2004-2005

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Workplace Relations Amendment (Work Choices) Bill 2005

No. , 2005

(Employment and Workplace Relations)

A Bill for an Act to amend the law relating to workplace relations, and for related purposes

Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	3
Schedule 1—Main	n amendments	4
Workplace	Relations Act 1996	4
Schedule 2—Trai	nsitional arrangements for State organisations	659
Workplace	Relations Act 1996	659
Schedule 3—Scho	ool-based apprentices and trainees	666
Workplace	Relations Act 1996	666
Schedule 4—Trai	nsitional and other provisions	674
Part 1—Regul	lations for transitional etc. provisions and	
conse	equential amendments	674
Part 2—Trans	itional, application and saving provisions	675
Division 1–	-Definitions used in this Part	675
Division 2-	-Awards	675
Division 3–	-Termination of employment	676
Division 4–	-Miscellaneous	679
Schedule 5—Ren	umbering the Workplace Relations Act 1996	685
Workplace	Relations Act 1996	685

A Bill for an Act to amend the law relating to workplace relations, and for related purposes

³ The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Workplace Relations Amendment (Work Choices) Act 2005.

2 Commencement

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

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	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.	
3. Schedule 2	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.	
4. Schedule 3	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.	
5. Schedule 4, Part 1	The day on which this Act receives the Royal Assent.	
6. Schedule 4, Part 2	At the same time as the provision(s) covered by table item 2.	
7. Schedule 5	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.	
Note:	This table relates only to the provisions of this A passed by the Parliament and assented to. It will deal with provisions inserted in this Act after ass	not be expanded t

Workplace Relations Amendment (Work Choices) Bill 2005

No. , 2005

1 2 3	(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.
4	3 Schedule(s)
5	Each Act that is specified in a Schedule to this Act is amended or
6	repealed as set out in the applicable items in the Schedule
7	concerned, and any other item in a Schedule to this Act has effect
8	according to its terms.

Schedule 1—Main amendments

4 Workplace Relations Act 1996

1 Section 3

1

2 3

5

6

Repeal the section, substitute:

7 3	Principal	object
-----	-----------	--------

8 9 10	The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:
10	(a) encouraging the pursuit of high employment, improved living
11	standards, low inflation and international competitiveness
12	through higher productivity and a flexible and fair labour
13	market; and
15	(b) establishing and maintaining a simplified national system of
15	workplace relations; and
17	(c) providing an economically sustainable safety net of minimum
18	wages and conditions for those whose employment is
19	regulated by this Act; and
20	(d) providing a foundation of key minimum standards for
21	agreement-making while ensuring that the primary
22	responsibility for determining matters affecting the
23	employment relationship rests with the employer and
24	employees at the workplace or enterprise level; and
25	(e) enabling employers and employees to choose the most
26	appropriate form of agreement for their particular
27	circumstances; and
28	(f) ensuring compliance with minimum standards, industrial
29	instruments and bargaining processes by providing effective
30	means for the investigation and enforcement of:
31	(i) employee entitlements; and
32	(ii) the rights and obligations of employers and employees,
33	and their organisations; and
34	(g) ensuring that awards provide minimum safety net
35	entitlements for award-reliant employees which are
36	consistent with Australian Fair Pay Commission decisions

Wa

4

1		and which avoid creating disincentives to bargain at the
2		workplace level; and
3	(h)	supporting harmonious and productive workplace relations
4		by providing flexible mechanisms for the voluntary
5		settlement of disputes; and
6	(1)	balancing the right to take industrial action for the purposes
7		of collective bargaining at the workplace level with the need
8		to protect the public interest and appropriately deal with illegitimate and unprotected industrial action; and
9		ensuring freedom of association, including the rights of
10	()	employees and employers to join an organisation or
11 12		association of their choice, or not to join an organisation or
12		association of their choice, of not to join an organisation of association; and
	(12)	protecting the competitive position of young people in the
14 15	(K)	labour market, promoting youth employment, youth skills
15 16		and community standards and assisting in reducing youth
10		unemployment; and
18	(1)	assisting employees to balance their work and family
19	(1)	responsibilities effectively through the development of
20		mutually beneficial work practices with employers; and
21	(m)	respecting and valuing the diversity of the work force by
22		helping to prevent and eliminate discrimination on the basis
23		of race, colour, sex, sexual preference, age, physical or
24		mental disability, marital status, family responsibilities,
25		pregnancy, religion, political opinion, national extraction or
26		social origin; and
27	(n)	assisting in giving effect to Australia's international
28		obligations in relation to labour standards.
•	2 Section 4	
29		
30	Repeal the	e section, substitute:
31	4 Definitions	
32	(1) In thi	is Act, unless the contrary intention appears:
22		T Consequential Provisions Act moons the ACT
33		<i>T. Consequential Provisions Act</i> means the A.C.T. Government (Consequential Provisions) Act 1988.
34	Sey-	Sovernment (Consequential Fronstons) ACI 1900.
35	AFP	<i>C</i> has the meaning given by section 7F.

1 2	<i>allowable award matters</i> means the matters referred to in subsection 116(1).
3 4	Note: The matters referred to in subsection 116(1) have a meaning that is affected by section 116B.
5 6	<i>alternative dispute resolution process</i> has the meaning given by section 176A.
7	Anti-Discrimination Conventions means:
8	(a) the Equal Remuneration Convention; and
9	(b) the Convention on the Elimination of all Forms of
10	Discrimination against Women, a copy of the English text of
11	which is set out in the Schedule to the Sex Discrimination Act
12	<i>1984</i> ; and
13	(c) the Convention concerning Discrimination in respect of
14	Employment and Occupation, a copy of the English text of
15	which is set out in Schedule 1 to the Human Rights and $E_{\text{res}} = 100 \text{ G}$
16	<i>Equal Opportunity Commission Act 1986</i> ; and
17	(d) Articles 3 and 7 of the International Covenant on Economic,
18	Social and Cultural Rights.
19	<i>APCS</i> has the meaning given by section 90B.
19 20	<i>APCS</i> has the meaning given by section 90B. <i>applies to employment generally</i> : a law of a State or Territory
20	applies to employment generally: a law of a State or Territory
20 21	applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to
20 21 22	applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to:
20 21 22 23	 applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to: (a) all employers and employees in the State or Territory; or (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a
20 21 22 23 24	 applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to: (a) all employers and employees in the State or Territory; or (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory.
20 21 22 23 24 25	 applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to: (a) all employers and employees in the State or Territory; or (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory. For this purpose, it does not matter whether or not the law also
20 21 22 23 24 25 26	 applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to: (a) all employers and employees in the State or Territory; or (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory. For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power
20 21 22 23 24 25 26 27	 applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to: (a) all employers and employees in the State or Territory; or (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory. For this purpose, it does not matter whether or not the law also
20 21 22 23 24 25 26 27 28	 applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to: (a) all employers and employees in the State or Territory; or (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory. For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power
20 21 22 23 24 25 26 27 28 29	 applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to: (a) all employers and employees in the State or Territory; or (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory. For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power under the law affects all the persons to whom the law applies.
20 21 22 23 24 25 26 27 28 29 30	 applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to: (a) all employers and employees in the State or Territory; or (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory. For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power under the law affects all the persons to whom the law applies. arbitration powers means the powers of the Commission in
20 21 22 23 24 25 26 27 28 29 30 31	 applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to: (a) all employers and employees in the State or Territory; or (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory. For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power under the law affects all the persons to whom the law applies. arbitration powers means the powers of the Commission in relation to arbitration. Australian-based employee means: (a) an employee whose primary place of work is in Australia, in
20 21 22 23 24 25 26 27 28 29 30 31 32	 applies to employment generally: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to: (a) all employers and employees in the State or Territory; or (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory. For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power under the law affects all the persons to whom the law applies. arbitration powers means the powers of the Commission in relation to arbitration.

1 2 3 4 5	 (b) an employee who is employed by the Commonwealth or a Commonwealth authority, except an employee engaged outside Australia and the external Territories to perform duties outside Australia and the external Territories; or (c) an employee who is prescribed by the regulations for the purposes of this definition.
6	
7	Note: Subsection 4AA(1) defines <i>employee</i> .
8	Australian Capital Territory Government Service means the
9	service established by the Public Sector Management Act 1994 of
10	the Australian Capital Territory.
11	Australian employer means:
12	(a) an employer that is a trading corporation formed within the
13	limits of the Commonwealth (within the meaning of
14	paragraph 51(xx) of the Constitution); or
15	(b) an employer that is a financial corporation formed within the
16	limits of the Commonwealth (within the meaning of
17	paragraph 51(xx) of the Constitution); or
18	(c) an employer that is the Commonwealth; or
19	(d) an employer that is a Commonwealth authority; or
20	(e) an employer that is a body corporate incorporated in a
21	Territory; or
22	(f) an employer that carries on in Australia, in Australia's
23	exclusive economic zone or in, on, or over Australia's
24	continental shelf activities (whether of a commercial,
25	governmental or other nature) whose central management
26	and control is in Australia; or
27	(g) an employer that is prescribed by the regulations for the
28	purposes of this definition.
29	Note: Subsection 4AB(1) defines <i>employer</i> .
30	Australian Fair Pay and Conditions Standard has the meaning
31	given by subsection 89(3).
32	Australian workplace agreement or AWA has the meaning given
33	by section 96.
34	Australia's continental shelf means the continental shelf (as
35	defined in the Seas and Submerged Lands Act 1973) of Australia.

1	Australia's exclusive economic zone means the exclusive
2	economic zone (as defined in the Seas and Submerged Lands Act
3	1973) of Australia.
4	AWA: see Australian workplace agreement.
5	award means:
6	(a) an award made by the Commission under section 118E; or
7	(b) a pre-reform award.
8	award rationalisation process means a process of award
9	rationalisation conducted as a result of an award rationalisation
10	request.
11	award rationalisation request has the meaning given by
11	section 118.
13	<i>award-related order</i> means an order varying, revoking or
14	suspending an award.
15	award simplification process means a process of reviewing and
16	simplifying awards under section 118M.
17	bargaining agent means:
18	(a) in relation to an AWA—a person who has been duly
19	appointed as a bargaining agent in relation to the AWA in
20	accordance with section 97A; or
21	(b) in relation to an employee collective agreement—a person
22	who has been requested to be a bargaining agent in relation to
23	the agreement in accordance with section 97B.
24	BCII Act means the Building and Construction Industry
25	Improvement Act 2005.
26	breach includes non-observance.
27	Chief Justice means the Chief Justice of the Court.
28	civil remedy provision has the meaning given by section 188.
29	collective agreement means:
30	(a) an employee collective agreement; or
31	(b) a union collective agreement; or
32	(c) an employer greenfields agreement; or

1 2	(d) a union greenfields agreement; or(e) a multiple-business agreement.
2	
3 4	<i>Commission</i> means the Australian Industrial Relations Commission.
5	Commissioner means a Commissioner of the Commission.
6	<i>committee of management</i> , in relation to an organisation,
7	association or branch of an organisation or association, means the
8 9	group or body of persons (however described) that manages the affairs of the organisation, association or branch.
10	Commonwealth authority means:
11 12	(a) a body corporate established for a public purpose by or under a law of the Commonwealth; or
13	(b) a body corporate:
14	(i) incorporated under a law of the Commonwealth or a
15	State or Territory; and
16	(ii) in which the Commonwealth has a controlling interest.
17	conciliation powers means the powers of the Commission in
18	relation to conciliation.
19	constitutional corporation means a corporation to which
20	paragraph $51(xx)$ of the Constitution applies.
21	constitutional trade or commerce means trade or commerce:
22	(a) between Australia and a place outside Australia; or
23	(b) among the States; or
24	(c) between a State and a Territory; or
25	(d) between 2 Territories; or
26	(e) within a Territory.
27	contingency fee agreement means an agreement between a legal
28	practitioner and a person under which:
29	(a) the legal practitioner agrees to provide legal services; and
30	(b) the payment of all, or a substantial proportion, of the legal
31	practitioner's costs is contingent on the outcome of the matter
32	in which the practitioner provides the legal services for the
33	person.
34	Court means the Federal Court of Australia.

1 2 3 4	Note: For the purposes of various provisions of this Act, <i>Court</i> means the Federal Court of Australia or the Federal Magistrates Court. This is indicated by definitions that apply for the purposes of those provisions.
5	demarcation dispute includes:
6	(a) a dispute arising between 2 or more organisations, or within
7	an organisation, as to the rights, status or functions of
8	members of the organisations or organisation in relation to
9	the employment of those members; or
10	(b) a dispute arising between employers and employees, or
11	between members of different organisations, as to the
12	demarcation of functions of employees or classes of employees; or
13	(c) a dispute about the representation under this Act, or the
14 15	Registration and Accountability of Organisations Schedule,
16	of the industrial interests of employees by an organisation of
17	employees.
18	Deputy President means a Deputy President of the Commission.
19	employee has a meaning affected by section 4AA.
20	employee collective agreement has the meaning given by
21	section 96A.
22	employer has a meaning affected by section 4AB.
22 23	<i>employer</i> has a meaning affected by section 4AB. <i>employer greenfields agreement</i> has the meaning given by
23 24	<i>employer greenfields agreement</i> has the meaning given by section 96D.
23	<i>employer greenfields agreement</i> has the meaning given by section 96D. <i>employing authority</i> , in relation to a class of employees, means the
23 24 25	<i>employer greenfields agreement</i> has the meaning given by section 96D.
23 24 25 26	 <i>employer greenfields agreement</i> has the meaning given by section 96D. <i>employing authority</i>, in relation to a class of employees, means the person or body, or each of the persons or bodies, prescribed as the
23 24 25 26 27	 <i>employer greenfields agreement</i> has the meaning given by section 96D. <i>employing authority</i>, in relation to a class of employees, means the person or body, or each of the persons or bodies, prescribed as the employing authority in relation to the class of employees.
23 24 25 26 27 28	 <i>employer greenfields agreement</i> has the meaning given by section 96D. <i>employing authority</i>, in relation to a class of employees, means the person or body, or each of the persons or bodies, prescribed as the employing authority in relation to the class of employees. <i>employment</i> has a meaning affected by section 4AC.
23 24 25 26 27 28 29 30	 <i>employer greenfields agreement</i> has the meaning given by section 96D. <i>employing authority</i>, in relation to a class of employees, means the person or body, or each of the persons or bodies, prescribed as the employing authority in relation to the class of employees. <i>employment</i> has a meaning affected by section 4AC. <i>Employment Advocate</i> means the Employment Advocate referred to in Part IVA.
23 24 25 26 27 28 29	 <i>employer greenfields agreement</i> has the meaning given by section 96D. <i>employing authority</i>, in relation to a class of employees, means the person or body, or each of the persons or bodies, prescribed as the employing authority in relation to the class of employees. <i>employment</i> has a meaning affected by section 4AC. <i>Employment Advocate</i> means the Employment Advocate referred

1	Family Responsibilities Convention means the Workers with
2	Family Responsibilities Convention, 1981, a copy of the English
3	text of which is set out in Schedule 12.
4	<i>flight crew officer</i> has the meaning given by clause 1 of
5	Schedule 1.
6	Full Bench means a Full Bench of the Commission.
7	Full Court means a Full Court of the Court.
8	greenfields agreement means a union greenfields agreement or an
9	employer greenfields agreement.
10	industrial action has the meaning given by section 106A.
11	Industrial Registrar means the Industrial Registrar appointed
12	under section 67.
13	Industrial Registry means the Australian Industrial Registry.
14	<i>industry</i> includes:
15	(a) any business, trade, manufacture, undertaking or calling of
16	employers; and
17	(b) any calling, service, employment, handicraft, industrial occupation or vocation of employees; and
18	
19	(c) a branch of an industry and a group of industries.
20	<i>inspector</i> means a workplace inspector.
21	Judge means:
22	(a) in the case of a reference to the Court or a Judge—a Judge
23	(including the Chief Justice) sitting in Chambers; or
24	(b) otherwise—a Judge of the Court (including the Chief
25	Justice).
26	judgment means a judgment, decree or order, whether final or
27	interlocutory, or a sentence.
28	legal practitioner means a legal practitioner (however described)
29	of the High Court or of a Supreme Court of a State or Territory.
30	magistrate's court means:
31	(a) a court constituted by a police, stipendiary or special
32	magistrate; or

1 2	(b) a court constituted by an industrial magistrate who is also a police, stipendiary or special magistrate.
3 4	<i>maritime employee</i> has the meaning given by clause 1 of Schedule 1.
5 6	<i>model dispute resolution process</i> means the process set out in Division 2 of Part VIIA.
7 8	<i>multiple-business agreement</i> has the meaning given by section 96E.
9	new APCS has the meaning given by subsection 90ZJ(1).
10 11	<i>nominal expiry date</i> of a workplace agreement has the meaning given by section 101.
12	Northern Territory authority means:
13	(a) a body corporate established for a public purpose by or under
14	a law of the Northern Territory; or
15	(b) a body corporate:
16	(i) incorporated under a law of the Northern Territory; and
17	(ii) in which the Northern Territory has a controlling
18	interest;
19	other than a prescribed body.
20	notional agreement preserving State awards has the meaning
21	given by clause 1 of Schedule 15.
22	occupier, in relation to premises, includes a person in charge of the
23	premises.
24	office, in relation to an organisation or a branch of an organisation,
25	has the same meaning as in the Registration and Accountability of
26	Organisations Schedule.
27	officer, in relation to an organisation or a branch of an
28	organisation, means a person who holds an office in the
29	organisation or branch.
30	organisation means an organisation registered under the
31	Registration and Accountability of Organisations Schedule.
32 33	Note: An organisation that was registered under the <i>Workplace Relations</i> <i>Act 1996</i> immediately before the commencement of item 1 of

1 2 3 4 5 6	Schedule 2 to the <i>Workplace Relations Legislation Amendment</i> (<i>Registration and Accountability of Organisations</i>) (<i>Consequential Provisions</i>) Act 2002 (the Consequential Provisions Act) is taken to have been registered under the Registration and Accountability of Organisations Schedule (see item 15 of Schedule 1 to the Consequential Provisions Act).
7 8	<i>panel</i> means a panel to which an industry has been assigned under section 37.
9 10 11	<i>peak council</i> means a national or State council or federation that is effectively representative of a significant number of organisations representing employers or employees in a range of industries.
12 13	<i>penalty unit</i> has the meaning given by section 4AA of the <i>Crimes Act 1914</i> .
14	<i>person</i> includes an organisation.
15	<i>pilot</i> has the meaning given by clause 1 of Schedule 1.
16 17	<i>premises</i> includes any land, building, structure, mine, mine working, ship, aircraft, vessel, vehicle or place.
18 19	<i>pre-reform AWA</i> has the meaning given by clause 1 of Schedule 14.
20 21 22	<i>pre-reform award</i> means an instrument that has effect after the reform commencement under item 4 of Schedule 4 to the <i>Workplace Relations Amendment (Work Choices) Act 2005.</i>
23 24	<i>prescribed</i> includes prescribed by Rules of the Commission made under section 48.
25	preserved APCS has the meaning given by subsection 90ZD(1).
26 27	<i>preserved award entitlement</i> , in relation to an employee, has the meaning given by section 117B.
28	preserved award term has the meaning given by section 117.
29 30	<i>preserved State agreement</i> has the meaning given by clause 1 of Schedule 15.
31	President means the President of the Commission.

1	Presidential Member means the President, a Vice President, a
2	Senior Deputy President or a Deputy President.
3	previous Act means the Conciliation and Arbitration Act 1904, and
4	includes any other Act so far as the other Act affects the operation
5	of that Act.
6	<i>proceeding</i> includes a proceeding relating to the following:
7	(a) an award rationalisation process;
8	(b) an award simplification process.
9	protected action has the meaning given by section 108.
10	protected action ballot means a ballot under Division 4 of Part VC.
11	public sector employment means employment of, or service by, a
12	person in any capacity (whether permanently or temporarily and
13	whether full-time or part-time):
14	(a) under the <i>Public Service Act 1999</i> or the <i>Parliamentary</i>
15	Service Act 1999; or
16	(b) by or in the service of a Commonwealth authority; or
17	(c) under a law of the Australian Capital Territory relating to
18	employment by that Territory, including a law relating to the
19	Australian Capital Territory Government Service; or
20	(d) by or in the service of:
21	(i) an enactment authority as defined by section 3 of the
22	A.C.T. Consequential Provisions Act; or
23	(ii) a body corporate incorporated under a law of the Australian Capital Territory and in which the Australian
24 25	Capital Territory has a controlling interest;
26	other than a prescribed authority or body; or
27	(e) under a law of the Northern Territory relating to the Public
28	Service of the Northern Territory; or
29	(f) by or in the service of a Northern Territory authority; or
30	(g) by or in the service of a prescribed person or under a
31	prescribed law;
32	but, other than in section 44N, does not include:
33	(h) employment of, or service by, a person included in a
34	prescribed class of persons; or
35	(i) employment or service under a prescribed law.

1 2	<i>reform commencement</i> means the commencement of Schedule 1 to the <i>Workplace Relations Amendment (Work Choices) Act 2005.</i>
3 4	<i>Registrar</i> means the Industrial Registrar or a Deputy Industrial Registrar.
5	Registration and Accountability of Organisations Schedule means Schedule 1B.
7 8	<i>registry</i> means the Principal Registry or another registry established under section 64.
0	<i>regular part-time employee</i> means an employee who:
9	
10	(a) works less than full-time ordinary hours; and
11	(b) has reasonably predictable hours of work; and
12	(c) receives, on a pro-rata basis, equivalent pay and conditions to
13	those specified in an award or awards for full-time employees who do the same kind of work.
14	who do the same kind of work.
15	secondary office, in relation to a person who holds an office of
16	member of the Commission and an office of member of a
17	prescribed State industrial authority, means the office to which the
18	person was most recently appointed.
19 20	<i>Senior Deputy President</i> means a Senior Deputy President of the Commission.
20	
21	<i>ship</i> has the meaning given by clause 1 of Schedule 1.
22	single business has the meaning given by section 95A.
23	special magistrate means a magistrate appointed as a special
24	magistrate under a law of a State or Territory.
	-
25	<i>State award</i> means an award, order, decision or determination of a
26	State industrial authority.
27	State employment agreement means an agreement:
28	(a) between an employer and one or more of the following:
29	(i) an employee of the employer;
30	(i) a trade union; and
	(b) that regulates wages and conditions of employment of one or
31 32	more of the employees; and
	(c) that is in force under a State or Territory industrial law; and
33	

1	(d) that prevails over an inconsistent State award.	
2	State industrial authority means:	
3 4 5 6	 (a) a board or court of conciliation or arbitration, or tribunal, body or persons, having authority under a State Act to exercise any power of conciliation or arbitration in relatio industrial disputes within the limits of the State; or 	n to
7 8	 (b) a special board constituted under a State Act relating to factories; or 	
9 10	(c) any other State board, court, tribunal, body or official prescribed for the purposes of this definition.	
11	State or Territory industrial law means:	
12	(a) any of the following State Acts:	
13	(i) the Industrial Relations Act 1996 of New South Wal	es;
14	(ii) the Industrial Relations Act 1999 of Queensland;	
15	(iii) the Industrial Relations Act 1979 of Western Austral	lia;
16	(iv) the Fair Work Act 1994 of South Australia;	
17	(v) the Industrial Relations Act 1984 of Tasmania; or	
18	(b) an Act of a State or Territory that applies to employment	
19	generally and has one or more of the following as its main	1
20	purpose or one or more of its main purposes:	
21	(i) regulating workplace relations (including industrial	
22	matters, industrial disputes and industrial action, wit	hin
23	the ordinary meaning of those expressions);	
24 25	(ii) providing for the determination of terms and condition of employment;	ons
25 26	(iii) providing for the making and enforcement of	
20	agreements determining terms and conditions of	
28	employment;	
29	(iv) providing for rights and remedies connected with the)
30	termination of employment;	
31	(v) prohibiting conduct that relates to the fact that a pers	on
32	either is, or is not, a member of an industrial associat	tion
33	(as defined in section 240); or	
34	(c) an instrument made under an Act described in paragraph (
35	or (b), so far as the instrument is of a legislative character	; or
36	(d) a law that:	
37	(i) is a law of a State or Territory; and	

Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1 2	(ii) is prescribed by regulations for the purposes of this paragraph.
3	State or Territory training authority means a body authorised by a
4 5	law or award of a State or Territory for the purpose of overseeing arrangements for the training of employees.
6 7	<i>stevedoring operations</i> has the meaning given by clause 1 of Schedule 1.
8 9 10	<i>Termination of Employment Convention</i> means the Termination of Employment Convention, 1982, a copy of the English text of which is set out in Schedule 10.
11 12	<i>this Act</i> includes the regulations but does not include Schedule 1B or regulations made under that Schedule.
13	<i>trade union</i> means:
14	(a) an organisation of employees; or
15	(b) an association of employees that is registered or recognised
16	as a trade union (however described) under the law of a State
17	or Territory; or
18	(c) an association of employees a principal purpose of which is
19 20	the protection and promotion of the employees' interests in matters concerning their employment.
20	matters concerning their employment.
21	training arrangement means a combination of work and training
22	that is subject to a training agreement or a training contract
23	between the employee and employer that is registered:
24	(a) with the relevant State or Territory training authority; or
25	(b) under a law of a State or Territory relating to the training of
26	employees.
27	<i>union collective agreement</i> has the meaning given by section 96B.
28	union greenfields agreement has the meaning given by
29	section 96C.
30	Vice President means a Vice President of the Commission.
31	vocational placement means a placement that is:
32	(a) undertaken with an employer for which a person is not
33	entitled to be paid any remuneration; and

1	(b) undertaken as a requirement of an education or training
2	course; and
3 4	(c) authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory.
5	waterside worker has the meaning given by clause 1 of Schedule 1.
6	<i>wharf</i> has the meaning given by clause 1 of Schedule 1.
7 8	<i>working day</i> means a day that is not a Saturday, a Sunday or a public holiday.
9	workplace agreement means:
10	(a) an AWA; or
11	(b) a collective agreement.
12	Note: Section 95D affects the meaning of <i>workplace agreement</i> .
13	workplace determination means a determination under Division 8
14	of Part VC.
15	<i>workplace inspector</i> means a person appointed as a workplace
16	inspector under section 84.
17	(2) To avoid doubt, it is declared that a reference in this Act (except in
18	Part XA) to an independent contractor is confined to a natural
19	person.
20	(3) In this Act, a reference to:
21	(a) a person who is eligible to become a member of an
22	organisation; or
23	(b) a person who is eligible for membership of an organisation;
24	includes a reference to a person who is eligible merely because of
25	an agreement made under rules of the organisation made under
26	subsection 151(1) of the Registration and Accountability of
27	Organisations Schedule.
28	(4) In this Act, a reference to a person making a statement that is to the
29	person's knowledge false or misleading in a material particular
30	includes a reference to a person making a statement where the
31	person is reckless as to whether the statement is false or misleading
32	in a material particular.

1 2 3	(5)	In this Act, a reference to engaging in conduct includes a reference to being, whether directly or indirectly, a party to or concerned in the conduct.
4 5	(6)	A reference in this Act to a term of an award includes a reference to a provision of an award.
6 7		Note: Section 69B of the <i>Australian Federal Police Act 1979</i> provides that this Act does not apply to certain matters relating to AFP employees.
8	3 After se	ection 4
9	Inse	rt:
10	4AA Emp	loyee
11		Basic definition
12	(1)	In this Act, unless the contrary intention appears:
13		employee means an individual so far as he or she is employed, or
14		usually employed, as described in the definition of <i>employer</i> in
15 16		subsection 4AB(1), by an employer, except on a vocational placement.
17		Note: See also Part XV (employees and employers in Victoria).
18		References to employee with ordinary meaning
19	(2)	However, a reference to employee has its ordinary meaning
20		(subject to subsections (3) and (4)) if the reference is listed in
21		clause 2 of Schedule 1. This does not limit the circumstances in
22		which a contrary intention may appear for the purposes of
23		subsection (1).
24 25		Note: The regulations may amend clause 2 of Schedule 1. See clause 5 of Schedule 1.
26	(3)	In this Act, unless the contrary intention appears, a reference to
27		employee with its ordinary meaning includes a reference to an
28		individual who is usually an employee with that meaning.
29	(4)	In this Act, unless the contrary intention appears, a reference to
30		employee with its ordinary meaning does not include a reference to
31		an individual on a vocational placement.

1 4AB Employer

2	Basic definition
3	(1) In this Act, unless the contrary intention appears:
4	<i>employer</i> means:
5 6	(a) a constitutional corporation, so far as it employs, or usually employs, an individual; or
7 8	(b) the Commonwealth, so far as it employs, or usually employs, an individual; or
9 10	(c) a Commonwealth authority, so far as it employs, or usually employs, an individual; or
11 12 13 14	 (d) a person or entity (which may be an unincorporated club) so far as the person or entity, in connection with constitutional trade or commerce, employs, or usually employs, an individual as:
15	(i) a flight crew officer; or
16	(ii) a maritime employee; or
17	(iii) a waterside worker; or
18 19	(e) a body corporate incorporated in a Territory, so far as the body employs, or usually employs, an individual; or
20 21 22 23 24 25	 (f) 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, so far as the person or entity employs, or usually employs, an individual in connection with the activity carried on in the Territory.
26 27 28	Note 1: In this context, <i>Australia</i> includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands. See paragraph 17(a) of the <i>Acts Interpretation Act 1901</i> .
29	Note 2: See also Part XV (employees and employers in Victoria).
30	References to employer with ordinary meaning
31	(2) However, a reference to employer has its ordinary meaning
32	(subject to subsection (3)) if the reference is listed in clause 3 of
33	Schedule 1. This does not limit the circumstances in which a
34 35 36	contrary intention may appear for the purposes of subsection (1).Note: The regulations may amend clause 3 of Schedule 1. See clause 5 of Schedule 1.

20

1 2 3	(3)	employe	Act, unless the contrary intention appears, a reference to er with its ordinary meaning includes a reference to a or entity that is usually an employer with that meaning.
4	4AC Emp	loymen	t
5	(1)	In this A	Act, unless the contrary intention appears:
6 7		<i>employi</i> employe	<i>nent</i> means the employment of an employee by an er.
8		Note:	Subsections 4AA(1) and 4AB(1) define <i>employee</i> and <i>employer</i> .
9		Referen	ces to employment with ordinary meaning
10 11 12 13	(2)	the refer the circu	er, a reference to employment has its ordinary meaning if rence is listed in clause 4 of Schedule 1. This does not limit umstances in which a contrary intention may appear for the s of subsection (1).
14 15		Note:	The regulations may amend clause 4 of Schedule 1. See clause 5 of Schedule 1.
16	4 Section	4 A	
17	Rep	eal the se	ection, substitute:
18	4A Schedu	ıles 1B,	13, 14, 15 and 16 have effect
19		Schedul	es 1B, 13, 14, 15 and 16 have effect.
20		Note 1:	Schedule 1B is about registration and accountability of organisations.
21 22		Note 2:	Schedule 13 is about transitional arrangements for parties bound by federal awards.
23 24		Note 3:	Schedule 14 is about transitional arrangements for existing pre-reform certified agreements.
25 26		Note 4:	Schedule 15 is about transitional treatment of State employment agreements and State awards.
27 28		Note 5:	Schedule 16 is about transitional instruments and transmission of business.
29	5 Section	is 5 an	d 5AA
30	Rep	eal the se	ections.
31	6 Section	n 7	

1	Repeal the section, substitute:
2	7 Modifications for Christmas Island and Cocos (Keeling) Islands
3	(1) If the regulations prescribe modifications of this Act for its
4	application in relation to the Territory of Christmas Island, this Act
5	has effect as modified in relation to the Territory.
6	(2) If the regulations prescribe modifications of this Act for its
7	application in relation to the Territory of Cocos (Keeling) Islands,
8	this Act has effect as modified in relation to the Territory.
9	(3) In this section:
10	modifications includes additions, omissions and substitutions.
11	7AA Extraterritorial application
12	(1) Each Part or Division listed in the table, and the rest of this Act so
13	far as it relates to the Part or Division, extends to persons, acts,
14	omissions, matters and things outside Australia as described in the
15	relevant section listed in the table.

Item	This Part or Division:	Which is about this topic:	Extends to persons, acts, omissions, matters and things outside Australia as described in this section:
1	Part VA	The Australian Fair Pay and Conditions Standard	Section 89D
2	Part VB	Workplace agreements	Section 95E
3	Part VI	Awards	Section 115C
4	Division 1 of Part VIA	Meal breaks	Section 170AD
5	Division 2 of Part VIA	Equal remuneration for work of equal value	Section 170BGD
6	Division 3 of Part VIA	Termination of employment	Section 170CCB
7	Part IX	Right of entry	Section 200
8	Part XA	Freedom of association	Section 249

1 2 3		Note 1:	In this context, <i>Australia</i> 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 <i>Acts Interpretation Act 1901</i> .
4 5 6 7 8		Note 2:	Provisions of section 86 giving inspectors power to enter certain premises and places and do certain things there also extend to some premises and places outside Australia, subject to Australia's international obligations relating to foreign-flagged ships and foreign-registered aircraft.
9		Modified	l application in Australia's exclusive economic zone
10 11	(2)	operation	gulations prescribe modifications of this Act for its n in relation to all or part of Australia's exclusive
12			c zone, then, so far as this Act extends to the zone or part m this subsection, it has effect as modified in relation to
13 14		the zone	
15	(3)		purposes of subsection (2), the regulations may prescribe
16			modifications in relation to different parts of Australia's e economic zone.
17 18			l application in relation to Australia's continental shelf
10		moujieu	ι αρριτταιιόν τη τετατιόν το Αμειτατία ε τοπιπετιται επεί
19 20	(4)		gulations prescribe modifications of this Act for its n in relation to all or part of Australia's continental shelf,
21			far as this Act extends in relation to the continental shelf or
22			t from this subsection, it has effect as modified in relation
23		to the co	ntinental shelf or part.
24	(5)		purposes of subsection (4), the regulations may prescribe
25			modifications in relation to different parts of Australia's
26		continen	tal shelf.
27		Definitio	ons
28	(6)	In this se	ection:
29		modifica	ttions includes additions, omissions and substitutions.
30		this Act	includes the Registration and Accountability of
31			ations Schedule and regulations made under it.
32	7 Sectior	י 7B	
33	Befo	ore "Chap	oter", insert "(1)".

• / • •	d of section 7B
Add:	
• • •	lowever, so far as Part 2.7 of the <i>Criminal Code</i> is relevant to this act, it has effect subject to the following sections of this Act:
	(a) section 7AA;
	(b) the sections mentioned in section 7AA;
	(c) section 86.
N	ote: Part 2.7 of the <i>Criminal Code</i> is about geographical jurisdiction in connection with offences. Section 7AA, the sections mentioned there and section 86 deal with extraterritorial operation of this Act.
9 At the en	d of Part I
Add:	
7C Act exclu	udes some State and Territory laws
(1) T	his Act is intended to apply to the exclusion of all the following
	two of a State or Territory so far as they would otherwise apply in
re	elation to an employee or employer:
	(a) a State or Territory industrial law;
	(b) a law that applies to employment generally and deals with
	(b) a law that applies to employment generally and deals with leave other than long service leave;
	leave other than long service leave;(c) a law providing for a court or tribunal constituted by a law of
	leave other than long service leave;(c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal
	leave other than long service leave;(c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in
	 leave other than long service leave; (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 170BB);
	 leave other than long service leave; (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 170BB); (d) a law providing for the variation or setting aside of rights and
	 leave other than long service leave; (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 170BB); (d) a law providing for the variation or setting aside of rights and obligations arising under a contract of employment, or
	 leave other than long service leave; (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 170BB); (d) a law providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal
	 leave other than long service leave; (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 170BB); (d) a law providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair;
	 leave other than long service leave; (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 170BB); (d) a law providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair; (e) a law that entitles a representative of a trade union to enter
	 leave other than long service leave; (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 170BB); (d) a law providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair;
	 leave other than long service leave; (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 170BB); (d) a law providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair; (e) a law that entitles a representative of a trade union to enter premises for a purpose other than a purpose connected with
Ν	 leave other than long service leave; (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 170BB); (d) a law providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair; (e) a law that entitles a representative of a trade union to enter premises for a purpose other than a purpose connected with occupational health and safety.
N Si	 leave other than long service leave; (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 170BB); (d) a law providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair; (e) a law that entitles a representative of a trade union to enter premises for a purpose other than a purpose connected with occupational health and safety. ote: Subsection 4(1) defines <i>applies to employment generally</i>.

1 2	(a)	the law deals with the prevention of discrimination, the promotion of EEO or both, and is neither a State or Territory
3		industrial law nor contained in such a law; or
4 5	(b)	the law is prescribed by the regulations as a law to which subsection (1) does not apply; or
6	(c)	the law deals with any of the matters (the <i>non-excluded</i>
7		<i>matters</i>) described in subsection (3).
8	(3) The r	non-excluded matters are as follows:
9	(a)	superannuation;
10	(b)	workers compensation;
11	(c)	occupational health and safety;
12	(d)	child labour;
13	(e)	long service leave;
14	(f)	the observance of a public holiday, except the rate of
15		payment of an employee for the public holiday;
16	(g)	the method of payment of wages or salaries;
17	(h)	the frequency of payment of wages or salaries;
18	(i)	deductions from wages or salaries;
19	(j)	matters relating to training or apprenticeships, except the rate
20		of payment of trainees and apprentices;
21	(k)	industrial action (within the ordinary meaning of the
22		expression) affecting essential services;
23	(1)	attendance for service on a jury;
24	(m)	regulation of any of the following:
25		(i) associations of employees;
26		(ii) associations of employers;
27		(iii) members of associations of employees or of
28		associations of employers.
29	Note:	Part IX (Right of entry) sets prerequisites for a trade union
30		representative to enter certain premises under a right given by a
31		prescribed law of a State or Territory. The prerequisites apply even though the law deals with accumptional health and affety and
32 33		though the law deals with occupational health and safety and paragraph (2)(c) says this Act is not to apply to the exclusion of a law
33 34		dealing with that.

This Act excludes prescribed State and Territory lawsThis Act is intended to apply to the exclusion of a law of a State or Territory that is prescribed by the regulations for the purposes of this subsection.DefinitionIn this section:
Territory that is prescribed by the regulations for the purposes of this subsection. Definition
·
In this section:
<i>this Act</i> includes the Registration and Accountability of Organisations Schedule and regulations made under it.
ds, agreements and Commission orders prevail over State and Territory law etc.
An award or workplace agreement prevails over a law of a State or Territory, a State award or a State employment agreement, to the extent of any inconsistency.
However, a term of an award or workplace agreement dealing with any of the following matters has effect subject to a law of a State or Territory dealing with the matter:
 (a) occupational health and safety; (b) workers compensation; (c) apprenticeship; (d) a matter prescribed by the regulations for the purposes of this paragraph.
An order of the Commission under Part VIA prevails over a law of a State or Territory, a State award or a State employment agreement, to the extent of any inconsistency.
Note: Part VIA is about minimum entitlements of employees.
ay exclude State and Territory laws in other cases
 Sections 7C and 7D are not a complete statement of the circumstances in which this Act and instruments made under it are intended to apply to the exclusion of, or prevail over, laws of the States and Territories or instruments made under those laws. Note: Other provisions of this Act deal with its relationship with laws of the States and Territories. For example, see clause 87 of Schedule 13,

1 2	which is about not excluding or limiting Victorian law that can operate concurrently with certain provisions of that Schedule.
3	(2) In this section:
4 5	<i>this Act</i> includes the Registration and Accountability of Organisations Schedule and regulations made under it.
6	10 After Part I
7	Insert:
8	Part IA—Australian Fair Pay Commission
9	Division 1—Preliminary
10	7F Definitions
11	In this Part:
12	AFPC Chair means the AFPC Chair appointed under section 7P.
13 14	<i>AFPC Commissioner</i> means an AFPC Commissioner appointed under section 7Y.
15 16	<i>AFPC Secretariat</i> means the AFPC Secretariat established under section 7ZG.
17 18	<i>Director of the Secretariat</i> means the Director of the Secretariat appointed under section 7ZK.
19 20	<i>wage review</i> means a review conducted by the AFPC to determine whether it should exercise any of its wage-setting powers.
21 22	<i>wage-setting decision</i> means a decision made by the AFPC in the exercise of its wage-setting powers.
23	wage-setting function has the meaning given by section 7I.
24	wage-setting powers means the powers of the AFPC under
25	Division 2 of Part VA.

1	Division 2—A	ustralian Fair Pay Commission
2	Subdivision A-	
3	7G Establishme	ent
4	(1) The <i>A</i>	Australian Fair Pay Commission is established by this section.
5 6 7	(a)	AFPC is to consist of: the AFPC Chair; and 4 AFPC Commissioners.
8	7H Functions of	f the AFPC
9 0 1 2 3 4 5 5 5 7 8	(a) (b) (c) (d) Subdivision B-	unctions of the AFPC are as follows: its wage-setting function as set out in section 7I; any other functions conferred on the AFPC under this Act or any other Act; any other functions conferred on the AFPC by regulations made under this Act or any other Act; to undertake activities to promote public understanding of matters relevant to its wage-setting and other functions. —AFPC's wage-setting function e-setting function
9	The A	AFPC's <i>wage-setting function</i> is to:
0		conduct wage reviews; and
1 2		exercise its wage-setting powers as necessary depending on the outcomes of wage reviews.
3 4	Note:	The main wage-setting powers of the AFPC cover the following matters (within the meaning of Division 2 of Part VA):
5		(a) adjusting the standard FMW (short for Federal Minimum Wage);
5 7 8		 (b) determining or adjusting special FMWs for junior employees, employees with disabilities or employees to whom training arrangements apply;
9 0 1		 determining or adjusting basic periodic rates of pay and basic piece rates of pay payable to employees or employees of particular classifications;
2		(d) determining or adjusting casual loadings.

1	7J AFPC's wage-setting parameters
2	The objective of the AFPC in performing its wage-setting function
3	is to promote the economic prosperity of the people of Australia
4	having regard to the following:
5 6	 (a) the capacity for the unemployed and low paid to obtain and remain in employment;
7	(b) employment and competitiveness across the economy;
8	(c) providing a safety net for the low paid;
9	(d) providing minimum wages for junior employees, employees
10	to whom training arrangements apply and employees with
11	disabilities that ensure those employees are competitive in
12	the labour market.
13	7K Wage reviews and wage-setting decisions
14	(1) The AFPC may determine the following:
15	(a) the timing and frequency of wage reviews;
16	(b) the scope of particular wage reviews;
17	(c) the manner in which wage reviews are to be conducted;
18	(d) when wage-setting decisions are to come into effect.
19	(2) For the purposes of performing its wage-setting function, the
20	AFPC may inform itself in any way it thinks appropriate, including
21	by:
22	(a) undertaking or commissioning research; or
23	(b) consulting with any other person, body or organisation; or
24	(c) monitoring and evaluating the impact of its wage-setting
25	decisions.
26	(3) Subsections (1) and (2) have effect subject to this Act and any
27	regulations made under this Act.
28	(4) The AFPC's wage-setting decisions must:
29	(a) be in writing; and
30	(b) be expressed as decisions of the AFPC as a body; and
31	(c) include reasons for the decisions, expressed as reasons of the
32	AFPC as a body.
33	A wage-setting decision is not a legislative instrument.

7L Cons	titution of the AFPC for wage reviews
(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	b) 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 Pub	ishing wage-setting decisions etc.
(1) The AFPC must publish its wage-setting decisions.
(2) The AFPC may, as it thinks appropriate, publish other informatio
	about wages or its wage-setting function.
(3	Publishing under subsection (1) or (2) may be done in any way th
	AFPC thinks appropriate.
Subdivis	ion C—Operation of the AFPC
7N AFP	C to determine its own procedures
(1) The AFPC may determine the procedures it will use in performing its functions.
(2	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.
70 Ann	ial 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.

2	7P Appoi	ntment
3 4	(1)	The AFPC Chair is to be appointed by the Governor-General by written instrument.
5 6 7	(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.
8 9	(3)	To be appointed as AFPC Chair, a person must have a high level of skills and experience in business or economics.
10	7Q Remu	neration
11 12 13 14	(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.
15	(2)	The AFPC Chair is to be paid the allowances that are prescribed.
16 17	(3)	This section has effect subject to the <i>Remuneration Tribunal Act</i> 1973.
18	7R Leave	of absence
 19 20 21 22 23 24 25 26 27 		 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. 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.
		concisions that the realister determines.

1	7S Engaging in other paid employment
2	If the AFPC Chair is appointed on a full-time basis, the AFPC
3	Chair must not engage in paid employment outside the duties of his
4	or her office without the Minister's approval.
5	7T Disclosure of interests
6	The AFPC Chair must give written notice to the Minister of all
7	interests (financial or otherwise) that the AFPC Chair has or
8	acquires and that could conflict with the proper performance of his
9	or her duties.
10	7U Resignation
11	(1) The AFPC Chair may resign his or her appointment by giving the
12	Governor-General a written resignation.
13	(2) The resignation takes effect on the day it is received by the
14	Governor-General or, if a later day is specified in the resignation,
15	on that later day.
16	7V Termination of appointment
	i v Terminuton of uppontenent
17	(1) The Governor-General may terminate the appointment of the
17 18	••
	(1) The Governor-General may terminate the appointment of the
18	(1) The Governor-General may terminate the appointment of the AFPC Chair if:
18 19	 (1) The Governor-General may terminate the appointment of the AFPC Chair if: (a) the AFPC Chair:
18 19 20	 (1) The Governor-General may terminate the appointment of the AFPC Chair if: (a) the AFPC Chair: (i) becomes bankrupt; or
18 19 20 21	 (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
18 19 20 21 22	 (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
 18 19 20 21 22 23 	 (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
 18 19 20 21 22 23 24 	 (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
 18 19 20 21 22 23 24 25 	 (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
 18 19 20 21 22 23 24 25 26 27 28 	 (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
 18 19 20 21 22 23 24 25 26 27 28 29 	 (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
 18 19 20 21 22 23 24 25 26 27 28 29 30 	 (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
 18 19 20 21 22 23 24 25 26 27 28 29 	 (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

Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1 2	(i) the AFPC Chair engages, except with the Minister's approval, in paid employment outside the duties of his
3	or her office; or
4	(ii) the AFPC Chair is absent, except on leave of absence,
5	for 14 consecutive days or for 28 days in any 12
6	months; or
7	(e) if the AFPC Chair is appointed on a part-time basis—the
8	AFPC Chair is absent, except on leave of absence, to an
9	extent that the Minister considers excessive.
10	(2) Subject to subsections (3) and (4), the Governor-General may
11	terminate the appointment of the AFPC Chair for misbehaviour or
12	physical or mental incapacity.
13	(3) If the AFPC Chair:
14	(a) is an eligible employee for the purposes of the
15	Superannuation Act 1976; and
16	(b) has not reached his or her maximum retiring age within the
17	meaning of that Act;
18	his or her appointment cannot be terminated for physical or mental
19 20	incapacity unless the CSS Board has given a certificate under section 54C of that Act.
21	(4) If the AFPC Chair:
22	(a) is a member of the superannuation scheme established by
23	deed under the Superannuation Act 1990; and
24	(b) is under 60 years of age;
25	his or her appointment cannot be terminated for physical or mental
26	incapacity unless the PSS Board has given a certificate under
27	section 13 of that Act.
28	7W Other terms and conditions
29	The AFPC Chair holds office on the terms and conditions (if any)
30	in relation to matters not covered by this Act that are determined
31	by the Minister.
32	7X Acting AFPC Chair
33	(1) The Minister may appoint a person who meets the requirements set
34	out in subsection $7P(3)$ to act as the AFPC Chair:

1 2	 (a) during a vacancy in the office of the AFPC Chair (whether or not an appointment has previously been made to the office);
2	or
4	(b) during any period, or during all periods, when the AFPC
5	Chair is absent from duty or from Australia, or is, for any
6	reason, unable to perform the duties of the office.
7 8	(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
9	(a) the occasion for the appointment had not arisen; or
10 11	(b) there was a defect or irregularity in connection with the appointment; or
12	(c) the appointment had ceased to have effect; or
13	(d) the occasion to act had not arisen or had ceased.
14	Subdivision E—AFPC Commissioners
15	7Y Appointment
16 17	 An AFPC Commissioner is to be appointed by the Governor-General by written instrument.
18	(2) An AFPC Commissioner holds office on a part-time basis for the
19 20	period specified in his or her instrument of appointment. The period must not exceed 4 years.
21	(3) To be appointed as an AFPC Commissioner, a person must have
22	experience in one or more of the following areas:
23	(a) business;
24	(b) economics;
25	(c) community organisations;
26	(d) workplace relations.
27	7Z Remuneration
28	(1) An AFPC Commissioner is to be paid the remuneration that is
29	determined by the Remuneration Tribunal. If no determination of
30	that remuneration by the Tribunal is in operation, an AFPC
31	Commissioner is to be paid the remuneration that is prescribed.
32	(2) An AFPC Commissioner is to be paid the allowances that are
33	prescribed.

34

1 2	(3)	This section has effect subject to the <i>Remuneration Tribunal Act</i> 1973.
3	7ZA Leav	ve of absence
4		The AFPC Chair may grant leave of absence to an AFPC
5 6		Commissioner on the terms and conditions that the AFPC Chair determines.
7	7ZB Disc	losure of interests
8 9		An AFPC Commissioner must give written notice to the Minister of all interests (financial or otherwise) that the AFPC
10 11		Commissioner has or acquires and that could conflict with the proper performance of his or her duties.
12	7ZC Resig	gnation
13 14	(1)	An AFPC Commissioner may resign his or her appointment by giving the Governor-General a written resignation.
15 16 17	(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.
18	7ZD Tern	nination of appointment
19 20	(1)	The Governor-General may terminate the appointment of an AFPC Commissioner if:
21		(a) the AFPC Commissioner:
22		(i) becomes bankrupt; or
23 24		(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
25		(iii) compounds with his or her creditors; or
26 27		(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
28		(b) the AFPC Commissioner fails, without reasonable excuse, to
29		comply with section 7ZB; or
30		(c) the AFPC Commissioner has or acquires interests (including
31		by being an employer or employee) that the Minister

1	considers conflict unacceptably with the pro-	oper performance
2	of the AFPC Commissioner's duties; or	
3	(d) the AFPC Commissioner is absent, except of	
4	absence, to an extent that the Minister const	ders excessive.
5	(2) Subject to subsections (3) and (4), the Governor-	General may
6	terminate the appointment of an AFPC Commissi	-
7	misbehaviour or physical or mental incapacity.	
8	(3) If an AFPC Commissioner:	
9	(a) is an eligible employee for the purposes of the purpose of the purposes of the purposes of the purpose of the purposes of the purposes of the purposes of the purposes of the purpose of the purposes of the purpose of the purposes of the purpose of the purposes of the purpose of the p	the
10	Superannuation Act 1976; and	
11	(b) has not reached his or her maximum retiring	g age within the
12	meaning of that Act;	
13	his or her appointment cannot be terminated for p	hysical or mental
14	incapacity unless the CSS Board has given a certi	ficate under
15	section 54C of that Act.	
16	(4) If an AFPC Commissioner:	
17	(a) is a member of the superannuation scheme	established by
18	deed under the Superannuation Act 1990; a	nd
19	(b) is under 60 years of age;	
20	his or her appointment cannot be terminated for p	
21	incapacity unless the PSS Board has given a certi	ficate under
22	section 13 of that Act.	
23	7ZE Other terms and conditions	
24	An AFPC Commissioner holds office on the term	is and conditions
25	(if any) in relation to matters not covered by this	Act that are
26	determined by the Minister.	
27	7ZF Acting AFPC Commissioners	
28	(1) The Minister may appoint a person who meets the	e requirement set
28 29	out in subsection $7Y(3)$ to act as an AFPC Comm	-
30	(a) during a vacancy in the office of an AFPC	
31	(whether or not an appointment has previou	
32	the office); or	,
33	(b) during any period, or during all periods, wh	en an AFPC
34	Commissioner is acting as AFPC chair, is a	bsent from duty

1 2	or from Australia, or is, for any reason, unable to perform the duties of the office.
3	(2) Anything done by or in relation to a person purporting to act under
4	an appointment is not invalid merely because:
5	(a) the occasion for the appointment had not arisen; or
6	(b) there was a defect or irregularity in connection with the
7	appointment; or
8	(c) the appointment had ceased to have effect; or
9	(d) the occasion to act had not arisen or had ceased.
10	Division 3—AFPC Secretariat
11	Subdivision A—Establishment and function
12	7ZG Establishment
13	(1) The AFPC Secretariat is established by this section.
14	(2) The AFPC Secretariat is to consist of:
15	(a) the Director of the Secretariat; and
16	(b) the staff of the Secretariat.
17	7ZH Function
18 19	The function of the AFPC Secretariat is to assist the AFPC in the performance of the AFPC's functions.
20	Subdivision B—Operation of the AFPC Secretariat
21	7ZI AFPC Chair may give directions
22	(1) The AFPC Chair may give directions to the Director of the
23	Secretariat about the performance of the function of the AFPC
24	Secretariat.
25	(2) The Director of the Secretariat must ensure that a direction given
26	under subsection (1) is complied with.
27	(3) To avoid doubt, the AFPC Chair must not give directions under
28	subsection (1) in relation to the performance of functions, or

1 2	exercise of powers, under the Financial Management and Accountability Act 1997 or the Public Service Act 1999.
3	7ZJ Annual report
4 5 6 7	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.
8	Subdivision C—The Director of the Secretariat
9	7ZK Appointment
10 11	(1) The Director of the Secretariat is to be appointed by the Minister by written instrument.
12 13 14	(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.
15	7ZL Remuneration
16 17 18 19	(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.
20 21	(2) The Director of the Secretariat is to be paid the allowances that are prescribed.
22 23	(3) This section has effect subject to the <i>Remuneration Tribunal Act</i> 1973.
24	7ZM Leave of absence
25 26	(1) The Director of the Secretariat has the recreation leave entitlements that are determined by the Remuneration Tribunal.
27 28 29	(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.

