just before the commencement of this Schedule:
 - (i) only because of a certified agreement or an AWA, the provisions did not have the effect of requiring a particular affected employer to pay redundancy pay; and

- (ii) disregarding the certified agreement or the AWA, the provisions would still not have had that effect, and this would have been so only because of a Federal award;

then the provisions do not, at or at any time after the commencement of this Schedule, have that effect in relation to the particular affected employer.

Eligible instruments where small business redundancy pay requirement was present just before 26 March 2004 and a future Federal award starts to apply

- (5) If:
- (a) just before 26 March 2004, the eligible instrument contained provisions requiring the affected employers to pay redundancy pay; and
 - (b) neither subitem (3) nor subitem (4) applies; and
 - (c) the eligible instrument contains the provisions from the commencement of this Schedule until a later time (the *award time*) when a particular affected employer becomes bound by a Federal award; and
 - (d) the Federal award applies in relation to some or all of the particular affected employer's employees (the *affected employees*) to whom the requirement to pay redundancy pay relates;

then, from the award time, the provisions do not have the effect of requiring the particular affected employer to pay redundancy pay in respect of the affected employees.

Definitions

- (6) In this item:
- eligible instrument* has the meaning given by subsection 167(1) of the *Workplace Relations Act 1996* as inserted by item 5 of this Schedule.
- Federal award* means an award under the *Workplace Relations Act 1996*.
- relevant employer* has the meaning given by subsection 167(4) of the *Workplace Relations Act 1996* as inserted by item 5 of this Schedule.

10 Protection of existing entitlements

Nothing in this Schedule, or an amendment made by this Schedule, affects any entitlement to a payment that had arisen before the commencement of this Schedule.

Schedule 4, item 4, page 675 (after line 16), after the definition of *award* in subitem 4(1), insert:

eligible entity has the same meaning as in Division 6A of Part VI of the amended Act.

Schedule 4, item 4, page 675 (after line 20), after the definition of *employer* in subitem 4(1), insert:

outworker term has the same meaning as in Division 6A of Part VI of the amended Act.

Schedule 4, item 4, page 675 (lines 22 and 23), omit “, to the extent that the original award regulates employers in respect of the employment of their employees”.

Schedule 4, item 4, page 675 (lines 27 and 28), omit “in respect of matters relating to the employment of employees”.

Schedule 4, item 4, page 676 (line 2), at the end of paragraph 4(3)(c), add “, to the extent that the original award regulates work performed by the employee”.

Schedule 4, item 4, page 676 (line 2), at the end of subitem 4(3), add:

- ; (d) each eligible entity that was bound immediately before the reform commencement by the original award, but only in relation to outworker terms.

Schedule 4, item 4, page 676 (line 3), after “employer”, insert “or eligible entity”.

Schedule 4, item 4, page 676 (line 5), after “employer”, insert “or eligible entity”.

Schedule 4, item 4, page 676 (line 10), after “employer”, insert “, an eligible entity”.

Schedule 4, item 4, page 676 (line 13), after “employer”, insert “, eligible entity”.

Schedule 4, page 676 (after line 22), after item 5, insert:

**5A Saving provision relating to awards and orders made before
26 March 2004**

If:

- (a) before the start of 26 March 2004, a term of an award or order had the effect of requiring an employer of fewer than 15 employees to pay redundancy pay (within the meaning of the amended Act); and
- (b) that term of the award or order continued in effect until immediately before the reform commencement; and
- (c) immediately after the reform commencement, that term of the award or order:
 - (i) became a term of a pre-reform award because of the operation of item 4 of this Schedule; or
 - (ii) continued in operation as a term of a transitional award because of the operation of clause 4 of Schedule 13 to the amended Act;

section 116L of the amended Act, or clause 27 of Schedule 13 to the amended Act, as the case requires, does not affect the operation of that term of the award or order and the term continues in effect as a term of the pre-reform award or the transitional award.

Schedule 4, item 18, page 681 (line 24), omit paragraph (b) of the definition of **170MX award**, substitute:

- (b) in operation immediately before that commencement, or made after that commencement because of Part 8 of Schedule 14 to the amended Act.

Schedule 4, item 20, page 682 (after line 18), after subitem (1), insert:

(1A) This item applies subject to:

- (a) Parts 4 and 8 of Schedule 14 to the amended Act; and
- (b) item 20A of this Schedule.

Schedule 4, page 682 (after line 26), after item 20, insert:

20A Continuation of section 170MX proceedings under new provisions for workplace determinations

- (1) This item applies if:
- (a) a bargaining period was terminated on the ground set out in subsection 170MW(3) or (7) of the *Workplace Relations Act 1996* before the reform commencement; and
 - (b) the Commission had not started to exercise arbitration powers in accordance with subsection 170MX(3) of the *Workplace Relations Act 1996* before the reform commencement in relation to the bargaining period; and
 - (c) had this Act not amended the *Workplace Relations Act 1996*, the Commission would have been able to make an award under subsection 170MX(3) of the *Workplace Relations Act 1996* after the reform commencement in relation to the bargaining period.
- (2) Division 8 of Part VC of the amended Act applies in relation to the bargaining period (in accordance with item 19 of this Schedule) as if:
- (a) the termination of the bargaining period were the termination of a bargaining period on the ground set out in subsection 107G(3) of the amended Act; and
 - (b) that termination happened on the reform commencement.
- (3) A reference in this item to subsection 170MX(3) of the *Workplace Relations Act 1996* does not include a reference to that subsection as it had effect because of repealed Division 2 of Part XV of that Act.