1	7ZN	Engaging	in	other	paid	employmen	t
---	-----	----------	----	-------	------	-----------	---

2 3 4	The Director of the Secretariat must not engage in paid employment outside the duties of his or her office without the Minister's approval.
5	7ZO Disclosure of interests
6	The Director of the Secretariat must give written notice to the
7	Minister of all interests (financial or otherwise) that the Director of
8	the Secretariat has or acquires and that could conflict with the
9	proper performance of his or her duties.

7ZP Resignation 10

25

26

27

28

29

30

31

32

33

11 12	 The Director of the Secretariat may resign his or her appointment by giving the Minister a written resignation.
13 14 15	(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.
16	7ZQ Termination of appointment
17 18	(1) The Minister may terminate the appointment of the Director of the Secretariat if:
19	(a) the Director of the Secretariat:
20	(i) becomes bankrupt; or
21	(ii) applies to take the benefit of any law for the relief of
22	bankrupt or insolvent debtors; or
23	(iii) compounds with his or her creditors; or
24	(iv) makes an assignment of his or her remuneration for the
25	benefit of his or her creditors; or

Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005 39

(b) the Director of the Secretariat fails, without reasonable

(d) the Director of the Secretariat engages, except with the

(c) the Director of the Secretariat has or acquires interests that

the Minister considers conflict unacceptably with the proper

Minister's approval, in paid employment outside the duties of

performance of the Director of the Secretariat's duties; or

excuse, to comply with section 7ZO; or

his or her office; or

1	(e) the Director of the Secretariat is absent, except on leave of
2	absence, for 14 consecutive days or for 28 days in any 12
3	months.
4	(2) The Minister must terminate the appointment of the Director of the
5	Secretariat if the Minister is of the opinion that the performance of
6	the Director of the Secretariat has been unsatisfactory for a
7	significant period of time.
8	(3) Subject to subsections (4) and (5), the Minister may terminate the
9	appointment of the Director of the Secretariat for misbehaviour or
10	physical or mental incapacity.
11	(4) If the Director of the Secretariat:
12	(a) is an eligible employee for the purposes of the
13	Superannuation Act 1976; and
14	(b) has not reached his or her maximum retiring age within the
15	meaning of that Act;
16	his or her appointment cannot be terminated for physical or mental
17	incapacity unless the CSS Board has given a certificate under
18	section 54C of that Act.
19	(5) If the Director of the Secretariat:
20	(a) is a member of the superannuation scheme established by
21	deed under the Superannuation Act 1990; and
22	(b) is under 60 years of age;
23	his or her appointment cannot be terminated for physical or mental
24	incapacity unless the PSS Board has given a certificate under
25	section 13 of that Act.
26	7ZR Other terms and conditions
27	The Director of the Secretariat holds office on the terms and
28	conditions (if any) in relation to matters not covered by this Act
29	that are determined by the Minister.
30	7ZS Acting Director of the Secretariat
31	(1) The Minister may appoint a person to act as the Director of the
32	Secretariat:

1	(a) during a vacancy in the office of the Director of the
2	Secretariat (whether or not an appointment has previously
3	been made to the office); or
4	(b) during any period, or during all periods, when the Director of
5	the Secretariat is absent from duty or from Australia, or is,
6	for any reason, unable to perform the duties of the office.
7 8	(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
9	(a) the occasion for the appointment had not arisen; or
10 11	(b) there was a defect or irregularity in connection with the appointment; or
12	(c) the appointment had ceased to have effect; or
13	(d) the occasion to act had not arisen or had ceased.
14	Subdivision D—Staff and consultants
15	7ZT Staff
16 17	(1) The staff of the AFPC Secretariat are to be persons engaged under the <i>Public Service Act 1999</i> .
18	(2) For the purposes of the <i>Public Service Act 1999</i> :
19	(a) the Director of the Secretariat and the staff of the AFPC
20	Secretariat together constitute a Statutory Agency; and
21	(b) the Director of the Secretariat is the Head of that Statutory
22	Agency.
23	7ZU Consultants
24	The Director of the Secretariat may, on behalf of the
25	Commonwealth, engage persons having suitable qualifications and
26	experience as consultants to the AFPC or the AFPC Secretariat.
27	The terms and conditions of the engagement of a person are those
28	determined by the Director of the Secretariat in writing.
29	11 Section 33
30	Repeal the section, substitute:

33 Exerci	
	se of Commission powers
(1)	The Commission may perform a function or exercise a power on its own initiative.
(2)	Despite subsection (1), the Commission must not perform a function or exercise a power under a provision of this Act on its own initiative if:
	 (a) the function is to be performed, or the power exercised, on application by a specified person or class of persons; and (b) the function is not also expressed to be able to be performed, or the power exercised, on the Commission's own initiative.
12 Subse	ection 36(3)
Rep	beal the subsection.
13 Section	on 39
Rep	beal the section.
14 At the	e end of Division 2 of Part II
Ado	1:
41A Co-o	peration with the States by President
	The President may invite the heads of State industrial authorities to meet with the President to exchange information and discuss matters of mutual interest in relation to workplace relations.
41B Co-o	meet with the President to exchange information and discuss
41B Co-o	meet with the President to exchange information and discuss matters of mutual interest in relation to workplace relations.
41B Co-o	meet with the President to exchange information and discuss matters of mutual interest in relation to workplace relations. peration with the States by Registrar The Industrial Registrar may invite the principal registrars of State industrial authorities to meet with the Industrial Registrar to
41B Co-o	meet with the President to exchange information and discuss matters of mutual interest in relation to workplace relations. peration with the States by Registrar The Industrial Registrar may invite the principal registrars of State
	meet with the President to exchange information and discuss matters of mutual interest in relation to workplace relations. peration with the States by Registrar The Industrial Registrar may invite the principal registrars of State industrial authorities to meet with the Industrial Registrar to exchange information and discuss matters of mutual interest in relation to workplace relations.
15 Subse	meet with the President to exchange information and discuss matters of mutual interest in relation to workplace relations. peration with the States by Registrar The Industrial Registrar may invite the principal registrars of State industrial authorities to meet with the Industrial Registrar to exchange information and discuss matters of mutual interest in

(a) all parties have given express consent to that representation; and
(b) the Commission grants leave for the party to be so represented.
(3A) A party (including an employing authority) may be represented by counsel, solicitor or agent if:
(a) the party applies to the Commission to be so represented; and
(a) the Commission grants leave for the party to be so
represented.
(3B) In deciding whether or not to grant leave under subsection (3), the Commission must have regard to the following matters:
(a) whether being represented by counsel, solicitor or agent
would assist the party concerned to bring the best case
possible;
(b) the capacity of the particular counsel, solicitor or agent to
represent the party concerned;
(c) the capacity of the particular counsel, solicitor or agent to
assist the Commission in performing the Commission's functions under this Act.
(3C) In deciding whether or not to grant leave under subsection (3A),
the Commission must have regard to the following matters:
(a) the matters referred to in paragraphs (3B)(a), (b) and (c);
(b) the complexity of the factual and legal issues relating to the proceeding;
(c) whether there are special circumstances that make it desirable
that the party concerned be represented by counsel, solicitor or agent.
(3D) An appeal to a Full Bench under section 45 may not be made in
relation to a decision under subsection (3) or (3A) to grant leave or
not to grant leave.
16 At the end of paragraphs 42(7)(a) and (b)
Add "or".
17 At the end of subsection 42(7)
Add:
; or (e) a bargaining agent.

1 2	18 Subsection 43(1) Omit "(1)".
3	19 Subsection 43(2)
4	Repeal the subsection.
5	20 After Division 3 of Part II
6	Insert:
7 8	Division 3A—General matters relating to the powers and procedures of the Commission
9 10	Subdivision A—General matters Commission to take into account
11	44A Commission to take into account the public interest
12	(1) In the performance of its functions, the Commission must take into
13 14	account the public interest, and for that purpose must have regard to:
15	(a) the objects of this Act; and
16	(b) the state of the national economy and the likely effects on the
17	national economy of any order that the Commission is
18	considering, or is proposing to make, with special reference
19	to likely effects on the level of employment and on inflation.
20	(2) To the extent that the Commission is performing its functions in
21	relation to matters arising under the Registration and
22 23	Accountability of Organisations Schedule, the Commission must take into account the public interest, and for that purpose must
23 24	have regard to:
25	(a) Parliament's intention in enacting that Schedule; and
26	(b) the state of the national economy and the likely effects on the
27	national economy of any order that the Commission is
28	considering, or is proposing to make, with special reference
29	to likely effects on the level of employment and on inflation.
30	(3) This section does not apply to the performance of a function under
31	Part VC or Part VI.

44B	Commission to take into account discrimination issues
	In the performance of its functions, the Commission must take into account the following:
	(a) the need to apply the principle of equal pay for work of equal value without discrimination based on sex;
	(b) 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.
44C	Commission to take account of Racial Discrimination Act, Sex Discrimination Act, Disability Discrimination Act and
	Age Discrimination Act
	In the performance of its functions, the Commission must take
	account of the principles embodied in the <i>Racial Discrimination</i> <i>Act 1975</i> , the <i>Sex Discrimination Act 1984</i> , the <i>Disability</i>
	Discrimination Act 1992 and the Age Discrimination Act 2004
	relating to discrimination in relation to employment.
44D	Commission to take account of Family Responsibilities
	Convention
	 In performing its functions, the Commission must take account of the principles embodied in the Family Responsibilities Convention, in particular those relating to:
	 (a) preventing discrimination against workers who have family responsibilities; and
	(b) helping workers to reconcile their employment and family responsibilities.
	(2) This section does not apply to the performance of a function under Part VC.
	Part VC.
44E	Safety, health and welfare of employees
	(1) In performing its functions, the Commission must take into account the provisions of any law of a State or Territory relating to the

1	(2) This section does not apply to the performance of a function under
2	Division 2 of Part VIA.
3	44F Commission to act quickly
4 5	The Commission must perform its functions as quickly as practicable.
6 7	44G Commission to avoid technicalities and facilitate fair conduct of proceedings
8	The Commission must perform its functions in a way that avoids
9	unnecessary technicalities and facilitates the fair and practical
10	conduct of any proceedings under this Act or the Registration and
11	Accountability of Organisations Schedule.
12	Subdivision B—Particular powers and procedures of the
13	Commission
14	44H Procedure of Commission
15 16	(1) In a proceeding under this Act or the Registration and Accountability of Organisations Schedule:
17	 (a) the procedure of the Commission is, subject to this Act, the
18	Registration and Accountability of Organisations Schedule
19	and the Rules of the Commission, within the discretion of the
20	Commission; and
21	(b) the Commission is not bound to act in a formal manner and is
22	not bound by any rules of evidence, but may inform itself on
23	any matter in such manner as it considers just; and
24	(c) the Commission must act according to equity, good
25	conscience and the substantial merits of the case, without
26	regard to technicalities and legal forms.
27	(2) The Commission may determine the periods that are reasonably
28	necessary for the fair and adequate presentation of the respective
29	cases of the parties to the proceeding and require that the cases be
30	presented within the respective periods.
31	(3) The Commission may require evidence or argument to be
32	presented in writing, and may decide the matters on which it will
33	hear oral evidence or argument.

1 44I Particular powers of Commission

2	(1) The (Commission may do any of the following in relation to a
2		beeding under this Act or the Registration and Accountability of
4		nisations Schedule:
5	(a)	inform itself in any manner that it thinks appropriate;
6	(b)	take evidence on oath or affirmation;
7	(c)	give directions orally or in writing in the course of, or for the
8		purposes of, procedural matters relating to the proceeding;
9	(d)	vary or revoke an order, direction or decision of the
10		Commission;
11	(e)	dismiss a matter or part of a matter on the ground:
12		(i) that the matter, or the part of the matter, is trivial; or
13		(ii) that further proceedings in relation to the matter are not
14		necessary or desirable in the public interest;
15	(f)	determine the proceeding in the absence of a person who has
16		been summoned or served with a notice to appear;
17	(g)	sit at any place;
18	(h)	conduct the proceeding, or any part of the proceeding, in
19		private;
20	(i)	adjourn the proceeding to any time and place;
21	(j)	refer any matter to an expert and accept the expert's report as
22		evidence;
23	(k)	direct a member of the Commission to consider a particular
24		matter that is before the Full Bench and prepare a report for
25		the Full Bench on that matter;
26	(1)	allow the amendment, on any terms that it thinks appropriate,
27		of any application or other document relating to the
28		proceeding;
29	(m)	correct, amend or waive any error, defect or irregularity
30		whether in substance or form;
31	(n)	summon before it any persons whose presence the Commission considers would assist in relation to the
32 33		proceeding;
33 34	(\mathbf{o})	compel the production before it of documents and other
34 35	(0)	things for the purpose of reference to such entries or matters
36		as relate to the proceeding;
37	(n)	make interim decisions;
	(P)	

1 2	(q) make a final decision in respect of the matter to which the proceeding relates.
3	(2) The Commission may, in writing, authorise a person (including a
4	member of the Commission) to take evidence on its behalf, with
5	any limitations as the Commission directs, in relation to the
6	proceeding, and the person has all the powers of the Commission
7	to secure:
8	(a) the attendance of witnesses; and
9	(b) the production of documents and things; and
10	(c) the taking of evidence on oath or affirmation.
11	(3) The following provisions do not apply to the performance of a
12	function under Part VC:
13	(a) paragraph (1)(e);
14	(b) paragraph $(1)(j)$;
15	(c) paragraph (1)(k).
16	(4) The following provisions do not apply to the performance of a
17	function under Division 2, 3 or 4 of Part VIA:
18	(a) paragraph (1)(a);
19	(b) paragraph $(1)(e)$;
20	(c) paragraph (1)(k);
21	(d) paragraph (1)(p);
22	(e) paragraph (1)(q);
23	(f) subsection (2).
24	(5) Paragraph $(1)(j)$ does not apply to the performance of a function
25	under Division 3 of Part VIA.
26	(6) If a provision of this Act specifies a time or a period in respect of
27	any matter or thing, the Commission must not extend the time or
28	the period specified unless this Act expressly permits the
29	Commission to do so.
30	(7) If a provision of the Registration and Accountability of
31	Organisations Schedule specifies a time or a period in respect of
32	any matter or thing, the Commission must not extend the time or
33	the period specified unless the Registration and Accountability of
34	Organisations Schedule expressly permits the Commission to do
35	SO.



1 2		For the purposes of paragraph $(1)(d)$, <i>order</i> does not include an award or an award-related order.
3	44J Refere	ence of proceedings to Full Bench
4		If a proceeding is before a member of the Commission, a party to
5		the proceeding or the Minister may apply to the member to have the proceeding dealt with by a Full Bench because the subject
6 7		matter of the proceeding is of such importance that, in the public
8		interest, the proceeding should be dealt with by a Full Bench.
9 10		If an application is made under subsection (1) to a member of the Commission other than the President:
11 12		(a) the member must refer the application to the President to be dealt with; and
13		(b) the President must confer with the member about whether the
14		application should be granted.
15		If the President is of the opinion that the subject matter of the
16		proceeding is of such importance that, in the public interest, the
17 18		proceeding should be dealt with by a Full Bench, the President must grant the application.
19		If the President grants an application under subsection (1), the Full
20		Bench must (subject to subsection (5)) hear and determine the
21		proceeding to which the application relates.
22		If the President grants an application under subsection (1), the Full
23		Bench may do either or both of the following:
24		(a) have regard to any evidence given, and any arguments
25		adduced, in the proceeding before the Full Bench began to
26		deal with it;
27 28		(b) refer a part of the proceeding to a member of the Commission to hear and determine.
29		The President may, before a Full Bench has been established for
30		the purpose of dealing with a proceeding under this section,
31		authorise a member of the Commission to take evidence for the
32		purposes of the proceeding, and the Full Bench must have regard to
33		the evidence.

1 2 3	(7)	The President or a Full Bench may, in relation to the exercise of powers under this section, direct a member of the Commission to provide a report in relation to a specified matter.
4 5 6	(8)	The member must, after making such investigation (if any) as is necessary, provide a report to the President or the Full Bench, as required.
7	(9)	In this section:
8		proceeding includes a part of a proceeding.
9	44K Presi	dent may deal with certain proceedings
10 11 12	(1)	The President may, whether or not another member of the Commission has begun to deal with a particular proceeding, decide to deal with the proceeding.
13 14	(2)	If the President decides to deal with the proceeding, the President must:
15 16		(a) hear and determine the proceeding; or(b) refer the proceeding to a Full Bench.
17 18 19	(3)	If the President refers an application to a Full Bench, the Full Bench must (subject to subsection (4)) hear and determine the proceeding.
20 21 22	(4)	If the President refers the proceeding to a Full Bench, the Full Bench may refer a part of the proceeding to a member of the Commission to hear and determine.
23 24 25 26	(5)	The President or the Full Bench may, in dealing with the proceeding, have regard to any evidence given, and any arguments adduced, in the proceeding before the President or the Full Bench, as the case may be, began to deal with it.
27 28 29	(6)	The President or a Full Bench may, in relation to the exercise of powers under this section, direct a member of the Commission to provide a report in relation to a specified matter.
30 31 32	(7)	The member must, after making such investigation (if any) as is necessary, provide a report to the President or a Full Bench, as the case may be.
33	(8)	In this section:

1		proceeding includes a part of a proceeding.
2	44L Revie	w on application by Minister
3 4 5 6 7 8	(1)	The Minister may apply to the President for a review by a Full Bench of an award or order, or a decision relating to the making of an award or order, made by a member of the Commission (whether under this Act, the Registration and Accountability of Organisations Schedule or otherwise) if it appears to the Minister that the award, order or decision is contrary to the public interest.
9 10 11	(2)	If an application is made to the President under subsection (1), the President must establish a Full Bench to hear and determine the application.
12 13 14 15 16	(3)	The Full Bench must, if in its opinion the matter is of such importance that, in the public interest, the award, order or decision should be reviewed, make such review of the award, order or decision as appears to it to be desirable having regard to the matters referred to in the application.
17 18 19	(4)	Subject to subsection (5) of this section, subsections 45(4) to (8) apply in relation to a review under this section in the same manner as they apply in relation to an appeal under section 45.
20 21 22 23	(5)	Subsections 45A(4) to (8) apply in relation to a review under this section in relation to a matter arising under the Registration and Accountability of Organisations Schedule in the same manner as they apply in relation to an appeal under section 45A.
24 25 26 27 28 29	(6)	 In a review under this section: (a) the Commission must take such steps as it thinks appropriate to ensure that each person and organisation bound by the award or otherwise with an interest in the review is made aware of the review; and (b) the Minister may intervene in the proceeding.
30 31 32	(7)	Each provision of this Act relating to the performance of the Commission's functions in relation to awards extends to a review under this section.
33 34	(8)	Nothing in this section affects any right of appeal or any power of a Full Bench under section 45, and an appeal under that section and

1 2			a review under this section may, if the Full Bench thinks appropriate, be dealt with together.
3		(9)	Nothing in this section affects any right of appeal or any power of
4			a Full Bench under section 45A, and an appeal under that section
5			and a review under this section may, if the Full Bench thinks
6			appropriate, be dealt with together.
7	44M	Com	pulsory conferences
8		(1)	For the purpose of the performance of a function, or the exercise of
9			a power, of the Commission under this Act or the Registration and
10 11			Accountability of Organisations Schedule, a member of the Commission may, on the initiative of the member or on application
12			made by a party to, or intervener in, the proceeding, direct a person
13			to attend, at a specified time and place, a conference to be presided
14			over by a member of the Commission or another person nominated
15			by the President.
16			Note: Contravening a direction may be an offence under section 300.
17		(2)	A direction may be given to anyone whose presence at the
18			conference the member considers would help in the performance of
19 20			a function under this Act or the Registration and Accountability of Organisations Schedule.
21		(3)	The conference must be held in private except to the extent that the
22			person presiding over the conference directs that it be held in
23			public.
24		(4)	This section does not apply to the performance of a function under
25			Part VC.
26 27	44N	Powe	r to override certain laws affecting public sector employment
28		(1)	In so far as the performance of its functions under this Act or the
28 29		(1)	Registration and Accountability of Organisations Schedule
30			involves public sector employment, the Commission may, where it
31			considers it proper to do so, make an award or order that is not, or
32			in its opinion may not be, consistent with a relevant law of the
33			Commonwealth or of an internal Territory.
34		(2)	In this section:

1 2 3	<i>enactment</i> means an ordinance made under the Northern Territory (Administration) Act 1910 and continued in force by the Northern Territory (Self-Government) Act 1978.
4 5 6	<i>relevant law</i> means a law of the Commonwealth or an internal Territory relating to matters pertaining to the relationship between employers and employees in public sector employment, other than:
7 8 9 10	 (a) the Safety, Rehabilitation and Compensation Act 1988, the Long Service Leave (Commonwealth Employees) Act 1976, the Superannuation Act 1976 or the Superannuation Act 1990; or
11 12	(b) a prescribed Act or enactment, or prescribed provisions of an Act or enactment.
13 14	(3) This section does not apply to the performance of a function under Part VIA.
15 16	440 State authorities may be restrained from dealing with matter that is before the Commission
17 18 19 20 21 22	(1) If it appears to a Full Bench that a State industrial authority is dealing or is about to deal with a matter that is the subject of a proceeding before the Commission under this Act or the Registration and Accountability of Organisations Schedule, the Full Bench may make an order restraining the State industrial authority from dealing with the matter.
23 24	(2) The State industrial authority must, in accordance with the order, cease dealing or not deal, as the case may be, with the matter.
25 26 27	(3) An order, award, decision or determination of a State industrial authority made in contravention of the order of a Full Bench under this section is, to the extent of the contravention, void.
28	44P Joint sessions of Commission
29	If:
30	(a) the President considers that a question is common to 2 or
31	more proceedings before the Commission; and (b) the Commission is not constituted by the same person or
32 33	(b) the Commission is not constituted by the same person or persons for the purposes of each proceeding;

1	the President may direct that the Commission constituted by all the
2	persons who constitute the Commission for the purposes of the
3	proceedings may take evidence or hear argument, or take evidence
4	and hear argument, as to the question for the purposes of both or all
5	of the proceedings.
6	44Q Revocation and suspension of awards and orders
7	 An organisation, a person interested or the Minister may apply to
8	the President, and a member of the Commission or a Registrar may
9 10	refer a matter to the President, for action by a Full Bench under this section.
11	(2) If an application is made to the President under subsection (1), the
12	President must establish a Full Bench to hear and determine the
13	application.
14	(3) If a matter is referred to the President under subsection (1), the
15	President may establish a Full Bench to hear and determine the
16	matter.
17 18 19 20 21 22 23 24 25	 (4) If it appears to the Full Bench: (a) that an organisation has contravened this Act, the Registration and Accountability of Organisations Schedule or an award or order of the Commission; or (b) that a substantial number of the members of an organisation refuse to accept employment either at all or in accordance with existing awards or orders; or (c) that for any other reason an award or order should be suspended or revoked in whole or part;
26	the Full Bench may, subject to such conditions as it thinks
27	appropriate, make an order revoking, or suspending for such period
28	as it thinks appropriate, the award or order or any of the terms of
29	the award or an order.
30 31 32 33 34	 (5) The Full Bench may also make such other orders as it thinks appropriate in relation to the operation of: (a) if the Full Bench revokes or suspends an award or order on a ground referred to in paragraph (4)(a) or (b)—any other award or order that binds the organisation; or
35	(b) in any other case—any other award or order that applies in
36	relation to the employment of:

1		(i) members of an organisation that is bound by the
2		revoked or suspended award or order; or
3		(ii) persons eligible to be members of such an organisation.
4		(6) The revocation or suspension of all or any of the terms of an award
5		or order may be expressed to apply only in relation to:
6		 (a) a particular organisation or person bound by the award or order; or
7 8		(b) a particular branch of an organisation; or
9		(c) a particular class of members of an organisation; or
10		(d) a particular locality.
	~	
11	21	Paragraph 45(1)(a)
12		Repeal the paragraph.
13	22	Paragraph 45(1)(b)
14		Omit all the words from and including "Commission, ", substitute
15		"Commission; and".
16	23	Paragraph 45(1)(d)
17		Omit "111(1)(g)", substitute "44I(1)(e)".
18	24	Paragraph 45(1)(da)
19		Repeal the paragraph.
20	25	Paragraphs 45(1)(e) and (eaa)
21		Repeal the paragraphs.
22	26	Paragraph 45(1)(eba)
22	20	Omit "or certified agreement under section 298Z", substitute "under
23 24		section 273".
25	27	Paragraphs 45(1)(ea) and (eb)
25 26	_,	Repeal the paragraphs.
20		Repear die paragraphs.
27	28	Paragraph 45(1)(ed)
28		Omit "certified agreement", substitute "workplace agreement".
29	29	Paragraphs 45(3)(ab) and (ac)

	Repeal the paragraphs, substitute:
	(ab) in the case of an appeal under paragraph (1)(b) against an
	order that was made under subsection 125E(1) or subclause
	14(1) or 23(1) of Schedule 16—by the person who applied
	for the order or any person who made submissions to the Commission on whether the order should be made; and
	(ac) in the case of an appeal under paragraph (1)(c) against a
	decision not to make an order under subsection 125E(1) or
	subclause 14(1) or 23(1) of Schedule 16—by the person who
	applied for the order;
30	Paragraphs 45(3)(ad), (b) and (ba)
	Repeal the paragraphs.
31	Subparagraphs 45(3)(baa)(i) and (ii)
	Repeal the subparagraphs, substitute:
	(i) an employer, employee or organisation bound by the
	award; or
32	Paragraph 45(3)(bab)
	Repeal the paragraph.
33	Paragraph 45(3)(bb)
	Omit "under section 111A", substitute "or workplace agreement".
34	Subsection 45(3) (note)
	Repeal the note.
35	Subsection 45(3A)
	Repeal the subsection.
36	Subsection 45(3B)
	Repeal the subsection.
37	Paragraph 45(7)(d)
	Omit "111(1)(g)", substitute "44I(1)(e)".
38	Subsection 45(9)

1 2 3 4	39	Paragraph 45A(1)(b) Omit all the words after "Commission", substitute "in proceedings under that Schedule, other than an order made by consent of the parties to the proceeding; and".
5 6	40	Paragraph 45A(1)(d) Omit "111(1)(g)", substitute "44I(1)(e)".
7 8	41	Paragraph 45A(7)(d) Omit "111(1)(g)", substitute "44I(1)(e)".
9 10	42	Subsections 48(1A) and (1B) Repeal the subsections.
11 12	43	Sections 83BB and 83BC Repeal the sections, substitute:
13	83I	BB Functions of the Employment Advocate
14		(1) The functions of the Employment Advocate are:
15		(a) to promote the making of workplace agreements; and
16 17 18		 (b) to provide assistance and advice to employees and employers (especially employers in small business) in relation to workplace agreements; and
19 20		(c) to provide education and information to employees and employers in relation to workplace agreements; and
21 22		 (d) to promote better work and management practices through workplace agreements; and
23		(e) to accept lodgment of:
24		(i) workplace agreements; and
25		(ii) notices about transmission of instruments; and
26 27		(f) to provide advice to employees and employers about awards and the Australian Fair Pay and Conditions Standard; and
28		(g) to provide aggregated statistical information to the Minister;
29		and
30		(h) to authorise multiple-business agreements in accordance with
31		the regulations; and (i) to give to the Minister in accordance with the regulations
32 33		(i) to give to the Minister, in accordance with the regulations, information and copies of documents; and

	(j) to disclose information that relates to the functions of workplace inspectors to workplace inspectors in response to
	requests from workplace inspectors; and
	(k) to disclose information to workplace inspectors that the
	Employment Advocate considers on reasonable grounds is
	likely to assist the inspectors in performing their functions;
	and
	(l) to analyse workplace agreements; and
	(m) to perform any other function conferred on the Employment
	Advocate by this Act, another Act, the regulations or the
	Registration and Accountability of Organisations Schedule.
(2)	In performing his or her functions relating to workplace
	agreements, the Employment Advocate must encourage parties to
	agreement-making to take account of the needs of workers in
	disadvantaged bargaining positions (for example: women, people from a non-English speaking background, young people,
	apprentices, trainees and outworkers).
	apprentices, trances and outworkers).
(3)	In performing his or her functions, the Employment Advocate must
	have particular regard to:
	(a) assisting workers to balance work and family responsibilities;
	and
	(b) the need to prevent and eliminate discrimination on the
	grounds of race, colour, sex, sexual preference, age, physical
	or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or
	social origin.
(4)	Regulations made for the purposes of paragraph (1)(i) may require
	that documents given to the Minister are given with such deletions
	as are necessary to prevent the identification of individuals to
	whom the documents refer.
83BC Min	nister's directions to Employment Advocate
(1)	The Minister may, by legislative instrument, give directions specifying the manner in which the Employment Advocate must exercise or perform the powers or functions of the Employment Advocate.
(2)	The directions must not be about a particular workplace agreement.

(3) The Employment Advocate must comply with the directions.
44 Subsection 83BE(2) Omit "under Part VID relating to the approval of AWAs and ancillary documents", substitute "relating to the authorisation of multiple-business agreements".
45 Subsection 83BE(3)
Repeal the subsection.
46 Division 2 of Part IVA
Repeal the Division.
•
47 Section 83BS
Repeal the section, substitute:
83BS Identity of parties to AWAs not to be disclosed
(1) A person commits an offence if:
(a) the person discloses information; and
(b) the information is protected information; and
(c) the discloser has reasonable grounds to believe that the
information will identify another person as being, or having
been, a party to an AWA; and
(d) the disclosure is not made by the discloser in the course of
performing functions or duties as a workplace agreement
official; and
(e) the disclosure is not required or permitted by this Act, by
another Act, by regulations made for the purposes of another
provision of this Act or by regulations made for the purposes of another Act; and
(f) the person whose identity is disclosed has not, in writing, authorised the disclosure.
Penalty: Imprisonment for 6 months.
(2) In this section:
protected information, in relation to a person, means information
that the person acquired:

1	(a) in the course of performing functions or duties, or exercising
2	powers, as a workplace agreement official; or
3	(b) from a workplace agreement official who acquired the
4	information as mentioned in paragraph (a).
5	workplace agreement official means:
6	(a) the Employment Advocate; or
7	(b) a delegate of the Employment Advocate; or
8 9	 (c) a member of the staff assisting the Employment Advocate under section 83BD.
10	48 Section 83BT
11	Omit "AWAs or ancillary documents", substitute "workplace
12	agreements".
13	49 Part V (heading)
14	Repeal the heading, substitute:
15	Part V—Workplace inspectors
16	50 Subsection 84(1)
17	Before "inspectors", insert "workplace".
18	51 Subsection 84(2)
19	Repeal the subsection, substitute:
20	(2) The Minister may, by instrument, appoint as a workplace
21	inspector:
22	(a) a person who has been appointed, or who is employed, by the
23	Commonwealth; or
24	(b) a person, other than a person mentioned in paragraph (a).
25	52 Subsection 84(3)
26	Repeal the subsection, substitute:
27	(3) A person appointed under paragraph $(2)(a)$ is appointed for the
28	period specified in regulations made for the purposes of this
29	subsection.

	for the purposes of this subsection.
53	Subsection 84(4)
	Omit "an inspector has such powers and functions in relation to the
	observance of this Act, awards and certified agreements as are
	conferred by this Act", substitute "a workplace inspector has the powers and functions conferred on a workplace inspector by this Act or by the regulations or by another Act".
54	Subsection 84(4A)
	Omit "an inspector has such powers and functions in relation to the observance of this Act, awards and certified agreements as are conferred on an inspector by this Act and", substitute "a workplace inspector has only such of the powers and functions mentioned in
	subsection (4) as are".
55	Subsection 84(5)
	Omit "by notice published in the <i>Gazette</i> ", substitute "by legislative instrument".
56	Subsection 84(6)
	Omit "An inspector shall", substitute "A workplace inspector must".
57	Subsection 85(2)
	Omit "shall", substitute "must".
58	At the end of section 85
	Add:
	(3) A person commits an offence if:
	(a) the person ceases to be a workplace inspector; and
	(b) the person does not return the person's identity card to the Secretary of the Department within 14 days of so ceasing.
	Penalty: 1 penalty unit.

(3A) A person appointed under paragraph (2)(b) is appointed for the

period specified in the person's instrument of appointment, which must not be longer than the period specified in regulations made

1

2 3

1	Note: For <i>strict liability</i> , see section 6.1 of the <i>Criminal Code</i> .
2 59	Subsection 86(1)
3	Repeal the subsection, substitute:
4	Purpose for which powers of inspectors can be exercised
5 6	(1) The powers of a workplace inspector under this section may be exercised:
7 8	(a) for the purpose of determining whether any of the following are being, or have been, observed:
9 10	(i) workplace agreements;(ii) awards;
11 12 13 14	 (ii) twices, (iii) the Australian Fair Pay and Conditions Standard; (iv) minimum entitlements and orders under Part VIA; (v) the requirements of this Act (other than section 541) and the regulations; or
15 16	(b) for the purposes of a provision of the regulations that confers powers or functions on inspectors.
17 18 19 20	Note: Workplace determinations are treated for the purposes of the Act as if they were collective agreements (see section 113F). Undertakings are treated the same way (see section 103M). This means that inspectors also have powers in relation to those instruments.
21 60	Subparagraph 86(1A)(a)(i)
22 23	Omit "an award or certified agreement", substitute "an instrument or entitlement mentioned in subparagraphs $(1)(a)(i)$ to (iv) ".
24 61	Subparagraph 86(1A)(b)(iii)
25	Omit "any employee", substitute "any person".
26 62	At the end of paragraph 86(1A)(b)
27	Add:
28 29	(vi) to require a person to tell the inspector who has custody of a document; and
30 63	Paragraph 86(1A)(c)
31 32	Omit "to the inspector a document relevant to the purpose set out in subsection (1)", substitute "a document to the inspector".

1	64	At the end of subsection 86(1A)
2		Add:
3 4		Note: Contravening a requirement under subparagraph (b)(iv) or paragraph (c) may be an offence under section 305.
5	65	Subsection 86(4B)
6		Omit "paragraph (1A)(c)", substitute "this section".
7	66	Subsection 86(4C)
8	00	Omit "paragraph (1A)(c)", substitute "this section".
9	67	Subsections 86(6) and (7)
10		Repeal the subsections, substitute:
11		In Australia's exclusive economic zone
12		(6) Subsection (1A) extends to premises, and places of business, that:
13		(a) are in Australia's exclusive economic zone; and
14		(b) are owned or occupied by an Australian employer.
15		This subsection has effect subject to Australia's obligations under
16		international law concerning jurisdiction over ships that fly the flag
17		of a foreign country and aircraft registered under the law of a
18		foreign country.
19		On Australia's continental shelf outside exclusive economic zone
20		(7) Subsection (1A) also extends to premises, and places of business,
21		that:
22		(a) are outside the outer limits of Australia's exclusive economic
23		zone, but in, on or over a part of Australia's continental shelf
24		that is prescribed by the regulations for the purposes of this
25		subsection; and
26		(b) are connected with the exploration of the continental shelf or
27		the exploitation of its natural resources; and
28 29		(c) meet the requirements that are prescribed by the regulations for that part.
30		Note: The regulations may prescribe different requirements relating to
31		different parts of Australia's continental shelf. The regulations may
32		need to do so to give effect to Australia's international obligations.
33	68	After section 86

Insert:

1

2	86 A	Disclosure of information by inspectors
3		(1) A workplace inspector may disclose information acquired by the
4		inspector in the course of exercising powers, or performing
5		functions, as a workplace inspector, if the inspector considers on
6		reasonable grounds that it is necessary or appropriate to do so in
7		the course of exercising his or her powers, or performing his or her
8		functions, as an inspector.
9		(2) A workplace inspector may disclose information to an officer of
10		the Department administered by the Minister who administers the
11		Migration Act 1958 if the inspector considers on reasonable
12		grounds that the disclosure of the information is likely to assist the
13		officer in the administration of that Act.
14		(3) The regulations may authorise workplace inspectors to disclose
15		information of the prescribed kind, to officers of the
16		Commonwealth of the prescribed kind, for prescribed purposes.
17		(4) A workplace inspector may disclose information to an officer of a
18		State who has powers, duties or functions that relate to the
19		administration of a workplace relations or other system relating to
20		terms and conditions, or incidents, of employment, if the inspector
21		considers on reasonable grounds that the disclosure of the
22		information is likely to assist the officer in the administration of
23		that system.
24	69	Section 87
25		Repeal the section.
26	70	Section 88
27		Repeal the section.
28	71	Parts VA and VI
29		Repeal the Parts, substitute:

Part VA—The Australian Fair Pay and Conditions Standard

3	Division 1—Preliminary
4	89 Purpose of Part
5 6	(1) The purpose of this Part is to set out key minimum entitlements of employment.
7 8 9 10 11 12	 (2) The key minimum entitlements relate to the following matters: (a) basic rates of pay and casual loadings (see Division 2); (b) maximum ordinary hours of work (see Division 3); (c) annual leave (see Division 4); (d) personal leave (see Division 5); (e) parental leave and related entitlements (see Division 6).
13 14	(3) The provisions of Divisions 2 to 6 constitute the Australian Fair Pay and Conditions Standard.
15	89A Operation of the Australian Fair Pay and Conditions Standard
16 17 18	 The Australian Fair Pay and Conditions Standard provides key minimum entitlements of employment for the employees to whom it applies.
19 20 21 22 23	(2) The Australian Fair Pay and Conditions Standard prevails over a workplace agreement or a contract of employment that operates in relation to an employee to the extent to which, in a particular respect, the Australian Fair Pay and Conditions Standard provides a more favourable outcome for the employee.
24 25 26 27 28 29	 (3) The regulations may prescribe: (a) what a particular respect is or is not for the purposes of subsection (2); or (b) the circumstances in which the Australian Fair Pay and Conditions Standard provides or does not provide a more favourable outcome in a particular respect.
30 31	Example 1: The way in which particular amounts of annual leave are accrued could be prescribed as a particular respect under paragraph (3)(a).

1 2 3 4 5 6 7 8	Example 2: Both the Standard and a workplace agreement require an employ attest to certain matters in a statutory declaration made for the purposes of maternity leave. The matters required by the agreem are different in some respects from those set out in the Standard. Regulations made for the purposes of paragraph (3)(b) could pre- the matters to be attested in a statutory declaration as a circumsta in which the Standard is not taken to provide a more favourable outcome.	ent scribe
9 10	89B Australian Fair Pay and Conditions Standard cannot be excluded	
11 12 13	A term of a workplace agreement or a contract has no effect to extent to which it purports to exclude the Australian Fair Pay a Conditions Standard or any part of it.	
14 15	89C This Part does not apply in relation to prescribed employees Australia	in
16	(1) This Part does not apply in relation to:	
17	(a) an employee in Australia who is prescribed by the regula	tions
18	as an employee in relation to whom this Part does not ap	
19	or	<i>,</i>
20	(b) the employee's employer.	
21	Note 1: In this context, <i>Australia</i> includes the Territory of Christmas Isla	and
22 23	the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the <i>Acts Interpretation Act</i> 19	
24 25	Note 2: The regulations may prescribe the employee by reference to a cla See subsection 13(3) of the <i>Legislative Instruments Act 2003</i> .	ISS.
26	(2) Before the Governor-General makes regulations prescribing an	l
27	employee as an employee in relation to whom this Part does no	
28	apply, the Minister must be satisfied that this Part should not a	pply
29	to the employee because there is not a sufficient connection	
30	between the employee's employment and Australia.	
31	89D Extraterritorial extension	
32	(1) This Part, and the rest of this Act so far as it relates to this Part	,
33	extend:	
34	(a) to an employee outside Australia who meets any of the	
35	conditions in this section; and	

1 2	(b) to the employee's employer (whether the employer is in or outside Australia); and
3 4	(c) to acts, omissions, matters and things relating to the employee (whether they are in or outside Australia).
5 6 7	Note: In this context, <i>Australia</i> 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 <i>Acts Interpretation Act 1901</i> .
8	In Australia's exclusive economic zone
9 10	(2) One condition is that the employee is in Australia's exclusive economic zone and either:
11 12 13	 (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
14 15	(b) is an employee prescribed by the regulations as an employee to whom this subsection applies.
16 17	Note: The regulations may prescribe the employee by reference to a class. See subsection 13(3) of the <i>Legislative Instruments Act 2003</i> .
18	On Australia's continental shelf outside exclusive economic zone
19	(3) Another condition is that the employee:
20	(a) is outside the outer limits of Australia's exclusive economic
21	zone, but is in, on or over a part of Australia's continental
	shelt that is prescribed by the regulations for the purposes of
22	shelf that is prescribed by the regulations for the purposes of this subsection in connection with the exploration of the
23	this subsection, in connection with the exploration of the
23 24	this subsection, in connection with the exploration of the continental shelf or the exploitation of its natural resources;
23 24 25	this subsection, in connection with the exploration of the continental shelf or the exploitation of its natural resources; and
23 24	this subsection, in connection with the exploration of the continental shelf or the exploitation of its natural resources;
23 24 25 26 27	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.
23 24 25 26	 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
23 24 25 26 27 28	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.
23 24 25 26 27 28 29	 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
23 24 25 26 27 28 29 30	 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.
23 24 25 26 27 28 29 30 31	 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. <i>Outside Australia's exclusive economic zone and continental shelf</i> (4) Another condition is that the employee: (a) is neither in Australia's exclusive economic zone nor in, on
23 24 25 26 27 28 29 30 31 32	 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. <i>Outside Australia's exclusive economic zone and continental shelf</i> (4) Another condition is that the employee: (a) is neither in Australia's continental shelf described in
23 24 25 26 27 28 29 30 31 32 33	 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. <i>Outside Australia's exclusive economic zone and continental shelf</i> (4) Another condition is that the employee: (a) is neither in Australia's exclusive economic zone nor in, on

1	(c) is an Australian-based employee or bound by a workplace
2	agreement that binds the employer too; and
3	(d) is not prescribed by the regulations as an employee to whom
4	this subsection does not apply.
5	(5) Another condition is that the employee:
6	(a) is neither in Australia's exclusive economic zone nor in, on
7 8	or over a part of Australia's continental shelf described in paragraph (3)(a); and
9	(b) is an Australian-based employee of an employer that is not an
10	Australian employer; and
11	(c) is bound by a workplace agreement that binds the employer
12	too; and
13	(d) is not prescribed by the regulations as an employee to whom
14	this subsection does not apply.
15	Definition
16	(6) In this section:
17	this Act includes the Registration and Accountability of
18	Organisations Schedule and regulations made under it.
19	89E Model dispute resolution process
20	The model dispute resolution process applies to a dispute about
20	entitlements under Divisions 3 to 6.
22	Note: The model dispute resolution process is set out in Part VIIA.
23	Division 2—Wages
24	Subdivision A—Preliminary
25	90 AFPC's wage-setting parameters etc.
26	In exercising any of its powers under this Division, the AFPC must
27	act in accordance with section 7J (AFPC's wage-setting
28	parameters).
29	Note 1: Any additional considerations or limitations on the exercise of the
30	AFPC's powers are set out in the various sections of this Division
31	(including sections 90A and 90ZR).

1 2 3	Note 2:	The AFPC must ensure that APCSs do not (after 3 years) continue to contain coverage rules that are described by reference to State or Territory boundaries—see section 90ZB.
4 5	90A AFPC to ha Taskfe	ve regard to recommendations of Award Review orce
6 7 8	have re	cising any of its powers under this Division, the AFPC is to gard to any relevant recommendations made by the Award Taskforce.
9	90B Definitions	
10	In this	Division:
11	APCS	means a preserved APCS or a new APCS.
12	Note:	APCS is short for Australian Pay and Classification Scale.
13	-	<i>piece rate employee</i> means an employee in relation to whom
14		owing paragraphs are satisfied:
15		he employee's employment is covered by an APCS;
16		he rate provisions of the APCS determine one or more basic
17 18	-	iece rates of pay that apply to the employment of the mployee.
19	basic p	eriodic rate of pay means a rate of pay for a period worked
20		er the rate is described) that does not include
21		ve-based payments and bonuses, loadings, monetary
22		nces, penalty rates or any other similar separately
23 24		able entitlements. The meaning of <i>basic periodic rate of</i> also affected by section 90ZF.
25	Note:	Most of the kinds of entitlement excluded from this definition are
26		allowable award matters (see section 116).
27		<i>iece rate of pay</i> means a piece rate of pay, other than a piece
28		pay that is payable, as an incentive-based payment or bonus,
29	in addi	tion to a basic periodic rate of pay.
30	Note:	Incentive-based payments and bonuses are allowable award matters.
31 32	<i>casual</i> section	<i>loading</i> : the meaning of casual loading is affected by
33		<i>loading provisions</i> has the meaning given by section 90C.

1	<i>classification</i> has the meaning given by section 90D.
2	coverage provisions means:
3	(a) for a pre-reform wage instrument—all provisions (whether of
4	that instrument or of another instrument or law), as in force
5	on the reform comparison day, that would have affected the
6	determination of whether the employment of any particular
7	employee was covered by the instrument on that day; or
8	(b) for an APCS—provisions of the APCS that determine
9	whether the employment of a particular employee is covered
10	by the APCS.
11	Note: For a preserved APCS, the coverage provisions will (at least initially)
12	be the coverage provisions for the pre-reform wage instrument from
13	which the APCS is derived (see paragraph 90ZD(1)(f)).
14	<i>covered</i> : for when the employment of a particular employee is
15	covered by a particular APCS, see sections 90Z and 90ZA.
16	current circumstances of employment, in relation to an employee,
17	includes any current circumstance of or relating to the employee's
18	employment.
10	employment
19	default casual loading percentage has the meaning given by
20	subsection 90I(1).
21	<i>derived from</i> : for when a preserved APCS is derived from a
22	particular pre-reform wage instrument, see subsection 90ZD(2).
23	employee with a disability means an employee who is qualified for
24	a disability support pension as set out in section 94 or 95 of the
25	Social Security Act 1991, or who would be so qualified but for
26	paragraph 94(1)(e) or 95(1)(c) of that Act.
27	FMW for an employee: for when there is an FMW for an
28	employee, see section 90P.
29	Note: FMW is short for Federal Minimum Wage.
30	<i>junior employee</i> means an employee who is under the age of 21.
31	new APCS has the meaning given by subsection 90ZJ(1).
32	piece rate of pay means a rate of pay that is expressed as a rate for
33	a quantifiable output or task (as opposed to being expressed as a
34	rate for a period worked).

1	Note: The	following are examples of piece rates of pay:
2 3	(a)	a rate of pay calculated by reference to number of articles produced;
4 5	(b)	a rate of pay calculated by reference to number of kilometres travelled;
6 7	(c)	a rate of pay calculated by reference to number of articles delivered;
8	(d)	a rate of pay calculated by reference to number of articles sold;
9 10	(e)	a rate of pay calculated by reference to number of tasks performed.
11	pre-reform f	ederal wage instrument means:
12		rd (as defined in subsection 4(1) of this Act as in force
13		iately before the reform commencement) as in force
14		iately before the reform commencement, but not
15	includi	ng:
16	(i) an	order under section 120A of this Act as then in force;
17	or	
18	(ii) an	award under section 170MX of this Act as then in
19	fo	rce; or
20	(b) section	s 552 and 555 of this Act as in force immediately
21	before	the reform commencement; or
22	(c) a law, o	or a provision of a law, of the Commonwealth, being a
23	law or	provision:
24	(i) as	in force immediately before the reform
25	co	ommencement; and
26 27		at is specified, or is of a kind specified, in regulations ade for the purposes of this paragraph; or
28		rument made under a law, or a provision of a law, of
29		nmonwealth, being an instrument:
30		in force immediately before the reform
31		ommencement; and
32	(ii) th	at is specified, or is of a kind specified, in regulations
33		ade for the purposes of this paragraph.
34 35		when regulations made for the purpose of paragraph (c) or (d) be expressed to take effect, see section 90ZI.
36	nre-reform n	on-federal wage instrument means a pre-reform State
37		nent or a pre-reform Territory wage instrument.
38	pre-reform S	tate wage instrument means:

1	(a)	a State award (as defined in subsection 4(1) of this Act as in
2		force immediately before the reform commencement) as in force immediately before the reform commencement; or
3	(b)	a law, or a provision of a law, of a State, being a law or
4 5	(0)	provision:
6		(i) as in force immediately before the reform
7		commencement; and
8		(ii) that entitled employees, or a particular class of
9		employees, to payment of a particular rate of pay; or
10	(c)	a law, or a provision of a law, of a State, being a law or
11		provision:
12 13		(i) as in force immediately before the reform commencement; and
14 15		(ii) that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph; or
16	(d)	an instrument made under a law, or a provision of a law, of a
17	(0)	State, being an instrument:
18		(i) as in force immediately before the reform
19		commencement; and
20		(ii) that is specified, or is of a kind specified, in regulations
21		made for the purposes of this paragraph.
22 23	Note:	For when regulations made for the purpose of paragraph (c) or (d) may be expressed to take effect, see section 90ZI.
24	pre-r	eform Territory wage instrument means:
25	(a)	a law, or a provision of a law, of a Territory, being a law or
26		provision:
27		(i) as in force immediately before the reform
28		commencement; and
29		(ii) that entitled employees, or a particular class of
30		employees, to payment of a particular rate of pay; or
31	(b)	a law, or a provision of a law, of a Territory, being a law or
32		provision:
33 34		(i) as in force immediately before the reform commencement; and
35		(ii) that is specified, or is of a kind specified, in regulations
36		made for the purposes of this paragraph; or
37	(c)	an instrument made under a law, or a provision of a law, of a
38	()	Territory, being an instrument:

Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1 2	(i) as in force immediately before the reform commencement; and
	(ii) that is specified, or is of a kind specified, in regulations
3 4	made for the purposes of this paragraph.
5	Note: For when regulations made for the purpose of paragraph (b) or (c)
6	may be expressed to take effect, see section 90ZI.
7	pre-reform wage instrument means a pre-reform federal wage
8	instrument or a pre-reform non-federal wage instrument.
9	preserved APCS has the meaning given by subsection 90ZD(1).
10	pro-rata disability pay method means a method for determining a
11 12	rate of pay for employees with a disability, being a method that determines the rate by reference to the relative capacities of those
12	employees.
14	rate provisions has the meaning given by section 90E.
15	reform comparison day means the day before the day on which the
16	reform comparison day means the day before the day on which the
17	special FMW has the meaning given by section 90S.
18	standard FMW has the meaning given by section 90Q.
19	90C Meaning of casual loading provisions
20	(1) For the purposes of this Division, <i>casual loading provisions</i> , of a
21	pre-reform wage instrument or an APCS, are provisions of the
22	instrument or APCS that determine a casual loading payable to an
23	employee, or an employee of a particular classification, in addition
24	to a basic periodic rate of pay.
25	(2) The means by which such provisions may determine a casual
26	loading include the following, or any combination of any of the
27	following:
28	(a) direct specification of the loading;
29	(b) identification of the loading by reference to other provisions
30	(whether or not of the same instrument or APCS);
31	(c) direct specification, or identification by reference to other
32	provisions (whether or not of the same instrument or APCS),
33	of a method for calculating the loading.

1	(3)	Subject to the regulations, a method referred to in subsection (2)
2		may provide for a person or body to determine a loading in a
3		particular way. For the purposes of this Division, a loading
4		determined by the person or body in that way is taken to be a
5		loading determined by the provisions that specify or identify the
6		method.
7	90D Mear	ning of classification
8	(1)	For the purposes of this Division, a <i>classification</i> of employees is a
9		classification or category of employees, however described in the
10		pre-reform wage instrument or APCS concerned.
11	(2)	A classification or category of employees may be described by
12		reference to matters including (but not limited to) any of the
13		following, or any combination of any of the following:
14		(a) the nature of work performed by employees;
15		(b) the skills or qualifications or employees;
16		(c) the level of responsibility or experience of employees;
17		(d) whether employees are junior employees, or a particular class
18		of junior employees;
19		(e) whether employees are employees with a disability, or are a
20		particular class of employees with a disability;
21		(f) whether employees are employees to whom training
22		arrangements, or are a particular class of employees to whom
23		training arrangements, apply.
24	90E Mean	ing of <i>rate provisions</i>
25	(1)	For the purposes of this Division, <i>rate provisions</i> , of a pre-reform
26		wage instrument or an APCS, are provisions of the instrument or
27		APCS that determine a basic periodic rate of pay, or basic piece
28		rates of pay, payable to an employee, or an employee of a
29		particular classification.
30	(2)	The means by which such provisions may determine a basic
31		periodic rate of pay, or a basic piece rate of pay, include the
32		following, or any combination of any of the following:
33		(a) direct specification of a rate;
34		(b) identification of a rate by reference to other provisions
35		(whether or not of the same instrument or APCS);

1 2 3	(c) direct specification, or identification by reference to other provisions (whether or not of the same instrument or APCS), of a method for calculating a rate.
4 5	(3) Subject to the regulations, a method referred to in subsection (2) may provide for a person or body to determine a rate in a particular
6 7 8	way. For the purposes of this Division, a rate determined by the person or body in that way is taken to be a rate determined by the provisions that specify or identify the method.
9	Subdivision B—Guarantee of basic rates of pay
10	90F The guarantee
11	Guarantee of APCS basic periodic rates of pay
12	(1) If:
13	(a) the employment of an employee is covered by an APCS; and
14	(b) the employee is not an APCS piece rate employee;
15	the employee must be paid a basic periodic rate of pay for each
16	hour worked (pro-rated for parts of hours worked) that is at least
17	equal to the basic periodic rate of pay (the guaranteed basic
18	<i>periodic rate of pay</i>) that is payable to the employee under the APCS.
19	
20 21	Note: For provisions affecting what hours count as hours worked for this subsection, see section 90G.
22	Guarantee of APCS piece rates of pay
23	(2) If:
24	(a) the employment of an employee is covered by an APCS; and
25	(b) the employee is an APCS piece rate employee;
26	the employee must be paid basic piece rates of pay for his or her
27	work that are at least equal to the basic piece rates of pay (the
28	<i>guaranteed basic piece rates of pay</i>) that are payable to the employee under the APCS.
29	employee under the APCS.
30	Guarantee of standard FMW
31	(3) If:
32 33	(a) the employment of an employee is not covered by an APCS; and

1 2	(b) the employee is not a junior employee, an employee with a disability, or an employee to whom a training arrangement
3	applies;
4	the employee must be paid a basic periodic rate of pay for each
5	hour worked (pro-rated for parts of hours worked) that is at least
6	equal to the standard FMW (the <i>guaranteed basic periodic rate of</i>
7	pay).
8 9	Note: For provisions affecting what hours count as hours worked for this subsection, see section 90G.
10	Guarantee of special FMW
11	(4) If:
12 13	(a) the employment of an employee is not covered by an APCS; and
14	(b) the employee is a junior employee, an employee with a
15	disability, or an employee to whom a training arrangement
16	applies; and
17	(c) there is a special FMW for the employee;
18	the employee must be paid a basic periodic rate of pay for each
19	hour worked (pro-rated for parts of hours worked) that is at least
20 21	equal to that special FMW (the <i>guaranteed basic periodic rate of pay</i>).
22 23	Note: For provisions affecting what hours count as hours worked for this subsection, see section 90G.
24	90G Provisions affecting what hours count as hours worked
25	Hours worked generally means hours required to be worked
26	(1) Subject to subsection (2), for the purpose of subsections $90F(1)$, (3)
27	and (4), a reference to an hour (or part of an hour) worked by an
28	employee is a reference to an hour (or part of an hour) that the
29	employee worked and that he or she was required to work.
30 31	Hours worked includes hours that would have been worked on public holidays (but not for casual employees)
32 33 34 35	(2) For the purpose of the application of subsection 90F(1), (3) or (4) in relation to an employee who is not a causal employee, a reference to an hour (or part of an hour) worked includes a reference to an hour (or part of an hour) that would have been

1 2		worked by the employee on a particular day, had it not been a public holiday.
3	(3) For the purpose of subsection (2), a <i>public holiday</i> is a day
4	(declared by or under a law of a State or Territory to be observed
5		generally within the State or Territory, or a region of that State or
6		Territory, as a public holiday by people who work in that State,
7		Territory or region, other than:
8		(a) a union picnic day; or
9		(b) a day, or kind of day, that is excluded by regulations made
10		for the purposes of this paragraph from counting as a public
11		holiday.
12		An APCS may determine that hours attending off-the-job training
13		count as hours worked
14	(4) If an APCS includes provisions that determine, in relation to
15		employees to whom training arrangements apply, whether hours
16		attending off-the-job training (including hours attending an
17		educational institution) count as hours for which a basic periodic
18		rate of pay is payable, those provisions have effect for the purposes
19		of subsection 90F(1).
20		Hours worked do not include periods of industrial action during
21		which section 114 prohibits payment
22	(5) For the purpose of subsections 90F(1), (3) and (4), a reference to
23		an hour (or part of an hour) worked by an employee does not
24		include a reference to any period in relation to which the employer
25		is prohibited by section 114 from making a payment to the
26		employee.
27	Subdivi	ision C—Guarantee of casual loadings
28	90H Th	e guarantee
29	(1) This section applies to a casual employee for whom, under
30		section 90F, there is a guaranteed basic periodic rate of pay, other
31		than a casual employee in relation to whom the following
32		paragraphs are satisfied:
33		(a) subsection 90F(1) applies to the employee;

1	(b) the APCS that covers the employment of the employee does	
2	not contain casual loading provisions under which a casual	
3	loading is payable to the employee;	
4	(c) the employee's employment is not covered by a collective	
5	agreement or an AWA.	
6	(2) The casual employee must be paid, in addition to his or her actual	
7	basic periodic rate of pay, a casual loading that is at least equal to	
8	the guaranteed casual loading percentage of that actual basic	
9	periodic rate of pay.	
10 11	Note: The employee's actual basic periodic rate of pay should at least equa the guaranteed basic periodic rate of pay under section 90F.	1
12	(3) The guaranteed casual loading percentage is:	
13	(a) if the guaranteed basic periodic rate of pay for the employee	
14	under section 90F is a basic periodic rate of pay payable	
15	under an APCS, and the employee's employment is not	
16	covered by a collective agreement or an AWA—the	~
17 18	percentage that is the casual loading payable to the employed under casual loading provisions of the APCS; or	e
19	(b) if the guaranteed basic periodic rate of pay for the employee	
20	under section 90F is a basic periodic rate of pay payable	
20	under an APCS, and the employee's employment is covered	
22	by a collective agreement or an AWA—the default casual	
23	loading percentage (regardless of what casual loading, if any	/,
24	might otherwise be payable under casual loading provisions	
25	of the APCS); or	
26	(c) if the guaranteed basic periodic rate of pay is the FMW for	
27	the employee—the default casual loading percentage.	
28	901 Default casual loading percentage	
29	(1) The <i>default casual loading percentage</i> is 20%, subject to the	
30	power of the AFPC to adjust the percentage.	
31 32	(2) Any adjustment of the default casual loading percentage must be such that the adjusted rate is still expressed as a percentage.	
33	90J Adjustment of default casual loading percentage	
34	(1) The AFPC may adjust the default casual loading percentage.	

78 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1	(2) The power to adjust the default casual loading percentage is subject
2	to:
3	(a) sections 90 and 90A; and
4	(b) subsection 90I(2); and
5	(c) section 90K; and
6	(d) section 90N; and
7	(e) section 90ZR.
8	90K Only one default casual loading percentage
9 10	The AFPC must ensure that there is only ever one default casual loading percentage at any one time.
11	Subdivision D—Guarantee against reductions below
12	pre-reform commencement rates
13 14	90L The guarantee where only basic periodic rates of pay are involved
15	(1) This section applies if:
16	(a) the AFPC proposes to exercise any of the following powers
17	(subject to subsection (4)):
18	(i) adjusting the standard FMW;
19	(ii) adjusting a preserved APCS;
20	(iii) determining or adjusting a new APCS;
21	(iv) revoking a preserved or new APCS; and
22	(b) immediately after the exercise of the power takes effect, there
23	will, under section 90F, be a guaranteed basic periodic rate of
24	pay (the <i>resulting guaranteed basic periodic rate</i>) for a
25	particular employee affected by the exercise of the power;
26	and
27	(c) immediately after the reform commencement (and after any relevant adjustments mentioned in sections 90ZE to 90ZH
28 29	took effect), there would, under section 90F, have been a
30	guaranteed basic periodic rate of pay (the <i>commencement</i>
31	guaranteed basic periodic rate of puy (the commencement) guaranteed basic periodic rate) for the employee if the
32	employee had at that time been in his or her current
33	circumstances of employment.

1 2	(2) The AFPC must ensure that the result of the exercise of the power, so far as it affects the employee, is such that the resulting
3	guaranteed basic periodic rate of pay for the employee will not be
4	less than the commencement guaranteed basic periodic rate of pay
5	for the employee.
6	(3) In applying this section in relation to a particular exercise of a
7	power by the AFPC, the effect of any other exercise of a power by
8	the AFPC that takes effect at the same time must also be taken into
9	account.
10	(4) This section does not limit the AFPC's power to make APCSs for
11	the purpose of section 90ZP or 90ZQ, or to adjust APCSs made for
12	the purpose of either of those sections.
10	00M. The guarantee where been piece rates of new are involved
13	90M The guarantee where basic piece rates of pay are involved
14	(1) This section applies if:
15	(a) the AFPC proposes to exercise any of the following powers
16	(subject to subsection (4)):
17	(i) adjusting the standard FMW;
18	(ii) adjusting a preserved APCS;
19	(iii) determining or adjusting a new APCS;
20	(iv) revoking a preserved or new APCS; and
21	(b) either or both of the following subparagraphs apply in
22	relation to a particular employee who will be affected by the
23	exercise of the power:
24	(i) immediately after the exercise of the power takes effect,
25	there will, under section 90F, be guaranteed basic piece
26	rates of pay for the employee;
27	(ii) immediately after the reform commencement (and after
28	any relevant adjustments mentioned in sections 90ZE to
29	90ZH took effect), there would, under section 90F, have
30	been guaranteed basic piece rates of pay for the
31	employee if the employee had at that time been in his or
32	her current circumstances of employment.
33	(2) The AFPC must exercise the power in a way that it considers will
34	not result in an employee of average capacity, after the exercise of
35	the power takes effect, being entitled to less basic pay per week
36	than he or she would have been entitled to because of this Division
37	immediately after the reform commencement if the employee had

1 2		t that time been in his or her current circumstances of mployment.
3		applying this section in relation to a particular exercise of a
4	-	ower by the AFPC, the effect of any other exercise of a power by
5		he AFPC that takes effect at the same time must also be taken into
6	ac	ccount.
7	(4) T	his section does not limit the AFPC's power to make APCSs for
8 9		he purpose of section 90ZP or 90ZQ, or to adjust APCSs made for he purpose of either of those sections.
10	•	arantee for casual loadings that apply to basic periodic
11	ſ	ates of pay
12 13		his section applies in relation to the exercise by the AFPC of any f the following powers:
14		(a) adjusting a preserved APCS;
15		(b) determining or adjusting a new APCS;
16		(c) revoking a preserved or new APCS;
17		(d) adjusting the default casual loading percentage.
18	(2) T	he AFPC must ensure that the result of the exercise of the power,
10		o far as it affects any particular employee to whom this Division
20		pplies (other than an employee who will, after the exercise of the
21	-	ower, be an APCS piece rate employee), is such that the resulting
22	-	uaranteed casual loading percentage for the employee will not be
23		ess than the commencement guaranteed casual loading percentage
24	to	or the employee.
25	(3) F	or the purposes of subsection (2):
26		(a) the <i>resulting guaranteed casual loading percentage</i> for the
27		employee is the guaranteed casual loading percentage
28		referred to in section 90H for the employee, as it will be
29		immediately after the exercise of the power takes effect; and
30		(b) subject to subsection (4), the <i>commencement guaranteed</i>
31 32		<i>casual loading percentage</i> for the employee is the percentage that, immediately after the reform commencement
32 33		(and after any relevant adjustments mentioned in
34		sections 90ZE to 90ZH took effect), would have been the
35		guaranteed casual loading percentage referred to in
36		section 90H for the employee if the employee had, at that

1 2		f
2	(A) If.	
3		
4	(,	
5		
6 7		bsection
8	the commencement guaranteed casual loading perce	entage for the
9	employee is taken to be the default casual loading per	rcentage, as it
10	was immediately after the reform commencement.	
11	(5) In applying this section in relation to a particular exer	rcise of a
12	1 5 5	
13	the AFPC that takes effect at the same time must also	be taken into
14	account.	
15	Subdivision E—The guarantee against reductions be	
15		210 W
16	Feueral Willing wages (FIVI WS)	
17		
17	900 The guarantee	
		to make an
18 19	(1) Subject to subsection (3), when exercising its power	
18	 (1) Subject to subsection (3), when exercising its power APCS, or to adjust an APCS, the AFPC must ensure 	that the rate
18 19	 (1) Subject to subsection (3), when exercising its power APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF 	that the rate
18 19 20	 (1) Subject to subsection (3), when exercising its power a APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF periodic rate of pay for each employee: 	that the rate PCS basic
18 19 20 21	 (1) Subject to subsection (3), when exercising its power APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AI periodic rate of pay for each employee: (a) whose employment will be covered by the APC 	that the rate PCS basic CS
18 19 20 21 22	 (1) Subject to subsection (3), when exercising its power of APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; and a subset of the power; and a subset of the power in the appendix of the power is a subset of the power in the appendix of the power in the appendix of the power in the appendix of the power is a subset of the power in the appendix of the power is a subset of the power in the appendix of the power is a subset of the power in the appendix of the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power is a subset of the power in the power in the power in the power is a subset of the power in the power	that the rate PCS basic CS d
18 19 20 21 22 23	 (1) Subject to subsection (3), when exercising its power of APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; an (b) for whom there will be an FMW immediately a 	that the rate PCS basic CS d
18 19 20 21 22 23 24	 (1) Subject to subsection (3), when exercising its power of APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AI periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; and (b) for whom there will be an FMW immediately a exercise of the power; and 	that the rate PCS basic CS d fter the
18 19 20 21 22 23 24 25	 (1) Subject to subsection (3), when exercising its power a APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; and (b) for whom there will be an FMW immediately a exercise of the power; and (c) who will not be an APCS piece rate employee i 	that the rate PCS basic CS d fter the
18 19 20 21 22 23 24 25 26	 (1) Subject to subsection (3), when exercising its power of APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AI periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; and (b) for whom there will be an FMW immediately a exercise of the power; and (c) who will not be an APCS piece rate employee i after the exercise of the power; 	that the rate PCS basic CS d fter the
18 19 20 21 22 23 24 25 26 27	 (1) Subject to subsection (3), when exercising its power APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; and (b) for whom there will be an FMW immediately a exercise of the power; and (c) who will not be an APCS piece rate employee i after the exercise of the power; is not less than that FMW. 	that the rate PCS basic CS d fter the mmediately
18 19 20 21 22 23 24 25 26 27 28 29 30	 (1) Subject to subsection (3), when exercising its power a APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; and (b) for whom there will be an FMW immediately a exercise of the power; and (c) who will not be an APCS piece rate employee i after the exercise of the power; is not less than that FMW. Note 1: This section does not apply to rates determined by ra initially included in a preserved APCS from a pre-ref. 	that the rate PCS basic CS d fter the mmediately te provisions as form wage
18 19 20 21 22 23 24 25 26 27 28 29 30 31	 (1) Subject to subsection (3), when exercising its power APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; and (b) for whom there will be an FMW immediately a exercise of the power; and (c) who will not be an APCS piece rate employee i after the exercise of the power; is not less than that FMW. Note 1: This section does not apply to rates determined by ra initially included in a preserved APCS from a pre-refinstrument as mentioned paragraph 90ZD(1)(a). How 	that the rate PCS basic CS d fter the mmediately te provisions as form wage vever, this section
18 19 20 21 22 23 24 25 26 27 28 29 30	 (1) Subject to subsection (3), when exercising its power APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; and (b) for whom there will be an FMW immediately a exercise of the power; and (c) who will not be an APCS piece rate employee i after the exercise of the power; is not less than that FMW. Note 1: This section does not apply to rates determined by ra initially included in a preserved APCS from a pre-refinstrument as mentioned paragraph 90ZD(1)(a). How does apply to any subsequent adjustment of those rate 	that the rate PCS basic CS d fter the mmediately te provisions as form wage vever, this section
18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33	 (1) Subject to subsection (3), when exercising its power a APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; and (b) for whom there will be an FMW immediately a exercise of the power; and (c) who will not be an APCS piece rate employee i after the exercise of the power; is not less than that FMW. Note 1: This section does not apply to rates determined by ra initially included in a preserved APCS from a pre-ref instrument as mentioned paragraph 90ZD(1)(a). How does apply to any subsequent adjustment of those rat to any new APCS that replaces the preserved APCS. 	that the rate PCS basic CS d fter the mmediately te provisions as form wage rever, this section e provisions, or
18 19 20 21 22 23 24 25 26 27 28 29 30 31 32	 (1) Subject to subsection (3), when exercising its power a APCS, or to adjust an APCS, the AFPC must ensure provisions in the APCS are such that the resulting AF periodic rate of pay for each employee: (a) whose employment will be covered by the APC immediately after the exercise of the power; and (b) for whom there will be an FMW immediately a exercise of the power; and (c) who will not be an APCS piece rate employee i after the exercise of the power; is not less than that FMW. Note 1: This section does not apply to rates determined by ra initially included in a preserved APCS from a pre-ref instrument as mentioned paragraph 90ZD(1)(a). How does apply to any subsequent adjustment of those rat to any new APCS that replaces the preserved APCS. Note 2: See also section 90ZC (deeming APCS rates to at lead 	that the rate PCS basic CS d fter the mmediately te provisions as form wage rever, this section e provisions, or st equal FMW

1 2 3 4 5	pe pa in	or the purposes of subsection (1), the <i>resulting APCS basic</i> <i>eriodic rate of pay</i> for an employee is the basic periodic rate of ay that will be payable to the employee under the APCS mediately after the exercise of the power by the AFPC takes fect.
6 7 8 9 10	sp in m	he requirement in subsection (1) does not apply in relation to a becial FMW unless the determination of the special FMW cludes a statement to the effect that the special FMW is a inimum standard for all APCSs, for a class of APCSs that cludes the APCS or for the particular APCS (see section 90T).
11 12 13 14	pc th	applying this section in relation to a particular exercise of a ower by the AFPC, the effect of any other exercise of a power by e AFPC that takes effect at the same time must also be taken into ecount.
15	Subdivision	F—Federal Minimum Wages (FMWs)
16	90P When is	s there an FMW for an employee?
17 18 19 20 21 22		 here is an FMW for an employee if the employee is not: (a) a junior employee; or (b) an employee with a disability; or (c) an employee to whom a training arrangement applies; or (d) an APCS piece rate employee. he FMW for the employee is the standard FMW.
23 24 25 26 27	ra ap th	here is an FMW for a junior employee (other than an APCS piece te employee) if the AFPC has determined a special FMW that oplies to all junior employees, or to a class of junior employees at includes the employee. The FMW for the employee is that becial FMW.
28 29 30 31 32	A FI en	here is an FMW for an employee with a disability (other than an PCS piece rate employee) if the AFPC has determined a special MW that applies to all employees with a disability, or to a class of mployees with a disability that includes the employee. The FMW or the employee is that special FMW.
33 34 35	ap	here is an FMW for an employee to whom a training arrangement oplies (other than an APCS piece rate employee) if the AFPC has etermined a special FMW that applies to all employees to whom

1 2 3	training arrangements apply, or to a class of employees to whom training arrangements apply that includes the employee. The FMW for the employee is that special FMW.
4	90Q Standard FMW
5 6	(1) The <i>standard FMW</i> is \$12.75 per hour, subject to the power of the AFPC to adjust the standard FMW.
7 8	(2) Any adjustment of the standard FMW must be such that the adjusted rate is still expressed as a monetary amount per hour.
9	90R Adjustment of standard FMW
10	(1) The AFPC may adjust the standard FMW.
11	(2) The power to adjust the standard FMW is subject to:
12	(a) sections 90 and 90A; and
13	(b) section 90L; and
14	(c) section 90M; and
15	(d) subsection 90Q(2); and
16	(e) section 90ZR.
17	908 Determination of special FMWs
18	The AFPC may determine a <i>special FMW</i> for any of the following:
19	(a) all junior employees, or a class of junior employees;
20 21	(b) all employees with a disability, or a class of employees with
21 22	a disability;
23	(c) all employees to whom training arrangements apply, or a
24	class of employees to whom training arrangements apply.
25	90T AFPC to state whether special FMW is a minimum standard
23 26	for APCSs
27	(1) When determining a special FMW, the AFPC must consider
28	whether the FMW is to operate as a minimum standard for all, or
29	one or more, APCSs.
30 31	(2) If the AFPC considers that the special FMW should operate as a minimum standard for all APCSs, the AFPC must, in the

1		instrument determining the special FMW, include a statement to
2		that effect.
3	(3)	If the AFPC considers that the special FMW should operate as a
4		minimum standard for one or more (but not all) APCSs, the AFPC
5		must, in the instrument determining the special FMW, include a
6		statement to that effect that identifies those APCSs, whether by
7		description of a class or identification of the particular APCS or
8		APCSs.
9	(4)	If the AFPC considers that the special FMW should not operate as
10		a minimum standard for any APCS, the AFPC must, in the
11		instrument determining the special FMW, include a statement to that effect.
12		ulat effect.
13	90U How	a special FMW is to be expressed
14	(1)	A special FMW is to be expressed in a way that produces a
15		monetary amount per hour.
16	(2)	The means by which a special FMW may be expressed to produce
17		a monetary amount per hour include:
18		(a) specification of a monetary amount per hour; or
19		(b) specification of a method for calculating a monetary amount
20		per hour.
21	(3)	Any adjustment of a special FMW must be such that the adjusted
22		special FMW still complies with this section.
23	90V Adju	istment of a special FMW
24	-	-
24	(1)	The AFPC may adjust a special FMW.
25	(2)	The power to adjust a special FMW is subject to:
26		(a) sections 90 and 90A; and
27		(b) section 90U; and
28		(c) section 90ZR.
29	(3)	The AFPC may adjust statements of a kind mentioned in
30		section 90T that are included in the instrument determining the
31		special FMW.

1 2	Subdivision G—Australian Pay and Classification Scales (APCSs): general provisions
3	90W What is an APCS?
4 5	 An APCS is a set of provisions relating to pay and loadings for particular employees that complies with this Subdivision.
6 7 8	 (2) An APCS is either: (a) a preserved APCS (see section 90ZD); or (b) a new APCS (see section 90ZJ).
9	90X What must or may be in an APCS?
10	(1) An APCS must contain:
11	(a) either or both of the following:
12 13 14	 (i) rate provisions determining basic periodic rates of pay for employees whose employment is covered by the APCS;
15 16	(ii) rate provisions determining basic piece rates of pay for employees whose employment is covered by the APCS;
17 18 19 20	and (b) if the rate provisions determine different rates of pay for employees of different classifications—provisions describing those classifications; and
21	(c) coverage provisions.
22	(2) An APCS may also contain:
23 24 25	 (a) casual loading provisions determining casual loadings for employees whose employment is covered by the APCS and for whom there are not basic piece rates of pay; and
26 27	(b) if the casual loading provisions determine different casual loadings for employees of different classifications—
28	provisions describing those classifications; and
29 30 31 32	 (c) provisions that determine, in relation to employees to whom training arrangements apply, whether hours attending off-the-job training (including hours attending an educational institution) count as hours for which a basic periodic rate of the p
33 34	pay is payable; and(d) other incidental provisions.

1 2	(3)	Rate provisions or casual loading provisions in an APCS must not include provisions under which a rate or casual loading provided
3 4		for by the APCS will or may be increased by operation of the provisions and without anyone having to take any other action.
5 6 7		Note: This does not prevent an APCS, or an adjustment of an APCS, from being expressed to take effect at a future date. However, it does prevent an APCS from containing provisions under which (for
8		example):
9 10		(a) there will be one or more specified increases of a rate or loading at a specified future time or times; or
11		(b) rates of pay or loading are indexed periodically.
12 13	(4)	The AFPC must not include in a new APCS, or adjust a preserved or new APCS so that it includes, provisions that:
14		(a) determine whether an employer who acquires a business
15		(whether by transfer or in some other way) is covered by the
16		APCS; or
17		(b) give a person or body a power to make a decision that affects
18		whether a person is covered by the APCS; or
19 20		(c) give the Commission a direct or indirect role in determining a rate of pay or loading.
21 22 23 24		Note: A preserved APCS may contain provisions referred to in subsection (4) that were contained in the pre-reform wage instrument from which the APCS is derived, but the effect of those provisions is limited by sections 90Z and 90ZE.
25	(5)	An APCS must not contain any provisions that purport to limit the
26	()	duration of the APCS.
27	(6)	Subject to the regulations, an APCS must not contain any other
28		provisions.
29	90Y How	pay rates and loadings are to be expressed in an APCS
30	(1)	Rate provisions in an APCS must be such that basic periodic rates
31		of pay determined by the provisions are expressed as a monetary
32		amount per hour.
33	(2)	Rate provisions in an APCS must be such that basic piece rates of
34		pay determined by the provisions are expressed as a monetary
35		amount.

(2)	
(3)	Casual loading provisions in an APCS must be such that casual loadings determined by the provisions are expressed as percentages to be applied to basic periodic rates of pay.
(4)	The AFPC must ensure these rules are complied with in exercising its powers to adjust a preserved APCS or make or adjust a new APCS.
90Z Whe	n is employment covered by an APCS?
(1)	The question whether the employment of a particular employee is covered by a particular APCS is to be determined by reference to the coverage provisions of the APCS.
(2)	If coverage provisions of a preserved APCS include provisions that determine whether an employer who acquires a business (whether by transfer or in some other way) is covered by the APCS, those provisions only have effect, for the purpose of determining whether the employment of a particular employee is covered by the APCS, in relation to acquisitions of businesses that occurred before the reform commencement.
(3)	If coverage provisions of a preserved APCS include provisions that give a person or body a power to make a decision that affects whether a person is covered by the APCS, those provisions only have effect, for the purpose of determining whether the employment of a particular employee is covered by the APCS, in relation to decisions made by the person or body before the reform commencement.
90ZA WI	nat if 2 or more APCSs would otherwise cover an employee?
(1)	If, but for this section, 2 or more APCSs would cover the employment of the same employee, the employment of the employee is taken to be covered only by the APCS that prevails.
(2)	 Apply the following rules to work out which APCS prevails: (a) the preserved APCS derived from the pre-reform federal wage instrument referred to in paragraph (b) of the definition of <i>pre-reform federal wage instrument</i> in section 90B (as that preserved APCS is adjusted from time to time) prevails over any other APCS;
	 (4) 90Z Whe (1) (2) (3) 90ZA WH (1)

1	
2 3	 (b) subject to paragraph (a), an APCS made in accordance with Subdivision L (as that APCS is adjusted from time to time) prevails over any other APCS;
4	(c) subject to paragraphs (a) and (b):
5	(i) a new APCS prevails over a preserved APCS; and
6	(ii) a preserved APCS that is derived from a pre-reform
7	federal wage instrument prevails over a preserved APCS
8	that is derived from a pre-reform non-federal wage
9	instrument;
10	(d) subject to paragraphs (a), (b) and (c):
11	(i) as between 2 or more APCSs that are made or adjusted
12	on different days, the APCS that is made or adjusted on
13	the more recent day prevails; and
14	(ii) as between 2 or more APCSs that are made or adjusted
15	on the same day, the APCS that is more generous to the
16	employee prevails.
17	(3) For the purpose of this section, all preserved APCSs are taken to
18	have been made on the day on which the reform commencement
19	occurs.
20	90ZB AFPC to remove coverage rules described by reference to
21	State or Territory boundaries
22	(1) The AFPC must (through exercise of its powers to adjust, revoke
	and make APCSs) ensure that, by the end of the period of 3 years
23	and make in ess) ensure that, by the end of the period of 5 years
23 24	starting on the reform commencement, all APCSs comply with the
24	starting on the reform commencement, all APCSs comply with the following rules:(a) the question whether the employment of a particular
24 25 26 27	starting on the reform commencement, all APCSs comply with the following rules:(a) the question whether the employment of a particular employee is covered by an APCS must not be determined by
24 25 26	 starting on the reform commencement, all APCSs comply with the following rules: (a) the question whether the employment of a particular employee is covered by an APCS must not be determined by reference to State or Territory boundaries;
24 25 26 27 28 29	 starting on the reform commencement, all APCSs comply with the following rules: (a) the question whether the employment of a particular employee is covered by an APCS must not be determined by reference to State or Territory boundaries; (b) the question whether a particular employee is entitled to a
24 25 26 27 28 29 30	 starting on the reform commencement, all APCSs comply with the following rules: (a) the question whether the employment of a particular employee is covered by an APCS must not be determined by reference to State or Territory boundaries; (b) the question whether a particular employee is entitled to a particular basic periodic rate of pay, basic piece rate of pay,
24 25 26 27 28 29 30 31	 starting on the reform commencement, all APCSs comply with the following rules: (a) the question whether the employment of a particular employee is covered by an APCS must not be determined by reference to State or Territory boundaries; (b) the question whether a particular employee is entitled to a particular basic periodic rate of pay, basic piece rate of pay, or casual loading provided for by an APCS must not be
24 25 26 27 28 29 30	 starting on the reform commencement, all APCSs comply with the following rules: (a) the question whether the employment of a particular employee is covered by an APCS must not be determined by reference to State or Territory boundaries; (b) the question whether a particular employee is entitled to a particular basic periodic rate of pay, basic piece rate of pay, or casual loading provided for by an APCS must not be determined by reference to State or Territory boundaries.
24 25 26 27 28 29 30 31 32 33	 starting on the reform commencement, all APCSs comply with the following rules: (a) the question whether the employment of a particular employee is covered by an APCS must not be determined by reference to State or Territory boundaries; (b) the question whether a particular employee is entitled to a particular basic periodic rate of pay, basic piece rate of pay, or casual loading provided for by an APCS must not be determined by reference to State or Territory boundaries. (2) In complying with this obligation, the AFPC must do so in a way
24 25 26 27 28 29 30 31 32	 starting on the reform commencement, all APCSs comply with the following rules: (a) the question whether the employment of a particular employee is covered by an APCS must not be determined by reference to State or Territory boundaries; (b) the question whether a particular employee is entitled to a particular basic periodic rate of pay, basic piece rate of pay, or casual loading provided for by an APCS must not be determined by reference to State or Territory boundaries.

1 2	90ZC Deeming APCS rates to at least equal FMW rates after first exercise of AFPC's powers takes effect
3 4 5	(1) This section applies at all times after the first exercise of powers by the AFPC under this Division takes effect. If the first exercise of powers involves the exercise of powers taking effect at different
6 7	times, this section applies at all times after the earliest of those times.
8 9	(2) Subject to subsection (3), if:(a) there is an FMW for an employee at a particular time when
10	this section applies; and
11 12 13	 (b) an APCS that covers the employment of the employee determines a basic periodic rate of pay for the employee at that time that is less than that FMW;
14 15 16	the basic periodic rate of pay determined by the APCS for the employee at that time is taken to be equal to the rate that is the FMW for the employee at that time.
17 18 19	Note: This subsection ensures that the employee will, under subsection 90F(1), be guaranteed a rate that equals the FMW rate, rather than the lower APCS rate.
20	(3) Subsection (2) does not apply in relation to a special FMW and a particular APCS uplace the determination of the special FMW
21 22	particular APCS unless the determination of the special FMW includes a statement to the effect that the special FMW is a
23 24	minimum standard for all APCSs, for a class of APCSs that includes the APCS or for the particular APCS (see section 90T).
25	Subdivision H—Australian Pay and Classification Scales:
26	preserved APCSs
27	90ZD Deriving preserved APCSs from pre-reform wage instruments
28	(1) If a pre-reform wage instrument contains rate provisions
29	determining one or more basic periodic rates of pay, or basic piece
30 31	rates of pay, payable to employees, then, from the reform commencement, there is taken to be a <i>preserved APCS</i> that
32	includes (subject to this Subdivision):
33	(a) those rate provisions; and
34	(b) if those rate provisions determine different basic periodic
35	rates of pay, or different basic piece rates of pay, for

1 2 3 4 5 6 7 8 9 10	 employees of different classifications—the provisions of the instrument that describe those classifications; and (c) any casual loading provisions of the instrument that determine casual loadings payable to employees, other than employees for whom the instrument provides basic piece rates of pay; and (d) if the casual loading provisions determine different casual loadings for employees of different classifications—the provisions of the instrument that describe those classifications; and
11 12 13 14 15 16	 (e) any provisions of the instrument that determine, in relation to employees to whom training arrangements apply, whether hours attending off-the-job training (including hours attending an educational institution) count as hours for which a basic periodic rate of pay is payable; and (f) the coverage provisions for the instrument.
17 (2 18	2) The preserved APCS is <i>derived from</i> the pre-reform wage instrument.
19 (3 20 21 22 23	B) Subject to the regulations, the preserved APCS is taken not to include any provision of the pre-reform wage instrument which, after the adjustments referred to in sections 90ZE to 90ZH take effect, will not comply with the requirements of sections 90X and 90Y.
24 25	Note: For when regulations made for the purpose of subsection (3) may be expressed to take effect, see section 90ZI.
27	 a) The adjustments referred to in sections 90ZE to 90ZH are, subject to the regulations, to be made in the following order: (a) adjustments referred to in section 90ZE;
28 29 30	(b) adjustments referred to in section 90ZF;(c) adjustments referred to in section 90ZG;
31 32 33	 (d) adjustments referred to in subsection 90ZH(1). Note: For when regulations made for the purpose of subsection (4) may be expressed to take effect, see section 90ZI.

90ZE Notional adjustment: rates and loadings determined as for reform comparison day

3		Rate provisions
4 5 6 7 8 9 10	(1)	Subject to subsections (2) and (3), if rate provisions included in a preserved APCS as mentioned in section 90ZD would, apart from this subsection, determine a basic periodic rate of pay otherwise than by direct specification of the monetary amount of the rate, then the APCS is taken to be adjusted as necessary immediately after the reform commencement so that those rate provisions instead directly specify, as that rate of pay, the rate as determined
11 12 13 14 15	(2)	by the provisions for the reform comparison day. Subsection (1) does not apply to the rate provisions included in the preserved APCS derived from the pre-reform federal wage instrument referred to in paragraph (b) of the definition of <i>pre-reform federal wage instrument</i> in section 90B.
16 17 18 19 20	(3)	If the rate provisions included in a preserved APCS as mentioned in section 90ZD determine a basic periodic rate of pay by (or by referring to) a pro-rata disability pay method, subsection (1) applies to any other rate of pay that the method refers to, but does not otherwise apply to the method.
21 22 23 24	(4)	If the rate provisions included in a preserved APCS as mentioned in section 90ZD determine a basic piece rate of pay by (or by referring to) a method, subsection (1) does not apply to the rate provisions that determine that rate.
25 26 27 28	(5)	The regulations may provide for other situations in which subsection (1) is not to apply to rate provisions, or is to apply with specified modifications. Note: For when regulations made for the purpose of subsection (5) may be
29 30		expressed to take effect, see section 90ZI.
31 32 33 34 35	(6)	If casual loading provisions included in a preserved APCS as mentioned in section 90ZD would, apart from this subsection, determine a loading otherwise than by direct specification of the loading, then the APCS is taken to be adjusted as necessary immediately after the reform commencement so that those loading

92

1 2		provisions instead directly specify, as that loading, the loading as determined by the provisions for the reform comparison day.
3 4	90ZF	Notional adjustment: deducing basic periodic rate of pay and casual loading from composite rate
5		If:
6		(a) a particular rate of pay determined by rate provisions
7 8		included in a preserved APCS as mentioned in section 90ZD would, apart from this subsection, be a basic periodic rate of
9		pay for a casual employee; and
10 11 12		(b) the rate of pay is, by an amount (the <i>inbuilt casual loading amount</i>), higher than it would have been if the employee had not been a casual employee; and
12		(c) apart from this subsection, the preserved APCS does not
13		contain casual loading provisions that determine a casual
15		loading for the employee;
16		the APCS is taken to be adjusted as necessary immediately after
17		the reform commencement so that:
18		(d) the rate provisions instead determine a basic periodic rate of
19		pay for the employee that equals the rate referred to in
20 21		paragraph (a), reduced by the inbuilt casual loading amount; and
22		(e) the preserved APCS contains casual loading provisions that
23 24		determine a casual loading for the employee that equals the inbuilt casual loading amount.
25 26	90ZG	Notional adjustment: how basic periodic rates and loadings are expressed
27		(1) If a montion loss having monipolic moter of more determined has not
27 28		(1) If a particular basic periodic rate of pay determined by rate provisions included in a preserved APCS as mentioned in
28 29		section 90ZD would, apart from this subsection, be expressed as a
30		monetary amount for a period other than an hour (for example, it
31		would be expressed as a rate for a week), the rate provisions are
32		taken to be adjusted as necessary immediately after the reform
33		commencement so that they produce the result that the rate is
34		expressed as the equivalent monetary hourly rate.
35		(2) If a particular casual loading determined by casual loading
36		provisions included in a preserved APCS as mentioned in

1 2 3 4 5 6	section 90ZD would, apart from this subsection, be expressed as an amount of money that is to be added to a basic periodic rate of pay, the loading provisions are taken to be adjusted as necessary immediately after the reform commencement so that they produce the result that the loading is expressed as the equivalent percentage of the basic periodic rate of pay.
7	90ZH Regulations dealing with notional adjustments
8 9 10	(1) The regulations may provide for other adjustments (including by determining methods for working out adjustments) that are to be taken to be made to a preserved APCS.
11 12 13 14	(2) The regulations may determine methods for working out the adjustments mentioned in any of sections 90ZE to 90ZG, or may otherwise clarify the operation of any aspect of those sections. Those sections have effect accordingly.
15 16	Note: For when regulations made for the purpose of this section may be expressed to take effect, see section 90ZI.
17 18	90ZI Certain regulations relating to preserved APCSs may take effect before registration
19 20 21	 (1) This section applies to regulations made for the purpose of any of the following provisions: (a) paragraph (c) or (d) of the definition of <i>pre-reform federal</i>
22 23 24	 <i>wage instrument</i> in section 90B; (b) paragraph (c) or (d) of the definition of <i>pre-reform State wage instrument</i> in section 90B;
25 26	 (c) paragraph (b) or (c) of the definition of <i>pre-reform Territory wage instrument</i> in section 90B;
27 28 29	 (d) subsection 90ZD(3) or (4); (e) subsection 90ZE(5); (f) section 90ZH.
30 31 32 33	 (2) Despite subsection 12(2) of the <i>Legislative Instruments Act 2003</i>, regulations to which this section applies may be expressed to take effect from a date before the regulations are registered under that Act.
34 35	(3) If regulations to which this section applies take effect before their registration under the <i>Legislative Instruments Act 2003</i> , those

1 2 3	regulations are not to be taken into account in determining the effect of sections 90F, 90H, 90L, 90M and 90N in relation to periods of employment before the registration of those regulations.
4 5	Subdivision I—Australian Pay and Classification Scales: new APCSs
6	90ZJ AFPC may determine new APCSs
7	(1) The AFPC may determine an APCS (a <i>new APCS</i>).
8	(2) The power to determine a new APCS is subject to:
9	(a) sections 90 and 90A; and
10	(b) section 90L; and
11	(c) section 90M; and
12	(d) section 90N; and
13	(e) section 90O; and
14	(f) section 90X; and
15	(g) section 90Y; and
16	(h) Subdivision L; and
17	(i) section 90ZR.
18	Subdivision J—Australian Pay and Classification Scales:
19	duration, adjustment and revocation of APCSs
20	(preserved or new)
21	90ZK Duration of APCSs
22	An APCS continues to have effect indefinitely (subject to
23	revocation or adjustment by the AFPC under this Subdivision, and
24	to the rules in section 90ZA about when one APCS prevails over
25	another).
26	90ZL Adjustment of APCSs
.7	(1) The AFPC may adjust an APCS.
28	(2) The power to adjust an APCS is subject to:
29	(a) sections 90 and 90A; and
0	(b) section 90L; and

1	(c) section 90M; and
2	(d) section 90N; and
3	(e) section 90O; and
4	(f) section 90X; and
5	(g) section 90Y; and
6	(h) Subdivision K; and
7	(i) section 90ZR.
8	90ZM Revocation of APCSs
9	(1) The AFPC may revoke an APCS.
10	(2) The power to revoke an APCS is subject to:
11	(a) sections 90 and 90A; and
12	(b) section 90L; and
13	(c) section 90M; and
14	(d) section 90N; and
15	(e) section 90ZR.
16	Subdivision K—Adjustments to incorporate 2005 Safety Net
17	Review etc.
18	90ZN Adjustments to incorporate 2005 Safety Net Review
19	(1) This section applies in relation to a preserved APCS if:
20	(a) the APCS is derived from a pre-reform federal wage
21	instrument referred to in paragraph (a) of the definition of
22	pre-reform federal wage instrument in section 90B; and
23	(b) either:
24	(i) in accordance with the Commission's wage fixing
25	principles that applied at that time, the Commission
26	(before the reform commencement) adjusted the
27 28	instrument in accordance with the Commission's 2004 Safety Net Review decision; or
	(ii) the instrument took effect after the Commission's 2004
29 30	Safety Net Review decision; and
31	(c) the Commission did not, before the reform commencement,
32	adjust the instrument in accordance with the Commission's
33	2005 Safety Net Review decision.

	The AFPC must adjust the rate provisions of the preserved APCS to increase rates in accordance with the Commission's 2005 Safety Net Review decision (if applicable).
	The adjustment must be made as part of the first exercise of the powers of the AFPC under this Division.
	After the adjustment has been made, section 90L has effect in relation to an employee as if the adjustment had been made to the pre-reform federal wage instrument immediately before the reform commencement.
	Note: This subsection ensures that the post-adjustment rate is the rate against which compliance with the guarantee in section 90L is measured.
90ZO Reg	ulations may require adjustments to incorporate other decisions
(1)	The regulations may require the AFPC to adjust rate provisions in a class of preserved APCSs that are derived from non-federal pre-reform wage instruments to increase rates to take account of decisions that were made before the reform commencement but that were not given effect to in those instruments before the reform commencement.
(2)	Regulations made for the purposes of subsection (1) may also modify how section 90L applies in relation to any APCSs that are so adjusted.
Subdivisio	on L—Special provisions relating to APCSs for employees with disabilities and employees to whom training arrangements apply
90ZP Emp	oloyees with disabilities
(1)	If the AFPC considers that there should be an APCS that applies to
	all, or a class of, employees with a disability that determines basic
	periodic rates of pay for those employees, the AFPC must
	determine an APCS containing rate provisions that determine basic periodic rates of pay for those employees, and that so determines those rates as rates specific to employees with disabilities.
	Note: The usual provisions relating to the content of an APCS apply (see Subdivision G).
	(3) (4) 90ZO Reg (1) (2) Subdivisio 90ZP Emp (1)

1				
2		(2)	The determination of the APCS must include a statement to the effect that it is determined for the purpose of this section.	
3 4			Note: APCSs determined for the purpose of this section generally prevail over all other APCSs—see section 90ZA.	
5 6		(3)	The APCS (the <i>special APCS</i>) is taken not to cover the employment of a particular employee if:	
7			(a) there is another APCS that covers the employment of the	
8			employee (disregarding the effect that paragraph 90ZA(2)(b) would otherwise have because of the special APCS); and	
9				
10 11			 (b) that other APCS determines a basic periodic rate of pay specifically for a particular class of employees with disabilities; and 	
12				
13 14			(c) the employee's employment is covered by that other APCS because the employee is a member of that class; and	
15			(d) that class is the same as, or is a subclass of, the employees	
16			whose employment would otherwise be covered by the	
17			special APCS.	
18		(4)	This section does not limit the powers of the AFPC to determine	
19			APCSs, or to revoke or adjust APCSs (including APCSs	
20			determined for the purpose of this section).	
20 21	90ZQ	Em	determined for the purpose of this section). ployees to whom training arrangements apply	
	90ZQ			,
21	90ZQ		ployees to whom training arrangements apply)
21 22	90ZQ		ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those	
21 22 23 24 25	90ZQ		ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate	
21 22 23 24 25 26	90ZQ		ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay to be payable	
21 22 23 24 25 26 27	90ZQ		ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay to be payable to those employees, and that so determines those rates as rates	
21 22 23 24 25 26 27 28	90ZQ		ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay to be payable to those employees, and that so determines those rates as rates specific to employees to whom training arrangements apply.	
21 22 23 24 25 26 27	90ZQ		ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay to be payable to those employees, and that so determines those rates as rates	
21 22 23 24 25 26 27 28 29	90ZQ	(1)	ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay to be payable to those employees, and that so determines those rates as rates specific to employees to whom training arrangements apply. Note: The usual provisions relating to the content of an APCS apply (see	
21 22 23 24 25 26 27 28 29 30	90ZQ	(1)	ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay to be payable to those employees, and that so determines those rates as rates specific to employees to whom training arrangements apply. Note: The usual provisions relating to the content of an APCS apply (see Subdivision G).	
21 22 23 24 25 26 27 28 29 30 31	90ZQ	(1)	ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay to be payable to those employees, and that so determines those rates as rates specific to employees to whom training arrangements apply. Note: The usual provisions relating to the content of an APCS apply (see Subdivision G). The determination of the APCS must include a statement to the	
21 22 23 24 25 26 27 28 29 30 31 32 33 34	90ZQ	(1) (2)	 ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay to be payable to those employees, and that so determines those rates as rates specific to employees to whom training arrangements apply. Note: The usual provisions relating to the content of an APCS apply (see Subdivision G). The determination of the APCS must include a statement to the effect that it is determined for the purpose of this section. Note: APCSs determined for the purpose of this section generally prevail over all other APCSs—see section 90ZA. 	
21 22 23 24 25 26 27 28 29 30 31 32 33	90ZQ	(1) (2)	 ployees to whom training arrangements apply If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay to be payable to those employees, and that so determines those rates as rates specific to employees to whom training arrangements apply. Note: The usual provisions relating to the content of an APCS apply (see Subdivision G). The determination of the APCS must include a statement to the effect that it is determined for the purpose of this section. Note: APCSs determined for the purpose of this section generally prevail 	

1	(a) there is another APCS that covers the employment of the
2	employee (disregarding the effect that paragraph 90ZA(2)(b)
3	would otherwise have because of the special APCS); and
4	(b) that other APCS determines a basic periodic rate of pay
5	specifically for a particular class of employees to whom
6	training arrangements apply; and
7 8	(c) the employee's employment is covered by that other APCS because the employee is a member of that class; and
	(d) that class is the same as, or is a subclass of, the employees
9 10	whose employment would otherwise be covered by the
11	special APCS.
12	(4) The AFPC must, as part of the first exercise of the powers of the
13	AFPC under this Division, consider whether it should determine
14	APCSs for the purpose of this section. This does not limit the
15	AFPC's power to consider whether it should determine APCSs for
16	the purpose of this section at other times.
17	(5) This section does not limit the powers of the AFPC to determine
18	APCSs, or to revoke or adjust APCSs (including APCSs
19	determined for the purpose of this section).
20	Subdivision M—Miscellaneous
21	90ZR Anti-discrimination considerations
22	(1) Without limiting sections 90 and 90A, in exercising any of its
23	powers under this Division, the AFPC is to:
24	(a) apply the principle that men and women should receive equal
25	remuneration for work of equal value; and
26	(b) have regard to the need to provide pro-rata disability pay
27	methods for employees with disabilities; and
28	(c) take account of the principles embodied in the <i>Racial</i>
29	Discrimination Act 1975, the Sex Discrimination Act 1984,
30	the Disability Discrimination Act 1992 and the Age
31	<i>Discrimination Act 2004</i> relating to discrimination in relation to employment; and
32	
33 34	(d) take account of the principles embodied in the Family
	Responsibilities Convention, in particular those relating to:
35 36	(i) preventing discrimination against workers who have family responsibilities; or

tus, nion, d of
nion, d of
nion, d of
nion, d of
nion, d of
d of
mine
vith
l
·.
-6
of

91B Agreement between employees and employers

2 3		
		Via a workplace agreement
	(1)	For the purposes of this Division, an employee and an employer
4	(-)	are taken to agree about a particular matter in a particular way if a
5		provision of a workplace agreement binding the employee and the
6		employer specifies that the matter is to be dealt with in that way.
7		Via an award
8	(2)	For the purposes of this Division, an employee and an employer
9	()	are taken to agree about a particular matter in a particular way if a
10		term of an award that binds the employee and the employer
11		specifies that the matter is to be dealt with in that way.
12		Via other means
13	(3)	To avoid doubt, nothing in this section prevents employees and
14		employers agreeing about matters by other means.
15	Subdivisi	on B—Guarantee of maximum ordinary hours of
16		work
17	91C The g	guarantee
18	(1)	An employee must not be required by an employer to work more
18 19	(1)	An employee must not be required by an employer to work more than:
19	(1)	than:
19 20	(1)	(a) an average of 38 hours per week over the employee's
19 20 21	(1)	than:(a) an average of 38 hours per week over the employee's applicable averaging period; and
19 20	(1)	than:(a) an average of 38 hours per week over the employee's applicable averaging period; and(b) reasonable additional hours.
19 20 21 22 23	(1)	 than: (a) an average of 38 hours per week over the employee's applicable averaging period; and (b) reasonable additional hours. Note 1: An employee and an employer may agree that the employee is to work
 19 20 21 22 23 24 	(1)	 than: (a) an average of 38 hours per week over the employee's applicable averaging period; and (b) reasonable additional hours. Note 1: An employee and an employer may agree that the employee is to work less than an average of 38 hours per week over the employee's
 19 20 21 22 23 24 25 	(1)	 than: (a) an average of 38 hours per week over the employee's applicable averaging period; and (b) reasonable additional hours. Note 1: An employee and an employer may agree that the employee is to work less than an average of 38 hours per week over the employee's applicable averaging period.
 19 20 21 22 23 24 25 26 	(1)	 than: (a) an average of 38 hours per week over the employee's applicable averaging period; and (b) reasonable additional hours. Note 1: An employee and an employer may agree that the employee is to work less than an average of 38 hours per week over the employee's applicable averaging period. Note 2: The requirement for an employee to work a particular number of
 19 20 21 22 23 24 25 	(1)	 than: (a) an average of 38 hours per week over the employee's applicable averaging period; and (b) reasonable additional hours. Note 1: An employee and an employer may agree that the employee is to work less than an average of 38 hours per week over the employee's applicable averaging period.
 19 20 21 22 23 24 25 26 27 	(1)	 than: (a) an average of 38 hours per week over the employee's applicable averaging period; and (b) reasonable additional hours. Note 1: An employee and an employer may agree that the employee is to work less than an average of 38 hours per week over the employee's applicable averaging period. Note 2: The requirement for an employee to work a particular number of hours may come, for example, from an award or a workplace
19 20 21 22 23 24 25 26 27 28		 than: (a) an average of 38 hours per week over the employee's applicable averaging period; and (b) reasonable additional hours. Note 1: An employee and an employer may agree that the employee is to work less than an average of 38 hours per week over the employee's applicable averaging period. Note 2: The requirement for an employee to work a particular number of hours may come, for example, from an award or a workplace agreement.
 19 20 21 22 23 24 25 26 27 28 29 		 than: (a) an average of 38 hours per week over the employee's applicable averaging period; and (b) reasonable additional hours. Note 1: An employee and an employer may agree that the employee is to work less than an average of 38 hours per week over the employee's applicable averaging period. Note 2: The requirement for an employee to work a particular number of hours may come, for example, from an award or a workplace agreement. Average hours per week worked
 19 20 21 22 23 24 25 26 27 28 29 30 		 than: (a) an average of 38 hours per week over the employee's applicable averaging period; and (b) reasonable additional hours. Note 1: An employee and an employer may agree that the employee is to work less than an average of 38 hours per week over the employee's applicable averaging period. Note 2: The requirement for an employee to work a particular number of hours may come, for example, from an award or a workplace agreement. Average hours per week worked For the purposes of this section, if, for a continuous period (the

1 2	employer, the employee's <i>applicable averaging period</i> at the time is:
3	(a) a period that the employee and the employer have agreed to
4 5	in writing that is shorter than the employment period and finishes at the end of the employment period; or
6	(b) if the employee and the employer have not agreed to a period
7	in accordance with paragraph (a)—the employment period.
8	(3) For the purposes of this section, if, for a continuous period (the
9	employment period) of at least 12 months immediately before a
10	particular time, an employee has been an employee of a particular
11	employer, the employee's <i>applicable averaging period</i> at the time
12	is:
13	(a) a period that the employee and the employer have agreed to
14	in writing that is shorter than 12 months and finishes at the
15	end of the employment period; or
16	(b) if the employee and the employer have not agreed to a period
17	in accordance with paragraph (a)—the last 12 months of the
18	employment period.
19	(4) For the purposes of calculating the average number of hours that an
20	employee has worked per week over the employee's applicable
21	averaging period, the hours worked by the employee are taken to
22	include any hours of authorised leave taken by the employee
23	during that period.
24	Reasonable additional hours
25	(5) For the purposes of paragraph $(1)(b)$, in determining whether
26	additional hours that an employee is required by an employer to
27	work are reasonable additional hours, all relevant factors must be
28	taken into account. Those factors may include, but are not limited
29	to, the following:
30	(a) any risk to the employee's health and safety that might
31	reasonably be expected to arise if the employee worked the
32	additional hours;
33	(b) the employee's personal circumstances (including family
34	responsibilities);
35	(c) the operational requirements of the workplace, or enterprise,
36	in relation to which the employee is required to work the
37	additional hours;

1 2	(d) any notice given by the employer of the requirement that the employee work the additional hours;
3 4	(e) any notice given by the employee of the employee's intention to refuse to work the additional hours.
5	Division 4—Annual leave
6	Subdivision A—Preliminary
7	92 Employees to whom Division applies
8 9	This Division applies to all employees other than casual employees.
10	92A Definitions
11	In this Division:
12	annual leave has the meaning given by subsection 92D(1).
13 14	<i>authorised leave</i> means leave, or an absence, whether paid or unpaid, that is authorised:
15	(a) by an employee's employer; or
16 17	 (b) by or under a term or condition of an employee's employment; or
18 19	(c) by or under a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory.
20	basic periodic rate of pay has the meaning given by section 90B.
21	Note: See also section 92C.
22	continuous service, in relation to a period of an employee's service
23	with an employer, means service with the employer as an
24	employee (other than a casual employee) during the whole of the
25 26	period, including (as a part of the period) any period of authorised leave.
27 28	<i>employee</i> means an employee to whom this Division applies under section 92.
29 30	<i>nominal hours worked</i> : the number of <i>nominal hours worked</i> by an employee for an employer during a period means the sum of:
50	an employee for an employer during a period means the sum of.