Schedule 1, item 71, page 165 (line 23), omit the heading to section 97.

Schedule 1, item 71, page 165 (lines 24 to 27), omit subsection 97(1).

Schedule 1, item 71, page 165 (line 30) to page 166 (line 3), omit subsection 97(3).

Schedule 1, item 71, page 167 (line 19), omit “or section 97”.

Schedule 1, item 71, page 168 (line 32), omit “sections 97 and 97A (which deal”, substitute “section 97A (which deals”.

Schedule 1, item 71, page 168 (lines 35 and 36), omit “sections 97 and 97B (which deal”, substitute “section 97B (which deals”.

Schedule 1, item 71, page 186 (lines 29 and 30), omit “sections 97 and 97A (which deal”, substitute “section 97A (which deals”.

Schedule 1, item 71, page 186 (lines 33 and 34), omit “sections 97 and 97B (which deal”, substitute “section 97B (which deals”.

Schedule 1, item 71, page 193 (lines 21 and 22), omit “sections 97 and 97A (which deal”, substitute “section 97A (which deals”.

Question—That Schedule 1, item 10; item 71, sections 89C, 95C and 115B; and item 240, section 523 stand as printed—put and negated.

Question—That Schedule 1, as amended, be agreed to—put.

The committee divided—

AYES, 35

Senators—

Abetz	Eggleston (Teller)	Joyce	Parry
Adams	Ellison	Kemp	Patterson
Barnett	Ferguson	Lightfoot	Payne
Boswell	Fierravanti-Wells	Macdonald, Ian	Ronaldson
Brandis	Fifield	Macdonald, Sandy	Santoro
Campbell, Ian	Heffernan	Mason	Scullion
Chapman	Hill	McGauran	Troeth
Colbeck	Humphries	Minchin	Trood
Coonan	Johnston	Nash	

NOES, 32

Senators—

Allison	Evans	Marshall	Sherry
Bartlett	Faulkner	McEwen	Siewert
Bishop	Forshaw	McLucas	Stephens
Brown, Carol	Hogg	Moore	Sterle
Campbell, G (Teller)	Hurley	Murray	Stott Despoja
Carr	Kirk	Nettle	Webber
Conroy	Ludwig	O'Brien	Wong
Crossin	Lundy	Polley	Wortley

Schedule agreed to.

Question—That Schedules 2 and 4, as amended, be agreed to and Schedules 3 and 5 stand as printed—put.

The committee divided—

AYES, 35

Senators—

Abetz	Eggleston (Teller)	Joyce	Parry
Adams	Ellison	Kemp	Patterson
Barnett	Ferguson	Lightfoot	Payne
Boswell	Fierravanti-Wells	Macdonald, Ian	Ronaldson
Brandis	Fifield	Macdonald, Sandy	Santoro
Campbell, Ian	Heffernan	Mason	Scullion
Chapman	Hill	McGauran	Troeth
Colbeck	Humphries	Minchin	Trood
Coonan	Johnston	Nash	

NOES, 32

Senators—

Allison	Evans	Marshall	Sherry
Bartlett	Faulkner	McEwen	Siewert
Bishop	Forshaw	McLucas	Stephens
Brown, Carol	Hogg	Moore	Sterle
Campbell, G (Teller)	Hurley	Murray	Stott Despoja
Carr	Kirk	Nettle	Webber
Conroy	Ludwig	O'Brien	Wong
Crossin	Lundy	Polley	Wortley

Schedules agreed to.

Bill, as amended, agreed to.

Bill to be reported with amendments.

The President resumed the chair and the Chair of Committees (Senator Hogg) reported accordingly.

On the motion of Senator Abetz the report from the committee was adopted.

Senator Abetz moved—That this bill be now read a third time.

Debate ensued.

Limitation of debate: The time allotted for the consideration of the bill expired.

Question—That this bill be now read a third time—put.

The Senate divided—

AYES, 35

Senators—

Abetz	Coonan	Joyce	Parry
Adams	Ellison	Kemp	Patterson
Barnett	Ferguson	Lightfoot	Payne
Boswell	Fierravanti-Wells	Macdonald, Ian	Ronaldson
Brandis	Fifield	Macdonald, Sandy	Santoro
Calvert	Heffernan	Mason	Scullion
Campbell, Ian	Hill	McGauran (Teller)	Troeth
Chapman	Humphries	Minchin	Trood
Colbeck	Johnston	Nash	

NOES, 33

Senators—

Allison	Faulkner	McEwen	Stephens
Bartlett	Fielding	McLucas	Sterle
Bishop	Forshaw	Moore	Stott Despoja
Brown, Carol	Hogg	Murray	Webber
Campbell, G (Teller)	Hurley	Nettle	Wong
Carr	Kirk	O'Brien	Wortley
Conroy	Ludwig	Polley	
Crossin	Lundy	Sherry	
Evans	Marshall	Siewert	

Question agreed to.

Bill read a third time.

4 ADJOURNMENT

Pursuant to order, the Senate adjourned at 6.07 pm till Monday, 5 December 2005 at 12.30 pm.

5 ATTENDANCE

Present, all senators except Senators Ferris*, Hutchins, Milne, Ray*, Vanstone and Watson (* on leave).

HARRY EVANS
Clerk of the Senate