2 3 4 5	the number of hours during the period that the employee both was required to work, and did work, for the employer (excluding any reasonable additional hours during that period that the employee both was required to work, and did work, for the employer); and the number of hours of paid authorised leave taken by the employee from his or her employment with the employer during the period.
9 Exam 10 11 12 13	apple: A workplace agreement requires an employee to work for an employer an average of 38 hours per week. The employee works 38 hours for the employer during a week, and takes no paid authorised leave during that week. So the number of nominal hours worked by the employee for the employer during that week is 38.
14 Note 15 16	1: Nominal hours worked by an employee for an employer during a period do not include hours of unpaid authorised leave taken by the employee during the period.
17 Note 18 19	2: The requirement for an employee to work a particular number of hours may come, for example, from an award or a workplace agreement.
20 Note 21	3: For the guarantee relating to maximum ordinary hours of work (including reasonable additional hours), see Division 3.
22 Note	4: See also section 92C.
	<i>e rate employee</i> means an employee who is paid a piece rate of within the meaning of section 90B.
26Terr27a reg28who	<i>lic holiday</i> means a day declared by or under a law of a State or itory to be observed generally within the State or Territory, or gion of that State or Territory, as a public holiday by people work in that State, Territory or region, other than: a union picnic day; or
	a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday.
33 shift	worker means:
34 (a)	an employee who:
35	(i) is employed in a business in which shifts are
36 37	continuously rostered 24 hours a day for 7 days a week; and
38	(ii) is regularly rostered to work those shifts; and
39	(iii) regularly works on a Sunday or public holiday; or

1 2	(b) an employee of a type that is prescribed by regulations made for the purposes of this paragraph.
3	92B Agreement between employees and employers
4	Via a workplace agreement
5	(1) For the purposes of this Division, an employee and an employer
6	are taken to agree about a particular matter in a particular way if a
7 8	provision of a workplace agreement binding the employee and the employer specifies that the matter is to be dealt with in that way.
9	Via other means
10	(2) To avoid doubt, nothing in this section prevents employees and
11	employers agreeing about matters by other means.
12	92C Regulations may prescribe different definitions for piece rate
13	employees
14	The regulations may prescribe:
15	(a) a different definition of <i>basic periodic rate of pay</i> for the
16	purpose of the application of this Division in relation to piece rate employees; and
17 18	(b) a different definition of <i>nominal hours worked</i> for the
19	purpose of the application of this Division in relation to piece
20	rate employees.
21	Subdivision B—Guarantee of annual leave
22	92D The guarantee
23	(1) For the purposes of this Division, <i>annual leave</i> means leave to
24	which an employee is entitled under this Subdivision.
25	All employees to whom this Division applies
26	(2) An employee is entitled to accrue an amount of paid annual leave,
27	for each completed 4 week period of continuous service with an
28 20	employer, of $1/13$ of the number of nominal hours worked by the employee for the employer during that 4 week period.
29	employee for the employer during that 4 week period.

1 2 3 4	Example:	An employee whose nominal hours worked for a 12 month period were 38 hours per week would be entitled under this subsection to 152 hours of annual leave (which would be the equivalent of 4 weeks of annual leave if his or her nominal hours worked remained unchanged).
5	Addition	al leave entitlement for shift workers
6	(3) An empl	oyee is also entitled to accrue an amount of paid annual
7		r each completed 12 month period of continuous service
8	with an e	employer, of ¹ / ₅₂ of the number of nominal hours worked
9	-	mployee, for the employer, as a shift worker during that 12
10	month pe	eriod.
11	Example:	A shift worker whose nominal hours worked for a 12 month period
12		were 38 hours per week, and who worked as a shift worker throughout
13 14		that period, would be entitled under this subsection to an additional 38 hours of annual leave (which would be the equivalent of one week of
14		hours of annual leave (which would be the equivalent of one week of annual leave if his or her nominal hours worked remained unchanged).
16	92E Entitlement t	o cash out annual leave
17		oyee is entitled to forgo an entitlement to take an amount
18	of annua	l leave credited to the employee by an employer if:
19	(a) a p	provision in a workplace agreement binding the employee
20	and	d the employer entitles the employee to forgo the
21	ent	titlement to the amount of annual leave; and
22	(b) the	e employee gives the employer a written election to forgo
23	the	e amount of annual leave; and
24		provision in a workplace agreement binding the employee
25		d the employer entitles the employee to receive pay in lieu
26	of	the amount of annual leave at a rate that is no less than the
27		ployee's basic periodic rate of pay at the time that the
28	ele	ection is made; and
29	(d) the	e employer authorises the employee to forgo the amount of
30	anı	nual leave.
31	(2) However	r, during each 12 month period, an employee is not entitled
32	to forgo	an amount of annual leave credited to the employee by an
33	employe	r that is equal to more than $1/26$ of the nominal hours
34		by the employee for the employer during the period.
35	(3) An empl	oyer must not:
36	-	uire an employee to forgo an entitlement to take an
37		nount of annual leave; or

1 2 3 4		(b) exert undue influence or undue pressure on an employee in relation to the making of a decision by the employee whether or not to forgo an entitlement to take an amount of annual leave.
5	Subdivisi	on C—Annual leave rules
6	92F Annu	al leave—accrual, crediting and accumulation rules
7		Accrual
8	(1)	Annual leave accrues on a pro-rata basis.
9		Crediting
10	(2)	Each month an employer must credit to an employee of the
11		employer the amount (if any) of annual leave accrued by the
12		employee under subsection $92D(2)$ since the employer last credited
13 14		to the employee an amount of annual leave accrued under that subsection.
15	(3)	Each year an employer must credit to an employee of the employer
16		the amount (if any) of annual leave accrued by the employee under
17		subsection 92D(3) since the employer last credited to the employee
18		an amount of annual leave accrued under that subsection.
19		Accumulation
20	(4)	Annual leave is cumulative.
21	92G Annu	ual leave—payment rules
22	(1)	If an employee takes annual leave during a period, the annual leave
23	(-)	must be paid at a rate that is no less than the employee's basic
24		periodic rate of pay immediately before the period begins.
25	(2)	If the employment of an employee who has not taken an amount of
26	. ,	accrued annual leave ends at a particular time, the employee's
27		untaken accrued annual leave must be paid at a rate that is no less
28		than the employee's basic periodic rate of pay at that time.

92H Rules about taking annual leave

2	General rules
3 4 5	(1) Subject to this section and section 92E, an employee is entitled to take an amount of annual leave during a particular period if:(a) at least that amount of annual leave is credited to the
6	employee; and
7 8	(b) the employee's employer has authorised the employee to take the annual leave during that period.
9	(2) To avoid doubt, there is no maximum or minimum limit on the
10	amount of annual leave that an employer may authorise an
11	employee to take.
12	(3) Any authorisation given by an employer enabling an employee to
13	take annual leave during a particular period is subject to the
14	operational requirements of the workplace or enterprise in respect
15	of which the employee is employed.
16	(4) An employer must not unreasonably:
17	(a) refuse to authorise an employee to take an amount of annual
18	leave that is credited to the employee; or
19	(b) revoke an authorisation enabling an employee to take annual
20	leave during a particular period.
21	Shut downs
22	(5) An employee must take an amount of annual leave during a
23	particular period if:
24	(a) the employee is directed to do so by the employee's
25	employer because, during that period, the employer shuts
26	down the business, or any part of the business, in which the
27	employee works; and
28	(b) at least that amount of annual leave is credited to the
29	employee.
30	Extensive accumulated annual leave
31	(6) An employee must take an amount of annual leave during a
32	particular period if:
33	(a) the employee is directed to do so by his or her employer; and

108

1	(b) at the time that the direction is given, the employee has
2	annual leave credited to him or her of more than $1/13$ of the
3	number of nominal hours worked by the employee for the
4	employer during the period of 104 weeks ending at the time
5	that the direction is given; and
6	(c) the amount of annual leave that the employee is directed to
7 8 9	take is less than, or equal to, $1/4$ of the amount of credited annual leave of the employee at the time that the direction is given.
10	Subdivision D—Service: annual leave
11	921 Annual leave—service
12 13	(1) A period of annual leave does not break an employee's continuity of service.
14 15	(2) Annual leave counts as service for all purposes except as prescribed by the regulations.
16	Division 5—Personal leave
17	Subdivision A—Preliminary
18	93 Employees to whom Division applies
19	(1) Subject to this section, this Division applies to all employees other
20	than casual employees.
21	(2) This Subdivision, Subdivision C and sections 93O and 93P apply
22	to all employees.
23	93A Definitions
24	In this Division:
25	authorised leave means leave, or an absence, whether paid or
26	unpaid, that is authorised:
27	(a) by an employee's employer; or
28	(b) by or under a term or condition of an employee's
29	employment; or

1	(c) by or under a law, or an instrument in force under a law, of
2	the Commonwealth, a State or a Territory.
3	carer's leave has the meaning given by paragraph 93D(b).
4	<i>child</i> includes the following:
5	(a) an adopted child;
6	(b) a stepchild;
7	(c) an exnuptial child;
8	(d) an adult child.
9	<i>compassionate leave</i> has the meaning given by subsection $93Q(1)$.
10	continuous service, in relation to a period of an employee's service
11	with an employer, means service with the employer as an
12	employee (other than a casual employee) during the whole of the
13	period, including (as a part of the period) any period of authorised
14	leave.
15	de facto spouse, of an employee, means a person of the opposite
16	sex to the employee who lives with the employee as the
17	employee's husband or wife on a genuine domestic basis although
18	not legally married to the employee.
19	employee, when used in a provision of this Division, means an
20	employee to whom the provision applies under section 93.
21	immediate family: the following are members of an employee's
22	immediate family:
23	(a) a spouse, child, parent, grandparent, grandchild or sibling of
24	the employee;
25	(b) a child, parent, grandparent, grandchild or sibling of a spouse
26	of the employee.
27	medical certificate means a certificate signed by a medical
28	practitioner.
29	medical practitioner means a person registered, or licensed, as a
30	medical practitioner under a law of a State or Territory that
31	provides for the registration or licensing of medical practitioners.
32	nominal hours worked: the number of nominal hours worked by
33	an employee for an employer during a period means the sum of:

1		nber of hours during the period that the employee both
2		quired to work, and did work, for the employer
3		ding any reasonable additional hours during that period
4 5		e employee both was required to work, and did work, employer); and
6		nber of hours of paid authorised leave taken by the
7		yee from his or her employment with the employer
8		the period.
9	Example: A w	vorkplace agreement requires an employee to work for an
10		ployer an average of 38 hours per week. The employee works 38
11 12		rs for the employer during a week, and takes no paid authorised ve during that week. So the number of nominal hours worked by
13		employee for the employer during that week is 38.
14		minal hours worked by an employee for an employer during a
15 16		iod do not include hours of unpaid authorised leave taken by the ployee during the period.
17	-	e requirement for an employee to work a particular number of
18	hou	rs may come, for example, from an award or a workplace
19	agre	eement.
20 21	Note 3: For (inc	the guarantee relating to maximum ordinary hours of work cluding reasonable additional hours), see Division 3.
22	Note 4: See	also section 93C.
23	permissible of	occasion, for unpaid carer's leave, has the meaning
24	given by sub	esection 93J(1).
25	personal/car	<i>rer's leave</i> has the meaning given by section 93D.
26	piece rate en	<i>nployee</i> means an employee who is paid a piece rate of
27	pay within th	ne meaning of section 90B.
28	<i>sick leave</i> ha	as the meaning given by paragraph 93D(a).
29	<i>spouse</i> inclu	des the following:
30	(a) a form	er spouse;
31	(b) a de fa	cto spouse;
32	(c) a form	er de facto spouse.

<i>, UD</i>	Agreement between employees and employers
	Via a workplace agreement
	(1) For the purposes of this Division, an employee and an employer
	are taken to agree about a particular matter in a particular way if a
	provision of a workplace agreement binding the employee and the
	employer specifies that the matter is to be dealt with in that way.
	Via other means
	(2) To avoid doubt, nothing in this section prevents employees and
	employers agreeing about matters by other means.
93C	Regulations may prescribe different definitions for piece rate
	employees
	The regulations may prescribe a different definition of <i>nominal</i>
	<i>hours worked</i> for the purpose of the application of this Division in
	relation to piece rate employees.
93D	Meaning of personal/carer's leave
	For the purposes of this Division, personal/carer's leave is:
	(a) paid leave (<i>sick leave</i>) taken by an employee because of a
	personal illness, or injury, of the employee; or
	(b) paid or unpaid leave (<i>carer's leave</i>) taken by an employee to
	provide care or support to a member of the employee's
	immediate family, or a member of the employee's household,
	who requires care or support because of:
	(i) a personal illness, or injury, of the member; or
	(ii) an unexpected emergency affecting the member.
Suł	odivision B—Guarantee of paid personal/carer's leave
93E	The guarantee
	(1) Subject to this Subdivision, an employee is entitled to paid
	personal/carer's leave if the employee complies with the notice and
	documentation requirements under Subdivision D, to the extent to

1 2	Note: The entitlement is subject to the restrictions in sections 93F, 93H and 93I.
3	(2) An employee is taken not to have been entitled to a period of paid
4	personal/carer's leave at any time after the start of the period if:
5	(a) Subdivision D:
6	(i) required the employee to give notice or a document (the
7 8	<i>required notice or document</i>) to his or her employer; and
9	(ii) allowed the employee to give the required notice or
10 11	document to his or her employer after the start of the leave; and
12	(b) when the employee started the leave, the employee had not
13 14	given his or her employer the required notice or document; and
15	(c) the employee did not later give the required notice or
16	document to his or her employer within the period required
17	under Subdivision D.
18 19 20	Note: Under Subdivision D, an employee may be required to give his or her employer notice, a medical certificate or a statutory declaration (depending on the simulations)
20	(depending on the circumstances).
21	93F Paid personal/carer's leave—accrual, crediting and
21 22	93F Paid personal/carer's leave—accrual, crediting and accumulation rules
	• · · · · ·
22	accumulation rules
22 23	accumulation rules Entitlement to take credited leave (1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer's leave if, under this section, that
22 23 24	accumulation rules <i>Entitlement to take credited leave</i> (1) Subject to this Subdivision, an employee is entitled to take an
22 23 24 25	 accumulation rules <i>Entitlement to take credited leave</i> (1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer's leave if, under this section, that
22 23 24 25 26	accumulation rules Entitlement to take credited leave (1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer's leave if, under this section, that amount of leave is credited to the employee. Accrual
22 23 24 25 26 27	accumulation rules Entitlement to take credited leave (1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer's leave if, under this section, that amount of leave is credited to the employee. Accrual (2) An employee is entitled to accrue an amount of paid personal/carer's leave, for each completed 4 week period of
22 23 24 25 26 27 28	accumulation rules Entitlement to take credited leave (1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer's leave if, under this section, that amount of leave is credited to the employee. Accrual (2) An employee is entitled to accrue an amount of paid personal/carer's leave, for each completed 4 week period of continuous service with an employer, of ¹ / ₂₆ of the number of
22 23 24 25 26 27 28 29	accumulation rules Entitlement to take credited leave (1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer's leave if, under this section, that amount of leave is credited to the employee. Accrual (2) An employee is entitled to accrue an amount of paid personal/carer's leave, for each completed 4 week period of continuous service with an employer, of ¹ / ₂₆ of the number of nominal hours worked by the employee for the employer during
22 23 24 25 26 27 28 29 30	accumulation rules Entitlement to take credited leave (1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer's leave if, under this section, that amount of leave is credited to the employee. Accrual (2) An employee is entitled to accrue an amount of paid personal/carer's leave, for each completed 4 week period of continuous service with an employer, of ¹ / ₂₆ of the number of
 22 23 24 25 26 27 28 29 30 31 32 33 	 accumulation rules Entitlement to take credited leave (1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer's leave if, under this section, that amount of leave is credited to the employee. Accrual (2) An employee is entitled to accrue an amount of paid personal/carer's leave, for each completed 4 week period of continuous service with an employer, of ¹/₂₆ of the number of nominal hours worked by the employee for the employer during that 4 week period. Example: An employee whose nominal hours worked for an employer each
22 23 24 25 26 27 28 29 30 31 32 33 34	 accumulation rules Entitlement to take credited leave (1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer's leave if, under this section, that amount of leave is credited to the employee. Accrual (2) An employee is entitled to accrue an amount of paid personal/carer's leave, for each completed 4 week period of continuous service with an employer, of ¹/₂₆ of the number of nominal hours worked by the employee for the employer during that 4 week period. Example: An employee whose nominal hours worked for an employer each week over a 12 month period are 38 hours would be entitled to accrue
 22 23 24 25 26 27 28 29 30 31 32 33 	 accumulation rules Entitlement to take credited leave (1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer's leave if, under this section, that amount of leave is credited to the employee. Accrual (2) An employee is entitled to accrue an amount of paid personal/carer's leave, for each completed 4 week period of continuous service with an employer, of ¹/₂₆ of the number of nominal hours worked by the employee for the employer during that 4 week period. Example: An employee whose nominal hours worked for an employer each

1	(3)	Paid personal/carer's leave accrues on a pro-rata basis.
2		Crediting
3 4 5 6	(Each month, an employer must credit to an employee of the employer the amount (if any) of paid personal/carer's leave accrued by the employee since the employer last credited to the employee an amount of paid personal/carer's leave accrued under
7		this section.
8	1	Accumulation
9	(5)	Paid personal/carer's leave is cumulative.
10	93G Paid p	personal/carer's leave—payment rule
11		If an employee takes paid personal/carer's leave during a period,
12		the employer must pay the employee for that period the amount the
13 14		employee would reasonably have expected to be paid by the employer if the employee had worked during that period.
15 16		ick leave—no entitlement if workers' compensation received
17 18 19 20 21]	An employee is not entitled to take paid sick leave for a period during which the employee is absent from work because of a personal illness, or injury, for which the employee is receiving compensation payable under a law of the Commonwealth, a State or a Territory relating to workers' compensation.
22	931 Paid ca	arer's leave—annual limit
23 24		This section applies to an employee if, at a particular time, the employee:
25		(a) is employed by an employer; and
26 27 28		(b) for a continuous period of at least 12 months immediately before the time, has been in continuous service with the employer.
29 30 31 32]	The employee is not entitled to take paid carer's leave from his or her employment with the employer at the time if, during the period of 12 months ending at the time, the employee has already taken a total amount of paid carer's leave from that employment of $1/26$ of

1 2	the nominal hours worked by the employee for the employer during that period.
3 4 5 6 7 8 9	Example: An employee whose nominal hours worked for an employer each week were 38 hours during a 12 month period of continuous service with the employer would not be entitled to take any paid carer's leave from his or her employment with the employer if the employee had, during the period, already taken 76 hours paid carer's leave (which amounted to 2 weeks paid carer's leave for that employee) from that employment.
10	Subdivision C—Guarantee of unpaid carer's leave
11	93J The guarantee
12	(1) Subject to this Subdivision, an employee is entitled to a period of
13	up to 2 days unpaid carer's leave for each occasion (a permissible
14	<i>occasion</i>) when a member of the employee's immediate family, or
15	a member of the employee's household, requires care or support during such a period because of:
16	(a) a personal illness, or injury, of the member; or
17	(a) a personal inness, of injury, of the member, of (b) an unexpected emergency affecting the member.
18	
19	Note 1: This entitlement extends to casual employees (see section 93).
20	Note 2: The entitlement is subject to the restrictions in sections 93K and 93L.
21	(2) An employee is entitled to unpaid carer's leave only if the
22	employee complies with the notice and documentation
23	requirements under Subdivision D, to the extent to which they
24	apply to the employee.
25	(3) An employee is taken not to have been entitled to a period of
26	unpaid carer's leave at any time after the start of the period if:
27	(a) Subdivision D:
28	(i) required the employee to give notice or a document (the
29	<i>required notice or document</i>) to his or her employer;
30	and
31	(ii) allowed the employee to give the required notice or
32	document to his or her employer after the start of the
33	leave; and
34	(b) when the employee started the leave, the employee had not
35	given his or her employer the required notice or document;
36	and

1 2 3	(c) the employee did not later give the required notice or document to his or her employer within the period required under Subdivision D.
4 5 6	Note: Under Subdivision D, an employee may be required to give his or her employer notice, a medical certificate or a statutory declaration (depending on the circumstances).
7	93K Unpaid carer's leave—how taken
8	An employee who is entitled to a period of unpaid carer's leave
9 10	under section 93J for a particular permissible occasion is entitled to take the unpaid carer's leave as:
11	(a) a single, unbroken, period of up to 2 days; or
12	(b) any separate periods to which the employee and his or her
13	employer agree.
14	93L Unpaid carer's leave—paid personal leave exhausted
15	An employee is entitled to unpaid carer's leave for a particular
16	permissible occasion during a particular period only if the
17 18	employee cannot take an amount of any of the following types of paid leave during the period:
19	(a) paid personal/carer's leave;
20 21	 (b) any other authorised leave of the same type as personal/carer's leave.
22	Subdivision D—Notice and evidence requirements:
23	personal/carer's leave
24	93M Sick leave—notice
25	(1) To be entitled to sick leave during a period, an employee must give
26	his or her employer notice in accordance with this section that the
27 28	employee is (or will be) absent from his or her employment during the period because of a personal illness, or injury, of the employee.
29	(2) The notice must be given to the employer as soon as reasonably
30	practicable (which may be at a time before or after the sick leave
31	has started).

1 2 3	(3)	The notice must be to the effect that the employee requires (or required) leave during the period because of a personal illness, or injury, of the employee.		
4 5	(4)	This section does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.		
6 7		Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .		
8	93N Sick	leave—medical certificate		
9 10 11	(1)	This section applies if an employer requires his or her employee to give the employer a medical certificate in relation to a period of sick leave taken (or to be taken) by the employee.		
12 13 14	(2)	To be entitled to sick leave during the period, the employee must give the employer a medical certificate from a medical practitioner in accordance with this section.		
15 16 17	(3)	The medical certificate 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).		
18 19 20 21	(4)	The medical certificate must include a statement to the effect that, in the medical practitioner's opinion, the employee was, is, or will be unfit for work during the period because of a personal illness or injury.		
22 23	(5)	This section does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.		
24 25		Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .		
26	930 Care	r's leave—notice		
27 28	(1)	To be entitled to carer's leave during a period, an employee must give his or her employer notice in accordance with this section.		
29 30 31	(2)	The notice 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).		
32 33	(3)	The notice must be to the effect that the employee requires (or required) leave during the period to provide care or support to a		

1 2		member of the employee's immediate family, or a member of the employee's household, who requires (or required) care or support
3		because of:
4		(a) a personal illness, or injury, of the member; or
5		(b) an unexpected emergency affecting the member.
6 7	(4)	This section does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.
8 9		Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
10	93P Carer	's leave—documentary evidence
11	(1)	This section applies if, in relation to carer's leave taken (or to be
12		taken) by an employee during a period (the <i>relevant period</i>) to
13		provide care or support to a member of the employee's immediate
14		family or a member of the employee's household, the employee's
15		employer requires the employee to give the employer a document
16		(the <i>required document</i>) of whichever of the following types
17		applies:
18		(a) if the care or support is required because of a personal illness,
19		or injury, of the member—a medical certificate from a
20		medical practitioner;
21		(b) if the care or support is required because of an unexpected
22		emergency affecting the member—a statutory declaration
23		made by the employee.
24	(2)	To be entitled to carer's leave during the relevant period, the
25		employee must give the employer the required document in
26		accordance with this section.
27	(3)	The required document must be given to the employer as soon as
28		reasonably practicable (which may be at a time before or after the
29		carer's leave has started).
30	(4)	If the required document is a medical certificate, it must include a
31		statement to the effect that, in the opinion of the medical
32		practitioner, the member of the employee's immediate family, or of
33		the employee's household, who requires (or required) care or
34		support has, had, or will have a personal illness or injury during the
35		relevant period.

1 2 3 4 5 6 7		f the required document is a statutory declaration, it must include a statement to the effect that the employee requires (or required) eave during the period to provide care or support to a member of he employee's immediate family, or a member of the employee's nousehold, who requires (or required) care or support, during the relevant period, because of an unexpected emergency affecting the member.
8 9		This section does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.
10 11		Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
12	Subdivisio	n E—Guarantee of compassionate leave
13	93Q The g	iarantee
14	(1)	For the purposes of this Division, <i>compassionate leave</i> is paid
15		eave taken by an employee:
16		(a) for the purposes of spending time with a person who:
17 18		(i) is a member of the employee's immediate family or a member of the employee's household; and
19 20		(ii) has a personal illness, or injury, that poses a serious threat to his or her life; or
21 22		(b) after the death of a member of the employee's immediate family or a member of the employee's household.
23 24		An employee is entitled to a period of 2 days of compassionate eave if:
25 26		(a) a member of the employee's immediate family or a member of the employee's household:
27 28		(i) contracts a personal illness that poses a serious threat to his or her life; or
29		(ii) sustains a personal injury that poses a serious threat to
30		his or her life; or
31		(iii) dies; and
32		(b) the employee gives his or her employer any evidence that the
33		employer reasonably requires of the illness, injury or death.
34 35		Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .

1	93R Taking compassionate leave
2 3	An employee who is entitled to a period of compassionate leave under section 93Q is entitled to take the compassionate leave as:
4	(a) a single, unbroken period of 2 days; or
5	(b) 2 separate periods of 1 day each; or
6 7	(c) any separate periods to which the employee and his or her employer agree.
8	938 Compassionate leave—payment rule
9	If an employee takes compassionate leave during a period, the
10	employer must pay the employee for that period the amount the
11	employee would reasonably have expected to be paid by the
12	employer if the employee had worked during that period.
13	Subdivision F—Personal leave: service
14	93T Paid personal leave—service
15 16	(1) A period of paid personal leave does not break an employee's continuity of service.
17 18	(2) Paid personal leave counts as service for all purposes except as prescribed by the regulations.
19	(3) In this section:
20 21	<i>paid personal leave</i> means paid personal/carer's leave or compassionate leave.
22	93U Unpaid carer's leave—service
23	(1) A period of unpaid carer's leave does not break an employee's
24	continuity of service.
25 26	(2) However, a period of unpaid carer's leave does not otherwise count as service except:
27	(a) as expressly provided by or under:
28	(i) a term or condition of the employee's employment; or
29 30	(ii) a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory; or

	(b) as prescribed by the regulations.
Div	vision 6—Parental leave
Sul	odivision A—Preliminary
94	Employees to whom Division applies
	This Division applies to all employees, other than casual employees who are not eligible casual employees.
94A	Definitions
	In this Division:
	adoption agency means an agency, office, court or other entity that
	is authorised under a law of the Commonwealth, a State, a
	Territory or a foreign country to perform functions in relation to adoption.
	adoption leave has the meaning given by subsection 94ZL(1).
	authorised leave means leave, or an absence, whether paid or
	unpaid, that is authorised:
	(a) by an employee's employer; or
	(b) by or under a term or condition of an employee's employment; or
	(c) by or under a law, or an instrument in force under a law, of
	the Commonwealth, a State or a Territory.
	continuous service, in relation to a period of an employee's service
	with an employer, means service with the employer as an
	employee during the whole of the period, including (as a part of the
	period) any of the following periods:
	(a) a period of authorised leave;
	(b) a period (the <i>casual period</i>) during which the employee was a casual employee, if:
	(i) during the casual period, the employee was engaged on
	a regular and systematic basis by the employer; and

30 31 a regular and systematic basis by the employer; and(ii) during the casual period, the employee had a reasonable expectation of continuing employment by the employer.

1	day of placement: the day of placement of a child with an
2	employee for an adoption is:
3	(a) subject to paragraph (b), the earlier of the following days:
4	(i) the day on which the employee first takes custody of the
5	child for the adoption;
6	(ii) the day on which the employee starts any travel that is
7	reasonably necessary to take custody of the child for the
8	adoption; or
9	(b) if the child's adoption by an employee is authorised by an
10	adoption agency after the child has started living with the
11	employee (unless the employee has travelled overseas to take
12	custody of the child for an adoption intended to occur in
13	Australia)—the day on which the adoption is authorised by
14	the agency.
15	<i>de facto spouse</i> , of an employee, means a person of the opposite
16	sex to the employee who lives with the employee as the
17	employee's husband or wife on a genuine domestic basis although
18	not legally married to the employee.
19	eligible casual employee has the meaning given by section 94B.
20	eligible child has the meaning given by section 94ZJ.
21	employee means an employee to whom this Division applies under
22	section 94.
23	expected date of birth, of a child of an employee who is or was
24	pregnant, means:
25	(a) if, to comply with a requirement under Subdivision C, the
26	employee has given her employer a medical certificate
27	stating the expected date of birth of the child or a date that
28	would be, or would have been, the expected date of birth of
29	the child—the stated date; or
30	(b) if the employee could not comply with a requirement
31	mentioned in paragraph (a) because of circumstances beyond
32	her control—the date of birth of the child that could
33	reasonably be expected if the pregnancy were to go to full
34	term.
35	long adoption leave has the meaning given by paragraph
36	94ZL(1)(b).

<i>long paternity leave</i> has the meaning given by paragraph $94T(1)(b)$.
<i>maternity leave</i> has the meaning given by subsection 94C(1).
<i>medical certificate</i> means a certificate signed by a medical practitioner.
<i>medical practitioner</i> means a person registered, or licensed, as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.
<i>ordinary maternity leave</i> has the meaning given by paragraph $94C(1)(b)$.
paternity leave has the meaning given by subsection 94T(1).
<i>placement</i> , of a child, means:
(a) subject to paragraph (b)—the placement, by an adoption
agency, of the child into the custody of an employee for
adoption; or
(b) if the child's adoption by an employee is authorised by an
adoption agency after the child has started living with the
employee—the authorisation of the adoption by the adoption agency.
Note: <i>Day of placement</i> is also defined in this section.
<i>pre-adoption leave</i> has the meaning given by subsection 94ZK(2).
pregnancy-related illness means an illness related to pregnancy.
<i>primary care-giver</i> , of a child, means a person who assumes the
principal role of providing care and attention to the child.
short adoption leave has the meaning given by paragraph
94ZL(1)(a).
short paternity leave has the meaning given by paragraph
94T(1)(a).
<i>special maternity leave</i> has the meaning given by paragraph $94C(1)(a)$.
<i>spouse</i> includes the following:
-r

1	(b) a de facto spouse;
2	(c) a former de facto spouse.
3	94B Meaning of <i>eligible casual employee</i>
4 5	(1) For the purposes of this Division, an <i>eligible casual employee</i> is a casual employee:
6 7 8	 (a) who has been engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and
9 10 11 12	(b) who, but for an expected birth or an expected placement of a child, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.
13 14	(2) Without limiting subsection (1), for the purposes of this Division, a casual employee is also an <i>eligible casual employee</i> if:
15 16 17	 (a) the employee was engaged by a particular employer on a regular and systematic basis for a sequence of periods during a period (the <i>first period of employment</i>) of less than 12 months; and
18 19 20 21	(b) at the end of the first period of employment, the employee ceased, on the employer's initiative, to be so engaged by the employer; and
22 23 24 25 26	 (c) the employer later again engaged the employee on a regular and systematic basis for a further sequence of periods during a period (the <i>second period of employment</i>) that started not more than 3 months after the end of the first period of employment; and
20 27 28	(d) the combined length of the first period of employment and the second period of employment is at least 12 months; and
29 30 31	 (e) the employee, but for an expected birth or an expected placement of a child, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis
32 33	systematic basis. Subdivision B—Guarantee of maternity leave
34	94C The guarantee
35	(1) For the purposes of this Division, <i>maternity leave</i> is:

1	(a) unpaid leave (<i>special maternity leave</i>) taken by an employee
2	because:
3	(i) she is pregnant, and has a pregnancy-related illness; or
4	(ii) she has been pregnant, and the pregnancy has ended
5	within 28 weeks before the expected date of birth of the
6	child otherwise than by the birth of a living child; or
7	(b) a single, unbroken period of unpaid leave (<i>ordinary</i>
8	<i>maternity leave</i>) taken in respect of the birth, or the expected
9	birth, of a child of an employee (other than leave taken as
10	special maternity leave).
11 12	(2) Subject to this Subdivision and Subdivision D, an employee is entitled to maternity leave if:
13	(a) she complies with the documentation requirements under
14	Subdivision C, to the extent to which they apply to her; and
15	(b) immediately before the expected date of birth of the child:
16	(i) she has, or will have, completed at least 12 months
17	continuous service with her employer; or
18	(ii) she is, or will be, an eligible casual employee.
19 20	Note: Entitlement to maternity leave is subject to the restrictions in sections 94D and 94E and Subdivision D.
21	(3) An employee is taken not to have been entitled to a period of
22	maternity leave at any time after the start of the period if:
23	(a) Subdivision C:
24 25	(i) required the employee to give a document (the <i>required document</i>) to her employer; and
	(ii) allowed the employee to give the required document to
26 27	her employer after the start of the leave; and
28	(b) when the employee started the leave, the employee had not
29	given her employer the required document; and
30	(c) the employee did not later give the required document to her
31	employer within the period required under Subdivision C.
32	Note: Under Subdivision C, an employee may be required to give her
33 34	employer a medical certificate, an application or a statutory declaration (depending on the circumstances).
54	declaration (depending on the circumstances).
35	(4) Subject to this Division, an employee may take special maternity
36	leave, ordinary maternity leave, or both.

94D Period of maternity leave

2	(1)	In this se	ction:
3 4 5		be taken)	<i>uthorised leave</i> , in relation to maternity leave taken (or to by an employee, means any of the following types of d leave other than the maternity leave:
5			•
6			horised leave (other than paid leave under subparagraph $F(2)(b)(i)$ or (ii)) taken by the employee because of any of
7			following:
8			-
9) her pregnancy;
10) the birth of the child;
11		(111) the end of her pregnancy otherwise than by the birth of a
12			living child;
13) the death of the child;
14			ernity leave, or any other authorised leave of the same
15			e as paternity leave, taken by the employee's spouse
16		bec	ause of the birth of the child.
17 18	(2)		byee may take a period of maternity leave as part of a us period including any other authorised leave.
19	(3)	The maxi	imum total amount of maternity leave (including special
20	(-)		/ leave and ordinary maternity leave) to which an
21		•	e is entitled in relation to the birth of a child is 52 weeks,
22			nount equal to the total amount of related authorised leave
23		taken:	
24		(a) by	the employee before or after the maternity leave; and
25		(b) by	the employee's spouse before, during or after the
26		•	ternity leave.
27 28 29 30		Example:	Rosa is a pregnant employee entitled to maternity leave. She has taken 2 weeks of special maternity leave, but no other authorised leave. Rosa intends to take authorised leave because of the birth consisting of 4 weeks of annual leave and 12 weeks of long service leave, and a
31			period of ordinary maternity leave.
32			Rosa's spouse Jim intends to take 1 week of short paternity leave.
33 34			The maximum amount of ordinary maternity leave to which Rosa is entitled is 33 weeks, worked out as follows:
35 36		(a)	the maximum entitlement of any employee to maternity leave is 52 weeks;
37 38		(b)	the maximum amount of ordinary maternity leave available to Rosa must be reduced by 2 weeks for her special maternity leave;

126

1 2	(c) the maximum amount must also be reduced by 16 weeks for Rosa's annual leave and long service leave;
3 4	(d) the maximum amount must be further reduced by 1 week for Jim's short paternity leave.
5	94E Period of special maternity leave
6 7 8	 An employee is not entitled to a period of special maternity leave longer than the period stated in a medical certificate given to the employer for the purposes of section 94G.
9 10 11 12 13	Note: Section 94G requires an employee to give her employer a medical certificate (and other documents) in order to be entitled to special maternity leave. However, the section does not apply to an employee who could not comply with the section because of circumstances beyond her control (see subsection 94G(5)).
14 15 16	(2) In addition, a period of special maternity leave must end before the employee starts any continuous period of leave including (or constituted by) ordinary maternity leave.
17	94F Transfer to a safe job
18	(1) This section applies to an employee if:
19	(a) she is entitled to ordinary maternity leave; and
20	(b) she has already complied with the documentation
21	requirements under sections 94H and 94I; and
22	(c) the employee gives her employer a medical certificate from a
23	medical practitioner containing a statement to the effect that,
24	in the medical practitioner's opinion, the employee is fit to
25	work, but that it is inadvisable for her to continue in her
26	present position for a stated period because of:
27	(i) illness, or risks, arising out of her pregnancy; or
28	(ii) hazards connected with that position.
29	(2) If this section applies to an employee:
30	(a) if the employee's employer thinks it to be reasonably
31	practicable to transfer the employee to a safe job-the
32	employer must transfer the employee to the safe job, with no
33	other change to the employee's terms and conditions of
34	employment; or
35	(b) if the employee's employer does not think it to be reasonably
36	practicable to transfer the employee to a safe job:

1 2	(i) the employee may take paid leave immediately for a period ending at the time mentioned in paragraph (4)(b);
3	or
4	(ii) the employer may require the employee to take paid
5	leave immediately for a period ending at the time
6	mentioned in paragraph (4)(b).
7	(3) If the employee takes paid leave under subparagraph $(2)(b)(i)$ or
8	(ii) during a period, the employer must pay the employee for that
9	period the amount the employee would reasonably have expected
10	to be paid by the employer if the employee had worked during that
11	period.
12	(4) If the employee takes paid leave under subparagraph (2)(b)(i) or (i)
13	
14	(a) the entitlement to leave is in addition to any other leave entitlement she has; and
15 16	(b) the period of leave ends at the earliest of whichever of the
10	following times is applicable:
18	(i) the end of the period stated in the medical certificate;
19	(ii) if the employee's pregnancy results in the birth of a
20	living child—the end of the day before the date of birth;
21	(iii) if the employee's pregnancy ends otherwise than with
22	the birth of a living child—the end of the day before the
23	end of the pregnancy.
24	(5) To avoid doubt, this section applies whether the employee gives
25	the medical certificate to the employer because of a request under
26	subsection $94L(2)$ or otherwise.
27	Subdivision C—Maternity leave: documentation
28	94G Special maternity leave—documentation
29	Requirement for application
30	(1) To be entitled to special maternity leave during a period, an
31	employee must give her employer a written application for special
32	maternity leave, in accordance with this section, stating the first
33	and last days of the period.

1	Pregnancy-related illness—medical certificate
2	(2) An application for special maternity leave required because of a
3	pregnancy-related illness must be accompanied by a medical
4	certificate from a medical practitioner containing the following
5	statements of the medical practitioner's opinion:
6	(a) a statement that the employee is pregnant;
7	(b) a statement of the expected date of birth;
8	(c) a statement to the effect that the employee is (or was) unfit to
9	work for a stated period because of a pregnancy-related
10	illness.
11	End of pregnancy—medical certificate and statutory declaration
12	(3) An application for special maternity leave required because of the
13	end of the employee's pregnancy otherwise than by the birth of a
14	living child must be accompanied by:
15	(a) a medical certificate from a medical practitioner containing
16	the following statements of the medical practitioner's
17	opinion:
18	(i) a statement that the employee was pregnant, but that the
19	pregnancy has ended otherwise than by the birth of a
20	living child;
21	(ii) a statement of what the expected date of birth would
22	have been if the pregnancy had gone to full term;
23 24	(iii) a statement that the pregnancy ended on a stated day within 28 weeks before the expected date of birth;
25	(iv) a statement to the effect that the employee is (or was)
26	unfit for work during a stated period; and
27	(b) a statutory declaration made by the employee stating the
28	following:
29	(i) the first and last days of the period (or periods) of any
30	other authorised leave taken by the employee because of
31	a pregnancy-related illness or the end of the pregnancy;
32	(ii) that the employee will not engage in any conduct
33	inconsistent with her contract of employment while on
34	maternity leave.

1		Time for giving application to employer
2	(4)	The application, medical certificate and statutory declaration (if
3	(+)	required) must be given to the employer before, or as soon as
4		reasonably practicable after, starting a continuous period of leave
5		including (or constituted by) the special maternity leave.
6		Section does not apply if could not be complied with
7 8	(5)	This section does not apply to an employee who could not comply with the section because of circumstances beyond her control.
9 10		Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
11	94H Ordi	nary maternity leave—medical certificate
12		Requirement for medical certificate
13	(1)	To be entitled to ordinary maternity leave, an employee must give
14		her employer a medical certificate from a medical practitioner in
15		accordance with this section.
16		General rules
17	(2)	The medical certificate must contain the following statements of
18		the medical practitioner's opinion:
19		(a) a statement that the employee is pregnant;
20		(b) a statement of the expected date of birth.
21	(3)	The medical certificate mentioned in subsection (2) must be given
22		to the employer no later than 10 weeks before the expected date of
23		birth (as stated in the certificate).
24		Premature birth or other compelling reason
25	(4)	However, subsections (2) and (3) do not apply if it was not
26		reasonably practicable for a medical certificate mentioned in
27		subsection (2) to be given to the employer by the time required by
28		subsection (3) because of:
29		(a) the premature birth of the employee's child; or
30		(b) any other compelling reason.
31	(5)	If subsections (2) and (3) do not apply:

1		(a) subject to paragraph (b), as soon as reasonably practicable
2		before the birth of the child (which may be at a time before or
3		after the maternity leave has started) the employee must give
4		the employer a medical certificate from a medical
5		practitioner containing the following statements of the
6		medical practitioner's opinion:
7		(i) a statement that the employee is pregnant;
8		(ii) a statement of the expected date of birth if the
9		pregnancy were to go to full term; or
10		(b) if it was not reasonably practicable for the employee to
11		comply with paragraph (a) before the birth of the child—as
12		soon as reasonably practicable after the birth of the child
13		(which may be at a time before or after the maternity leave
14		has started) the employee must give the employer a medical certificate from a medical practitioner containing the
15 16		following statements of the medical practitioner's opinion (or
17		knowledge):
18		(i) a statement of the actual date of birth;
19		(ii) a statement of the expected date of birth as at the 70th
20		day before the actual date of birth.
21	,	Section does not apply if could not be complied with
22	(6)	This section does not apply to an employee who could not comply
23		with the section because of circumstances beyond her control.
24 25]	Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
26	94I Ordina	ary maternity leave—application
27		Requirement for application
28	(1)	To be entitled to ordinary maternity leave during a period, an
29		employee must give her employer a written application for
30		ordinary maternity leave in accordance with this section stating the
31	:	first and last days of the period.
32		General rule
33 34 35		The application must be given to the employer no later than 4 weeks before the first day of the intended continuous period of leave including (or constituted by) ordinary maternity leave.

	Premature birth or other compelling reason
	(3) However, subsection (2) does not apply if it was not reasonably
	practicable for the employee to comply with it because of:
	(a) the premature birth of the employee's child; or
	(b) any other compelling reason.
	(4) If subsection (2) does not apply, the application must be made as
	soon as reasonably practicable (which may be at a time before or
	after the maternity leave has started).
	Statutory declaration with application
	(5) The application must be accompanied by a statutory declaration
	made by the employee stating the following:
	(a) the first and last days of the period (or periods) of any other
	authorised leave (other than paid leave under subparagraph $O(F(2)(h)(i))$ or (iii)) inter do d to be taken (or already taken) by
	94F(2)(b)(i) or (ii)) intended to be taken (or already taken) by the employee because of her pregnancy or the expected birth;
	(b) the first and last days of the period (or periods) of any
	paternity leave, or any other authorised leave of the same
	type as paternity leave, intended to be taken (or already
	taken) by the employee's spouse because of the expected
	birth;
	(c) that the employee intends to be the child's primary care-giver
	at all times while on maternity leave;
	(d) that the employee will not engage in any conduct inconsistent
	with her contract of employment while on maternity leave.
	Section does not apply if could not be complied with
	(6) This section does not apply to an employee who could not comply with the section because of circumstances beyond her control
	with the section because of circumstances beyond her control.
	Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
Subdi	vision D—Maternity leave: from start to finish
94J M	laternity leave—start of leave
	Subject to section 94L, an employee may start a continuous period
	of leave including (or constituted by) ordinary maternity leave to

1 2	which she is entitled at any time within 6 weeks before the expected date of birth of the child.			
3	94K Requirement to take leave—for 6 weeks after birth			
4	A continuous period of leave including (or constituted by) ordinary			
5	maternity leave must include a period of leave of at least 6 weeks			
6	starting from the date of birth of the child.			
7	94L Requirement to take leave—within 6 weeks before birth			
8	(1) This section applies to an employee if:			
9	(a) she is entitled to ordinary maternity leave; and			
10	(b) she has already complied with the documentation			
11	requirements under sections 94H and 94I.			
12	(2) If the employee continues to work, during the period of 6 weeks			
13	before the expected date of birth, the employer may ask the			
14	employee to give the employer a medical certificate from a medical			
15	practitioner containing the following statement or statements of the			
16	medical practitioner's opinion:			
17	(a) a statement of whether the employee is fit to work;			
18	(b) if, in the opinion of the medical practitioner, the employee is			
19	fit to work—a statement of whether it is inadvisable for the			
20	employee to continue in her present position for a stated			
21	period because of:			
22	(i) illness, or risks, arising out of the pregnancy; or			
23	(ii) hazards connected with the position.			
24	Note: Under section 94F, the employee is entitled to be transferred to a safe			
25 26	job or to paid leave (depending on the circumstances) if the employee gives the employer a medical certificate stating that the employee is fit			
26 27	to work, but that illness or risks arising out of the employee's			
28	pregnancy or hazards connected with the work assigned to the			
29	employee make it inadvisable for the employee to continue in her			
30	present position.			
31	(3) The employer may require the employee to start a continuous			
32	period of leave including (or constituted by) maternity leave as			
33	soon as reasonably practicable, if the employee:			
34	(a) does not give the employer the requested certificate within 7			
35	days after the request; or			

1 2 3	(b) within 7 days after the request for the certificate, gives the employer a medical certificate stating that the employee is unfit to work.
4 94M 5	End of pregnancy—effect on ordinary maternity leave entitlement
6 7	(1) This section applies if the pregnancy of an employee ends otherwise than by the birth of a living child.
8 9 10 11	(2) If, when the pregnancy ended, the employee had not yet started a period of ordinary maternity leave, the employee is not, or is no longer, entitled to ordinary maternity leave in relation to the previously expected birth.
12 13 14 15	Note: However, the employee may be entitled to take special maternity leave because of the end of the pregnancy. An application for special maternity leave may be made after the leave has started (see section 94G).
16 17 18 19	(3) If, when the pregnancy ended, the employee had started a period of ordinary maternity leave, the employee's entitlement to ordinary maternity leave in relation to the previously expected birth is not affected by the end of the pregnancy.
20 21 22 23 24	Note: The employee may shorten the period of ordinary maternity leave by agreement with the employer under section 94P. However, to take advantage of the return to work guarantee under section 94R, the employee must also give the employer at least 4 weeks written notice of the proposed day of her return to work.
25 94N	Death of child—effect on ordinary maternity leave entitlement
26	(1) This section applies if:
27	(a) an employee gives birth to a living child, but the child later dies; and
28	
29 30	(b) when the child died, the employee had started a period of ordinary maternity leave in relation to the child's birth.
31 32 33	(2) Subject to subsections (3) and (4), the employee's entitlement to the ordinary maternity leave is not affected by the death of the child.
34 35 36	Note: The employee may shorten the period of ordinary maternity leave by agreement with the employer under section 94P. However, to take advantage of the return to work guarantee under section 94R, the

134

1 2		employee must also give the employer at least 4 weeks written notice of the proposed day of her return to work.
3		The employee's employer may give the employee written notice
4		that, from a stated day, any untaken ordinary maternity leave that
5		the employee remains entitled to at the stated day is cancelled with
6		effect from that day.
7		The day stated in the notice must be no earlier than the later of the
8		following days:
9		(a) the day that is 4 weeks after the day the notice was given;
10		(b) the day that is 6 weeks after the date of birth.
11	(5)	The employee's entitlement to any untaken ordinary maternity
12		leave in relation to the birth ends with effect from the day stated in
13	1	the notice.
14	940 End o	f ordinary maternity leave if employee stops being
15		primary care-giver
16		This section applies if:
16 17		This section applies if: (a) during a substantial period while an employee is on ordinary
16 17 18		 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee
16 17 18 19		 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and
16 17 18 19 20		 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other
16 17 18 19 20 21		 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the
16 17 18 19 20 21 22		 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary
16 17 18 19 20 21	(1)	 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period.
16 17 18 19 20 21 22	(1)	 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period. The employee's employer may give the employee written notice
16 17 18 19 20 21 22 23	(1)	 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period. The employee's employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the
16 17 18 19 20 21 22 23 24 25 26	(1)	 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period. The employee's employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken ordinary maternity leave that the
16 17 18 19 20 21 22 23 24 25 26 27	(1)	 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period. The employee's employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken ordinary maternity leave that the employee remains entitled to at the stated day is cancelled with
16 17 18 19 20 21 22 23 24 25 26	(1)	 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period. The employee's employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken ordinary maternity leave that the
16 17 18 19 20 21 22 23 24 25 26 27	(1)	 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period. The employee's employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken ordinary maternity leave that the employee remains entitled to at the stated day is cancelled with
16 17 18 19 20 21 22 23 24 25 26 27 28	(1) (2) (3)	 This section applies if: (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child's primary care-giver; and (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period. The employee's employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken ordinary maternity leave that the employee remains entitled to at the stated day is cancelled with effect from that day.

94P Va	riation of period of ordinary maternity leave
(1) This section applies after an employee has started a continuous period of leave including (or constituted by) ordinary maternity leave.
(2) Subject to Subdivision B and sections 94N and 94O:
	(a) the employee may extend the period of maternity leave once
	by giving her employer 14 days written notice before the end of the period stating the period by which the leave is extended; and
	(b) the period of maternity leave may be further extended by agreement between the employee and her employer.
(3) Subject to section 94K, the period of maternity leave may be
Ň	shortened by written agreement between the employee and her
	employer.
	Note: However, to take advantage of the return to work guarantee under
	section 94R, the employee must also give her employer at least 4 weeks written notice of the proposed day for her return to work.
94Q En	ployee's right to terminate employment during maternity leave
(An employee may terminate her employment at any time during a period of maternity leave or leave under subparagraph 94F(2)(b)(i) or (ii).
(2) The employee's right to terminate her employment is subject to
	any notice required to be given by the employee by or under:
	(a) a term or condition of her employment; or
	(b) a law, or an instrument in force under a law, of the
	Commonwealth, a State or a Territory.
94R Re	turn to work guarantee—maternity leave
(1) This section applies to an employee who returns to work after a period of leave including (or constituted by) maternity leave (the <i>maternity-related leave period</i>) if:
	 (a) the employee gives her employer written notice of the proposed day of her return to work no later than 4 weeks before that day; or

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23		 (b) the period of leave includes (or is constituted by) special maternity leave, and does not include any ordinary maternity leave; or (c) the employee's entitlement to ordinary maternity leave ends under section 94N or 94O. This section also applies if an employee returns to work after a period of leave under subparagraph 94F(2)(b)(i) or (ii). Subject to subsections (4) and (5), the employee is entitled to return:
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22		 leave; or (c) the employee's entitlement to ordinary maternity leave ends under section 94N or 94O. This section also applies if an employee returns to work after a period of leave under subparagraph 94F(2)(b)(i) or (ii). Subject to subsections (4) and (5), the employee is entitled to return:
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22		 (c) the employee's entitlement to ordinary maternity leave ends under section 94N or 94O. This section also applies if an employee returns to work after a period of leave under subparagraph 94F(2)(b)(i) or (ii). Subject to subsections (4) and (5), the employee is entitled to return:
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22		period of leave under subparagraph 94F(2)(b)(i) or (ii). Subject to subsections (4) and (5), the employee is entitled to return:
9 10 11 12 13 14 15 16 17 18 19 20 21 22	(3)	return:
11 12 13 14 15 16 17 18 19 20 21 22		
14 15 16 17 18 19 20 21 22		 (a) unless paragraph (b) or (c) applies—to the position she held immediately before the start of the maternity-related leave period; or
17 18 19 20 21 22		 (b) if she was promoted or voluntarily transferred to a new position (other than to a safe job under paragraph 94F(2)(a)) during the maternity-related leave period—to the new position; or
18 19 20 21 22		position; or
21 22		(c) if paragraph (b) does not apply, and she began working part-time because of her pregnancy—to the position she held immediately before starting to work part-time.
21 22	(4)	If subsection (3) would, apart from this subsection, entitle the
	(4)	employee to return to a position that the employee had been transferred to under paragraph $94F(2)(a)$, the employee is instead
24		entitled to return to the position she held immediately before the transfer.
25	(5)	If the position (the <i>former position</i>) no longer exists, and the
26 27		employee is qualified and able to work for her employer in another position, the employee is entitled to return to:
28		(a) that position; or
29 30		(b) if there are 2 or more such positions—whichever position is nearest in status and remuneration to the former position.
31 94S	Repla	cement employees—maternity leave
32 33 34 35 36	(1)	Before an employer engages an employee (a <i>primary replacement</i>) to do the work of another employee because the other employee is taking a continuous period of leave including (or constituted by) maternity leave, the employer must tell the primary replacement: (a) that the engagement to do that work is temporary; and

1	(b) what the rights of the employee taking maternity leave are
2	under section 94R when she returns to work after the period
3	of leave.
4	(2) Before an employer engages an employee (a <i>secondary</i>
5	<i>replacement</i>) to do the work of another employee (the <i>primary</i>
6	<i>replacement</i>) because the primary replacement has been
7	temporarily promoted or transferred to do the work of a third
8	employee while the third employee is taking a continuous period of
9	leave including (or constituted by) maternity leave, the employer
10	must tell the secondary replacement:
11	(a) that the engagement to do that work is temporary; and
12	(b) what the rights of the employee taking maternity leave are
13	under section 94R when she returns to work after the period
14	of leave.
15	(3) In this section:
16	<i>employee</i> has the meaning given by subsection 4AA(1).
17	Subdivision E—Guarantee of paternity leave
17	Subdivision E—Guarantee of paterinty leave
18	94T The guarantee
18 19	94T The guarantee
18 19 20	94T The guarantee (1) For the purposes of this Division, <i>paternity leave</i> is:
18 19 20 21	 94T The guarantee (1) For the purposes of this Division, <i>paternity leave</i> is: (a) a single, unbroken period of unpaid leave (<i>short paternity</i>)
18 19 20 21 22	 94T The guarantee (1) For the purposes of this Division, <i>paternity leave</i> is: (a) a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within
18 19 20 21 22 23	 94T The guarantee (1) For the purposes of this Division, <i>paternity leave</i> is: (a) a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth;
18	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male
18 19 20 21 22 23 24	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male employee after his spouse gives birth to a living child so that
18 19 20 21 22 23 24 25	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male
18 19 20 21 22 23 24 25 26	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male employee after his spouse gives birth to a living child so that the employee can be the child's primary care-giver.
18 19 20 21 22 23 24 25 26 27	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male employee after his spouse gives birth to a living child so that
 18 19 20 21 22 23 24 25 26 27 28 	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male employee after his spouse gives birth to a living child so that the employee can be the child's primary care-giver. Subject to this Subdivision and Subdivision G, an employee is
18 19 20 21 22 23 24 25 26 27 28 29	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male employee after his spouse gives birth to a living child so that the employee can be the child's primary care-giver. Subject to this Subdivision and Subdivision G, an employee is entitled to paternity leave if:
 18 19 20 21 22 23 24 25 26 27 28 29 30 	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male employee after his spouse gives birth to a living child so that the employee can be the child's primary care-giver. Subject to this Subdivision and Subdivision G, an employee is entitled to paternity leave if: he complies with the documentation requirements under
 18 19 20 21 22 23 24 25 26 27 28 29 30 31 	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male employee after his spouse gives birth to a living child so that the employee can be the child's primary care-giver. Subject to this Subdivision and Subdivision G, an employee is entitled to paternity leave if: he complies with the documentation requirements under Subdivision F, to the extent to which they apply to him; and
 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male employee after his spouse gives birth to a living child so that the employee can be the child's primary care-giver. Subject to this Subdivision and Subdivision G, an employee is entitled to paternity leave if: he complies with the documentation requirements under Subdivision F, to the extent to which they apply to him; and immediately before the first day on which the paternity leave is, or is to be, taken:
 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 	 94T The guarantee For the purposes of this Division, <i>paternity leave</i> is: a single, unbroken period of unpaid leave (<i>short paternity leave</i>) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or a single, unbroken period of unpaid leave (<i>long paternity leave</i>), other than short paternity leave, taken by a male employee after his spouse gives birth to a living child so that the employee can be the child's primary care-giver. Subject to this Subdivision and Subdivision G, an employee is entitled to paternity leave if: he complies with the documentation requirements under Subdivision F, to the extent to which they apply to him; and immediately before the first day on which the paternity leave

138

1	(ii) he is, or will be, an eligible casual employee.
2 3	Note: Entitlement to paternity leave is subject to the restrictions in sections 94U and 94W and Subdivision G.
4	(3) An employee is taken not to have been entitled to a period of
5	paternity leave at any time after the start of the period if:
6	(a) Subdivision F:
7 8	(i) required the employee to give a document (the <i>required document</i>) to his employer; and
9 10	(ii) allowed the employee to give the required document to his employer after the start of the leave; and
11 12	(b) when the employee started the leave, the employee had not given his employer the required document; and
13	(c) the employee did not later give the required document to his
14	employer within the period required under Subdivision F.
15	Note: Under Subdivision F, an employee may be required to give his
16 17	employer a medical certificate, an application or a statutory declaration (depending on the circumstances).
18	(4) Subject to this Division, an employee may take short paternity
19	leave, long paternity leave, or both.
20	94U Period of paternity leave
21	(1) In this section:
22	related authorised leave, in relation to paternity leave taken (or to
23	be taken) by an employee because his spouse has given birth to a
24	living child, means any of the following types of authorised leave
25	other than the paternity leave:
26	(a) authorised leave taken by the employee because of any of the
27	following:
28	(i) the birth of the child;
29	(ii) the death of the child;
30	(b) maternity leave, or any other authorised leave of the same
31	type as maternity leave, taken by the employee's spouse
32	because of the birth of the child or the pregnancy.
33	(2) An employee may take a period of paternity leave as part of a
34	continuous period including any other authorised leave.
54	continuous period metuding any other authorised leave.

1 2	(3) The maximum total amount of paternity leave (including short paternity leave and long paternity leave) to which an employee is		
3	entitled in relation to the birth of a child by his spouse is 52 weeks,		
4		mount equal to the total amount of related authorised leave	
5	taken:	•	
6	(a) by	the employee before or after the paternity leave; and	
7	(b) by	the spouse before, during or after the paternity leave.	
8	Example:	Max's spouse Rachel is pregnant, and Max is an employee entitled to	
9	-	paternity leave. He intends to take 2 periods of authorised leave	
10 11		because of the birth of the child. The first is to consist of 5 weeks: 1 week of short paternity leave and 4 weeks of annual leave. The second	
12		is to consist of a later period of long paternity leave starting 20 weeks	
13 14		after the birth, when Max is to be the primary care-giver for the child after Rachel returns to work.	
15 16		Rachel has not taken any special maternity leave or other authorised leave during her pregnancy. She intends to take 20 weeks of maternity	
17		leave because of the birth of the child.	
18		The maximum amount of long paternity leave to which Max is	
19		entitled is 27 weeks, worked out as follows:	
20 21	(a)	the maximum entitlement of any employee to paternity leave is 52 weeks;	
22 23	(b)	the maximum amount of long paternity leave available to Max must be reduced by 1 week for his short paternity leave;	
24 25	(c)	the maximum amount must also be reduced by 4 weeks for Max's annual leave;	
26 27	(d)	the maximum amount must be further reduced by 20 weeks for Rachel's maternity leave.	
28 29	Note:	A period of long paternity leave must end within 12 months after the date of birth of the child (see section 94ZB).	
30	94V Short patern	ity leave—concurrent leave taken by spouse	
31	An emp	loyee may take short paternity leave in relation to the birth	
32		d by his spouse while the spouse is taking any authorised	
33		cluding maternity leave (if any), in relation to the birth.	
34		ity leave—not to be concurrent with maternity	
35	leave ta	iken by spouse	
36	A period	l of long paternity leave taken by an employee in relation	
37		rth of a child by his spouse must not include any period	
38		which the spouse is taking maternity leave, or any other	

authorised leave of the same type as maternity leave, because of the birth.	of
Subdivision F—Paternity leave: documentation	
94X Paternity leave—medical certificate	
Requirement for medical certificate	
(1) To be entitled to paternity leave, an employee must give his employer a medical certificate from a medical practitioner in accordance with this section.	
the medical practitioner's opinion (or knowledge):	of
-	
(ii) the actual date of birth of the child.	
General rule	
(3) The medical certificate must be given to the employer no later 10 weeks before the date stated in the certificate.	than
Premature birth or other compelling reason	
(4) However, the medical certificate must be given to the employe	er as
	or
	cause
(b) any other compelling reason.	
Section does not apply if could not be complied with	
(5) This section does not apply to an employee who could not con with the section because of circumstances beyond his control.	nply
	 the birth. Subdivision F—Paternity leave: documentation 94X Paternity leave—medical certificate (1) To be entitled to paternity leave, an employee must give his employer a medical certificate from a medical practitioner in accordance with this section. (2) The medical certificate must contain the following statements the medical practitioner's opinion (or knowledge): (a) if the child has not yet been born: (i) the name of the employee's spouse; and (ii) that the employee's spouse is pregnant; and (iii) the date on which the birth is expected; (b) if the child has been born: (i) the name of the employee's spouse; and (ii) the actual date of birth of the child. General rule (3) The medical certificate must be given to the employer no later 10 weeks before the date stated in the certificate. Premature birth or other compelling reason (4) However, the medical certificate must be given to the employer soon as reasonably practicable (which may be at a time before after the paternity leave has started) if it was not reasonably practicable for the employee to comply with subsection (3) bear of: (a) the premature birth of the child; or (b) any other compelling reason.

1 2			Note:	The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
3	94Y	Short	t paterni	ty leave—application
4 5 6 7		(1)	must give	titled to short paternity leave during a period, an employee e his employer a written application for short paternity accordance with this section, stating the first and last days riod.
8 9 10		(2)		ication must be given to the employer as soon as ly practicable on or after the first day of the period of
11 12		(3)		ion does not apply to an employee who could not comply section because of circumstances beyond his control.
13 14			Note:	The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
15	94Z	Long	paternit	ty leave—documentation
16			Requiren	nent for application
17 18 19 20		(1)	must give	titled to long paternity leave during a period, an employee e his employer a written application for long paternity accordance with this section stating the first and last days riod.
21			General	rule
22 23 24		(2)	weeks be	ication must be given to the employer no later than 10 efore the first day of the intended continuous period of luding (or constituted by) the long paternity leave.
25			Prematu	re birth or other compelling reason
26 27 28 29 30 31		(3)	practicab paternity the emplo (a) the	r, the application must be made as soon as reasonably ble (which may be at a time before or after the long leave has started) if it was not reasonably practicable for oyee to comply with subsection (2) because of: premature birth of the child; or y other compelling reason.

	Statutory declaration with application
(4)	The application must be accompanied by a statutory declaration
	made by the employee stating the following:
	(a) the first and last days of the period (or periods) of any other
	authorised leave intended to be taken (or already taken) by
	the employee because of the birth or the expected birth;
	(b) the first and last days of the period (or periods) of any
	maternity leave, or any other authorised leave of the same
	type as maternity leave, intended to be taken (or already
	taken) by the employee's spouse because of the pregnancy, the birth or the expected birth;
	(c) that the employee intends to be the child's primary care-give
	at all times while on long paternity leave;
	(d) that the employee will not engage in any conduct inconsister
	with his contract of employment while on long paternity
	leave.
	Section does not apply if could not be complied with
(5)	This section does not apply to an employee who could not comply
	with the section because of circumstances beyond his control.
	Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
	ion C. Dotomity looves from stort to finish
Subdivisi	ion G—Paternity leave: from start to finish
	ort paternity leave—when taken
	ort paternity leave—when taken
	ort paternity leave—when taken An employee may take short paternity leave to which he is entitled
	ort paternity leave—when taken
	ort paternity leave—when taken An employee may take short paternity leave to which he is entitled at any time within the week starting on the day his spouse begins t give birth.
	 ort paternity leave—when taken An employee may take short paternity leave to which he is entitled at any time within the week starting on the day his spouse begins t give birth. Note: Short paternity leave must be taken in a single, unbroken period (see section 94T). The combined total of paternity leave and related
	 ort paternity leave—when taken An employee may take short paternity leave to which he is entitled at any time within the week starting on the day his spouse begins t give birth. Note: Short paternity leave must be taken in a single, unbroken period (see section 94T). The combined total of paternity leave and related authorised leave taken by the employee and his spouse must be no
	 ort paternity leave—when taken An employee may take short paternity leave to which he is entitled at any time within the week starting on the day his spouse begins t give birth. Note: Short paternity leave must be taken in a single, unbroken period (see section 94T). The combined total of paternity leave and related authorised leave taken by the employee and his spouse must be no more than 52 weeks (see section 94U). Short paternity leave may be taken concurrently with any authorised leave taken by the employee'
	 ort paternity leave—when taken An employee may take short paternity leave to which he is entitled at any time within the week starting on the day his spouse begins t give birth. Note: Short paternity leave must be taken in a single, unbroken period (see section 94T). The combined total of paternity leave and related authorised leave taken by the employee and his spouse must be no more than 52 weeks (see section 94U). Short paternity leave may be
94ZA Sho	 ort paternity leave—when taken An employee may take short paternity leave to which he is entitled at any time within the week starting on the day his spouse begins t give birth. Note: Short paternity leave must be taken in a single, unbroken period (see section 94T). The combined total of paternity leave and related authorised leave taken by the employee and his spouse must be no more than 52 weeks (see section 94U). Short paternity leave may be taken concurrently with any authorised leave taken by the employee'
94ZA Sho	 An employee may take short paternity leave to which he is entitled at any time within the week starting on the day his spouse begins t give birth. Note: Short paternity leave must be taken in a single, unbroken period (see section 94T). The combined total of paternity leave and related authorised leave taken by the employee and his spouse must be no more than 52 weeks (see section 94U). Short paternity leave may be taken concurrently with any authorised leave taken by the employee' spouse in relation to the birth of the child (see section 94V).

1 2 3 4 5 6 7		Note:	Long paternity leave must be taken in a single, unbroken period (see section 94T). The combined total of paternity leave and related authorised leave taken by the employee and his spouse must be no more than 52 weeks (see section 94U). Long paternity leave must not be taken concurrently with any maternity leave, or any other authorised leave of the same type as maternity leave, taken by the employee's spouse because of the birth of the child (see section 94W).
8	94ZC End	l of preg	nancy—effect on paternity leave
9 10	(1)		ion applies if the pregnancy of an employee's spouse ends e than by the birth of a living child.
11 12	(2)	-	loyee is not, or is no longer, entitled to paternity leave in o the pregnancy.
13 14 15	(3)	employe	doubt, this section does not affect any entitlement of an e to short paternity leave that was taken by the employee ration of the birth.
16	94ZD Dea	th of chi	ld—effect on paternity leave
17 18	(1)		ion applies if an employee's spouse gives birth to a living the child later dies.
19 20 21	(2)	of patern	the child died, the employee had not yet started a period ity leave in relation to the birth, the employee is not, or is r, entitled to that leave.
22 23 24 25	(3)	employe birth, the	o subsections (4) and (5), if, when the child died, the e had started a period of paternity leave in relation to the employee's entitlement to the leave is not affected by the the child.
26 27 28 29 30 31		Note:	The employee may shorten a period of long paternity leave by agreement with the employer under section 94ZF. However, if the period of leave including (or constituted by) long paternity leave is longer than 4 weeks, to take advantage of the return to work guarantee under section 94ZH, the employee must also give the employer at least 4 weeks written notice of the proposed day of his return to work.
32 33 34 35 36	(4)	that, from notice is	loyee's employer may give the employee written notice n a stated day no earlier than 4 weeks after the day the given, any untaken long paternity leave that the employee entitled to at the stated day is cancelled with effect from

1 2 3	(5)	The employee's entitlement to any untaken long paternity leave in relation to the birth ends with effect from the day stated in the notice.
4 5	94ZE End	l of long paternity leave if employee stops being primary care-giver
6	(1)	This section applies if:
7		(a) during a substantial period while an employee is on long
8 9		paternity leave after the birth of a living child, the employee is not the child's primary care-giver; and
10		(b) having regard to the length of that period and to any other
11		relevant circumstances, it is reasonable to expect that the
12		employee will not again become the child's primary
13		care-giver within a reasonable period.
14	(2)	The employee's employer may give the employee written notice
15		that, from a stated day no earlier than 4 weeks after the day the
16		notice is given, any untaken long paternity leave that the employee
17 18		remains entitled to at the stated day is cancelled with effect from that day.
19	(3)	The employee's entitlement to any untaken long paternity leave in
20 21		relation to the birth ends with effect from the day stated in the notice.
22	94ZF Var	iation of period of long paternity leave
23	(1)	This section applies after an employee has started a continuous
24		period of leave including (or constituted by) long paternity leave.
25	(2)	Subject to Subdivision E and sections 94ZB, 94ZD and 94ZE:
26		(a) the employee may extend the period of long paternity leave
27		once by giving his employer 14 days written notice before
28		the end of the period stating the period by which the leave is
29		extended; and (b) the period of land notamity leave may be further extended by
30 31		(b) the period of long paternity leave may be further extended by agreement between the employee and his employer.
32	(3)	The period of long paternity leave may be shortened by written
33	. ,	agreement between the employee and his employer.

1 2 3 4 5		Note:	However, if the period of leave including (or constituted by) long paternity leave is longer than 4 weeks, to take advantage of the return to work guarantee under section 94ZH, the employee must also give his employer at least 4 weeks written notice of the proposed day of his return to work.
6 7	94ZG E	mployee leave	e's right to terminate employment during paternity
8 9	(1		pployee may terminate his employment at any time during a lof paternity leave.
10 11 12 13 14	(2	notice (a) (b)	mployee's right to terminate his employment is subject to any required to be given by the employee by or under: a term or condition of his employment; or a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory.
15	94ZH R	eturn to	work guarantee—paternity leave
16 17 18	(1	period	ection applies to an employee who returns to work after a l of leave including (or constituted by) paternity leave (the <i>nity-related leave period</i>) if:
 19 20 21 22 23 		(b)	the paternity-related leave period is 4 weeks or less; or if the paternity-related leave period is longer than 4 weeks— the employee has given his employer written notice of the proposed day of his return to work no later than 4 weeks before that day; or
24 25			the employee's entitlement to long paternity leave ends under section 94ZD or 94ZE.
26 27 28 29	(2	(a)	mployee is entitled to return: unless paragraph (b) or (c) applies—to the position he held immediately before the start of the paternity-related leave period; or
30 31 32		1	if he was promoted or voluntarily transferred to a new position during the paternity-related leave period—to the new position; or
33 34 35		(c)	if paragraph (b) does not apply, and he began working part-time because of his spouse's pregnancy—to the position he held immediately before starting to work part-time.

1 2	(3) However, if the position (the <i>former position</i>) no longer exists, and the employee is qualified and able to work for his employer in
3	another position, the employee is entitled to return to:
4	(a) that position; or
5	(b) if there are 2 or more such positions—whichever position is
6	nearest in status and remuneration to the former position.
7	94ZI Replacement employees—long paternity leave
8	(1) Before an employer engages an employee (a <i>primary replacement</i>)
9	to do the work of another employee because the other employee is
10 11	taking a continuous period of leave including (or constituted by) paternity leave, the employer must tell the primary replacement:
12	(a) that the engagement to do that work is temporary; and
13	(b) what the rights of the employee taking paternity leave are
14	under section 94ZH when he returns to work after the period of leave.
15	of leave.
16	(2) Before an employer engages an employee (a <i>secondary</i>
17	<i>replacement</i>) to do the work of another employee (the <i>primary</i>
18	<i>replacement</i>) because the primary replacement has been
19	temporarily promoted or transferred to do the work of a third
20	employee while the third employee is taking a continuous period of
21	leave including (or constituted by) paternity leave, the employer
22	must tell the secondary replacement:
23	(a) that the engagement to do that work is temporary; and
24	(b) what the rights of the employee taking paternity leave are
25	under section 94ZH when he returns to work after the period
26	of leave.
27	(3) In this section:
28	<i>employee</i> has the meaning given by subsection 4AA(1).
29	Subdivision H—Guarantee of adoption leave
30	94ZJ Meaning of <i>eligible child</i>
31	For the purposes of this Division, a child is an <i>eligible child</i> in
32	relation to an employee with whom the child is, or is to be, placed
33	for adoption, if the child:

1 2 3 4 5 6 7	 (a) is (or will be) under the age of 5 years as at the day of placement or the proposed day of placement; and (b) has not (or will have not) previously lived continuously with the employee for a period of 6 months or more as at the day of placement or the proposed day of placement; and (c) is not a child or step-child of the employee or the employee's spouse.
8	94ZK The guarantee—pre-adoption leave
9 10	(1) This section applies if an employee is seeking to obtain approval to adopt an eligible child.
11	Entitlement to leave
12 13 14	(2) The employee is entitled to a period of up to 2 days unpaid leave (<i>pre-adoption leave</i>) to attend any interviews or examinations required to obtain the approval.
15 16 17 18 19 20 21	 (3) However, the employee is not entitled to take a period of pre-adoption leave if: (a) the employee could take other authorised leave instead for the same period for the purpose mentioned in subsection (2); and (b) the employee's employer directs the employee to take such leave for the period.
22 23 24 25 26	 (4) An employee who is entitled to a period of pre-adoption leave is entitled to take the leave as: (a) a single, unbroken, period of up to 2 days; or (b) any separate periods to which the employee and his or her employer agree.
27	Agreement between employees and employers
28 29 30 31	(5) For the purposes of paragraph (4)(b), an employee and an employer are taken to agree about a particular matter in a particular way if a provision of a workplace agreement binding the employee and the employer specifies that the matter is to be dealt with in that way.
32 33	(6) To avoid doubt, subsection (5) does not prevent employees and employers agreeing about matters by other means.

1	94ZL	The guarantee—adoption leave
2		(1) For the purposes of this Division, <i>adoption leave</i> is:
3		(a) a single, unbroken period of unpaid leave (short adoption
4		<i>leave</i>) of up to 3 weeks taken by an employee within the 3
5		weeks starting on the day of placement of an eligible child
6		with the employee for adoption; or
7		(b) a single, unbroken period of unpaid leave (<i>long adoption</i>
8 9		<i>leave</i>), other than short adoption leave, taken by an employee after the day of placement of an eligible child with the
10		employee for adoption so that the employee can be the
11		child's primary care-giver.
12		(2) Subject to this Subdivision and Subdivision J, an employee is
13		entitled to adoption leave if:
14 15		(a) the employee complies with the applicable documentation requirements under Subdivision I; and
16		(b) immediately before the first day on which the adoption leave
17		is, or is to be, taken:
18		(i) the employee has, or will have, completed at least 12
19		months continuous service with his or her employer; or
20		(ii) the employee is, or will be, an eligible casual employee.
21 22		Note: Entitlement to adoption leave is subject to the restrictions in sections 94ZM and 94ZO and Subdivision J.
23		(3) Subject to this Division, an employee may take short adoption
24		leave, long adoption leave, or both.
25	94ZM	Period of adoption leave
26		(1) In this section:
27		related authorised leave, in relation to adoption leave taken (or to
28		be taken) by an employee because of the placement of a child with
29		the employee and the employee's spouse, means any of the
30		following types of authorised leave other than pre-adoption leave:
31		(a) authorised leave, other than adoption leave, taken by the
32 33		employee because of the placement of the child with the employee;
33		(b) adoption leave, or any other authorised leave of the same
35		type as adoption leave, taken by the spouse because of the
36		placement of the child with the employee.

(-	oyee may take a period of adoption leave as part of a us period including any other authorised leave.
((3) The max	imum total amount of adoption leave (including short
(leave and long adoption leave) that an employee is
		o in relation to a placement is 52 weeks, less an amount
	equal to	the total amount of related authorised leave taken:
	(a) by	the employee before or after the adoption leave; and
	(b) by	the employee's spouse before or after the adoption leave.
	Example:	
		employees entitled to adoption leave. Because of the placement of the shild. Sugar intende to take authorized leave consisting of 2 works of
		child, Susan intends to take authorised leave consisting of 3 weeks of short adoption leave, 4 weeks of annual leave, 12 weeks of long
		service leave and a period of long adoption leave.
		Because of the placement of the child, Ali intends to take 3 weeks of short adoption leave.
		The maximum amount of long adoption leave to which Susan is
		entitled is 30 weeks, worked out as follows:
	(a)	the maximum entitlement of any employee to adoption leave is 52 weeks;
	(b)	the maximum amount of long adoption leave available to Susan must be reduced by 3 weeks for her short adoption leave;
	(c)	the maximum amount must also be reduced by 16 weeks for Susan's annual leave and long service leave;
	(d)	the maximum amount must also be further reduced by 3 weeks for Ali's short adoption leave.
	Note:	A period of long adoption leave must end within 12 months after the day of placement of the child (see section 94ZU).
94ZN S	hort adopt	ion leave—concurrent leave taken by spouse
	An empl	oyee may take short adoption leave in relation to the
		nt of a child while his or her spouse is taking any
	authorise	ed leave, including adoption leave (if any), in relation to
	the place	ment.
9470 I	ong adopt	ion leave—not to be concurrent with adoption
/720 L		ken by spouse
	A period	of long adoption leave taken by an employee in relation
		acement of a child with the employee and the employee's

1 2		taking adoption leave, or any other authorised leave of the same type as adoption leave, because of the placement.
3	Subdivisio	on I—Adoption leave: documentation
4	94ZP Ado	ption leave—notice
5		Requirement for notice
6 7	(1)	To be entitled to adoption leave, an employee must give his or her employer notice in accordance with this section.
8 9 10 11		Note: After an employee has given his or her employer notice in accordance with this section, the employee will have satisfied the notice requirement in relation to the employee's entitlement to both short adoption leave and long adoption leave.
12		Notices to be given to the employer
13 14 15 16 17	(2)	An employee must give written notice to his or her employer of the employee's intention to apply for adoption leave as soon as reasonably practicable after receiving notice (a <i>placement approval notice</i>) of the approval of the placement of an eligible child with the employee.
18 19 20 21	(3)	An employee must give written notice to his or her employer of the day when the placement of an eligible child with the employee is expected to start as soon as reasonably practicable after receiving notice (a <i>placement notice</i>) of the expected day.
22 23 24 25	(4)	An employee must give written notice to his or her employer of the first and last days of the periods of short and long adoption leave (or of either type of leave) the employee intends to apply for because of the placement:
26 27 28 29		 (a) if the employee receives a placement notice about the placement within the period of 8 weeks after receiving the placement approval notice—before the end of that 8 week period; or
30 31 32 33		(b) if the employee receives a placement notice about the placement after the end of the period of 8 weeks after receiving the placement approval notice—as soon as reasonably practicable after receiving the placement notice.

1	Adoption of a relative of the employee
2	(5) If an eligible child who is to be adopted by an employee is a
3	relative of the employee, and the employee decides to take the
4	child into custody pending the authorisation of the placement of the
5	child with the employee, the employee must:
	(a) give notice to his or her employee of the employee's decision
6 7	as soon as reasonably practicable after the decision is made;
7 8	and
9	(b) give the notices required by subsections (2), (3) and (4) in
10	accordance with those subsections.
11	Note: The employee's entitlement to adoption leave after taking the child
12	into custody starts when the adoption is authorised (this is the <i>day of</i>
13 14	<i>placement</i> of the child—see definition of <i>day of placement</i> in section 94A).
15	Adoption process started before engagement with the employer
16	(6) If, before starting an employee's current period of engagement
17	with his or her employer, the employee had already received a
18	placement approval notice or a placement notice, or had made a
19	decision to take a child into custody as mentioned in
20	subsection (5), the employee must give the notices required by this
21	section to the employer as soon as reasonable practicable after
22	starting the period of engagement.
23	Note: However, the employee is only entitled to take either short or long
24	adoption leave if the employee will have completed 12 months
25	continuous service with the employer immediately before the first day
26 27	on which the leave is to be taken, or if the employee is an eligible
21	casual employee (see section 94ZL).
28	If employee cannot comply
29	(7) A notice under this section must be given to the employee's
30	employer as soon as reasonably practicable before the first day of
31	adoption leave taken by the employee, if the employee cannot
32	comply with subsection (2) , (3) , (4) , (5) or (6) because of:
33	(a) the day when the placement is expected to start; or
34	(b) any other compelling reason.
35	(8) In this section:
36	<i>relative</i> , of an employee, means:
37	(a) a grandchild, nephew, niece or sibling of the employee; or

152 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1 2	(b) a grandchild, nephew, niece or sibling of the employee's spouse.
3 4	Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
5	94ZQ Short adoption leave—application
6	Requirement for application
7	(1) To be entitled to short adoption leave during a period, an employee
8	must give his or her employer a written application for short
9 10	adoption leave, in accordance with this section, stating the first and last days of the period.
11	General rule
12	(2) The application must be given to the employer no later than 14
13	days before the proposed day of placement of the child.
14	If employee cannot comply with general rule
15	(3) The application must be given to the employer as soon as
16	reasonably practicable before the first day of the short adoption
17 18	leave applied for if the employee cannot comply with subsection (2) because of:
19	(a) the day when the placement is expected to start; or
20	(b) any other compelling reason.
21 22	Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
23	94ZR Long adoption leave—application
24	Requirement for application
25	(1) To be entitled to long adoption leave during a period, an employee
26	must give his or her employer a written application for long
27	adoption leave, in accordance with this section, stating the first and
28	last days of the period.
29	General rule
30 31	(2) The application must be given to the employer no later than 10 weeks before the first day of the proposed continuous period of

1 2		leave including (or constituted by) the long adoption leave applied for.
3		If employee cannot comply with general rule
4	(.	3) The application must be given to the employer as soon as
5		reasonably practicable before the first day of the long adoption
6 7		leave applied for if the employee cannot comply with subsection (2) because of:
8		(a) the day when the placement is expected to start; or
9		(b) any other compelling reason.
10 11		Note: The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
12	94ZS A	doption leave—additional documents
13	(1) To be entitled to adoption leave, an employee must give his or her
14		employer documents as required by this section.
15	(2	2) The documents required by this section must be given to the
16		employer:
17		(a) before the employee begins the period of adoption leave; or
18		(b) if the employee is taking both short and long adoption
19 20		leave—before the employee begins the period of short adoption leave.
21	(.	3) The employee must give his or her employer the following
22		documents:
23		(a) a statement from an adoption agency of the day when the
24		placement is expected to start;
25		(b) a statutory declaration in accordance with subsection (4)
26		made by the employee.
27	(4	4) The statutory declaration must state the following:
28		(a) whether the employee is taking short adoption leave, long
29		adoption leave, or both;
30		(b) the first and last days of the period (or periods) of any other
31		authorised leave taken, or intended to be taken, by the
32		employee because of the placement of the child; (a) the first and last days of the period (or periods) of adoption
33 34		(c) the first and last days of the period (or periods) of adoption leave, or any other authorised leave of the same type as
J4		leave, or any other authorised leave of the same type as

1		adoption leave, taken, or intended to be taken, by the
2		employee's spouse because of the placement of the child;
3	(d)	that the child is an eligible child;
4	(e)	for any period of long adoption leave to be taken by the
5		employee—that the employee intends to be the child's
6		primary care-giver at all times while on the long adoption
7		leave;
8	(f)	that the employee will not engage in any conduct inconsistent
9		with his or her contract of employment while on adoption
10		leave.
11 12	Note:	The use of personal information given to an employer under this section may be regulated under the <i>Privacy Act 1988</i> .
13	Subdivision J-	—Adoption leave: from start to finish
14	94ZT Short ad	option leave—when taken
15	An e	mployee may take short adoption leave to which he or she is
16		led at any time within the period of 3 weeks starting on the day
17	of pla	acement of the child.
18	Note:	Short adoption leave must be taken in a single, unbroken period (see
19		section 94ZL). The combined total of adoption leave and related
20 21		authorised leave taken by the employee and his or her spouse must be
21		no more than 52 weeks (see section 94ZM). Short adoption leave may be taken concurrently with any authorised leave taken by the
23		employee's spouse (see section 94ZN).
24	94ZU Long ad	option leave—when taken
	C	-
25		mployee may take long adoption leave to which he or she is
26		ed at any time within 12 months after the day of placement of
27	the c	
28	Note:	Long adoption leave must be taken in a single, unbroken period (see
29 30		section 94ZL). The combined total of adoption and authorised leave taken by the employee and his or her spouse must be no more than 52
30 31		weeks (see section 94ZM). Long adoption leave must not be taken
32		concurrently with any adoption leave, or any other authorised leave of
33		the same type as adoption leave, taken by the employee's spouse
34		because of the placement (see section 94ZO).

1	94ZV	Placement does not proceed—effect on adoption leave
2 3		(1) This section applies if a proposed placement of a child with an employee:
4		(a) is cancelled before it starts, whether at the initiative of an
5		adoption agency, another body, or the employee; or
6		(b) starts but is later discontinued for any reason (including the
7		death of the child).
8		(2) If, when this section first applies, the employee had not yet started
9		a period of adoption leave in relation to the placement, the
10		employee is not, or is no longer, entitled to the leave.
11		(3) Subject to subsections (4) and (5), if, when this section applies, the
12		employee had started a period of adoption leave in relation to the
13		placement, the employee's entitlement to the adoption leave is not
14		affected by the cancellation or discontinuation of the placement.
15		Note: The employee may shorten a period of long adoption leave by
16		agreement with the employer under section 94ZX. However, if the
17		period of leave including (or constituted by) long adoption leave is
18		longer than 4 weeks, to take advantage of the return to work guarantee
19 20		under section 94ZZ, the employee must also give the employer at least 4 weeks written notice of the proposed day of his or her return to
20		work.
22		(4) The employee's employer may give the employee written notice
22		that, from a stated day no earlier than 4 weeks after the day the
		notice is given, any untaken long adoption leave that the employee
24 25		remains entitled to at the stated day is cancelled with effect from
25		•
26		that day.
27		(5) The employee's entitlement to any untaken long adoption leave in
28		relation to the placement ends with effect from the day stated in the
29		notice.
30	94ZW	End of long adoption leave if employee stops being primary
31		care-giver
32		(1) This section applies if:
33		(a) during a substantial period while an employee is on long
33 34		adoption leave after the placement of a child with the
34 35		employee, the employee is not the child's primary care-giver;
35 36		and
50		and

1 2 3 4		(b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period.
5 6 7 8 9		(2) The employee's employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken long adoption leave that the employee remains entitled to at the stated day is cancelled with effect from that day.
10 11 12		(3) The employee's entitlement to any untaken long adoption leave in relation to the placement ends with effect from the day stated in the notice.
13	94ZX	Variation of period of long adoption leave
14 15		(1) This section applies after an employee has started a continuous period of leave including (or constituted by) long adoption leave.
16 17 18 19 20 21 22		 (2) Subject to Subdivision H and sections 94ZU, 94ZV and 94ZW: (a) the employee may extend the period of long adoption leave once by giving his or her employer 14 days written notice before the end of the period stating the period by which the leave is extended; and (b) the period of long adoption leave may be further extended by agreement between the employee and his or her employer.
23 24		(3) The period of long adoption leave may be shortened by written agreement between the employee and his or her employer.
25 26 27 28 29		Note: However, if the period of leave including (or constituted by) long adoption leave is longer than 4 weeks, to take advantage of the return to work guarantee under section 94ZZ, the employee must also give his or her employer at least 4 weeks written notice of the proposed day for his or her return to work.
30 31	94ZY	Employee's right to terminate employment during adoption leave
32 33		(1) An employee may terminate his or her employment at any time during a period of adoption leave.
34 35		(2) The employee's right to terminate his or her employment is subject to any notice required to be given by the employee by or under:

1 2 3	(a) a term or condition of his or her employment; or(b) a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory.
4	94ZZ Return to work guarantee—adoption leave
5 6 7	(1) This section applies to an employee who returns to work after a period of leave including (or constituted by) adoption leave (the <i>adoption-related leave period</i>) if:
8	(a) the adoption-related leave period is 4 weeks or less; or
9 10 11 12	 (b) if the adoption-related leave period is longer than 4 weeks— the employee has given his or her employer written notice of the proposed day of his or her return to work no later than 4 weeks before that day; or
13 14	 (c) the employee's entitlement to long adoption leave ends under section 94ZV or 94ZW.
15	(2) The employee is entitled to return:
16	(a) unless paragraph (b) applies—to the position he or she held
17 18	immediately before the start of the adoption-related leave period; or
19 20 21	(b) if he or she was promoted or voluntarily transferred to a new position during the adoption-related leave period—to the new position.
22	(3) However, if the position (the <i>former position</i>) no longer exists, and
23 24	the employee is qualified and able to work for his or her employer in another position, the employer must employ the employee in:
25	(a) that position; or
26	(b) if there are 2 or more such positions—whichever position is
27	nearest in status and remuneration to the former position.
28	94ZZA Replacement employees—long adoption leave
29	(1) Before an employer engages an employee (a <i>primary replacement</i>)
30	to do the work of another employee because the other employee is
31	taking a continuous period of leave including (or constituted by)
32	adoption leave, the employer must tell the primary replacement:
33	(a) that the engagement to do that work is temporary; and

1	(b) what the rights of the employee taking adoption leave are
2	under section 94ZZ when he or she returns to work after the
3	period of leave.
4	(2) Before an employer engages an employee (a <i>secondary</i>
5	<i>replacement</i>) to do the work of another employee (the <i>primary</i>
6	<i>replacement</i>) because the primary replacement has been
7	temporarily promoted or transferred to do the work of a third
8	employee while the third employee is taking a continuous period of leave including (or constituted by) adoption leave, the employer
9 10	must tell the secondary replacement:
11	(a) that the engagement to do that work is temporary; and
12	(b) what the rights of the employee taking adoption leave are
12	under section 94ZZ when he or she returns to work after the
14	period of leave.
15	(3) In this section:
16	<i>employee</i> has the meaning given by subsection 4AA(1).
17	Subdivision K—Parental leave: service
18	94ZZB Parental leave and service
19	(1) A period of parental leave does not break an employee's continuity
20	of service.
21	(2) However, a period of parental leave does not otherwise count as
22	service except:
23	(a) for the purpose of determining the employee's entitlement to
24	a later period of leave under this Division; or
25	(b) as expressly provided by or under:
26	(i) a term or condition of the employee's employment; or
27	(ii) a law, or an instrument in force under a law, of the
28	Commonwealth, a State or a Territory; or
29	(c) as prescribed by the regulations.
30	(3) In this section:
31	parental leave means any of the following:
31 32	<i>parental leave</i> means any of the following: (a) maternity leave;

1	(c) paternity leave;
2	(d) pre-adoption leave;
3	(e) adoption leave.
4	Part VB—Workplace agreements
5	Division 1—Preliminary
6	95 Definitions
7	In this Part:
8 9	<i>Court</i> means the Federal Court of Australia or the Federal Magistrates Court.
10	new business has the meaning given by section 95B.
11	prohibited content has the meaning given by section 101D.
12	undertakings means undertakings mentioned in section 103M.
13	95A Single business and single employer
14	(1) For the purposes of this Part, a <i>single business</i> is:
15	(a) a business, project or undertaking that is carried on by an
16	employer; or
17	(b) the activities carried on by:
18	(i) the Commonwealth, a State or a Territory; or
19	(ii) a body, association, office or other entity established for
20	a public purpose by or under a law of the
21	Commonwealth, a State or a Territory; or
22 23	(iii) any other body in which the Commonwealth, a State or a Territory has a controlling interest.
23	a remory has a controlling increst.
24	(2) For the purposes of this Part:
25	(a) if 2 or more employers carry on a business, project or
26	undertaking as a joint venture or common enterprise, the
27	employers are taken to be one employer; and
28	(b) if 2 or more corporations that are related to each other for the C_{1} (b) C_{2} (c) C_{2}
29 20	purposes of the <i>Corporations Act 2001</i> each carry on a single business:
30	UUSIIIC88.

1 2 3		(i) the corporations may be treated as one employer; and(ii) the single businesses may be treated as one single business.
4		(3) For the purposes of this Part, a part of a single business includes,
5		for example:
6		(a) a geographically distinct part of the single business; or
7 8		(b) a distinct operational or organisational unit within the single business.
9	95B	New business
10 11		For the purposes of sections 96C and 96D, an agreement relates to a <i>new business</i> if:
12		(a) the agreement relates to:
13		(i) a new business, new project or new undertaking that the
14 15		employer in relation to the agreement is proposing to establish; or
16		(ii) if the employer in relation to the agreement is an entity
17		mentioned in paragraph 95A(1)(b)—new activities
18		proposed to be carried on by the employer; and
19 20		(b) the business, project or undertaking is, or the activities are, a single business (or a part of a single business).
21	95C	AWAs with Commonwealth employees
22 23 24 25		 An Agency Head (within the meaning of the <i>Public Service Act</i> 1999) may act on behalf of the Commonwealth in relation to AWAs with persons in the Agency who are engaged under the <i>Public Service Act</i> 1999.
26 27 28 29 30		(2) A Secretary of a Department (within the meaning of the <i>Parliamentary Service Act 1999</i>) may act on behalf of the Commonwealth in relation to AWAs with persons in the Department who are engaged under the <i>Parliamentary Service Act</i> 1999.
31 32	95D	Extended operation of Part in relation to proposed workplace agreements
33		So far as the context permits:

(a)	a reference in this Part to a workplace agreement includes a reference to a proposed workplace agreement; and
(h)	
(0)	a reference in this Part to an employer, in relation to a workplace agreement, includes a reference to a person who
	will be an employer in relation to a proposed agreement
	when it comes into operation; and
(c)	a reference in this Part to an employee, in relation to a
	workplace agreement, includes a reference to a person who
	will be an employee in relation to a proposed agreement
	when it comes into operation.
95E Extraterri	itorial extension
(1) This	Part, and the rest of this Act so far as it relates to this Part,
	nds to persons, acts, omissions, matters and things outside
	ralia that are connected with a workplace agreement relating to
an A	ustralian-based employee or an Australian employer.
Note:	· · · · · · · · · · · · · · · · · · ·
	the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the <i>Acts Interpretation Act 1901</i> .
(2) In th	is section:
this .	Act includes the Registration and Accountability of
	anisations Schedule and regulations made under it.
Division 2—7	Types of workplace agreements
96 Australian	workplace agreements (AWAs)
(1) An e	employer may make an agreement (an <i>Australian workplace</i>
	<i>ement</i> or <i>AWA</i>) in writing with a person whose employment
	be subject to the agreement.
(2) An A	AWA may be made before commencement of the employment.
96A Employee	collective agreements
I J	
An e	employer may make an agreement (an <i>employee collective</i>
An e agre	ement) in writing with persons employed at the time in a
An e <i>agre</i> singl	

96B Union collective agreements

2 3	An employer may make an agreement (a <i>union collective agreement</i>) in writing with one or more organisations of
4	employees if, when the agreement is made, each organisation:
5	(a) has at least one member whose employment in a single
6	business (or part of a single business) of the employer will be
7	subject to the agreement; and
8 9	(b) is entitled to represent the industrial interests of the member in relation to work that will be subject to the agreement.
10	96C Union greenfields agreements
11	(1) An employer may make an agreement (a <i>union greenfields</i>
12 13	<i>agreement</i>) in writing with one or more organisations of employees if:
14	(a) the agreement relates to a new business that the employer
15	proposes to establish, or is establishing, when the agreement
16	is made; and
17	(b) the agreement is made before the employment of any of the
18	persons:
19 20	(i) who will be necessary for the normal operation of the business; and
21	(ii) whose employment will be subject to the agreement;
22	and
23	(c) each organisation meets the requirements of subsection (2).
24	(2) When the agreement is made, each organisation must be entitled to
25	represent the industrial interests of one or more of the persons,
26	whose employment is likely to be subject to the agreement, in
27	relation to work that will be subject to the agreement.
28	96D Employer greenfields agreements
29	An employer may make an agreement (an employer greenfields
30	agreement) in writing if:
31	(a) the agreement relates to a new business that the employer
32	proposes to establish, or is establishing, when the agreement
33	is made; and
34	(b) the agreement is made before the employment of any of the
35	persons:

1 2		(i) who will be necessary for the normal operation of the business; and
3		(ii) whose employment will be subject to the agreement.
3		(ii) whose employment will be subject to the agreement.
4	96E Mult	iple-business agreements
5	(1)	A <i>multiple-business agreement</i> is an agreement that:
6		(a) relates to any combination or combinations of the following:
7		(i) one or more single businesses;
8		(ii) one or more parts of single businesses;
9		carried on by one or more employers; and
10		(b) would be a collective agreement of a type mentioned in
11		section 96A, 96B, 96C or 96D but for the matter in
12		paragraph (a).
13		Note: For civil remedy provisions dealing with the making or variation of a
14		multiple-business agreement, see sections 99A and 102I.
15	(2)	So far as the context permits, this Part (apart from this Division)
15	(2)	has effect in relation to a multiple-business agreement of a
17		particular type as if the agreement were a collective agreement
18		(other than a multiple-business agreement) of that type.
19	(3)	So far as the context permits, this Part (apart from this Division)
20		has effect in relation to a multiple-business agreement with more
21		than one employer as if a reference to the employer in relation to
22		an agreement were a reference to an employer in relation to the
23		agreement.
24	96F Auth	orisation of multiple-business agreements
25	(1)	An employer may apply to the Employment Advocate for an
26	()	authorisation to make or vary a multiple-business agreement.
27	(2)	The regulations may set out a procedure for applying to the
28		Employment Advocate for the authorisation. The Employment
29		Advocate need not consider an application if it is not made in
30		accordance with the procedure.
31	(3)	The Employment Advocate must not grant the authorisation unless
32	(3)	he or she is satisfied that it is in the public interest to do so, having
33		regard to:

1 2	(a)	whether the matters dealt with by the agreement (or the agreement as varied) could be more appropriately dealt with
2 3 4		by a collective agreement other than a multiple-business agreement; and
	(b)	-
5 6	(0)	any other matter specified in regulations made for the purposes of this subsection.
7	96G When a w	orkplace agreement is made
8 9		he purposes of this Act, a workplace agreement is <i>made</i> at hever of the following times is applicable:
10 11		for an AWA—the time when the AWA is approved in accordance with section 98C;
12 13	(b)	for an employee collective agreement—the time when the agreement is approved in accordance with section 98C;
14	(c)	for a union collective agreement—the time when the
15		employer and the organisation or organisations agree to the
16		terms of the agreement;
17	(d)	for a union greenfields agreement—the time when the
18 19		employer and the organisation or organisations agree to the terms of the agreement;
20 21	(e)	for an employer greenfields agreement—the time when the employer lodges the agreement (see section 99B).
22	Division 3—I	Bargaining agents
23	97 Bargaining	agents—qualifications
24	(1) For t	he purposes of sections 97A and 97B, a person can be a
25		aining agent in relation to a workplace agreement at a
26	partie	cular time only if the person meets the requirements in this
27	section	on at that time.
28	(2) The (2)	person must meet the requirements (if any) specified in the
29	-	ations.
30	(3) If the	e person is an organisation of employees:
31	(a)	at least one person whose employment is or will be subject to
32		the agreement must be a member of the organisation; and

1 2 3		(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.
4	97A Barga	aining agents—AWAs
5 6 7	(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.
8 9		Note: Subsection 104(3) provides a civil remedy for coercion in relation to appointments under this subsection.
10 11 12	(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).
13 14 15	(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.
16 17	(4)	Subsection (2) is a civil remedy provision.Note:See Division 11 for provisions on enforcement.
18	97B Barga	aining agents—employee collective agreements
19 20 21 22 23	(1)	An employee whose employment is or will be subject to an employee collective agreement may request another person (the <i>bargaining agent</i>) to represent the employee in meeting and conferring with the employer about the making or variation of the agreement.
24 25		Note: Subsection 104(4) provides a civil remedy for coercion in relation to requests under this subsection.
26 27 28 29	(2)	An employee whose employment is or will be subject to an employer greenfields agreement may request another person (the <i>bargaining agent</i>) to represent the employee in meeting and conferring with the employer about the variation of the agreement.
30 31		Note: Subsection 104(4) provides a civil remedy for coercion in relation to requests under this subsection.
32 33 34	(3)	The employer must give the bargaining agent a reasonable opportunity to meet and confer with the employer about the agreement during the period:

1 2	 (a) beginning 7 days before the agreement or variation is approved in accordance with section 98C or section 102F;
3	and
4	(b) ending when the agreement or variation is approved.
5	(4) Subsection (3) is a civil remedy provision.
6	Note: See Division 11 for provisions on enforcement.
7	(5) The requirement in subsection (3) ceases to apply to the employer if at any time after the request is made the employee with draws the
8 9	if at any time after the request is made the employee withdraws the request.
10	(6) The Employment Advocate may issue a certificate that he or she is
11	satisfied of one of the following matters if he or she is so satisfied:
12	(a) on application by a bargaining agent—that the employee has
13	made a request in accordance with subsection (1) or (2) for the bargaining agent to represent the employee in meeting
14 15	and conferring with the employer;
15	(b) on application by the employer—that, after the making of the
10	request, the requirement in subsection (3) for the employer to
18	give a reasonable opportunity to the bargaining agent to meet
19	and confer, has, because of subsection (5) or section 97,
20	ceased to apply to the employer.
21	(7) The certificate must not identify any of the employees concerned.
22	However, it must identify the bargaining agent, the employer and
23	the agreement.
24	(8) The certificate is, for all purposes of this Act, prima facie evidence
25	that the employee or employees made the request or that the
26	requirement has ceased to apply.
27	Division 4—Pre-lodgment procedure
28	97C Eligible employee
29	For the purposes of this Division, an <i>eligible employee</i> in relation
30	to a workplace agreement is:

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

31 32

1 2 3	(b) in the case of a collective agreement—a person employed by the employer whose employment will be subject to the agreement.
4 5	98 Providing employees with ready access and information statement
6 7 8 9 10 11 12	 (1) If an employer intends to have a workplace agreement (other than a greenfields agreement) approved under section 98C, the employer must take reasonable steps to ensure that all eligible employees in relation to the agreement either have, or have ready access to, the agreement in writing during the period: (a) beginning 7 days before the agreement is approved; and (b) ending when the agreement is approved.
13 14 15	(2) The employer must take reasonable steps to ensure that all eligible employees in relation to the agreement are given an information statement at least 7 days before the agreement is approved.
16 17 18 19 20 21	(3) Despite subsections (1) and (2), if the agreement is a collective agreement and a person becomes an eligible employee at a time during the period mentioned in subsection (1), the employer must take reasonable steps to ensure that:(a) the person is given an information statement at or before that time; and
22 23 24 25 26	 (b) the person either has, or has ready access to, the agreement in writing during the period: (i) beginning at that time; and (ii) ending when the agreement is approved under section 98C.
27 28 29 30 31 32 33 34 35	 (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

1 2	(d) any other information that the Employment Advocate requires by notice published in the <i>Gazette</i> .
3 4 5	(5) If a waiver has been made under section 98A in relation to the workplace agreement, subsection (1) and paragraph (3)(b) do not apply in relation to a time after the waiver takes effect.
6 7 8 9 10	(6) For the purposes of this section, if the workplace agreement incorporates terms from an industrial instrument mentioned in subsection 101C(2), the eligible employees have ready access to the workplace agreement only if they have ready access to that instrument in writing.
11 12 13 14	(7) To avoid doubt, if the content of the workplace agreement is changed during the period mentioned in subsection (1), the change results in a separate workplace agreement for the purposes of this section.
15 16 17 18	Note: If the content of an agreement for which the employer intends to seek approval is changed, the procedural steps set out in subsections (1), (2) and (3) must be repeated for the resulting separate agreement.
19	Contravention—ready access
20 21 22 23	 (8) An employer contravenes this subsection if: (a) the employer lodges a workplace agreement; and (b) the employer failed to comply with subsection (1) or (if applicable) paragraph (3)(b) in relation to the agreement.
24	Contravention—information statement
25 26 27 28	 (9) An employer contravenes this subsection if: (a) the employer lodges a workplace agreement; and (b) the employer failed to comply with subsection (2) or (if applicable) paragraph (3)(a) in relation to the agreement.
29	(10) Subsections (8) and (9) are civil remedy provisions.
30	Note: See Division 11 for provisions on enforcement.
31 32 33	(11) An employer cannot contravene subsection (8) or (9) more than once in relation to the lodgment of a particular workplace agreement.

1	98A	Empl	loyees may waive ready access
2 3		(1)	The persons mentioned in subsection (2) may make a waiver under this section in relation to a workplace agreement.
4 5		(2)	The persons are all the eligible employees at the time the waiver is made.
6		(3)	The waiver must be in writing and dated.
7 8		(4)	The waiver is made when all the persons mentioned in subsection (2) sign the waiver.
9		(5)	The waiver takes effect when it is made.
10	98B	Prohi	ibition on withdrawal from union collective agreement
11 12 13 14		(1)	An employer that has made a union collective agreement must take reasonable steps to seek approval for the agreement under section 98C, within a reasonable period after the agreement was made.
15		(2)	Subsection (1) is a civil remedy provision.
16			Note: See Division 11 for provisions on enforcement.
17	98C	Appr	oval of a workplace agreement
18		(1)	An AWA is <i>approved</i> if:
19			(a) the AWA is signed and dated by the employee and the
20			employer; and
21			(b) those signatures are witnessed; and
22			(c) if the employee is under the age of 18 years:
23			(i) the AWA is signed and dated by an appropriate person
24			(such as a parent or guardian of the employee, but not
25 26			the employer) on behalf of the employee, for the purpose of indicating that person's consent to the
20 27			employee making the AWA; and
28			(ii) that person is aged at least 18 years; and
29			(iii) that person's signature is witnessed.
20		(2)	An employee collective agreement or union collective agreement is
30 31		(2)	approved if:

1	(a) the employer has given all of the persons employed at the	
2	time whose employment will be subject to the agreement a	
3 4	reasonable opportunity to decide whether they want to approve the agreement; and	
-	(b) either:	
5		
6 7	 (i) if the decision is made by a vote—a majority of those persons who cast a valid vote decide that they want to 	
8	approve the agreement; or	
9	(ii) otherwise—a majority of those persons decide that the	ev
10	want to approve the agreement.	5
11	98D Employer must not lodge unapproved agreement	
12	(1) An employer contravenes this subsection if:	
13	(a) the employer lodges a workplace agreement (other than a	
14	greenfields agreement); and	
15	(b) the agreement has not been approved in accordance with	
16	section 98C.	
17	(2) Subsection (1) is a civil remedy provision.	
18	Note: See Division 11 for provisions on enforcement.	
19	Division 5—Lodgment	
20	99 Employer must lodge certain workplace agreements with the	
21	Employment Advocate	
22	(1) If an AWA, an employee collective agreement or a union collection	
23	agreement has been approved in accordance with section 98C, the	e
24	employer must lodge the agreement, in accordance with	
25	section 99B, within 14 days after the approval.	
26	(2) If a union greenfields agreement has been made, the employer	
27	must lodge the agreement, in accordance with section 99B, within	n
28	14 days after the agreement was made.	
29	(3) Subsections (1) and (2) are civil remedy provisions.	
30	Note: See Division 11 for provisions on enforcement.	
	—	

1	99A	Lodging multiple-business agreement without authorisation
2 3 4		 (1) An employer contravenes this section if: (a) the employer lodges a multiple-business agreement; and (b) the agreement has not been authorised under section 96F.
5		(2) Subsection (1) is a civil remedy provision.
6		Note: See Division 11 for provisions on enforcement.
7 8	99B	Lodging of workplace agreement documents with the Employment Advocate
9 10 11 12 13		 (1) The employer in relation to a workplace agreement <i>lodges</i> the workplace agreement with the Employment Advocate if: (a) the employer lodges a declaration under subsection (2); and (b) a copy of the workplace agreement is annexed to the declaration.
14 15 16		(2) An employer <i>lodges</i> a declaration with the Employment Advocate if:(a) the employer gives it to the Employment Advocate; and
17 18		(b) it meets the form requirements mentioned in subsection (3).Note: Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for
19		providing false or misleading information or documents.
20 21 22		(3) The Employment Advocate may, by notice published in the <i>Gazette</i> , set out requirements for the form of a declaration for the purposes of paragraph (2)(b).
23 24 25		(4) A declaration is given to the Employment Advocate for the purposes of subsection (2) only if the declaration is actually received by the Employment Advocate.
26 27 28 29		Note: This means that section 29 of the <i>Acts Interpretation Act 1901</i> (to the extent that it deals with the time of service of documents) and section 160 of the <i>Evidence Act 1995</i> do not apply to lodgment of a declaration.
30 31 32 33		(5) The Employment Advocate is not required to consider or determine whether any 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).

1 2	99C Employment Advocate must issue receipt for lodgment of declaration for workplace agreement
3 4	 If a declaration is lodged under subsection 99B(2), the Employment Advocate must issue a receipt for the lodgment.
5 6 7 8 9 10	 (2) The Employment Advocate must give a copy of the receipt 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.
11 12	99D Employer must notify employees after lodging workplace agreement
13 14 15 16 17	(1) An employer that has received a receipt under section 99C in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment is subject to the agreement when the employer receives the receipt are given a copy of the receipt within 21 days.
18	(2) Subsection (1) is a civil remedy provision.
19	Note: See Division 11 for provisions on enforcement.
20	(3) This section does not apply in relation to a greenfields agreement.
21 22	Division 6—Operation of workplace agreements and persons bound
23	100 When a workplace agreement is in operation
24 25	(1) A workplace agreement comes into operation on the day the agreement is lodged.
26 27 28	(2) A workplace agreement comes into operation even if the requirements in Divisions 3 and 4 have not been met in relation to the agreement.
29 30	(3) A multiple-business agreement comes into operation only if it has been authorised under section 96F.
31	(4) A workplace agreement ceases to be in operation if:

1	(a) it is terminated in accordance with Division 9; or
2	(b) in the case of an AWA—it is replaced by another AWA; or
3	(c) the Court declares it to be void under paragraph 105F(a).
4	(5) A collective agreement ceases to be in operation in relation to an
5	employee if it has:
6	(a) passed its nominal expiry date; and
7	(b) been replaced by another collective agreement in relation to
8	that employee.
9	Note: Part VIAA sets out the circumstances in which a workplace agreement
10	binding an employer because of transmission of business will cease to
11	operate.
12	(6) A multiple-business agreement ceases to operate in relation to a
13	single business (or a part of a single business) if:
14	(a) the multiple-business agreement came into operation on a
15	particular day; and
16	(b) a collective agreement (other than a multiple-business
17	agreement) was lodged on a later day; and
18	(c) the multiple-business agreement and the collective agreement
19	apply in relation to the same single business (or the same part
20	of the single business).
21	Example: Employers A, B and C lodge a multiple-business agreement which has
22	a nominal expiry date 5 years after it is lodged. Six months later
23 24	employer B lodges a collective agreement that applies in relation to its single business. This means that the multiple-business agreement
24 25	ceases to operate in relation to that single business.
26	(7) If a workplace agreement has ceased operating under (4) it can accurate again
27	subsection (4), it can never operate again.
28	(8) If a workplace agreement has ceased operating in relation to an
29	employee because of subsection (5), the agreement can never
30	operate again in relation to that employee.
	(0) If $x = 1/2$ is the interval of the second energy in the second energy is the second energy in the second energy is the second ene
31	(9) If a multiple-business agreement has ceased operating in relation to
32	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
33 34	business).
54	ousiness).
35	(10) If:
36	(a) a person or entity is the employer bound by a workplace
37	agreement; and

1 2 3	(b) the person or entity ceases to be an employer within the meaning of subsection 4AB(1);the agreement ceases to be in operation.
4 5 6 7	(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.
8	100A Relationship between overlapping workplace agreements
9 10	(1) Only one workplace agreement can have effect at a particular time in relation to a particular employee.
11 12	(2) A collective agreement has no effect in relation to an employee while an AWA operates in relation to the employee.
13	(3) If:
14 15	(a) a collective agreement (the <i>first agreement</i>) binding an employee is in operation; and
16 17 18	 (b) another collective agreement (the <i>later agreement</i>) binding the employee is lodged before the nominal expiry date of the first agreement;
19 20	the later agreement has no effect in relation to the employee until the nominal expiry date of the first agreement.
21 22 23	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.
24	100B Effect of awards while workplace agreement is in operation
25	An award has no effect in relation to an employee while a
26	workplace agreement operates in relation to the employee.
27	100C Workplace agreement displaces certain Commonwealth laws
28	(1) To the extent of any inconsistency, a workplace agreement
29 30	displaces prescribed conditions of employment specified in a Commonwealth law that is prescribed by the regulations.
31	(2) In this section:

	Commonwealth law means an Act or any regulations or other
	instrument made under an Act.
	<i>prescribed conditions</i> means conditions that are identified by the regulations.
100D	Persons bound by workplace agreements
	A workplace agreement that is in operation binds:
	(a) the employer in relation to the agreement; and
	(b) all persons whose employment is, at any time when the agreement is in operation, subject to the agreement; and
	 (c) if the agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations of employees with which the employer made the agreement.
	Note: A person can be bound by a workplace agreement because of Part VIAA (which deals with transmission of business).
Subo	 sion 7—Content of workplace agreements livision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA.
Note:	livision A—Required content
Note:	livision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA.
Note:	livision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA. Nominal expiry date
Note:	 Hivision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA. Nominal expiry date (1) The <i>nominal expiry date</i> of a workplace agreement is: (a) in the case of a greenfields agreement: (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the first
Note:	 Hivision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA. Nominal expiry date (1) The <i>nominal expiry date</i> of a workplace agreement is: (a) in the case of a greenfields agreement: (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the first anniversary of the date on which the agreement was
Note:	 Hivision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA. Nominal expiry date (1) The <i>nominal expiry date</i> of a workplace agreement is: (a) in the case of a greenfields agreement: (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the first anniversary of the date on which the agreement was lodged—that specified date; or
Note:	 Hivision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA. Nominal expiry date (1) The <i>nominal expiry date</i> of a workplace agreement is: (a) in the case of a greenfields agreement: (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the first anniversary of the date on which the agreement was
Note:	 Hivision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA. Nominal expiry date (1) The nominal expiry date of a workplace agreement is: (a) in the case of a greenfields agreement: (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the first anniversary of the date on which the agreement was lodged—that specified date; or (ii) otherwise—the first anniversary of the date on which
Note:	 Hivision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA. Nominal expiry date (1) The nominal expiry date of a workplace agreement is: (a) in the case of a greenfields agreement: (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the first anniversary of the date on which the agreement was lodged—that specified date; or (ii) otherwise—the first anniversary of the date on which the agreement was lodged; or
Note:	 Hivision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA. Nominal expiry date The nominal expiry date of a workplace agreement is: in the case of a greenfields agreement: if a date is specified in the agreement as its nominal expiry date, and that date is no later than the first anniversary of the date on which the agreement was lodged—that specified date; or otherwise—the first anniversary of the date on which the agreement was lodged; or (b) otherwise: if a date is specified in the agreement as its nominal expiry date, and that date is no later than the fifth
Note:	 Hivision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA. Nominal expiry date (1) The nominal expiry date of a workplace agreement is: (a) in the case of a greenfields agreement: (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the first anniversary of the date on which the agreement was lodged—that specified date; or (ii) otherwise—the first anniversary of the date on which the agreement was lodged; or (b) otherwise: (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the fifth anniversary of the date on which the agreement was lodged; or
Note:	 Hivision A—Required content For the operation of the Australian Fair Pay and Conditions Standard, see Part VA. Nominal expiry date The nominal expiry date of a workplace agreement is: in the case of a greenfields agreement: if a date is specified in the agreement as its nominal expiry date, and that date is no later than the first anniversary of the date on which the agreement was lodged—that specified date; or otherwise—the first anniversary of the date on which the agreement was lodged; or (b) otherwise: if a date is specified in the agreement as its nominal expiry date, and that date is no later than the fifth

1 2	(2) However, if the agreement has been varied to extend its nominal expiry date, the <i>nominal expiry date</i> of the agreement is:
3 4	 (a) in the case of a greenfields agreement—the earlier of the following dates:
5	(i) the date specified in the agreement as varied as its
6	nominal expiry date;
7 8	(ii) the first anniversary of the date on which the agreement was lodged; or
9	(b) otherwise—the earlier of the following dates:
10 11	(i) the date specified in the agreement as varied as its nominal expiry date;
12	(ii) the fifth anniversary of the date on which the agreement
12	was lodged.
14	101A Workplace agreement to include dispute settlement
15	procedures
16	(1) A workplace agreement must include procedures for settling
17	disputes (dispute settlement procedures) about matters arising
18	under the agreement between:
19	(a) the employer; and
20	(b) the employees whose employment will be subject to the
21	agreement.
22	(2) If a workplace agreement does not include dispute settlement
23	procedures, the agreement is taken to include the model dispute
24	resolution process mentioned in Part VIIA.
25	101B Protected award conditions
26	(1) This section applies if:
27	(a) a person's employment is subject to a workplace agreement;
28	and
29	(b) protected award conditions would have effect (but for the
30	agreement) in relation to the employment of the person.
31	(2) Those protected award conditions:
32	(a) are taken to be included in the workplace agreement; and
33	(b) have effect in relation to the employment of that person; and

1 2 3	(c)	have that effect subject to any terms of the workplace agreement that expressly exclude or modify all or part of them.
4	(3) In th	is section:
5	outw	orker means an employee who, for the purposes of the
6	busir	ness of the employer, performs work at private residential
7	prem	ises or at other premises that are not business or commercial
8	prem	ises of the employer.
9		orker conditions means conditions (other than pay) for
10		orkers, but only to the extent necessary to ensure that their
11		all conditions of employment are fair and reasonable in
12	-	parison with the conditions of employment specified in a
13		ant award or awards for employees who perform the same
14	KIIIQ	of work at an employer's business or commercial premises.
15	—	ected allowable award matters means the following matters:
16	(a)	rest breaks;
17	(b)	incentive-based payments and bonuses;
18	(c)	annual leave loadings;
19	(d)	observance of days declared by or under a law of a State or
20		Territory to be observed generally within that State or
21		Territory, or a region of that State or Territory, as public
22		holidays by employees who work in that State, Territory or
23		region, and entitlements of employees to payment in respect
24		of those days;
25	(e)	monetary allowances for:
26		(i) expenses incurred in the course of employment; or
27		(ii) responsibilities or skills that are not taken into account
28		in rates of pay for employees; or
29		(iii) disabilities associated with the performance of particular
30		tasks or work in particular conditions or locations;
31	(f)	loadings for working overtime or for shift work;
32	(g)	penalty rates;
33	(h)	outworker conditions;
34	(i)	any other matter specified in the regulations.
35	Note:	
36		mentioned in section 116.

1 2	<i>protected award conditions</i> means the terms of an award, as in force from time to time, to the extent that those terms:
2	(a) are about protected allowable award matters; and
3	(a) are not about:
-	(i) matters mentioned in section 116B; or
5	
6	(ii) any other matters specified in the regulations.
7	101C Calling up content of other documents
8	(1) A workplace agreement may incorporate by reference terms from
9	an industrial instrument mentioned in subsection (2) only if the
10	requirements in subsection (3) are satisfied.
11	(2) The industrial instruments are as follows:
12	(a) a workplace agreement;
13	(b) an award.
14	Note: For pre-reform certified agreements, see clause 9 in Schedule 14.
15	(3) The requirements are as follows:
16	(a) if the industrial instrument is an award:
17	(i) just before the agreement is made the award regulates
18	any term or condition of employment of persons
19	engaged in a particular kind of work; and
20	(ii) the employment of a person engaged in that kind of
21	work will be subject to the agreement when the
22	agreement comes into operation; and
23	(iii) the award is binding on the employer in relation to the
24	agreement just before the agreement is made;
25	(b) if the industrial instrument is a workplace agreement—it regulates, just before the agreement mentioned in
26 27	subsection (1) is made, the employment of at least one person
28	whose employment will be subject to the agreement
29	mentioned in subsection (1) when that agreement comes into
30	operation.
31	(4) If those requirements are satisfied, the workplace agreement may
32	incorporate terms by reference from the industrial instrument:
33	(a) as in operation just before the agreement is made; or
34	(b) as varied from time to time.
35	(5) A term of a workplace agreement is void to the extent that:

1	
1	(a) it incorporates by reference terms from an industrial
2	instrument mentioned in subsection (2); and
3	(b) the requirements in subsection (3) are not satisfied.
4	(6) A term of a workplace agreement is void to the extent that it
5	incorporates by reference terms from any of the following
6	instruments (other than an instrument mentioned in subsection (2)):
7	(a) an award or agreement regulating terms and conditions of
8	employment that is in force under a law of a State (other than
9	a contract of employment);
10 11	(b) an agreement, arrangement, deed or memorandum of understanding, that:
12	(i) regulates terms and conditions of employment; and
13	(ii) was created by a process of collective negotiation;
14	(c) an industrial instrument specified in the regulations.
15	(7) A term of a workplace agreement is void to the extent that it
16	applies or adopts terms from an instrument mentioned in
17	subsection (2) or (6), without incorporating those terms by
18	reference in accordance with this section.
19	Subdivision B—Prohibited content
20	101D Prohibited content
21	The regulations may specify matters that are <i>prohibited content</i> for
21 22	The regulations may specify matters that are <i>prohibited content</i> for the purposes of this Act.
	the purposes of this Act.
22	
22 23 24	the purposes of this Act. 101E Employer must not lodge agreement containing prohibited content
22 23 24 25	the purposes of this Act. 101E Employer must not lodge agreement containing prohibited content (1) An employer contravenes this subsection if:
22 23 24	 the purposes of this Act. 101E Employer must not lodge agreement containing prohibited (1) An employer contravenes this subsection if:
22 23 24 25 26 27	 the purposes of this Act. 101E Employer must not lodge agreement containing prohibited (1) An employer contravenes this subsection if: (a) the employer lodges a workplace agreement (or a variation to a workplace agreement); and
22 23 24 25 26	 the purposes of this Act. 101E Employer must not lodge agreement containing prohibited (1) An employer contravenes this subsection if:
22 23 24 25 26 27 28	 the purposes of this Act. 101E Employer must not lodge agreement containing prohibited (1) An employer contravenes this subsection if: (a) the employer lodges a workplace agreement (or a variation to a workplace agreement); and (b) the agreement (or the agreement as varied) contains
22 23 24 25 26 27 28 29	 the purposes of this Act. 101E Employer must not lodge agreement containing prohibited (1) An employer contravenes this subsection if: (a) the employer lodges a workplace agreement (or a variation to a workplace agreement); and (b) the agreement (or the agreement as varied) contains prohibited content; and
22 23 24 25 26 27 28 29 30	 the purposes of this Act. 101E Employer must not lodge agreement containing prohibited (1) An employer contravenes this subsection if: (a) the employer lodges a workplace agreement (or a variation to a workplace agreement); and (b) the agreement (or the agreement as varied) contains prohibited content; and (c) the employer was reckless as to whether the agreement (or

1 2		(a) before the agreement (or variation) was lodged, the Employment Advocate advised the employer that the
3		agreement (or the agreement as varied) did not contain prohibited content; and
5		(b) that advice was in the form specified in regulations made for
6		the purposes of this subsection.
7		(3) Subsection (1) is a civil remedy provision.
8		Note: See Division 11 for provisions on enforcement.
9	101F	Prohibited content in workplace agreement is void
10 11		A term of a workplace agreement is void to the extent that it contains prohibited content.
12 13		Note 1: The Employment Advocate can vary the workplace agreement to remove prohibited content (see section 101K).
14 15		Note 2: For civil remedy provisions relating to including prohibited content in a workplace agreement, see sections 101E, 101M and 101N.
16	101G	Initiating consideration of removal of prohibited content
17 18 19		 The Employment Advocate may exercise his or her power under section 101K to vary a workplace agreement to remove prohibited content:
20 21		(a) on his or her own initiative; or(b) on application by any person.
22 23 24 25		(2) This section and sections 101H, 101I and 101K are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Employment Advocate's decision whether to make a variation under section 101K.
26 27	101H	Employment Advocate must give notice that he or she is considering variation
28 29 30 31		 If the Employment Advocate is considering making a variation to a workplace agreement under section 101K, the Employment Advocate must give the persons mentioned in subsection (2) a written notice meeting the requirements in subsection 101I(1).
32 33		(2) The persons are:(a) the employer in relation to the workplace agreement; and

1 2 3 4	 (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.
5	1011 Matters to be contained in notice
6	(1) The requirements mentioned in subsection $101H(1)$ are that the
7	notice must:
8	(a) be dated; and
9 10	(b) state that the Employment Advocate is considering making the variation; and
11 12	(c) state the reasons why the Employment Advocate is considering making the variation; and
13	(d) set out the terms of the variation; and
14	(e) invite each person mentioned in subsection (2) to make a
15	written submission to the Employment Advocate about
16	whether the Employment Advocate should make the
17	variation; and
18 19	(f) state that any submission must be made within the period (the <i>objection period</i>) of 28 days after the date of the notice.
20	(2) The persons are:
21	(a) the employer in relation to the workplace agreement; and
22 23	(b) each person whose employment is subject to the agreement at the date of the notice; and
24	(c) if the agreement is a union collective agreement or a union
25	greenfields agreement—the organisation or organisations
26	bound by the agreement.
27	101J Employer must ensure employees have ready access to notice
28	(1) An employer that has received a notice under section 101H in
29	relation to a collective agreement must take reasonable steps to
30	ensure that all persons whose employment is subject to the
31	agreement at a time during the objection period are given a copy of
32	the notice as soon as practicable.
33	(2) Subsection (1) is a civil remedy provision.
34	Note: See Division 11 for provisions on enforcement.

101K	Employment Advocate must remove prohibited content from agreement
	 If the Employment Advocate is satisfied that a term of the workplace agreement contains prohibited content, the Employme Advocate must vary the agreement so as to remove that content.
	(2) In making a decision under subsection (1), the Employment Advocate must consider all written submissions (if any) received within the objection period from persons mentioned in subsection 101I(2).
	(3) The Employment Advocate must not make the variation before the end of the objection period.
	(4) If the Employment Advocate decides to make the variation, he of she must:
	(a) give the persons mentioned in subsection 101H(2) written notice of the decision, including the terms of the variation; and
	(b) if the workplace agreement is a collective agreement— publish a notice in the <i>Gazette</i> stating that the variation has been made and setting out particulars of the variation.
101L	Employer must give employees notice of removal of prohibite content
	(1) An employer that has received a notice under subsection 101K(4) in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment is subject to the agreement when the employer receives the notice are given a cop of the notice within 21 days.
	(2) Subsection (1) is a civil remedy provision.
	Note: See Division 11 for provisions on enforcement.
101M	Seeking to include prohibited content in an agreement
	 (1) A person contravenes this subsection if: (a) the person seeks to include a term: (i) in a workplace agreement in the course of negotiations for the agreement; or

1	(ii) in a variation to a workplace agreement in the course of
2	negotiations for the variation; and
3	(b) that term contains prohibited content; and
4 5	 (c) the person is reckless as to whether the term contains prohibited content.
6	(2) Subsection (1) is a civil remedy provision.
7	Note: See Division 11 for provisions on enforcement.
8	101N Misrepresentations about prohibited content
9	(1) A person contravenes this subsection if:
10 11 12 13	 (a) the person makes a misrepresentation in relation to a workplace agreement (or a variation to a workplace agreement) that a particular term does not contain prohibited content; and
14 15	(b) the person is reckless as to whether the term contains prohibited content.
16	(2) Subsection (1) is a civil remedy provision.
17	Note: See Division 11 for provisions on enforcement.
18	Division 8—Varying a workplace agreement
19	Subdivision A—General
20	102 Varying a workplace agreement
21	(1) The following persons may make a variation, in writing, to a
22	workplace agreement that is in operation:
23	(a) in the case of an AWA—the employer and the employee;
24	(b) in the case of an employee collective agreement or an
25	employer greenfields agreement—the employer and the
26	persons whose employment will be subject to the agreement
27	as varied;
28	(c) in the case of a union collective agreement or a union
29	greenfields agreement—the employer and the one or more
30	organisations of employees that are bound by the agreement.
31	Example: A workplace agreement may be varied to provide additional pay.

); or eements); ler the ent itself.
eements); ler the
eements); ler the
ler the
greement
ved in
hen the)2F;
ne ee to the
the ee to the
when the
e
e in
agreement;
nployment

1102C Providing employees with ready access and information2statement

3	(1) If an employer intends to have a variation to a workplace
4	agreement approved under section 102F, the employer must take
5	reasonable steps to ensure that all eligible employees in relation to
6	the variation either have, or have ready access to, the variation in
7	writing during the period:
8	(a) beginning 7 days before the variation is approved; and
9	(b) ending when the variation is approved.
10	(2) The employer must take reasonable steps to ensure that all eligible
11	employees in relation to the variation are given an information
12	statement at least 7 days before the variation is approved.
13	(3) Despite subsections (1) and (2), if the variation is to a collective
14	agreement and a person becomes an eligible employee at a time
15	during the period mentioned in subsection (1), the employer must
16	take reasonable steps to ensure that:
17	(a) the person is given an information statement at or before that
18	time; and
19	(b) the person either has, or has ready access to, the variation in
20	writing during the period:
21	(i) beginning at that time; and
22	(ii) ending when the variation is approved under
23	section 102F.
24	(4) The information statement mentioned in subsection (2) and
25	paragraph (3)(a) must contain:
26	(a) information about the time at which and the manner in which
27	the approval will be sought under section 102F; and
28	(b) if the relevant workplace agreement is an AWA—
29	information about the effect of sections 97 and 97A (which
30	deal with bargaining agents); and
31	(c) if the relevant workplace agreement is an employee
32	collective agreement or employer greenfields agreement—
33	information about the effect of sections 97 and 97B (which
34	deal with bargaining agents); and
35	(d) any other information that the Employment Advocate
36	requires by notice published in the Gazette.

186

1 (5 2 3	i) If a waiver has been made under section 102D in relation to the variation, subsection (1) and paragraph (3)(b) do not apply in relation to a time after the waiver takes effect.
4 (6 5 6 7 8	5) For the purposes of this section, if because of the variation, the agreement as varied would incorporate terms from an industrial instrument mentioned in subsection 101C(2), the eligible employees have ready access to the variation only if they have ready access to that instrument in writing.
9 (7 10 11	To avoid doubt, if the content of the variation is changed during the period mentioned in subsection (1), the change results in a separate variation for the purposes of this section.
12 13 14 15	Note: If the content of a variation for which the employer intends to seek approval is changed, the procedural steps set out in subsections (1), (2) and (3) must be repeated for the resulting separate variation.
16	Contravention—ready access
17 (8	3) An employer contravenes this subsection if:
18 19	(a) the employer lodges a variation to a workplace agreement; and
20 21	(b) the employer failed to comply with subsection (1) or (if applicable) paragraph (3)(b) in relation to the variation.
22	Contravention—information statement
23 (9) An employer contravenes this subsection if:
24	(a) the employer lodges a variation to a workplace agreement;
25	and
26 27	(b) the employer failed to comply with subsection (2) or (if applicable) paragraph (3)(a) in relation to the variation.
28 (10) Subsections (8) and (9) are civil remedy provisions.
29	Note: See Division 11 for provisions on enforcement.
30 (11 31) An employer cannot contravene subsection (8) or (9) more than once in relation to the lodgment of a particular variation.

1	102D	Employees may waive ready access
2 3		 The persons mentioned in subsection (2) may make a waiver under this section in relation to a variation to a workplace agreement.
4 5		(2) The persons are all the eligible employees at the time the waiver is made.
6		(3) The waiver must be in writing and dated.
7 8		(4) The waiver is made when all the persons mentioned in subsection (2) sign the waiver.
9		(5) The waiver takes effect when it is made.
10 11	102E	Prohibition on withdrawal from variation to union collective agreement
12 13 14 15		(1) An employer that has made a variation to a union collective agreement or a union greenfields agreement must take reasonable steps to seek approval for the variation under section 102F, within a reasonable period after the variation was made.
16		(2) Subsection (1) is a civil remedy provision.
17		Note: See Division 11 for provisions on enforcement.
18	102F	Approval of a variation to a workplace agreement
19		(1) A variation to an AWA is <i>approved</i> if:
20		(a) the variation is signed and dated by the employee and the
21		employer; and
22		(b) those signatures are witnessed; and
23		(c) if the employee is under the age of 18 years:
24 25		(i) the variation is signed and dated by an appropriate person (such as a parent or guardian of the employee,
26		but not the employer) on behalf of the employee, for the
27		purpose of indicating that person's consent to the
28		employee making the variation; and
29		(ii) that person is aged at least 18 years; and
30		(iii) that person's signature is witnessed.
31		(2) A variation to a collective agreement is <i>approved</i> if:

	(a) the employer has given all of the persons employed at the
	(a) the employer has given an of the persons employed at the
	time whose employment:
	(i) is subject to the agreement; or
	(ii) will be subject to the agreement as varied;
	a reasonable opportunity to decide whether they want to
	approve the variation; 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
	approve the variation; or
	(ii) otherwise—a majority of those persons decide that they want to approve the variation.
102G	Employer must not lodge unapproved variation
	(1) An employer contravenes this section if:
	(a) the employer lodges a variation to a workplace agreement;
	and
	(b) the variation has not been approved in accordance with
	section 102F.
	(2) Subsection (1) is a civil remedy provision.
	Note: See Division 11 for provisions on enforcement.
Subd	ivision C—Lodgment of variations
	ivision C—Lodgment of variations Employer must lodge variations with the Employment
	 ivision C—Lodgment of variations Employer must lodge variations with the Employment Advocate (1) If a variation has been approved in accordance with section 102F, the employer must lodge the variation, in accordance with
	 ivision C—Lodgment of variations Employer must lodge variations with the Employment Advocate (1) If a variation has been approved in accordance with section 102F, the employer must lodge the variation, in accordance with section 102J, within 14 days after the variation was approved.
102H	 ivision C—Lodgment of variations Employer must lodge variations with the Employment Advocate (1) If a variation has been approved in accordance with section 102F, the employer must lodge the variation, in accordance with section 102J, within 14 days after the variation was approved. (2) Subsection (1) is a civil remedy provision.

1 2 3 4	(2)	(a) the employer lodges a variation to a multiple-business agreement; and(b) the variation has not been authorised under section 96F.Subsection (1) is a civil remedy provision.
5		Note: See Division 11 for provisions on enforcement.
6 7	102J Lodg	ging of variation documents with the Employment Advocate
8 9 10 11	(1)	 The employer in relation to a variation to a workplace agreement <i>lodges</i> the variation with the Employment Advocate if: (a) the employer lodges a declaration under subsection (2); and (b) a copy of the variation is annexed to the declaration.
12 13 14 15	(2)	An employer <i>lodges</i> a declaration with the Employment Advocate if:(a) the employer gives it to the Employment Advocate; and(b) it meets the form requirements mentioned in subsection (3).
16 17		Note: Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for providing false or misleading information or documents.
18 19 20	(3)	The Employment Advocate may, by notice published in the <i>Gazette</i> , set out requirements for the form of a declaration for the purposes of paragraph $(2)(b)$.
21 22 23	(4)	A declaration is given to the Employment Advocate for the purposes of subsection (2) only if the declaration is actually received by the Employment Advocate.
24 25 26 27		Note: This means that section 29 of the <i>Acts Interpretation Act 1901</i> (to the extent that it deals with the time of service of documents) and section 160 of the <i>Evidence Act 1995</i> do not apply to lodgment of a declaration.
28 29 30 31	(5)	The Employment Advocate is not required to consider or determine whether any 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).

1 2	102K Employment Advocate must issue receipt for lodgment of declaration for variation
3 4	 If a declaration is lodged under subsection 102J(2), the Employment Advocate must issue a receipt for the lodgment.
5 6 7 8 9 10 11 12	 (2) The Employment Advocate must give a copy of the receipt to: (a) the employer in relation to the relevant workplace agreement; and (b) if the relevant workplace agreement is an AWA—the employee; and (c) if the relevant workplace agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.
13	102L Employer must notify employees after lodging variation
14 15 16 17 18	(1) An employer that has received a receipt under section 102K in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment is subject to the agreement when the employer receives the receipt are given a copy of the receipt within 21 days.
19	(2) Subsection (1) is a civil remedy provision.
20	Note: See Division 11 for provisions on enforcement.
21	Subdivision D—When a variation comes into operation
22	102M When a variation comes into operation
23 24 25	 A variation to a workplace agreement comes into operation when the variation is lodged with the Employment Advocate in accordance with section 102J.
26 27 28	(2) The variation comes into operation even if the requirements in Division 3 and Subdivision B of this Division have not been met in relation to the variation.

Division 9—Terminating a workplace agreement

2 Subdivision A—General

103	Types of termination
	(1) A workplace agreement may be terminated:
	(a) by approval (see Subdivisions B and C); or
	(b) unilaterally (see Subdivision D).
	(2) A workplace agreement is terminated when:
	(a) a termination of the agreement is lodged with the
	Employment Advocate in accordance with section 103H; or
	(b) a declaration to terminate the agreement in accordance with
	subsection 103K(2) is lodged with the Employment Advoca in accordance with section 103N; or
	(c) a declaration to terminate the agreement in accordance with
	subsection 103L(2) is lodged with the Employment Advoca
	in accordance with section 103N.
	livision B—Termination by approval (pre-lodgment procedure)
103A	procedure)
103A	procedure) Terminating a workplace agreement by approval
103A	procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with th
103A	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with th Subdivision by the following:
103A	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with th Subdivision by the following: (a) in the case of an AWA—the employer and the employee;
103A	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with th Subdivision by the following:
103A	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with the Subdivision by the following: (a) in the case of an AWA—the employer and the employee; (b) in the case of an employee collective agreement or an
103A	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with th Subdivision by the following: (a) in the case of an AWA—the employer and the employee; (b) in the case of an employee collective agreement or an employer greenfields agreement—the employer and the employees whose employment is subject to the agreement; (c) in the case of a union collective agreement or a union
103A	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with th Subdivision by the following: (a) in the case of an AWA—the employer and the employee; (b) in the case of an employee collective agreement or an employer greenfields agreement—the employer and the employees whose employment is subject to the agreement; (c) in the case of a union collective agreement or a union greenfields agreement—the employer and the one or more
103A	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with the Subdivision by the following: (a) in the case of an AWA—the employer and the employee; (b) in the case of an employee collective agreement or an employer greenfields agreement—the employer and the employees whose employment is subject to the agreement; (c) in the case of a union collective agreement or a union greenfields agreement—the employer and the one or more
	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with th Subdivision by the following: (a) in the case of an AWA—the employer and the employee; (b) in the case of an employee collective agreement or an employer greenfields agreement—the employer and the employees whose employment is subject to the agreement; (c) in the case of a union collective agreement or a union greenfields agreement—the employer and the one or more
	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with the Subdivision by the following: (a) in the case of an AWA—the employer and the employee; (b) in the case of an employee collective agreement or an employer greenfields agreement—the employer and the employees whose employment is subject to the agreement; (c) in the case of a union collective agreement or a union greenfields agreement—the employer and the one or more organisations of employees that are bound by the agreement
	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with th Subdivision by the following: (a) in the case of an AWA—the employer and the employee; (b) in the case of an employee collective agreement or an employer greenfields agreement—the employer and the employees whose employment is subject to the agreement; (c) in the case of a union collective agreement or a union greenfields agreement—the employer and the one or more organisations of employees that are bound by the agreement Eligible employee in relation to termination of workplace agreement For the purposes of this Subdivision, an <i>eligible employee</i> in
	 procedure) Terminating a workplace agreement by approval A workplace agreement may be terminated in accordance with th Subdivision by the following: (a) in the case of an AWA—the employer and the employee; (b) in the case of an employee collective agreement or an employer greenfields agreement—the employer and the employees whose employment is subject to the agreement; (c) in the case of a union collective agreement or a union greenfields agreement—the employer and the one or more organisations of employees that are bound by the agreement Eligible employee in relation to termination of workplace agreement

1	(a) in the case of an AWA—the employee; or
2	(b) in the case of a collective agreement—a person employed at
3	the time whose employment is subject to the agreement.
4	103C Providing employees with information statement
5	(1) If an employer intends to have the termination of a workplace
6	agreement approved under section 103E, the employer must take
7	reasonable steps to ensure that all eligible employees in relation to
8	the termination are given an information statement at or before the
9	start of the period of 7 days ending when the termination is
10	approved.
11	(2) Despite subsection (1), if the relevant workplace agreement is a
12	collective agreement and a person becomes an eligible employee at
13	a time during the period mentioned in subsection (1), the employer
14	must take reasonable steps to ensure that the person is given an
15	information statement at or before that time.
16	(3) The information statement mentioned in subsections (1) and (2)
17	must contain:
18	(a) information about the time at which and the manner in which
19	the approval will be sought under section 103E; and
20	(b) if the relevant workplace agreement is an AWA—
21	information about the effect of sections 97 and 97A (which
22	deal with bargaining agents); and
23	(c) any other information that the Employment Advocate
24	requires by notice published in the <i>Gazette</i> .
25	Contravention—information statement
26	(4) An employer contravenes this subsection if:
27	(a) the employer lodges a declaration to terminate a workplace
28	agreement; and
29	(b) the employer failed to comply with subsection (1) or (if
30	applicable) subsection (2) in relation to the termination.
31	(5) Subsection (4) is a civil remedy provision.
32	Note: See Division 11 for provisions on enforcement.
33	(6) An employer cannot contravene subsection (4) more than once in
33	relation to the lodgment of a particular termination.

1 2	103D	Prohibition on withdrawal from variation to union collective agreement
3		(1) An employer that has agreed to terminate a union collective
4		agreement or a union greenfields agreement with the organisation
5		or organisations bound by the agreement must take reasonable
6 7		steps to seek approval for the termination under section 103E, within a reasonable period after agreeing to do so.
8		(2) Subsection (1) is a civil remedy provision.
9		Note: See Division 11 for provisions on enforcement.
10	103E	Approval of a termination
11		(1) A termination of an AWA is <i>approved</i> if:
12 13		(a) the employer and employee make a written termination agreement to terminate the AWA; and
14		(b) the termination agreement is signed and dated by the
15		employee and the employer; and
16		(c) those signatures are witnessed; and
17		(d) if the employee is under the age of 18 years:
18 19		(i) the termination agreement is signed and dated by an appropriate person (such as a parent or guardian of the
20		employee, but not the employer) on behalf of the
21		employee, for the purpose of indicating that person's
22		consent to the employee terminating the AWA; and
23		(ii) that person is aged at least 18 years; and
24		(iii) that person's signature is witnessed.
25		(2) A termination of a collective agreement is <i>approved</i> if:
26		(a) the employer has given all of the persons employed at the
27		time whose employment is subject to the agreement a
28		reasonable opportunity to decide whether they want to
29		approve the termination; and
30		(b) either:
31		(i) if the decision is made by a vote—a majority of those
32 33		persons who cast a valid vote decide that they want to approve the termination; or
34		(ii) otherwise—a majority of those persons decide that they
34 35		want to approve the termination.

103F	Employer must not lodge unapproved termination
	(1) An employer contravenes this subsection if:
	(a) the employer lodges a termination of a workplace agreement;
	and
	(b) the termination has not been approved in accordance with section 103E.
	(2) Subsection (1) is a civil remedy provision.
	Note: See Division 11 for provisions on enforcement.
Subd	ivision C—Termination by approval (lodgment)
103G	Employer must lodge termination with the Employment Advocate
	(1) If a termination has been approved in accordance with
	section 103E, the employer must lodge the termination, in
	accordance with section 103H, within 14 days after the termination was approved.
	(2) Subsection (1) is a civil remedy provision.
	Note: See Division 11 for provisions on enforcement.
103H	Lodging termination documents with the Employment
	Advocate
	(1) The employer in relation to a workplace agreement to be
	terminated <i>lodges</i> the termination with the Employment Advocate if:
	(a) the employer lodges a declaration under subsection (2) for
	the termination of the workplace agreement; and
	(b) if the workplace agreement is an AWA—a copy of the
	termination agreement is annexed to the declaration.
	(2) An employer <i>lodges</i> a declaration with the Employment Advocate if:
	(a) the employer gives it to the Employment Advocate; and
	(b) it meets the form requirements mentioned in subsection (3).
	Note: Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for providing false or misleading information or documents.

1		(3)	The Employment Advocate may, by notice published in the
2 3			<i>Gazette</i> , set out requirements for the form of a declaration for the purposes of paragraph (2)(b).
		(A)	
4 5		(4)	A declaration is given to the Employment Advocate for the purposes of subsection (2) only if the declaration is actually
6			received by the Employment Advocate.
7 8			Note: This means that section 29 of the <i>Acts Interpretation Act 1901</i> (to the extent that it deals with the time of service of documents) and
9 10			section 160 of the <i>Evidence Act 1995</i> do not apply to lodgment of a declaration.
11		(5)	The Employment Advocate is not required to consider or
12 13			determine whether any of the requirements of this Division (other than this section) have been met in relation to the termination.
14	103I	Emp	loyment Advocate must issue receipt for lodgment of
15			declaration for termination
16		(1)	If a declaration is lodged under subsection 103H(2), the
17			Employment Advocate must issue a receipt for the lodgment.
18		(2)	The Employment Advocate must give a copy of the receipt to:
19 20			(a) the employer in relation to the relevant workplace agreement; and
21 22			(b) if the relevant workplace agreement is an AWA—the employee; and
23			(c) if the relevant workplace agreement is a union collective
24			agreement or a union greenfields agreement—the
25			organisation or organisations bound by the agreement.
26	103J	Emp	loyer must notify employees after lodging termination
27		(1)	An employer that has received a receipt under section 103I in
28			relation to a collective agreement must take reasonable steps to
29			ensure that all persons whose employment was subject to the
30 31			agreement just before the declaration was lodged are given a copy of the receipt within 21 days.
			· ·
32		(2)	Subsection (1) is a civil remedy provision.
33			Note: See Division 11 for provisions on enforcement.

1 Subdivision D—Unilateral termination after nominal expiry 2 date

3		teral termination in a manner provided for in workplace
4	2	agreement
5 6		This section applies if a workplace agreement provides for a nanner of terminating the agreement after its nominal expiry date.
7 8		Any of the following persons may terminate the agreement by odging a declaration in accordance with section 103N:
9		(a) the employer in relation to the agreement;
10 11 12		(b) a majority of the employees whose employment is subject to the agreement when the notice mentioned in subsection (4) is given;
12 13 14		(c) in the case of an AWA—a bargaining agent at the request of the employer or the employee;
15		(d) an organisation of employees that is bound by the agreement.
16 17	Ν	Note: Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for providing false or misleading information or documents.
18	(3) H	However, this may be done only if:
19 20		(a) the nominal expiry date of the workplace agreement has passed; and
21 22		(b) all the requirements in the agreement for terminating the agreement are met.
23		At least 14 days before the lodgment, the person or persons
24 25		ntending to lodge the declaration must take reasonable steps to ensure that the following are given written notice of the
23 26		ermination:
27		(a) the employer in relation to the agreement;
28		(b) each employee whose employment is subject to the
29		agreement when the notice is given;
30		(c) an organisation of employees that is bound by the agreement.
31	(5)	The notice must:
32		(a) state that the workplace agreement is to be terminated in the
33		manner provided for by the agreement; and
34 35		(b) be in the form (if any) that the Employment Advocate requires by notice published in the <i>Gazette</i> ; and

1 2	(c) contain the information (if any) that the Employment Advocate requires by notice published in the <i>Gazette</i> .
3	(6) A person contravenes this subsection if:
4	(a) the person lodges a declaration to terminate a workplace
5	agreement under subsection (2); and
6	(b) the person failed to comply with subsection (4) or (5).
7	(7) Subsection (6) is a civil remedy provision.
8	Note: See Division 11 for provisions on enforcement.
0	(8) This section does not apply in relation to a multiple business
9 10	(8) This section does not apply in relation to a multiple-business agreement.
11	103L Unilateral termination with 90 days written notice
12	(1) This section applies whether or not a workplace agreement
13	provides for a manner of terminating the agreement after its
14	nominal expiry date.
15	(2) Any of the following persons may terminate the agreement by
16	lodging a declaration in accordance with section 103N:
17	(a) the employer in relation to the agreement;
18	(b) a majority of the employees whose employment is subject to
19	the agreement when the notice mentioned in subsection (4) is
20	given;
21	(c) in the case of an AWA—a bargaining agent at the request of
22	the employer or the employee;
23	(d) an organisation of employees that is bound by the agreement.
24 25	Note: Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for providing false or misleading information or documents.
26	(3) However, this may be done only if the nominal expiry date of the
27	workplace agreement has passed.
28	(4) At least 90 days before the lodgment, the person or persons
29	intending to lodge the declaration must take reasonable steps to
30	ensure that:
31	(a) the following are given written notice of the termination:
32	(i) the employer in relation to the agreement;
33	(ii) each employee whose employment is subject to the
34	agreement when the notice is given;

1		(iii) an organisation of employees that is bound by the agreement; and
2		
3		(b) if the person giving the notice is the employer bound by the
4		agreement—a written copy of the undertakings (if any) made
5		by the employer under section 103M.
6		(5) The notice must:
7		(a) state that the workplace agreement is to be terminated; and
8		(b) specify the day on which the person or persons propose to
9		lodge the notice; and
10		(c) be in the form (if any) that the Employment Advocate
11		requires by notice published in the <i>Gazette</i> ; and
12		(d) contain the information (if any) that the Employment
13		Advocate requires by notice published in the Gazette.
14		(6) A person contravenes this subsection if:
15		(a) the person lodges a declaration to terminate a workplace
15		agreement under subsection (2); and
17		(b) the person failed to comply with subsection (4) or (5).
		Note: See Division 11 for provisions on enforcement.
18		Note. See Division 11 for provisions on enforcement.
19		(7) Subsection (6) is a civil remedy provision.
20		Note: See Division 11 for provisions on enforcement.
21		(8) This section does not apply in relation to a multiple-business
22		agreement.
23	103M	Undertakings about post-termination conditions
24		(1) An employer intending to terminate a workplace agreement under
25		subsection 103L(2) may make undertakings as to the terms and
26		conditions of employment of employees who were bound by the
27		workplace agreement just before it was terminated.
28		(2) The undertakings come into operation on the day that the
28 29		workplace agreement is terminated.
30		(3) The undertakings cease to operate in relation to an employee when
31		the employee's employment becomes subject to a later workplace
32		agreement.

1	(4) Subject to this section, the following provisions apply to the
2	undertakings as if they were a workplace agreement in operation:
3	(a) Part VIII;
4	(b) Part V;
5	(c) any other provision of this Act specified in the regulations.
6	(5) An employer contravenes this subsection if:
7 8	(a) the employer lodges a declaration to terminate a workplace agreement under subsection (2); and
9 10	(b) the employer has made undertakings in relation to that termination; and
11 12	(c) the employer did not annex a copy of the undertakings to the declaration.
13	(6) Subsection (5) is a civil remedy provision.
14	Note: See Division 11 for provisions on enforcement.
15	(7) If undertakings have ceased operating in relation to an employee
16	because of subsection (3), they can never operate again in relation
17	to that employee.
17 18	
	to that employee.
18	to that employee. 103N Lodging unilateral termination documents with the
18 19	to that employee. 103N Lodging unilateral termination documents with the Employment Advocate
18 19 20	to that employee. 103N Lodging unilateral termination documents with the Employment Advocate (1) A person <i>lodges</i> a declaration to terminate a workplace agreement
18 19 20 21	to that employee. 103N Lodging unilateral termination documents with the Employment Advocate (1) A person <i>lodges</i> a declaration to terminate a workplace agreement under section 103K or 103L with the Employment Advocate if:
18 19 20 21 22	to that employee. 103N Lodging unilateral termination documents with the Employment Advocate (1) A person <i>lodges</i> a declaration to terminate a workplace agreement under section 103K or 103L with the Employment Advocate if: (a) the person gives it to the Employment Advocate; and (b) it meets the form requirements mentioned in subsection (3). Note: Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for
18 19 20 21 22 23	to that employee. 103N Lodging unilateral termination documents with the Employment Advocate (1) A person <i>lodges</i> a declaration to terminate a workplace agreement under section 103K or 103L with the Employment Advocate if: (a) the person gives it to the Employment Advocate; and (b) it meets the form requirements mentioned in subsection (3).
18 19 20 21 22 23 24	 to that employee. 103N Lodging unilateral termination documents with the Employment Advocate (1) A person <i>lodges</i> a declaration to terminate a workplace agreement under section 103K or 103L with the Employment Advocate if: (a) the person gives it to the Employment Advocate; and (b) it meets the form requirements mentioned in subsection (3). Note: Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for providing false or misleading information or documents. (2) If the person is the employer in relation to the agreement, the
 18 19 20 21 22 23 24 25 	 to that employee. 103N Lodging unilateral termination documents with the Employment Advocate (1) A person lodges a declaration to terminate a workplace agreement under section 103K or 103L with the Employment Advocate if: (a) the person gives it to the Employment Advocate; and (b) it meets the form requirements mentioned in subsection (3). Note: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents. (2) If the person is the employer in relation to the agreement, the employer lodges undertakings in relation to the termination if:
 18 19 20 21 22 23 24 25 26 	 to that employee. 103N Lodging unilateral termination documents with the Employment Advocate (1) A person lodges a declaration to terminate a workplace agreement under section 103K or 103L with the Employment Advocate if: (a) the person gives it to the Employment Advocate; and (b) it meets the form requirements mentioned in subsection (3). Note: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents. (2) If the person is the employer in relation to the agreement, the employer lodges undertakings in relation to the termination if: (a) the employer lodges a declaration under subsection (1); and
 18 19 20 21 22 23 24 25 26 27 	 to that employee. 103N Lodging unilateral termination documents with the Employment Advocate (1) A person lodges a declaration to terminate a workplace agreement under section 103K or 103L with the Employment Advocate if: (a) the person gives it to the Employment Advocate; and (b) it meets the form requirements mentioned in subsection (3). Note: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents. (2) If the person is the employer in relation to the agreement, the employer lodges undertakings in relation to the termination if:
 18 19 20 21 22 23 24 25 26 27 28 	 to that employee. 103N Lodging unilateral termination documents with the Employment Advocate (1) A person lodges a declaration to terminate a workplace agreement under section 103K or 103L with the Employment Advocate if: (a) the person gives it to the Employment Advocate; and (b) it meets the form requirements mentioned in subsection (3). Note: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents. (2) If the person is the employer in relation to the agreement, the employer lodges undertakings in relation to the termination if: (a) the employer lodges a declaration under subsection (1); and
 18 19 20 21 22 23 24 25 26 27 28 29 	 to that employee. 103N Lodging unilateral termination documents with the Employment Advocate (1) A person <i>lodges</i> a declaration to terminate a workplace agreement under section 103K or 103L with the Employment Advocate if: (a) the person gives it to the Employment Advocate; and (b) it meets the form requirements mentioned in subsection (3). Note: Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for providing false or misleading information or documents. (2) If the person is the employer in relation to the agreement, the employer <i>lodges</i> undertakings in relation to the termination if: (a) the employer lodges a declaration under subsection (1); and (b) a copy of the undertakings is annexed to the declaration.

1 2 3	(4)	A declaration is given to the Employment Advocate for the purposes of subsection (1) only if the declaration is actually received by the Employment Advocate.
4 5 6 7		Note: This means that section 29 of the <i>Acts Interpretation Act 1901</i> (to the extent that it deals with the time of service of documents) and section 160 of the <i>Evidence Act 1995</i> do not apply to lodgment of a declaration.
8 9 10 11	(5)	The Employment Advocate is not required to consider or determine whether any of the requirements of this Subdivision (apart from this section) have been met in relation to the termination.
12 13	1030 Em	ployment Advocate must issue receipt for lodgment of declaration for notice of termination
14 15	(1)	If a declaration is lodged under subsection 103N(1) the Employment Advocate must issue a receipt for the lodgment.
16 17 18	(2)	The Employment Advocate must give a copy of the receipt to:(a) the person that lodged the declaration; and(b) the employer in relation to the relevant workplace agreement;
19 20 21		(c) if the relevant workplace agreement is an AWA—the employee; and
22 23 24		 (d) if the relevant workplace agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.
25 26	103P Emj	ployer must notify employees after lodging notice of termination
27 28 29 30 31	(1)	An employer that has received a receipt under section 103O in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment was subject to the agreement just before the declaration was lodged are given a copy of the receipt within 21 days.
32 33	(2)	Subsection (1) is a civil remedy provision.Note:See Division 11 for provisions on enforcement.

1	Subdivision E—Effect of termination
2	103Q When a termination takes effect
3	A termination takes effect even if:
4	(a) the requirements in Division 3 have not been met in relation
5	to the termination; or
6 7 8	 (b) in the case of a termination mentioned in paragraph 103(2)(a)—the requirements in Subdivision B have not been met in relation to the termination; or
9 10 11	 (c) in the case of a termination mentioned in paragraph 103(2)(b) or (c)—the requirements in subsections 103K(4) and (5) and 103L(4) and (5) have not been met in relation to the termination
12	termination.
13 14	103R Consequence of termination of agreement—application of other industrial instruments
15 16	(1) An industrial instrument mentioned in subsection (3) has no effect in relation to an employee if:
17 18	(a) a workplace agreement operated in relation to the employee; and
19	(b) the workplace agreement was terminated.
20 21	Note 1: See Part VA for the operation of the Australian Fair Pay and Conditions Standard in these circumstances.
22 23	Note 2: See subsections 103M(2), (3) and (4) for the operation of undertakings (if any) in these circumstances.
24	(2) Subsection (1) operates in relation to the period:
25	(a) starting when the agreement is terminated; and
26 27	(b) ending when another workplace agreement comes into operation in relation to the employee.
28	(3) The industrial instruments are as follows:
29	(a) a workplace agreement;
30	(b) an award.

Division 10—Prohibited conduct

101	Coercion and duress
	(1) A person must not:
	 (a) engage in or organise, or threaten to engage in or organise, any industrial action; or
	(b) take, or threaten to take, other action; or
	(c) refrain, or threaten to refrain, from taking any action;
	with intent to coerce another person to agree, or not to agree, to make, approve, lodge, vary or terminate a collective agreement.
	(2) Subsection (1) does not apply to protected action (within the meaning of 108).
	(3) A person must not coerce, or attempt to coerce, an employer or employee in relation to an AWA:
	 (a) to appoint, or not to appoint, a particular person as a bargaining agent under subsection 97A(1); or
	(b) to terminate the appointment of a bargaining agent appointed under subsection 97A(1).
	(4) A person must not coerce, or attempt to coerce, an employee of an employer:
	 (a) not to make a request mentioned in subsection 97B(1) or (2) in relation to a collective agreement; or
	(b) to withdraw such a request.
	(5) A person must not apply duress to an employer or employee in connection with an AWA.
	(6) To avoid doubt, an employer does not apply duress to an employee
	for the purposes of subsection (5) merely because the employer
	requires the employee to make an AWA with the employer as a condition of employment.
	(7) Subsections (1), (3), (4) and (5) are civil remedy provisions.
	Note: See Division 11 for provisions on enforcement.
104 A	A False or misleading statements
	(1) A person contravenes this section if:

	(a) the person makes a false or misleading statement to another person; and
	(b) the person is reckless as to whether the statement is false or misleading; and
	(c) the making of that statement causes the other person:
	(i) to make, approve, lodge, vary or terminate a workplace agreement; or
	(ii) not to make, approve, lodge, vary or terminate a workplace agreement.
	(2) Subsection (1) is a civil remedy provision.
	Note: See Division 11 for provisions on enforcement.
104B	Employers not to discriminate between unionist and non-unionist
	 An employer must not, in negotiating a collective agreement, or a variation to a collective agreement, discriminate between employees of the employer:
	(a) because some of those employees are members of an organisation of employees while others are not members of such an organisation; or
	(b) because some of those employees are members of a particular organisation of employees, while others are not members of that organisation or are members of a different organisation of employees.
	(2) Subsection (1) is a civil remedy provision.
	Note: See Division 11 for provisions on enforcement.
Divi	sion 11—Contravention of civil remedy provisions
Note:	For other rules about civil remedy provisions, see Division 4 of Part VIII.
Subo	livision A—General
105	General powers of Court not affected by this Division
	This Division does not affect the following:
	This Division does not affect the following.
	(a) the powers of the Court under Part XIV;

1	105A	Workplace inspector may take over proceeding
2		(1) A workplace inspector may take over a proceeding that was
3		instituted or is being carried on by another person for an order
4		under this Division.
5 6		(2) If a workplace inspector takes over such a proceeding, he or she may:
7		(a) carry it on further; or
8		(b) decline to carry it on further (whether immediately or at a
9		later stage of the proceeding).
10	105B	Standing for civil remedies
11		(1) Any of the following persons may apply to the Court for an order under this Division in relation to a workplace acrossment.
12		under this Division in relation to a workplace agreement:(a) an employee who is or will be bound by the agreement;
13		(a) an employee who is of will be bound by the agreement, (b) if the person who contravened the civil remedy provision was
14 15		not the employer in relation to the agreement, and the
16		provision is mentioned in subsection (2)—the employer;
17		(c) an organisation of employees that is or will be bound by the
18		agreement;
19		(d) an organisation of employees that represents an employee
20		who is or will be bound by the agreement (subject to
21		subsection (3));
22		(e) if the agreement is an AWA—a bargaining agent of the employee or of the employer;
23		(f) a workplace inspector;
24 25		(g) a person specified in regulations made for the purposes of
25 26		this paragraph.
27		(2) The provisions are as follows:(a) subsection 97A(2);
28 20		(a) subsection $97A(2)$, (b) subsection $101M(1)$;
29 20		(c) subsection 101N(1);
30 31		(d) subsection 103K(6);
32		(d) subsection 103K(0); (e) subsection 103L(6);
32 33		(c) subsection 1052(0), (f) subsection 104(1);
33 34		(g) subsection 104(3);
34 35		(b) subsection $104(5)$;
55		(1) subsection int(J),

1	(i) subsection 104A(1).
2	(3) An organisation of employees that represents an employee (as
3	mentioned in paragraph (1)(d)) must not apply on behalf of an
4	employee for a penalty or other remedy under this Division in
5	relation to a contravention of a civil remedy provision unless:
6	(a) the employee has requested the organisation to apply on the
7	employee's behalf; and
8 9	(b) a member of the organisation is employed by the employee's employer; and
10	(c) the organisation is entitled, under its eligibility rules, to
11	represent the industrial interests of the employee.
12 13	Subdivision B—Pecuniary penalty for contravention of civil remedy provisions
14	105C Application of Subdivision
15	This Subdivision applies to a contravention by a person of a civil
16	remedy provision in this Part.
17	105D Court may order pecuniary penalty
18	(1) The Court may order the person who contravened the civil remedy
19	provision to pay a pecuniary penalty of up to:
20	(a) if the person is an individual—the maximum number of
21	penalty units specified in subsection (2); or
22	(b) if the person is a body corporate—5 times the maximum
23	number of penalty units specified in subsection (2).
24	(2) The maximum number of penalty units is as follows:
25	(a) for subsection 97A(2)—30 penalty units;
26	(b) for subsection 97B(3)—30 penalty units;
27	(c) for subsection 98(8)—30 penalty units;
28	(d) for subsection 98(9)—30 penalty units;
29	(e) for subsection 98B(1)—30 penalty units;
30	(f) for subsection 98D(1)—60 penalty units;
31	(g) for subsection 99(1)—30 penalty units;
32	(h) for subsection 99(2)—30 penalty units;
33	(i) for subsection 99A(1)—60 penalty units;

1	(j)	for subsection 99D(1)—30 penalty units;
2	(k)	for subsection 101E(1)—60 penalty units;
3	(1)	for subsection 101J(1)—30 penalty units;
4	(m)	for subsection 101L(1)—30 penalty units;
5	(n)	for subsection 101M(1)—60 penalty units;
6	(0)	for subsection 101N(1)—60 penalty units;
7	(p)	for subsection 102C(8)—30 penalty units;
8	(q)	for subsection 102C(9)—30 penalty units;
9	(r)	for subsection 102E(1)—30 penalty units;
10	(s)	for subsection 102G(1)—60 penalty units;
11	(t)	for subsection 102H(1)—30 penalty units;
12	(u)	for subsection 102I(1)-60 penalty units;
13	(v)	for subsection 102L(1)—30 penalty units;
14	(w)	for subsection 103C(4)—30 penalty units;
15	(x)	for subsection 103D(1)—30 penalty units;
16	(y)	for subsection 103F(1)—60 penalty units;
17		for subsection 103G(1)—30 penalty units;
18	(za)	for subsection 103J(1)—30 penalty units;
19	(zb)	for subsection 103K(6)—60 penalty units;
20	(zc)	for subsection 103L(6)—60 penalty units;
21	(zd)	for subsection 103M(5)—30 penalty units;
22	(ze)	for subsection 103P(1)—30 penalty units;
23	(zf)	for subsection 104(1)—60 penalty units;
24	(zg)	for subsection 104(3)—60 penalty units;
25	(zh)	for subsection 104(4)—60 penalty units;
26	(zi)	for subsection 104(5)—60 penalty units;
27	(zj)	for subsection 104A(1)—60 penalty units;
28	(zk)	for subsection $104B(1)$ —60 penalty units.
29	Subdivision C	
30	civil	remedy provisions
31	105E Applicati	on of Subdivision
		~ · · · · · · · · · · · · · · · · · · ·

This Subdivision applies to a contravention by a person of any of the following civil remedy provisions in relation to a workplace agreement:

	(a) subsection 98D(1);
	(b) subsection $102G(1)$;
	(c) subsection 103F(1);
	(d) subsection 103K(6);
	(e) subsection 103L(6);
	(f) subsection $104(1)$;
	(g) subsection 104(5);
	(h) subsection 104A(1).
105F C	ourt may declare workplace agreement or part of workplace agreement void
	The Court may make an order:
	(a) declaring that the workplace agreement is void; or
	(b) declaring that specified terms of the workplace agreement are
	void.
105G C	ourt may vary terms of workplace agreement
	The Court may make an order varying the terms of the workplace agreement.
105H C	ourt may order that workplace agreement continues to operate despite termination
(1) This section applies if the workplace agreement has been terminated as a result of the contravention mentioned in section 105E.
(The Court may make an order declaring that the workplace agreement continues to operate despite the termination.
105I Da	nte of effect and preconditions for orders under sections 105F, 105G and 105H
(1) An order under section 105F, 105G or 105H takes effect from the date of the order or a later date specified in the order.
(2) The Court may make an order under section 105F, 105G or 105H only to the extent that the Court considers appropriate to remedy

1	(a) all or part of any loss or damage resulting from the
2	contravention mentioned in section 105E;
3	(b) prevention or reduction of all or part of that loss or damage.
4	105J Court may order compensation
5	The Court may make an order that the person mentioned in
6	section 105E pay compensation of such amount as the Court
7	considers appropriate for any loss or damage resulting from the
8	contravention suffered by an employee whose employment is
9	subject to the agreement.
10	105K Court may order injunction
11	(1) The Court may grant an injunction requiring the person mentioned
12	in section 105E to cease contravening (or not to contravene) the
13	civil remedy provision.
14	(2) Subsection (1) also applies in relation to a contravention of
15	subsection 104B(1).
16	Part VC—Industrial action

17 Division 1—Preliminary

18 **106 Definitions**

19	(1) In this Part:
20 21	<i>authorised ballot agent</i> means an authorised ballot agent as defined in section 109A for the purpose of Division 4.
22	bargaining period has the meaning given by section 107.
23 24	<i>Court</i> means the Federal Court of Australia or the Federal Magistrates Court.
25	industrial action has the meaning given by section 106A.
26	<i>initiating notice</i> has the meaning given by section 107.
27	<i>initiating party</i> has the meaning given by section 107.
28	<i>negotiating party</i> has the meaning given by section 107.

1		pattern bargaining has the meaning given by section 106B.
2		proposed collective agreement has the meaning given by
3		section 107.
4		protected action has the meaning given by section 108.
5		protected action ballot means a ballot under Division 4.
6 7		(2) Expressions used in this Part that are also used in Part VB have the same meanings in this Part as they have in that Part.
8	106A	Meaning of industrial action
9 10		(1) For the purposes of this Act, <i>industrial action</i> means any action of the following kinds:
11		(a) the performance of work by an employee in a manner
12		different from that in which it is customarily performed, or the adaption of a prosting in relation to work by an appleved
13 14		the adoption of a practice in relation to work by an employee, the result of which is a restriction or limitation on, or a delay
15		in, the performance of the work;
16		(b) a ban, limitation or restriction on the performance of work by
17		an employee or on the acceptance of or offering for work by
18		an employee;
19		(c) a failure or refusal by employees to attend for work or a failure or refusal to perform any work at all by employees
20 21		failure or refusal to perform any work at all by employees who attend for work;
22		(d) the lockout of employees from their employment by the
23		employer of the employees;
24		but does not include the following:
25		(e) action by employees that is authorised or agreed to by the
26		employer of the employees;
27		(f) action by an employer that is authorised or agreed to by or on
28		behalf of employees of the employer;
29		(g) action by an employee if:
30		(i) the action was based on a reasonable concern by the
31		employee about an imminent risk to his or her health or
32		safety; and
33 34		(ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other
34 35		available work, whether at the same or another
		·

1 2			workplace, that was safe and appropriate for the employee to perform.
3 4		Note 1:	See also subsection (4), which deals with the burden of proof of the exception in subparagraph (g)(i) of this definition.
5 6 7 8 9 10 11 12 13		Note 2:	The issue of whether action that is not industrial in character is industrial action was considered by the Commission in <i>Automotive</i> , <i>Food</i> , <i>Metals</i> , <i>Engineering</i> , <i>Printing and Kindred Industries Union v</i> <i>The Age Company Limited</i> , PR946290. In that case, the Full Bench of the Commission drew a distinction between an employee who does not attend for work in support of a collective demand that the employer agree to alteration of the conditions of employment as being clearly engaged in industrial action and an employee who does not attend for work on account of illness.
14	(2)	For the p	purposes of this Act:
15		(a) con	nduct is capable of constituting industrial action even if the
16			nduct relates to part only of the duties that employees are
17			uired to perform in the course of their employment; and
18		(b) a re	eference to industrial action includes a reference to a
19		cou	urse of conduct consisting of a series of industrial actions.
20		Meaning	g of lockout
21	(3)	For the p	ourposes of this section, an employer <i>locks out</i> employees
22	(-)		ir employment if the employer prevents the employees
23		from per	forming work under their contracts of employment
24		without t	terminating those contracts.
25		Burden a	of proof
26	(4)	Wheneve	er a person seeks to rely on subparagraph (g)(i) of the
27			n of <i>industrial action</i> in subsection (1), that person has the
28			f proving that subparagraph (g)(i) applies.
29	106B Mea	ning of _l	pattern bargaining
30		What is p	pattern bargaining?
31	(1)	For the r	ourposes of this Part, a course of conduct by a person is
32			bargaining if:
33		-	person is a negotiating party to 2 or more proposed
34			lective agreements; and

1	(b) the course of conduct involves seeking common wages or
2	conditions of employment for 2 or more of those proposed
3	collective agreements; and
4	(c) the course of conduct extends beyond a single business.
5	Exception: terms or conditions determined as national standards
6	(2) The course of conduct is not pattern bargaining to the extent that
7	the negotiating party is seeking, for 2 or more of the proposed
8	collective agreements, terms or conditions of employment
9	determined by the Full Bench in a decision establishing national
10	standards.
11	Exception: genuinely trying to reach an agreement for a single
12	business or part of a single business
13	(3) The course of conduct, to the extent that it relates to a particular
14	single business or part of a single business, is not pattern
15	bargaining if the negotiating party is genuinely trying to reach an
16	agreement for the business or part.
17	(4) For the purposes of subsection (3), factors relevant to working out
18	whether the negotiating party is genuinely trying to reach an
19	agreement for a single business or part of a single business include
20	(but are not limited to) the following:
21	(a) demonstrating a preparedness to negotiate an agreement
22	which takes into account the individual circumstances of the
23	business or part;
24	(b) demonstrating a preparedness to negotiate a workplace
25	agreement with a nominal expiry date which takes into
26	account the individual circumstances of the business or part;
27	(c) negotiating in a manner consistent with wages and conditions
28	of employment being determined as far as possible by
29	agreement between the employer and its employees at the
30	level of the single business or part;
31	(d) agreeing to meet face-to-face at reasonable times proposed
32	by another negotiating party;
33	(e) considering and responding to proposals made by another
34	negotiating party within a reasonable time;
35	(f) not capriciously adding or withdrawing items for bargaining.

1 2	(5) Whenever a person seeks to rely on subsection (3), the person has the burden of proving that subsection (3) applies.
3 4 5	(6) 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.
6	Division 2—Bargaining periods
7	107 Initiation of bargaining period
8 9 10	(1) This section applies in relation to a collective agreement that a person referred to in subsection (2) wants to try to make if the agreement, if made:
	(a) will be made under section 96A or 96B; and
11	(a) will be made under section 96A of 96B, and (b) will not be:
12	(i) a multiple-business agreement; or
13	(i) an agreement with 2 or more corporations that are
14 15	treated as one employer because of paragraph
16	95A(2)(b).
17	(2) If:
18	(a) an employer; or
19	(b) an organisation of employees; or
20	(c) an employee acting on his or her own behalf and on behalf of
21	other employees;
22	wants to try to make a collective agreement to which this section
23	applies in relation to employees who are employed in a single
24	business or a part of a single business, the employer, organisation
25	or employee (the <i>initiating party</i>) may initiate a period (the
26	<i>bargaining period</i>) for negotiating the agreement.
27 28	Note: This subsection has effect subject to subsections 107F(2), 107G(12) and (13), 107H(6) and (7) and 112(6).
29	(3) The bargaining period is initiated by the initiating party giving
30	written notice (the <i>initiating notice</i>) to each other negotiating party
31	and to the Commission stating that the initiating party intends to
32	try to make a collective agreement to which this section applies
33	(the <i>proposed collective agreement</i>) with the other negotiating
34	parties under section 96A or 96B.

1	(4) Each of the following is a <i>negotiating party</i> in relation to the	
2	proposed collective agreement:	
3	(a) the initiating party;	
4	(b) if the initiating party is an employer who intends to try to	
5	make the proposed collective agreement under section 96A—	
6 7	the employees at the time whose employment will be subject to the proposed collective agreement;	
8	(c) if the initiating party is an employer who intends to try to	
9	make the proposed collective agreement under section 96B—	
10	the organisation or organisations who are proposed to be	
11	bound by the proposed collective agreement;	
12 13	(d) if the initiating party is an organisation of employees—the employer who is proposed to be bound by the proposed	
14	collective agreement;	
15	(e) if the initiating party is an employee acting on his or her own	
16	behalf and on behalf of other employees—the employer who	
17	is proposed to be bound by the proposed collective agreement	
18	and the employees whose employment will be subject to the	
19	proposed collective agreement.	
20	107A Employee may appoint agent to initiate bargaining period	
21	(1) A person referred to in paragraph $107(2)(c)$ who wishes to initiate a	
22	bargaining period under section 107, without disclosing the	
23	person's identity to the person's employer, may appoint an agent to	
24	initiate the bargaining period on the person's behalf.	
25	(2) If a person has appointed an agent under subsection (1), the notice	
26	to the Commission under subsection 107(3) must be accompanied	
27	by a document containing the person's name.	
28	(3) The regulations may make provision in relation to the	
29	qualifications and appointment of agents appointed under this	
30	section.	
31	107B Identity of person who has appointed agent not to be disclosed	
32	Disclosure by Commission prohibited	
33	(1) The Commission must not disclose information that the	
33 34	 The Commission must not disclose information that the Commission has reasonable grounds to believe will identify a 	

1 2	person who has appointed an agent under section 107A as a person who has initiated a bargaining period under section 107.
3	(2) Each of the following is an exception to subsection (1):
4	(a) the disclosure is required or authorised by this Act or by
5	another Act, by regulations made for the purposes of another
6	provision of this Act, or by regulations made for the purposes
7	of another Act;
8 9	(b) the person whose identity is disclosed has, in writing, authorised the disclosure.
10	Disclosure by person prohibited
11	(3) A person commits an offence if:
12	(a) the person discloses information; and
13	(b) the information is protected information; and
14	(c) the person has reasonable grounds to believe that the
15	information will identify another person as a person referred
16	to in subsection (1); and
17	(d) the disclosure is not made by the person in the course of
18	performing functions or duties:
19	(i) as a Registry official; or
20	(ii) as, or on behalf of, an authorised ballot agent; and
21	(e) the disclosure is not required or authorised by this Act or by
22 23	another Act, by regulations made for the purposes of another provision of this Act, or by regulations made for the purposes
23 24	of another Act; and
25	(f) the person whose identity is disclosed has not, in writing,
26	authorised the disclosure.
27	Penalty: Imprisonment for 6 months.
28	(4) In this section:
29	protected information, in relation to a person, means information
30	that the person acquired:
31	(a) in the course of performing functions or duties as a Registry
32	official; or
33	(b) in the course of performing functions or duties as, or on
34	behalf of, an authorised ballot agent; or

1 2	(c) from a person referred to in paragraph (a) or (b) who acquired the information as mentioned in paragraph (a) or
3	(b).
4	Registry official means:
5	(a) the Industrial Registrar; or
6	(b) a member of the staff of the Industrial Registry (including a
7	Deputy Industrial Registrar).
8	107 C Particulars to accompany notice
9	An initiating notice is to be accompanied by particulars of:
10 11	(a) the single business or part of the single business to be covered by the proposed collective agreement; and
12	(b) the types of employees whose employment will be subject to
12	the proposed collective agreement and the other persons who
14	will be bound by the proposed collective agreement; and
15 16	(c) the matters that the initiating party proposes should be dealt with by the proposed collective agreement; and
17 18	(d) the proposed nominal expiry date of the proposed collective agreement; and
19	(e) any other matters prescribed by the regulations.
20	107D When bargaining period begins
21	A bargaining period begins at the end of 7 days after:
22	(a) the day on which the initiating notice was given; or
23	(b) if the notice was given to different persons on different
24	days—the later or latest of those days.
25	107E When bargaining period ends
26	A bargaining period ends if any of the following events occurs:
27	(a) a collective agreement under section Agt60 or 96B is made
28	by the employer and any one or more of the other negotiating
29	parties;
30	(b) the initiating party tells the other negotiating party or each of
31	the other negotiating parties in writing that the initiating
32 33 34	party no longer wants to reach a collective agreement under section 96A or 96B with that other party or those other parties;
33	

1 2	(c) the bargaining period is terminated under section 107G, 107H or 112.
3 4	107F Power of Commission to restrict initiation of new bargaining periods
5	(1) This section applies if a bargaining period (the <i>former bargaining</i>
6	<i>period</i>) in relation to a proposed collective agreement has ended because a negotiating party (the <i>former negotiating party</i>) has
7 8	given a notice under paragraph 107E(b).
9	(2) Subject to this section, the Commission may, by order, declare that,
10 11	during a specified period, a specified former negotiating party, or a specified employee of the employer:
12	(a) is not allowed to initiate a new bargaining period in relation
13	to specified matters that were dealt with by the proposed
14	collective agreement; or (b) may initiate a bargaining period only on conditions specified
15 16	in the order.
17	(3) The Commission must not make an order under subsection (2) unless:
18	(a) the Commission has given the former negotiating parties an
19 20	opportunity to be heard; and
21	(b) the Commission considers that it is in the public interest to
22	make the order; and
23	(c) either subsection (4) or (5) applies.
24	(4) The Commission may make an order under subsection (2):
25	(a) on application by a former negotiating party; and
26	(b) if, assuming the former bargaining period had not ended, the
27	Commission could make an order under subsection $107G(1)$
28 29	because a circumstance set out in subsection $107G(2)$, (7) or (8) exists or existed.
30	(5) The Commission may make an order under subsection (2):
31	(a) on its own initiative, or on application by a former
32	negotiating party; and
33	(b) if, assuming the former bargaining period had not ended, the
34	Commission could make an order under subsection $107G(1)$
35 36	because a circumstance set out in subsection 107G(3) exists or existed.

2	Suspension and termination of bargaining periods—general powers of Commission
3	Suspension or termination required if certain circumstances exist
4	(1) Subject to subsection (9), the Commission must, by order, suspend
5	or terminate a bargaining period if, after giving the negotiating
6	parties an opportunity to be heard, it is satisfied that any of the
7 8	circumstances set out in subsections (2), (3) (7) and (8) exists or existed.
9	<i>Circumstance—failing to genuinely try to reach agreement etc.</i>
10	(2) A circumstance for the purposes of subsection (1) is that a
11	negotiating party that, before or during the bargaining period, has
12	organised or taken, or is organising or taking, industrial action to
13	support or advance claims in respect of the proposed collective
14	agreement:
15	(a) did not genuinely try to reach an agreement with the other
16	negotiating parties before organising or taking the industrial
17	action; or
18 19	(b) is not genuinely trying to reach an agreement with the other negotiating parties; or
20	(c) has failed to comply with any orders or directions of the
20	Commission made during the bargaining period that relate to,
22	or that relate to industrial action relating to, the making of the
23	proposed collective agreement or to a matter that has arisen
24	in the negotiations for the proposed collective agreement.
25	Note: The issue of whether or not a negotiating party is genuinely trying to
26	reach agreement with the other negotiating parties was considered by
27	Justice Munro in Australian Industry Group v Automotive, Food,
28 29	<i>Metals, Engineering, Printing and Kindred Industries Union</i> , Print T1982.
2)	11/02.
30	Circumstance—industrial action endangering life etc.
31	(3) A circumstance for the purposes of subsection (1) is that:
32	(a) industrial action to support or advance claims in respect of
33	the proposed collective agreement is being taken, or is
34	threatened, impending or probable; and
35	(b) that industrial action is adversely affecting, or would
36 37	adversely affect, the employer or employees of the employer; and

1 2 3 4 5	 (c) that industrial action is threatening, or would threaten: (i) to endanger the life, the personal safety or health, or the welfare, of the population or of part of it; or (ii) to cause significant damage to the Australian economy or an important part of it.
6 7	Note: See also Division 8 (about workplace determinations once a bargaining period has been terminated).
8 9 10 11 12	(4) If an application is made to the Commission for an order under subsection (1) on the grounds of or including a circumstance set out in subsection (3), the Commission must, as far as practicable, hear and determine the application within 5 days after the application is made.
13 14 15 16 17	(5) If subsection (4) applies to an application and the Commission is unable to determine the application within the period referred to in that subsection, the Commission must, within that period, make an interim order suspending the bargaining period until the application is determined.
18 19 20 21 22 23 24 25 26	 (6) If the Commission makes an order under subsection (1) terminating a bargaining period in a circumstance set out in subsection (3), the Commission must send each of the negotiating parties a notice: (a) setting out the effect of Division 8; and (b) informing the negotiating parties that they may agree to submit the matters at issue to an alternative dispute resolution process conducted by the Commission or another provider (see Divisions 4 and 6 of Part VIIA).
27	Circumstance—organisations and employees who are not members
28	(7) A circumstance for the purposes of subsection (1) is that industrial
29	action is being organised or taken by:
30	(a) an organisation that is a negotiating party; or
31	(b) a member of such an organisation who is employed by the
32 33	employer; or (c) an officer or employee of such an organisation acting in that
33 34	capacity;
35	against an employer to support or advance claims in respect of
36	employees:
37	(d) whose employment will be subject to the agreement; and

1	(e) who are neither members, nor eligible to become members,
2	of the organisation.
3	Circumstance—demarcation disputes
4	(8) A circumstance for the purposes of subsection (1) is that industrial
5	action that is being organised or taken by an organisation that is a
6	negotiating party:
7	(a) relates, to a significant extent, to a demarcation dispute; or
8	(b) contravenes an order of the Commission that relates, to a
9	significant extent, to a demarcation dispute.
10	Orders on application or Commission's initiative
11	(9) The Commission:
12	(a) may not make an order under subsection (1), in a
13	circumstance set out in subsection (2), (7) or (8), except on
14	application by a negotiating party; but
15	(b) may make an order under subsection (1), in a circumstance
16	set out in subsection (3):
17	(i) on its own initiative; or
18	(ii) on application by a negotiating party or the Minister.
19	Application does not have to identify bargaining periods
20	(10) An application may be made to the Commission for an order under
21	subsection (1) for the suspension or termination of whatever
22	bargaining periods apply to:
23	(a) a specified business, or any part of that business; or
24	(b) a specified part of a specified business;
25	without specifically identifying the bargaining periods. The
26	application has effect as if it were an application for the suspension
27	or termination of the bargaining period, or each of the bargaining
28	periods, that applies to the specified business (or any part of it), or to the specified part of the business, as the case requires.
29	
30 31	Note: The other requirements of this section must still be complied with in relation to the application.
32	(11) If subsection (10) applies to an application, the Commission must
33	satisfy itself as to which bargaining periods the application has
34	effect in relation to.

1		Restrictions on initiating new bargaining periods
2	(12)	An order under subsection (1) suspending a bargaining period may,
3	· · · · ·	if the Commission considers it to be appropriate, contain a
4		declaration that, during some or all of the period while the
5		suspension has effect, a specified negotiating party or employee of
6		the employer:
7		(a) is not allowed to initiate a new bargaining period in relation
8		to specified matters that are dealt with by the proposed
9		collective agreement; or
10		(b) may initiate such a bargaining period only on conditions
11		specified in the declaration.
12	(13)	An order under subsection (1) terminating a bargaining period
13		may, if the Commission considers it to be appropriate, contain a
14		declaration that, during a specified period beginning at the time of
15		the termination, a specified negotiating party or employee of the
16		employer:
17		(a) is not allowed to initiate a new bargaining period in relation
18		to specified matters that are dealt with by the proposed
19		collective agreement; or
20		(b) may initiate such a bargaining period only on conditions
21		specified in the declaration.
22		Extension of notice period required by subsection $107K(3)$
23	(14)	In an order under subsection (1), the Commission may, if it is
24		satisfied, in relation to any industrial action that might be taken (by
25		virtue of section 107K) after the end of the period of suspension,
26		that there are exceptional circumstances justifying the period of
27		written notice required by subsection 107K(3) being longer than 3
28		days, specify a longer period, of up to 7 days.
29	107H Sus	pension and termination of bargaining periods—pattern
30	_	bargaining
31		Suspension or termination required for pattern bargaining
32	(1)	The Commission must, by order, suspend a bargaining period for a
33	(-)	period specified in the order, or terminate the bargaining period, if:

1	(a) a negotiating party, or a person prescribed by the regulations,	
2	applies to the Commission for an order under this section;	
3	and	
4 5	(b) another negotiating party is engaged in pattern bargaining in relation to the proposed collective agreement.	
6	Note: For other provisions relating to pattern bargaining, see:	
7	(a) section 108D; and	
8	(b) section 109L; and	
9	(c) section 111A.	
10	Negotiating parties must be given the opportunity to be heard	
11	(2) The Commission must not make an order under subsection (1)	
11 12	unless it has given the negotiating parties the opportunity to be	
13	heard.	
14	Commission may suspend or terminate as it considers appropriate	
15	(3) If the Commission is required by subsection (1) to make an order	
16	under that subsection, then regardless of the order applied for:	
17	(a) the order may be for the suspension or termination of the	
18	bargaining period, as the Commission considers appropriate;	
19	and	
20	(b) any period of suspension specified in the order must be such	
21	a period as the Commission considers appropriate.	
22	Application does not have to identify bargaining periods	
23	(4) An application may be made to the Commission for an order under	•
24	subsection (1) for the suspension or termination of whatever	
25	bargaining periods apply to:	
26	(a) a specified business, or any part of that business; or	
27	(b) a specified part of a specified business;	
28	without specifically identifying the bargaining periods. The	
29	application has effect as if it were an application for the suspension	L
30	or termination of the bargaining period, or each of the bargaining	
31	periods, that applies to the specified business (or any part of it), or to the specified part of the business, as the case requires.	
32		
33 34	Note: The other requirements of this section must still be complied with in relation to the application.	

1 2 3	(5) If subsection (4) applies to an application, the Commission must satisfy itself as to which bargaining periods the application has effect in relation to.
4	Restrictions on initiating new bargaining periods
5	(6) An order under subsection (1) suspending a bargaining period may,
6	if the Commission considers it to be appropriate, contain a
7	declaration that, during some or all of the period while the
8 9	suspension has effect, a specified negotiating party or employee of the employer:
10	(a) is not allowed to initiate a new bargaining period in relation
11	to specified matters that are dealt with by the proposed
12	collective agreement; or
13	(b) may initiate such a bargaining period only on conditions
14	specified in the declaration.
15	(7) An order under subsection (1) terminating a bargaining period
16	may, if the Commission considers it to be appropriate, contain a
17	declaration that, during a specified period beginning at the time of
18	the termination, a specified negotiating party or employee of the
19	employer:
20	(a) is not allowed to initiate a new bargaining period in relation
21	to specified matters that are dealt with by the proposed
22	collective agreement; or
23	(b) may initiate such a bargaining period only on conditions
24	specified in the declaration.
25	Extension of notice period required by subsection 107K(3)
26	(8) In an order under subsection (1) suspending a bargaining period,
27	the Commission may, if it is satisfied, in relation to any industrial
28	action that might be taken (by virtue of section 107K) after the end
29	of the period of suspension, that there are exceptional
30	circumstances justifying the period of written notice required by
31	subsection 107K(3) being longer than 3 days, specify a longer
32	period, of up to 7 days.

1	107I Suspension of bargaining periods—cooling off
2	Suspension if would assist in resolving matters at issue
3 4	(1) The Commission must, by order, suspend a bargaining period for a period specified in the order if:
5	(a) a negotiating party applies to the Commission for the
6	bargaining period to be suspended under this section; and
7 8	(b) protected action is being taken in respect of the proposed collective agreement; and
9 10	(c) the Commission considers that the suspension is appropriate, having regard to:
11	(i) whether suspending the bargaining period would be
12 13	beneficial to the negotiating parties because it would assist in resolving the matters at issue; and
14	(ii) the duration of the action; and
15	(iii) whether suspending the bargaining period would be
16	contrary to the public interest or inconsistent with the
17	objects of this Act; and
18 19	(iv) any other matters that the Commission considers relevant.
20	Period of suspension
21	(2) The period of suspension specified in the order must be a period
22	that the Commission considers appropriate.
23	Extension of suspension
24	(3) The Commission must, by order, extend the period of suspension
25	by a specified period that the Commission considers appropriate if:
26	(a) a negotiating party applies to the Commission for the period
27	of suspension to be extended; and
28	(b) the Commission considers that the extension is appropriate,
29	having regard to:
30	(i) the matters referred to in paragraph (1)(c); and
31	(ii) whether the negotiating parties, during the period of
32	suspension, genuinely tried to reach an agreement.

(4)	The Commission must not make an order under subsection (3) extending the period of suspension if that period has previously been extended.
	Negotiating parties must be given opportunity to be heard
(5)	The Commission must not make an order under subsection (1) or (3) unless it has given the negotiating parties the opportunity to be heard.
	Commission to inform negotiating parties that they may submit matters at issue for alternative dispute resolution
(6)	If the Commission makes an order under subsection (1) or (3), the Commission must send each of the negotiating parties a notice informing the negotiating parties that they may agree to submit the matters at issue to an alternative dispute resolution process conducted by the Commission or another provider (see Part VIIA).
	Extension of notice period required by subsection 107K(3)
(7)	In an order under subsection (1) or (3), the Commission may, if it is satisfied, in relation to any industrial action that might be taken (by virtue of section 107K) after the end of the period of suspension, that there are exceptional circumstances justifying the period of written notice required by subsection 107K(3) being longer than 3 days, specify a longer period, of up to 7 days.
107J Susp	ension of bargaining periods—significant harm to third party
	Suspension if industrial action threatens significant harm to a person
(1)	 The Commission must, by order, suspend a bargaining period for a period specified in the order if: (a) industrial action is being taken in respect of the proposed collective agreement; and (b) an application for the bargaining period to be suspended under this section is made to the Commission by or on behalf of:
	(5) (6) (7) 107J Susp

1	(i) an organisation, person or body directly affected by the
2	action (other than a negotiating party); or
3	(ii) the Minister; and
4	(c) the Commission considers that the action is adversely
5	affecting the employer or employees of the employer; and
6	(d) the Commission considers that the action is threatening to
7	cause significant harm to any person (other than a negotiating
8	party); and
9	(e) the Commission considers that the suspension is appropriate,
10	having regard to:
11	(i) whether suspending the bargaining period would be
12	contrary to the public interest or inconsistent with the
13	objects of this Act; and
14	(ii) any other matters that the Commission considers relevant.
15	Televant.
16	(2) For the purposes of paragraph (1)(d), in considering whether the
17	action is threatening to cause significant harm to a person, the
18	Commission may have regard to the following:
19	(a) if the person is an employee—the extent to which the action
20	affects the interests of the person as an employee;
21	(b) the extent to which the person is particularly vulnerable to
22	the effects of the action;
23	(c) the extent to which the action threatens to:
24	(i) damage the ongoing viability of a business carried on by
25	the person; or
26 27	(ii) disrupt the supply of goods or services to a business carried on by the person; or
	(iii) reduce the person's capacity to fulfil a contractual
28 29	obligation; or
30	(iv) cause other economic loss to the person;
31	(d) any other matters that the Commission considers relevant.
51	(d) any other matters that the commission considers relevant.
32	Period of suspension
33	(3) The period of suspension specified in the order must be a period
34	that the Commission considers appropriate. The period of
35	suspension (as extended under subsection (4), if applicable) must
36	not exceed 3 months.

1	Extension of suspension
2	(4) The Commission must, by order, extend the period of suspension
3	by a specified period that the Commission considers appropriate if:
4 5	 (a) an application for the period of suspension to be extended is made to the Commission by or on behalf of:
6	(i) an organisation, person or body directly affected by the action (other than a negotiating party); or
7	(ii) the Minister; and
8	
9	(b) the Commission considers that the extension is appropriate,
10 11	having regard to the matters referred to in paragraphs (1)(c), (d) and (e).
12	(5) The Commission must not make an order under subsection (4)
13	extending the period of suspension if that period has previously
14	been extended.
15	Negotiating parties must be given opportunity to be heard
16	(6) The Commission must not make an order under subsection (1) or
17	(4) unless it has given the negotiating parties the opportunity to be
18	heard.
19	Commission to inform negotiating parties that they may submit
20	matters at issue for alternative dispute resolution
21	(7) If the Commission makes an order under subsection (1) or (4), the
22	Commission must send each of the negotiating parties a notice
23	informing the negotiating parties that they may agree to submit the
24	matters at issue to an alternative dispute resolution process
25	conducted by the Commission or another provider (see Part VIIA).
26	Extension of notice period required by subsection 107K(3)
27	(8) In an order under subsection (1) or (4), the Commission may, if it
28	is satisfied, in relation to any industrial action that might be taken
29	(by virtue of section 107K) after the end of the period of
30	suspension, that there are exceptional circumstances justifying the
31	period of written notice required by subsection 107K(3) being
32	longer than 3 days, specify a longer period, of up to 7 days.

107K	Industrial action without further protected action ballot after end of suspension of bargaining period
	(1) This section applies if:
	 (a) before a bargaining period was suspended under subsection 107G(1), 107H(1), 107I(1) or 107J(1), industrial action was
	authorised by a protected action ballot; and
	(b) the ballot authorised industrial action:
	(i) some or all of which had not been taken before the period of suspension began; or
	(ii) that had not ended before the period of suspension began; or
	(iii) beyond the period of suspension.
	(2) After the period of suspension, as extended under subsection 107I(3) or 107J(4) (if applicable), has ceased (whether because the period ended or was revoked):
	(a) a relevant employee (within the meaning of Division 4) may organise, or engage in, that industrial action without another protected action ballot; and
	(b) a negotiating party that is an organisation of employees may organise, or engage in, that industrial action without another protected action ballot.
	For the purposes of working out when that industrial action may be organised, or engaged in, the period of suspension (including any dates authorised by a protected action ballot as dates on which action is to be taken) is to be ignored.
	(3) However, that industrial action is not protected action unless, after the period of suspension, the organisation, or the employee, gives the employer at least the required written notice of the intention to take the action. The notice must state the nature of the intended action and the day when it will begin.
	 (4) For the purposes of subsection (3), the <i>required written notice</i> is: (a) 3 working days' written notice; or (b) if the Commission, in the order under subsection 107G(1), 107H(1), 107I(1) or 107J(1) suspending the bargaining period, or an order under subsection 107I(3) or 107J(4) extending the period of suspension, specifies a higher number of days—that number of days' written notice.
	107K

1 2		Note:	For the maximum number of days the suspension order can specify, see subsection 107G(14), 107H(8), 107I(7) or 107J(8).
3	(5)	Nothing	in this section authorises industrial action after the end of
4	(\mathbf{J})	•	od of suspension that is different in type or duration from
5			strial action that was authorised by the protected action
6		ballot.	, , , , , , , , , , , , , , , , , , ,
7		Example 1	: A protected action ballot authorised strike action for 20 consecutive
8 9		Ĩ	working days from a specified date. Fourteen working days into the strike, the bargaining period was suspended for one month.
10			Under this section, once the period of suspension ends, the initiating
11			party could give the required written notice, without another protected
12 13			action ballot, of 6 further consecutive working days of strike action (the balance of the strike action authorised).
14		Example 2	2: A protected action ballot authorised the imposition of certain work
15			bans every Monday, for a period of 8 consecutive weeks starting from
16 17			a specified date. After 3 weeks, the bargaining period was suspended for a period of 2 weeks.
18			Under this section, once the period of suspension ends, the initiating
19			party could give the required written notice, without another protected
20 21			action ballot, that the work bans authorised by the ballot will be imposed for 5 further consecutive Mondays (the balance of the
22			industrial action authorised).
23	Division	3—Pro	tected action
24	Subdivisi	on A—V	What is protected action?
25	108 Prote	cted acti	ion
26		General	
27	(1)	Action b	by a person is <i>protected action</i> if:
28		(a) the	e action is protected action under subsection (2) or (3); and
29		(b) no	provision of Subdivision B excludes the action from being
30			otected action; and
31		(c) sul	bsection 107K(3) does not exclude the action from being
32			ptected action.
33		Employe	ee and employee organisation actions

(2) During a bargaining period:(a) an organisation of employees that is a negotiating party; or

34

35

1 2	(b) a member of such an organisation who is employed by the employer; or
	(c) an officer or employee of such an organisation acting in that
3 4	capacity; or
5	(d) an employee who is a negotiating party;
6	is entitled, for the purpose of:
7	(e) supporting or advancing claims made in respect of the
8	proposed collective agreement; or
9	(f) responding to industrial action by the employer against
10	employees whose employment will be subject to the
11	proposed collective agreement;
12	to organise or engage in industrial action against the employer and,
13	if the organisation, member, officer or employee does so, the
14	organising of, or engaging in, that industrial action is protected
15	action.
16	Employer actions
17	(3) Subject to subsection (5), during a bargaining period, the employer
18	is entitled, for the purpose of:
19	(a) supporting or advancing claims made by the employer in
20	respect of the proposed collective agreement; or
21	(b) responding to industrial action by any of the employees
22	whose employment will be subject to the proposed collective
23	agreement;
24	to engage in industrial action against all or any of the employees
25	whose employment will be subject to the agreement and, if the
26	employer does so, the organising of, or engaging in, that industrial
27	action is protected action.
28	Note 1: The existence of this entitlement does not affect any right of the
29	employer to refuse to pay the employee where, under the common
30 31	law, the employer is permitted to do so because the employee has not performed work as directed.
32	Note 2: The existence of this entitlement also does not affect any authorisation
33	of the employer to stand-down the employee under an award.
34	(4) If the employer engages in industrial action against employees in
35	accordance with subsection (3), the employer is entitled to refuse
36	to pay any remuneration to the employees in respect of the period
37	of the industrial action.

1	(5) The employer is not entitled to engage in industrial action against
2	employees under subsection (3) (and so the industrial action will
3	not be protected action) unless the continuity of the employees'
4 5	employment, for such purposes as are prescribed by the regulations, is not affected by the industrial action.
6	Subdivision B—Exclusions from protected action
7	108A Exclusion—claims in support of inclusion of prohibited
8	content
9	Engaging in industrial action in relation to a proposed collective
10	agreement is not protected action if it is to support or advance
11	claims to include prohibited content in the agreement.
12	108B Exclusion—industrial action while bargaining period is
13	suspended
14	Engaging in industrial action in relation to a proposed collective
15	agreement is not protected action if it is engaged in while the
16	bargaining period is suspended.
17 18	108C Exclusion—industrial action must not involve persons who are not protected for that industrial action
19	 Engaging in industrial action in relation to a proposed collective
20	agreement is not protected action if:
21	(a) it is engaged in in concert with one or more persons who are
22	not protected persons for the industrial action; or
23 24	(b) it is organised other than solely by one or more protected persons for the industrial action.
25	(2) Organising industrial action in relation to a proposed collective
26	agreement is not protected action if:
27	(a) it is organised in concert with one or more persons who are
28	not protected persons for the industrial action; or
29	(b) it is intended to be engaged in other than solely by one or
30	more protected persons for the industrial action.
31	(3) In this section:

1	protected person, for industrial action in relation to a proposed
2	collective agreement, means:
3	(a) an organisation of employees that is a negotiating party to the
4	proposed collective agreement; or
5	(b) a member of such an organisation who is employed by the
6 7	employer and whose employment will be subject to the proposed collective agreement; or
7	(c) an officer or employee of such an organisation acting in that
8 9	capacity; or
10 11	(d) an employee who is a negotiating party to the proposed collective agreement; or
12 13	(e) an employer who is a negotiating party to the proposed collective agreement.
14	108D Exclusion—industrial action must not be in support of pattern
15	bargaining claims
16	Engaging in or organising industrial action is not protected action
17	if:
18	(a) the industrial action is for the purpose of supporting or
19	advancing claims made by a negotiating party to a proposed
20	collective agreement; and
21 22	(b) the party is engaged in pattern bargaining in relation to the proposed collective agreement.
23	Note: For other provisions relating to pattern bargaining, see:
24	(a) section 107H; and
25	(b) section 109L; and
26	(c) section 111A.
27	108E Exclusion—industrial action must not be taken until after
28	nominal expiry date of workplace agreements or
29	workplace determinations
30	Engaging in industrial action in contravention of section 110 or
31	110A is not protected action.

1	108F Exc	lusion—notice of action to be given
2		Notice of employee and employee organisation actions
3	(1)	Any action taken as mentioned in subsection 108(2) by:
4		(a) an organisation of employees; or
5		(b) a member of such an organisation; or
6 7		(c) an officer or employee of such an organisation acting in that capacity; or
8		(d) an employee who is a negotiating party;
9		is not protected action unless the requirements set out in
10		subsection (2) are met.
11	(2)	The requirements are that:
12		(a) if the action is in response to, and is taken after the start of,
13		industrial action against employees by the employer in
14		respect of the proposed collective agreement—the
15		organisation, or the employee who is a negotiating party, has
16		given the employer written notice of the intention to take the
17		action; or
18		(b) in any other case—the organisation, or the employee who is a
19 20		negotiating party, has given the employer at least the required written notice of the intention to take the action.
21	(3)	For the purposes of paragraph (2)(b), the <i>required written notice</i>
22		is:
23		(a) 3 working days' written notice; or
24		(b) if a ballot order made under section 109M in respect of the
25		action specifies a higher number of days—that number of
26		days' written notice.
27 28		Note: For the maximum number of days the ballot order can specify, see subsection 109N(5).
29		Notice of employer actions
30	(4)	If one or more of the negotiating parties is an organisation of
31		employees, any action taken as mentioned in subsection 108(3) by
32		the employer:
33		(a) is not protected action unless the employer has given the
34		other negotiating party or each of the other negotiating
35		parties:

1	(i) if the industrial action is in response to, and takes place
2	after the start of, industrial action organised or engaged
3	in by an organisation that is a negotiating party in
4	respect of the proposed collective agreement—written notice of the intended industrial action; or
5	
6 7	(ii) in any other case—at least 3 working days' written notice of the intended industrial action; and
8	(b) is not protected action in so far as it relates to a particular
9	employee unless:
10	(i) if subparagraph (a)(i) applies—before the industrial
11	action begins; or
12	(ii) in any other case—at least 3 working days before the
13	industrial action begins;
14	the employer has given written notice to the particular
15	employee, or has taken other reasonable steps to notify the
16	particular employee, of the intended industrial action.
17	(5) If one or more of the negotiating parties is an employee whose
18	employment will be subject to the proposed collective agreement,
19	any action taken as mentioned in subsection 108(3) by the
20	employer is not protected action in so far as it relates to a particular
21	employee unless:
22	(a) if the industrial action is in response to, and takes place after
23	the start of, industrial action organised or engaged in by any
24	of the employees who are negotiating parties in respect of the
25	proposed collective agreement—before the industrial action
26	begins; or
27	(b) in any other case—at least 3 working days before the
28	industrial action begins;
29	the employer has given written notice to the particular employee,
30	or has taken other reasonable steps to notify the particular
31	employee, of the intended industrial action.
32	Notice to state nature of intended action and start day
33	(6) A written notice or other notification under this section must state
34	the nature of the intended action and the day when it will begin.
35	Limitations on when notice may be given
36	(7) A written notice or other notification under this section cannot be
37	given:

234 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1 2 3 4		 (a) if the notification relates to action that must, in order to be protected action, be authorised by a protected action ballot—before the declaration of the results of the ballot (see section 109ZA); or
5 6 7		(b) if the notification relates to industrial action by an employer (whether the notification is to be given by the employer, an organisation of employees or an employee)—before the start
8		of the bargaining period.
9	108G	Employee may appoint agent to give notice under section 108F
10		If:
11		(a) a person referred to in paragraph 108F(1)(d) has appointed an
12 13		agent under section 107A to initiate a bargaining period in relation to a proposed collective agreement; and
14		(b) the person wishes to give notice to an employer under
15		section 108F of intention to take industrial action relating to
16		the proposed collective agreement without disclosing the
17		person's identity to the person's employer;
18		the notice may be given by the agent on the person's behalf.
19	108H	Exclusion—requirement that employee organisation or
19 20	108H	Exclusion—requirement that employee organisation or employee comply with Commission orders and directions
	108H	
20	108H	employee comply with Commission orders and directions
20 21 22	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a
20 21 22 23	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and
20 21 22 23 24	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and (b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed
20 21 22 23 24 25	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and (b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the
20 21 22 23 24 25 26	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and (b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement;
20 21 22 23 24 25 26 27	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and (b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement; industrial action engaged in by a person who is a member of the
20 21 22 23 24 25 26 27 28 29 30	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and (b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement; industrial action engaged in by a person who is a member of the organisation is not protected action unless, before the person
20 21 22 23 24 25 26 27 28 29 30 31	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and (b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement; industrial action engaged in by a person who is a member of the organisation is not protected action unless, before the person begins to engage in the industrial action, the organisation has
20 21 22 23 24 25 26 27 28 29 30 31 32	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and (b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement; industrial action engaged in by a person who is a member of the organisation is not protected action unless, before the person begins to engage in the industrial action, the organisation has complied with the order or direction so far as it applies to the
20 21 22 23 24 25 26 27 28 29 30 31 32 33	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and (b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement; industrial action engaged in by a person who is a member of the organisation is not protected action unless, before the person begins to engage in the industrial action, the organisation has complied with the order or direction so far as it applies to the organisation.
20 21 22 23 24 25 26 27 28 29 30 31 32	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and (b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement; industrial action engaged in by a person who is a member of the organisation is not protected action unless, before the person begins to engage in the industrial action, the organisation has complied with the order or direction so far as it applies to the organisation. (2) If:
20 21 22 23 24 25 26 27 28 29 30 31 32 33	108H	 employee comply with Commission orders and directions (1) If: (a) an organisation of employees is a negotiating party to a proposed collective agreement; and (b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement; industrial action engaged in by a person who is a member of the organisation is not protected action unless, before the person begins to engage in the industrial action, the organisation has complied with the order or direction so far as it applies to the organisation.

1		(b) the Commission has, during the bargaining period, made or
2		given orders or directions that relate to, or that relate to
3		industrial action relating to, the making of the proposed
4		collective agreement or to a matter that has arisen in the
5		negotiations for the proposed collective agreement;
6		industrial action engaged in by the employee is not protected action
7		unless, before the employee begins to engage in the industrial
8		action, the employee has complied with the order or direction so
9		far as it applies to the employee.
10	108I	Exclusion—requirement that employer genuinely try to reach
11		agreement etc.
12		Industrial action engaged in by an employer against employees is
13		not protected action unless the employer has, before the employer
14		begins to engage in the industrial action:
15		(a) if the employees are members of an organisation or
16		organisations that are negotiating parties—genuinely tried to
17		reach agreement with the organisation or organisations; and
18		(b) if the employees are negotiating parties—genuinely tried to
19		reach agreement with the employees; and
20		(c) complied with all orders or directions made or given by the
21		Commission during the bargaining period that relate to, or
22		that relate to industrial action relating to, the making of the
23		proposed collective agreement or to a matter that has arisen in the negative for the proposed collective agreement as
24 25		in the negotiations for the proposed collective agreement, so far as the orders or directions apply to the employer.
23		The as the orders of directions apply to the employer.
26	108J	Exclusion—employee and employee organisation action to be
27		authorised by secret ballot or be in response to employer
28		action
29		Any action taken as mentioned in subsection 108(2) by:
30		(a) an organisation of employees; or
31		(b) a member of such an organisation; or
32		(c) an officer or employee of such an organisation acting in that
33		capacity; or
34		(d) an employee who is a negotiating party;
35		is not protected action unless:
		•

1 2 3	 (e) the action is in response to industrial action by the employer against employees whose employment will be subject to the proposed collective agreement; or
4 5	(f) the action has been authorised by a protected action ballot (see section 109ZC).
6 7	Note: The question whether industrial action is authorised by a protected action ballot is also affected by section 107K.
8	108K Exclusion—employee organisation action must be duly
9	authorised
10	(1) Engaging in industrial action by members of an organisation of
11 12	employees that is a negotiating party is not protected action unless, before the industrial action begins:
12	(a) the industrial action is duly authorised by a committee of
13	management of the organisation or by someone authorised by
15	such a committee to authorise the industrial action; and
16	(b) if the rules of the organisation provide for the way in which
17	the industrial action is to be authorised—the industrial action
18	is duly authorised under those rules; and
19 20	(c) written notice of the giving of the authorisation is given to a Registrar.
21	(2) Industrial action is taken, for the purposes of this section, to be
22	duly authorised under the rules of an organisation of employees
23	even though a technical breach has occurred in authorising the industrial action as long as the person or persons who committed
24 25	industrial action, so long as the person or persons who committed the breach acted in good faith.
26	(3) Examples of a technical breach in authorising industrial action are
27	as follows:
28	(a) a contravention of the rules of the organisation;
29	(b) an error or omission in complying with the requirements of
30	this Act;
31 32	(c) participation, by a person not eligible to do so, in the making of a decision by a committee of management, or by members,
32 33	of the organisation.
34	(4) Industrial action is taken, for the purposes of this section, to have
35	been duly authorised under the rules of an organisation of
36	employees, and to have been so authorised before the industrial
37	action began, unless:

(a) the Court declares in a proceeding that the industrial action
was not duly authorised under those rules; and
(b) the proceeding was brought in the Court within 6 months
after the notification in relation to the industrial action was
given to a Registrar under paragraph $(1)(c)$.
(5) In so far as the rules of an organisation of employees provide for
the way in which industrial action that section 108 entitles the
organisation to organise or engage in is to be authorised, the rules
do not contravene section 159 of the Registration and
Accountability of Organisations Schedule unless the manner
provided for contravenes that section.
Subdivision C—Significance of action being protected action
108L Immunity provisions
(1) Subject to subsection (2), no action lies under any law (whether
written or unwritten) in force in a State or Territory in respect of
any industrial action that is protected action unless the industrial
action has involved or is likely to involve:
(a) personal injury; or
(b) wilful or reckless destruction of, or damage to, property; or
(c) the unlawful taking, keeping or use of property.
(2) Subsection (1) does not prevent an action for defamation being
brought in respect of anything that occurred in the course of industrial action.
Note: Subsection 111(13) provides that an order under subsection 111(1) or
(6) directing that industrial action stop or not occur does not apply to
protected action.
108M Employer not to dismiss employee etc. for engaging in
protected action
(1) An employer must not:
(a) dismiss an employee, injure an employee in his or her
employment or alter the position of an employee to the
employee's prejudice; or
(b) threaten to dismiss an employee, injure an employee in his or
her employment or alter the position of an employee to the
her employment of uner the position of an employee to the

1 2	wholly or partly because the employee is proposing to engage, is engaging, or has engaged, in protected action.
3	(2) Subsection (1) does not apply to any of the following actions taken
4	by the employer:
5	(a) standing-down the employee;
6	(b) refusing to pay the employee, if:
7	(i) the refusal is in accordance with section 114; or
8	(ii) under the common law, the employer is permitted to do
9	so because the employee has not performed work as
10	directed;
11	(c) action that is itself protected action.
12	Civil remedy provisions
13	(3) Subsection (1) is a civil remedy provision.
14	(4) The Court may make one or more of the following orders in
15	relation to a person who has contravened subsection (1):
16	(a) an order imposing a pecuniary penalty on the person;
17	(b) injunctions, and any other orders, that the Court considers
18	necessary to stop the contravention or remedy its effects.
19	(5) The pecuniary penalty under paragraph $(4)(a)$ cannot be more than
20	300 penalty units for a body corporate or 60 penalty units in any
21	other case.
22	(6) Other orders the Court may make under paragraph (4)(b) include
23	(but are not limited to):
24	(a) if the contravention was constituted by dismissing an
25	employee—an order to reinstate the person dismissed to the
26	position that the person occupied immediately before the
27	dismissal or to a position no less favourable than that
28	position; and
29 30	(b) in any case—to pay, to the person dismissed, injured or prejudiced, compensation for loss suffered as a result of the
30 31	dismissal, injury or prejudice.
32	(7) An application for an order under subsection (4) may be made by:
33	(a) the employee concerned; or
34	(b) an organisation of employees of which that employee is a
35	member; or

1	(c) a workplace inspector; or	
2	(d) any other person prescrib	bed by the regulations.
3	(8) In proceedings for an order une	der subsection (4), it is to be
4		proves otherwise, that the alleged
5		arried out wholly or partly because
6 7	the employee was proposing to engaged, in protected action.	engage, was engaging, or had
8 9		t civil remedy provisions, see Division 4 of
10	Division 4—Secret ballots on pro	oposed protected action
11	Subdivision A—General	
12	109 Object of Division and overview	of Division
13	Object	
14	(1) The object of this Division is to	o establish a transparent process
15		ly concerned to choose, by means of
16		llot, whether to authorise industrial
17	action supporting or advancing	claims by organisations of
18	employees, or by employees.	
19	Overview of Division	
20	(2) Under Division 3, industrial ac	tion by employees is not protected
21		rised in advance by a secret ballot
22		tected action ballot). This Division
23	establishes the steps that organ	
24	must take in order to:	ise or engage in protected action
25		Commission that will authorise a
26 27	protected action ballot to	
28	(b) hold a protected action b	
28 29	(b) hold a protected action b industrial action.	anot that may autionse the
30		by employees is not protected action
31		y a protected action ballot does not
32		in employer engaging in industrial
33	action against the employees (s	see section 108J).

1	109A	Defin	itions

2	In this Division:
3	<i>applicant</i> means an applicant for a ballot order.
4 5	<i>applicant's agent</i> means an agent appointed by an employee, or by a group of employees, under subsection 109B(5).
6 7 8	<i>authorised ballot agent</i> , in relation to a protected action ballot, means the person authorised by the Commission in the ballot order to conduct the ballot.
9 10 11	<i>authorised independent adviser</i> , in relation to a protected action ballot, means the person authorised by the Commission in the ballot order to be the independent adviser for the ballot.
12 13	<i>ballot order</i> means an order made under section 109M requiring a protected action ballot to be held.
14 15 16	<i>declaration envelope</i> means an envelope in the form prescribed by the regulations on which a voter is required to make a declaration containing the information prescribed by the regulations.
17 18	<i>joint applicant</i> means a person who is participating, or has participated, in making a joint application under section 109F.
19 20	<i>party</i> , in relation to an application for a ballot order, means either of the following:
21 22	(a) the applicant;(b) the employer of the relevant employees.
23	<i>prescribed number</i> , in relation to relevant employees, means:
24	(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
25 26	employees—5% of the number of such employees; or
27	(c) if there are more than 5,000 relevant employees—250.
28	protected action ballot means a ballot under this Division.
29	relevant employee, in relation to proposed industrial action against
30	an employer in respect of a proposed collective agreement, means:
31 32	(a) if an organisation of employees is a negotiating party to the agreement—any member of the organisation who is

1	employed by the employer and whose employment will be
2	subject to the agreement; and
3	(b) if an employee is a negotiating party to the agreement—any
4	employee who is a negotiating party to the agreement;
5	but does not include an employee who is bound by an AWA whose
6	nominal expiry date has not passed.
7	roll of voters means a list compiled:
8	(a) by the Commission under section 109Q; or
9	(b) by an authorised ballot agent in compliance with an order of
10	the Commission under section 109Q.
11 12	Subdivision B—Application for order for protected action ballot to be held
13	109B Who may apply for a ballot order etc.
14	When application can be made
15	(1) A person referred to in subsection (3) may, during a bargaining
16	period, apply to the Commission for an order for a ballot to be held
17	to determine whether proposed industrial action has the support of
18	relevant employees.
19	Note: For the duration of a bargaining period, see sections 107D (when it
20	begins) and 107E (when it ends).
21	(2) However, if there are one or more existing collective agreements
22	binding on relevant employees, the application must not be made
23	before:
24	(a) if there is only one existing collective agreement—the
25	nominal expiry date of the existing collective agreement; or
26	(b) if there are 2 or more existing collective agreements—
27	whichever is the last occurring of the nominal expiry dates of
28	those existing collective agreements.
29	Who can apply
30	(3) The following people may apply:
31	(a) if the bargaining period was initiated by an organisation of
32	employees—that organisation;

1 2 3 4		(b) if the bargaining period was initiated by an employee or employees—any employee who is a negotiating party to the proposed collective agreement, or a group of such employees acting jointly.
5		Note: For joint applications, see section 109F.
6 7		Employee applications need support of prescribed number of employees
8 9 10	(4)	An employee, or a group of such employees acting jointly, cannot make an application unless the application has the support of at least the prescribed number of relevant employees.
11		Note: <i>Prescribed number</i> is defined in section 109A.
12		Employee applicants can appoint agent
13	(5)	A person or persons referred to in paragraph (3)(b) who wish to
14		make an application under this section without disclosing their
15 16		identities to their employer may appoint an agent to represent them for all purposes connected with the application.
17	109C Con	tents of application
17 18		The application must include the following:
		The application must include the following:(a) the question or questions to be put to the relevant employees
18		The application must include the following:
18 19 20		The application must include the following:(a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action;
18 19 20 21		The application must include the following:(a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action;(b) details of the types of employees who are to be balloted;
18 19 20 21 22		The application must include the following:(a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action;
18 19 20 21 22 23	(1)	 The application must include the following: (a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action; (b) details of the types of employees who are to be balloted; (c) any details required by Rules of the Commission (see
18 19 20 21 22 23 24	(1)	 The application must include the following: (a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action; (b) details of the types of employees who are to be balloted; (c) any details required by Rules of the Commission (see subsection (3)).
 18 19 20 21 22 23 24 25 	(1)	 The application must include the following: (a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action; (b) details of the types of employees who are to be balloted; (c) any details required by Rules of the Commission (see subsection (3)). The application may include the name of a person nominated by
 18 19 20 21 22 23 24 25 26 	(1)	 The application must include the following: (a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action; (b) details of the types of employees who are to be balloted; (c) any details required by Rules of the Commission (see subsection (3)). The application may include the name of a person nominated by the applicant to conduct the ballot.
 18 19 20 21 22 23 24 25 26 27 	(1)	 The application must include the following: (a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action; (b) details of the types of employees who are to be balloted; (c) any details required by Rules of the Commission (see subsection (3)). The application may include the name of a person nominated by the applicant to conduct the ballot. Note: The question of who conducts the ballot is ultimately decided by the
 18 19 20 21 22 23 24 25 26 27 28 	(1)	 The application must include the following: (a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action; (b) details of the types of employees who are to be balloted; (c) any details required by Rules of the Commission (see subsection (3)). The application may include the name of a person nominated by the applicant to conduct the ballot. Note: The question of who conducts the ballot is ultimately decided by the Commission—see paragraph 109N(1)(e) and section 109ZE.
 18 19 20 21 22 23 24 25 26 27 28 29 	(1)	 The application must include the following: (a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action; (b) details of the types of employees who are to be balloted; (c) any details required by Rules of the Commission (see subsection (3)). The application may include the name of a person nominated by the applicant to conduct the ballot. Note: The question of who conducts the ballot is ultimately decided by the Commission—see paragraph 109N(1)(e) and section 109ZE. Without limiting the generality of section 48, Rules of the Commission made under that section may deal with: (a) the matters to be included in an application for a ballot order;
 18 19 20 21 22 23 24 25 26 27 28 29 30 	(1)	 The application must include the following: (a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action; (b) details of the types of employees who are to be balloted; (c) any details required by Rules of the Commission (see subsection (3)). The application may include the name of a person nominated by the applicant to conduct the ballot. Note: The question of who conducts the ballot is ultimately decided by the Commission—see paragraph 109N(1)(e) and section 109ZE. Without limiting the generality of section 48, Rules of the Commission made under that section may deal with:

109D	Material to accompany application
	(1) The application must be accompanied by:
	(a) a copy of the notice given under subsection 107(3) to initiate
	the relevant bargaining period; and
	(b) a copy of the particulars that accompanied that notice as
	required by section 107C; and
	(c) a declaration by the applicant under subsection (4) of this section.
	(2) If the applicant is an organisation of employees, the application
	must be accompanied by a written notice showing that the
	application has been duly authorised by a committee of
	management of the organisation or by someone authorised by such a committee to authorise the application.
	(3) If the applicant is an employee, or a group of employees,
	represented by an applicant's agent, the application must be
	accompanied by a document containing the name of the employee,
	or each of those employees.
	(4) The applicant's declaration must state that the industrial action to
	which the application relates is not for the purpose of supporting or
	advancing claims to include in the proposed collective agreement any prohibited content.
	(5) The declaration must be in the form prescribed by the regulations.
	(6) A person commits an offence if:
	(a) the person makes, or joins in making, a declaration under subsection (4); and
	(b) the declaration contains a statement that is false or
	misleading in a material particular.
	Penalty for contravention of this subsection: 30 penalty units.
109E	Notice of application
	The applicant must give a copy of the application (but not the material referred to in section 109D) to:
	(a) the other party; and
	(b) any person nominated in the application to conduct the ballot;
	within 24 hours after lodging the application with the Commission.

1	109F Jo	oint applications
2 3 4	((1) If the bargaining period for the proposed collective agreement was initiated by an employee, 2 or more employees who are negotiating parties may make a joint application for a ballot order.
5 6 7 8	(2) An employee who has participated in making a joint application may withdraw his or her name from the application before the application is determined but cannot do so after the application is determined by the Commission.
9 10 11 12	(3) If employees have made a joint application, the name of another employee who is a negotiating party may, before the application is determined, be joined to the application if the other applicants consent.
13 14 15 16 17 18 19 20 21	((4) Without limiting the generality of section 48, Rules of the Commission made under that section may deal with: (a) in the case of a provision of this Act permitting an applicant for a ballot order to do any thing—how the provision is to apply to joint applicants; and (b) in the case of a provision of this Act requiring an applicant for a ballot order to be given notice, or otherwise informed, of any thing—how the requirement is to be fulfilled in relation to joint applicants.
22 23	Subdivi	ision C—Determination of application and order for ballot to be held
24	109G C	ommission may notify parties etc. of procedure
25		If:
26 27		(a) an application for a ballot order is lodged with the Commission; and
28 29 30 31 32		(b) the Commission considers that notifying the parties, or a person who may become the authorised ballot agent, of the procedure to be followed by the Commission in dealing with that application will not delay, and may expedite, the determination of the application;
33 34		the Commission may notify the parties or person concerned accordingly.

109H	Commission to act quickly in relation to application etc.
	(1) In exercising its powers under this Division, the Commission:
	(a) must act as quickly as is practicable; and
	(b) must, as far as is reasonably possible, determine all
	applications made under this Division within 2 working day
	after the application is made.
	Note: In exercising its powers, the Commission is also required to act
	according to equity, good conscience and the substantial merits of t
	case, without regard to technicalities and legal forms (see paragraph $44H(1)(c)$). It is not bound by the rules of evidence, and may inform
	itself in any manner it considers just (see paragraph 44H(1)(b)).
	(2) However, the Commission must not determine an application for ballot order until it is satisfied that:
	(a) the applicant has complied with section 109E; and
	(b) the persons referred to in subsections 109I(1) and (2) have
	had a reasonable opportunity to make submissions in relation
	to the application.
109I	Parties and relevant employees may make submissions and
	apply for directions
	(1) A party or a relevant employee may make submissions, and may
	apply for directions, relating to:
	(a) an application for a ballot order; or
	(b) any aspect of the conduct of a protected action ballot.
	(2) A person nominated in an application to conduct a ballot may
	make submissions, and apply for directions, relating to the
	application.
	(3) An authorised ballot agent may make submissions, and apply for
	directions, relating to any aspect of a protected action ballot.
	(4) The Commission may decline to consider a person's submission
	the Commission is satisfied that the submission is vexatious,
	frivolous, misconceived or lacking in substance.
109J	Commission may make orders or give directions
109J	(1) The Commission may make orders, or give directions, in

1 2		(a) an application for a ballot order; or(b) any aspect of the conduct of a protected action ballot.
3 4 5	(1	2) Without limiting subsection (1), the Commission may make orders, or give directions, aimed at ensuring that a protected action ballot is conducted expeditiously.
6 7 8 9 10	(.	3) In deciding whether to make an order, or give a direction, under this section, and in deciding the content of any such order or direction, the Commission must have regard to the desirability of the ballot results being available to the parties within 10 days after the ballot order is made.
11	109K C	ommission procedure regarding multiple applications
12	() If:
13		(a) more than one application for a ballot order is before the
14		Commission for determination; and
15		(b) the applications relate to industrial action by employees of
16 17		the same employer or by employees at the same place of work; and
18		(c) the Commission considers that determining the applications
19		at the same time will not unreasonably delay the determination of any of the applications;
20		the Commission may determine the applications at the same time.
21		the commission may determine the applications at the same time.
22	(.	2) If:
23		(a) the Commission has made an order requiring a ballot to be
24		held in relation to industrial action by employees of an
25		employer, or by employees at a place of work; and
26		(b) the Commission proposes to make another order requiring a
27 28		ballot to be held in relation to industrial action against that
28		employer, or at the same place of work; and (c) the Commission considers that the level of disruption of the
29 30		employer's business, or at the place of work (as the case
31		requires), could be reduced if the ballots were held at the
32		same time; and
33		(d) the Commission considers that requiring the ballots to be
34		held at the same time will not unreasonably delay the conduct
35		of either ballot;

1 2	the Commission may make, or vary, the relevant orders so as to require the ballots to be held at the same time.
3	109L Application not to be granted unless certain conditions are met
4	Commission must be satisfied of various matters
5 6	(1) The Commission must grant an application for a ballot order if, and must not grant the application unless, it is satisfied that:
7 8 9	 (a) during the bargaining period, the applicant genuinely tried to reach agreement with the employer of the relevant employees; and
10 11	(b) the applicant is genuinely trying to reach agreement with the employer; and
12	(c) the applicant is not engaged in pattern bargaining.
13 14	Note 1: An application for a ballot order must comply with the requirements set out in Subdivision B.
15	Note 2: To work out when a bargaining period began, see section 107D.
16	Note 3: For other provisions relating to pattern bargaining, see:
17	(a) section 107H; and
18	(b) section 108D; and
19	(c) section 111A.
20	When Commission has discretion to refuse application
21	(2) Despite subsection (1), the Commission may refuse the application
22	if it is satisfied:
23 24	(a) that granting the application would be inconsistent with the object of this Division (see section 109); or
25	(b) that the applicant, or a relevant employee, has at any time
26	contravened a provision of this Division or an order made, or
27	direction given, under this Division.
28	109M Grant of application—order for ballot to be held
29	If the Commission grants the application, the Commission must
30	order the applicant to hold a protected action ballot.

1	109N Ma	atters to l	be included in order
2	(1		r for a protected action ballot to be held must specify the
3		followin	g:
4		(a) the	e name of:
5 6		(i) if the applicant is an organisation of employees—the organisation; or
7 8 9		(i	 i) if the applicant is an employee, or a group of employees, represented by an applicant's agent—the applicant's agent; or
		(ii	i) if the applicant is an employee, or a group of
10 11 12		(II	employees, not represented by an applicant's agent—the employee or employees;
		(\mathbf{b}) th	e types of employees who are to be balloted;
13			
14			e voting method;
15			e timetable for the ballot, including:
16		(i) the day on which the roll of voters is to close, which
17 18			must be a day at least 2 working days before the day on which the ballot is to be held, or is to start to be held;
18 19			and
20		(i	i) the day on which the ballot is to close;
21			e name of the person authorised by the Commission to
22			nduct the ballot;
23			e name of the person (if any) authorised by the
24		Co	ommission to be the independent adviser for the ballot;
25		-	e question or questions to be put to the relevant employees
26			the ballot, including the nature of the proposed industrial
27		ac	tion.
28 29		Note 1:	Section 109ZE specifies who may be authorised by the Commission to conduct protected action ballots.
30		Note 2:	Section 109ZF specifies who may be authorised by the Commission to
31			be the independent adviser for a protected action ballot.
32	(2		er must specify a postal ballot as the voting method unless:
33			e order specifies another voting method; and
34			e Commission is satisfied that the other voting method is
35		m	ore efficient and expeditious than a postal ballot.
36	(3	3) If the or	der specifies a postal ballot as the voting method, it must
37		specify	that the voting must take place by way of declaration

1	voting. For this purpose, a person votes by way of <i>declaration</i>
2	<i>voting</i> if the person:
3	(a) marks his or her vote on a ballot paper; and
4	(b) places the ballot paper in a declaration envelope; and
5 6	(c) seals that envelope and signs his or her name in the space provided on the back flap of that envelope; and
7	(d) places that envelope in an outer envelope that is addressed to
8	the authorised ballot agent; and
9	(e) posts the outer envelope so that it reaches the authorised
10	ballot agent before the day on which the ballot is to close.
11	(4) If the order specifies an attendance ballot as the voting method, it
12 13	must specify that the voting must take place during the voters' meal-time or other breaks, or outside their hours of employment.
14	(5) If the Commission is satisfied, in relation to the proposed industrial
14 15	action that is the subject of the order, that there are exceptional
15	circumstances justifying the period of written notice referred to in
17	paragraph 108F(2)(b) being longer than 3 days, the order may
18	specify a longer period, of up to 7 days.
19	1090 Guidelines for ballot timetables
19 20	
	(1) The President may develop guidelines in relation to appropriate
20	 The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The
20 21	(1) The President may develop guidelines in relation to appropriate
20 21 22 23	(1) The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines.
20 21 22	 The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and
20 21 22 23 24	 The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines. Guidelines developed under this section are not legislative instruments.
20 21 22 23 24 25	 The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines. Guidelines developed under this section are not legislative
20 21 22 23 24 25 26	 The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines. Guidelines developed under this section are not legislative instruments. 109P Power of Commission to require information relevant to roll of voters
20 21 22 23 24 25 26 27	 The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines. Guidelines developed under this section are not legislative instruments. 109P Power of Commission to require information relevant to roll of voters (1) The Commission may order the employer of the relevant
20 21 22 23 24 25 26 27 28 29	 The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines. Guidelines developed under this section are not legislative instruments. 109P Power of Commission to require information relevant to roll of voters (1) The Commission may order the employer of the relevant employees, or the applicant, or both, to provide:
20 21 22 23 24 25 26 27 28	 The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines. Guidelines developed under this section are not legislative instruments. 109P Power of Commission to require information relevant to roll of voters (1) The Commission may order the employer of the relevant
20 21 22 23 24 25 26 27 28 29 30 31	 The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines. Guidelines developed under this section are not legislative instruments. Guidelines developed under this section are not legislative for the relevant to roll of voters The Commission may order the employer of the relevant employees, or the applicant, or both, to provide: (a) a list of employees of the type described in the application; and
20 21 22 23 24 25 26 27 28 29 30	 (1) The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines. (2) Guidelines developed under this section are not legislative instruments. 109P Power of Commission to require information relevant to roll of voters (1) The Commission may order the employer of the relevant employees, or the applicant, or both, to provide: (a) a list of employees of the type described in the application; and (b) any other information that it is reasonable for the
20 21 22 23 24 25 26 27 28 29 30 31 32	 The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines. Guidelines developed under this section are not legislative instruments. Guidelines developed under this section are not legislative for the relevant to roll of voters The Commission may order the employer of the relevant employees, or the applicant, or both, to provide: (a) a list of employees of the type described in the application; and

1 2	(2) The order may require the list, or other information, to be provided to the Commission or to the authorised ballot agent.	
3 4	(3) The order may require the list, or other information, to be provided in whatever form the Commission considers appropriate.	
5	109Q Roll to be compiled by Commission or ballot agent	
6	If the Commission makes a ballot order, it must:	
7	(a) compile a list of the names of the persons who are eligible to	
8	be included on the roll of voters for the ballot and provide	
9	that list, as the roll of voters, to the authorised ballot agent; or	•
10 11	(b) order, by separate order, the authorised ballot agent to compile the roll of voters for the ballot.	
12	109R Eligibility to be included on the roll	
13	(1) A person is eligible to be included on the roll of voters for the	
14	ballot if, and only if:	
15	(a) if the applicant is an organisation of employees—the person:	
16	(i) was a member of the organisation on the day the ballot	
17	order was made; and	
18	(ii) was employed by the employer on the day the ballot	
19	order was made; and	
20	(iii) will be subject to the proposed collective agreement; or	
21	(b) if the applicant is an employee, or a group of employees—the	•
22	person:	
23	(i) was employed by the employer on the day the ballot	
24	order was made; and	
25	(ii) will be subject to the proposed collective agreement.	
26	(2) A person is not eligible to be included on the roll of voters for the	
27	ballot if, on the day the ballot order was made, the person was	
28	bound by an AWA whose nominal expiry date had not passed.	
29	1098 Adding or removing names from the roll	
30	(1) If:	
31	(a) a person requests the authorised ballot agent to include the	
32	person's name on the roll of voters for a protected action	
33	ballot; and	

1		ne ballot agent is satisfied that the person is eligible to be
2		ncluded on the roll; and
3		ne request is made before the day on which the roll of voters
4		s to close;
5	the ball	lot agent must add the person's name to the roll.
6	(2) If:	
7	(a) a	person applies to the Commission for a declaration that the
8	р	erson is eligible to be included on the roll of voters for the
9	b	allot; and
10 11		ne Commission is satisfied that the person is eligible to be neluded on the roll; and
12		ne application is made before the day on which the roll of
13		oters is to close;
14	the Con	mmission must make the declaration and direct the
15	authori	sed ballot agent to include the person's name on the roll.
16	(3) If:	
17	(a) a	party, the authorised ballot agent, or a person whose name
18	is	s on the roll of voters for a protected action ballot, applies to
19 20		ne Commission for a declaration that a person whose name as been included on the roll of voters for the ballot is not
20 21		ligible to be so included; and
22	(b) th	ne application is made before the day on which the roll of
23		oters is to close; and
24	(c) th	ne Commission is satisfied that the person is not eligible to
25	b	e so included;
26	the Con	mmission must make the declaration and direct the
27	authori	sed ballot agent to remove the person's name from the roll.
28		on's name cannot be added to, or removed from, the roll of
29		for a protected action ballot after the day on which the roll
30	of vote	rs is to close.
31	109T Variation of	of order
32	Variati	on sought by applicant
33	(1) An ann	licant for a ballot order may apply to the Commission, at
33 34		the before the order expires, to vary the ballot order.
	uny un	

1	Variation sought by ballot agent
2	(2) The authorised ballot agent for a particular ballot may apply to the
3	Commission, at any time before the ballot has closed, to vary:
4	(a) the voting method specified in the ballot order; or
5	(b) the timetable for the ballot specified in the ballot order.
6	109U Expiry and revocation of order
7 8	(1) If a ballot has not been held within the period specified in the ballot order, the order expires at the end of that period.
9 10	(2) An applicant for a ballot order may apply to the Commission, at any time before the order expires, to revoke the ballot order.
11 12	(3) If the applicant makes an application under subsection (2), the Commission must revoke the order.
13	109V Compliance with orders and directions
14 15	 A person to whom an order or a direction under this Division is expressed to apply must comply with the order or direction.
16	Civil remedy provisions
17	(2) Subsection (1) is a civil remedy provision.
18	(3) The Court may order a person who has contravened subsection (1)
19	to pay a pecuniary penalty.
20 21	(4) The pecuniary penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.
22	(5) An application for an order under subsection (3) may be made by:
23	(a) an employee who is eligible to be included on the roll of
24	voters for the protected action ballot concerned; or
25	(b) an employer of employees referred to in paragraph (a); or
26 27	(c) an applicant for the order for the protected action ballot concerned to be held; or
28	(d) a workplace inspector; or
29	(e) any other person prescribed by the regulations.
30 31	Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII.

109W	Commission to notify parties and authorised ballot agent
	(1) As soon as practicable after making a ballot order, the Commission must ensure that a copy of the order is given to each party and to the authorised ballot agent.
	(2) As soon as practicable after varying a ballot order, the Commissio must ensure that a copy of the variation is given to each party and to the authorised ballot agent.
	(3) As soon as practicable after revoking a ballot order, the Commission must ensure that a copy of the revocation is given to each party and to the authorised ballot agent.
Subdi	vision D—Conduct and results of protected action ballot
109X	Conduct of ballot
	A ballot is not a protected action ballot unless it is conducted by the authorised ballot agent for the ballot.
109Y	Form of ballot paper
	The ballot paper must be in the prescribed form and must include the following:
	(a) the name of the applicant or the applicant's agent (as the cas requires);
	(b) the types of employees who are to be balloted;
	(c) the name of the ballot agent authorised to conduct the ballot
	(d) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action;
	(e) a statement that the voter's vote is secret and that the voter i free to choose whether or not to support the proposed industrial action;
	(f) instructions to the voter on how to complete the ballot paper
	(g) the day on which the ballot is to close.
109Z	Who can vote
	A person cannot vote in a protected action ballot unless the person's name is on the roll of voters for the ballot.

254 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1	109ZA	Declaration of ballot results
2 3		As soon as practicable after the day on which the ballot closes, the authorised ballot agent must, in writing:
4		(a) make a declaration of the results of the ballot; and
5		(b) inform the parties and the Industrial Registrar of the result.
U		
6	109ZB	Ballot reports
7		Report by authorised ballot agent
8 9 10		(1) As soon as practicable after the day on which the ballot closes, the authorised ballot agent must give the Industrial Registrar a written report about the conduct of the ballot.
11		Note: This subsection is a civil remedy provision: see subsection (7).
12		(2) A report under subsection (1) must set out details of:
13		(a) any complaints made to the authorised ballot agent about the
14		conduct of the ballot; and
15		(b) any irregularities in relation to the conduct of the ballot that
16		have come to the attention of the authorised ballot agent.
17		(3) Subsection (2) does not limit subsection (1).
18		Report by authorised independent adviser
19		(4) As soon as practicable after the end of the voting, the authorised
20		independent adviser (if any) must give the Industrial Registrar a
21		written report about the conduct of the ballot.
22		Note: This subsection is a civil remedy provision: see subsection (7).
23		(5) A report under subsection (4) must set out details of:
24		(a) any complaints made to the authorised independent adviser
25		about the conduct of the ballot; and
26		(b) any irregularities in relation to the conduct of the ballot that
27		have come to the attention of the authorised independent
28		adviser.
29		(6) Subsection (5) does not limit subsection (4).
30		Civil remedy provisions
31		(7) Subsections (1) and (4) are civil remedy provisions.

1	(8) The Court may order a person who has contravened subsection (1)		-						-	-	-) h	as	s co	ntr	ave	ne	d s	ut	osec	tion	(1)
2	or (4) to pay a pecuniary penalty.	pe	niary	ecunia	cuni	unia	nia	iar	ary	ary	ry j	/ p	en	alty	у.												
3	(9) The pecuniary penalty cannot be more than 300 penalty units for a	nn	lty c	enalty	nalt	alty	lty	y c	y c	v ca	ca	an	ino	t b	e m	nor	re	tha	ın 3	00	pe	nal	lty	un	its f	or a	a
4	body corporate or 60 penalty units in any other case.	alt	0 pe	or 60 j	60	60 j) p	pe	pe	pen	ena	nal	lty	un	its	in	a	ny	oth	er	cas	e.					
5	(10) An application for an order under subsection (8) may be made by:	ler	an or	or an	r an	an	n c	1 01	or	orc	ord	der	er u	Inde	er s	sut	bs	ecti	ion	(8)	m	ay	be	e m	ade	by:	:
6	(a) an employee who is eligible to be included on the roll of	s e	who	ee wh	e wl	wh	vho	ho	10	lo i) is	is e	eli	gib	ole 1	to	be	e in	clu	deo	l oi	n tl	he	rol	l of		
7	voters for the protected action ballot concerned; or		-	-	-	-	-																				
8	(b) an employer of employees referred to in paragraph (a); or	•									-	•	•							-		-	-		-	r	
9 10	(c) an applicant for the order for the protected action ballot concerned to be held; or														for	• th	ne	pro	otec	tec	l ac	tio	m	ball	ot		
11	(d) a workplace inspector; or	tor	nspe	e insp	e ins	ins	isp	spe	pe	pec	ect	cto	or;	or													
12	(e) any other person prescribed by the regulations.	res	son p	persor	erso	rsor	on	n j	n p	ı pı	pro	ores	scr	ribe	ed b	by	th	ne r	egı	ılat	ion	ıs.					
13 14	Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII.	ns a	ovisio			orovi	ovis	visi	isic	sio	ion	ons	s ab	out	civi	il re	en	nedy	/ pro	ovis	ions	3, S6	ee]	Divi	sion	4 of	f
15	Definitions																										
16	(11) In this section:																										
17	<i>conduct</i> , in relation to a protected action ballot, includes, but is not	pro	to a	ion tc	on te	n tc	to	0 8	o a	a	a p	pr	rote	ect	ed a	act	tic	on ł	call	ot,	inc	clu	de	s, b	ut is	s no	ot
18	limited to, the compilation of the roll of voters for the ballot.	on (oilati	mpil	mpil	pila	ila	lati	ati	atic	tio	on	ı of	f th	e ro	oll	lo	of v	ote	rs f	or	the	e b	allo	ot.		
19	<i>irregularity</i> , in relation to the conduct of a protected action ballot,	o tl	tion	elatio	latio	atio	ior	on	on [†]	n t	ı te	to 1	the	e co	ond	luc	ct	of a	a pi	ote	ecte	ed a	aci	tion	bal	lot,	,
20	includes, but is not limited to, an act or omission by means of																					-					
21	which the full and free recording of votes by all persons entitled to														-				-		-					d to	0
22 23	record votes and by no other persons is, or is attempted to be, prevented or hindered.	the		-	-	-					ot	oth	ıer	pe	rso	ns	18	5, 01	r 15	att	em	pte	ed	to t	зе,		
23	prevented of initialization.		cu.	uereu		icu	<i>.</i> u.	u.		•																	
24	109ZC Effect of ballot																										
25	(1) Industrial action is authorised by a protected action ballot if:	ris	autho	is au	is au	au	utł	ıth	the	tho	ıor	oris	isec	d by	y a	pr	ro	tect	ted	act	ion	ı ba	all	ot i	f:		
26	(a) the action was the subject of a protected action ballot; and	sub	s the	was tl	vas t	as tl	th	the	he	ne s	e s	su	ıbje	ect	of	a p	pr	ote	cte	d a	ctic	on 1	ba	llot	; and	d	
27 28	(b) at least 50% of persons on the roll of voters for the ballot voted in the ballot; and		-	-		-	-	-	•						ı th	e r	ro	ll o	f vo	ote	rs f	or	th	e ba	ıllot		
29	(c) more than 50% of the votes validly cast were votes approving									-					es v	val	lid	lly (cas	t w	ere	vo	ote	es aj	pprc	ovir	ıg
30	the action; and																	2									-
31	(d) the action commences during the 30-day period beginning on																								nnin	g o	n
32	the date of the declaration of the results of the ballot.	ara	e dec	the d	the c	ie d	de	dec	lec	ecl	cla	lar	rati	ion	of	th	ne	res	ults	s of	th	e b	val	lot.			

1 2 3		Note: Industrial action must be authorised under this Division if it is to be protected action under Division 3 (unless the action is in response to industrial action by the employer)—see section 108J.
4 5	(2)	However, the action is not authorised to the extent that it occurs after the end of the bargaining period referred to in section 109B.
6 7 8 9		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.
10 11 12 13	(3)	The Commission may, by order, extend the 30-day period mentioned in paragraph $(1)(d)$ 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.
14 15 16	(4)	The Commission must not make an order under subsection (3) extending the 30-day period if that period has previously been extended.
17 18	109ZD Re	gistrar to record questions put in ballot, and to publish results of ballot
19 20 21 22 23	(1)	The Industrial Registrar must, in relation to each protected action ballot that has been held, keep a record of:(a) the questions put to voters in the ballot; and(b) the results of the ballot declared by the authorised ballot agent under section 109ZA.
24 25 26	(2)	The Industrial Registrar must, as soon as practicable after being informed of the results of a ballot by the authorised ballot agent under section 109ZA, publish the results.
27 28	Subdivisi	on E—Authorised ballot agents and authorised independent advisers
29	109ZE W	ho may be an authorised ballot agent?
30 31 32	(1)	In a ballot order, the Commission may name as the authorised ballot agent: (a) the Australian Electoral Commission; or
33		(b) another person.

	(2) The Commission must not name a person other than the Australian Electoral Commission as the authorised ballot agent for the ballot unless the Commission is satisfied that the person:
	(a) is capable of ensuring the secrecy and security of votes cast in the ballot; and
	(b) is capable of ensuring that the ballot will be fair and democratic; and
	(c) will conduct the ballot expeditiously; and
	(d) is otherwise a fit and proper person to conduct the ballot.
	(3) The Commission must not name the applicant as the authorised ballot agent for the ballot unless:
	(a) the applicant nominates another person to be the authorised independent adviser for the ballot; and
	(b) the Commission names the other person as the authorised independent adviser for the ballot.
	Note: Section 109ZF specifies who may be authorised by the Commission to be the independent adviser for a protected action ballot.
	(4) If the Commission is satisfied that a person is not sufficiently independent of the applicant, the Commission must not name the person as the authorised ballot agent for the ballot unless:
	(a) the applicant nominates a third person as the authorised independent adviser for the ballot; and
	(b) the Commission names the third person as the authorised independent adviser for the ballot.
	Note: Section 109ZF specifies who may be authorised by the Commission to be the independent adviser for a protected action ballot.
	(5) The regulations may prescribe:
	(a) conditions that a person must meet in order to satisfy the
	Commission that the person is a fit and proper person to
	conduct a ballot; and
	(b) factors to be taken into account by the Commission in
	determining whether a person is a fit and proper person to conduct a ballot.
109ZF	Who may be an authorised independent adviser?
	(1) In a ballot order, the Commission may name a person nominated by the applicant as the authorised independent adviser.

1	(2) The Commission must not name a person as the authorised	
2	independent adviser for the ballot unless the Commission is	
3	satisfied that the person:	
4	(a) is sufficiently independent of the applicant; and	
5	(b) is capable of giving the authorised ballot agent:(i) advice that is; and	
6	(i) recommendations that are;	
7	directed towards ensuring that the ballot will be fair and	
8 9	democratic; and	
10	(c) has consented to be so named.	
11	(3) The regulations may prescribe factors to be taken into account by	
12	the Commission in determining whether a person is capable of	
13	giving an authorised ballot agent:	
14	(a) advice that is; and	
15	(b) recommendations that are;	
16	directed towards ensuring that a protected action ballot will be fair	
17	and democratic.	
18	Subdivision F—Funding of ballots	
19	109ZG Liability for cost of ballot	
20	(1) The applicant for a ballot order is liable for the cost of holding the	
21	ballot.	
22	(2) If the application for the ballot order was made by joint applicants,	
23	each applicant is jointly and severally liable for the cost of holding	
24	the ballot.	
25	(3) Subsections (1) and (2) have effect subject to subsections	
26	109ZH(3) and (6).	
27	(4) In this section:	
28	cost of holding the ballot means:	
29	(a) if the applicant, or one of the applicants, is the authorised	
30	ballot agent—the costs incurred by the authorised ballot	
31	agent in relation to the holding of the ballot; or	
31 32	agent in relation to the holding of the ballot; or (b) otherwise—the amount the authorised ballot agent charges to	
31	agent in relation to the holding of the ballot; or	

1	109ZH (Commonwealth has partial liability for cost of ballot
2 3		Authorised ballot agent someone other than the Australian Electoral Commission
4	(1) If:
5 6		(a) the authorised ballot agent for the ballot is not the Australian Electoral Commission; and
7 8		(b) the applicant notifies the Industrial Registrar of the cost of holding the ballot; and
9 10		(c) the applicant does so within a reasonable time after the day on which the ballot closed;
11 12 13		the Industrial Registrar must determine how much (if any) of that cost was reasonably and genuinely incurred in relation to the holding of the ballot.
14 15 16	(2	2) If subsection (1) applies, the Commonwealth is liable to pay to the authorised ballot agent 80% of the amount determined under that subsection.
17 18 19	(2	3) The applicant is, to the extent of the Commonwealth's liability under subsection (2), discharged from liability under section 109ZG for the cost of holding the ballot.
20 21 22 23	(4	4) The regulations may prescribe matters to be taken into account by the Industrial Registrar in determining whether costs are reasonably and genuinely incurred in relation to the holding of the ballot.
24		Authorised ballot agent the Australian Electoral Commission
25 26 27 28 29 20	(5	5) If the authorised ballot agent for the ballot is the Australian Electoral Commission, the Australian Electoral Commission must certify, within a reasonable time after the completion of the ballot, the amount of the reasonable costs charged by the Australian Electoral Commission to the applicant in relation to holding the ballot.
30 31 32 33	(6	5) The applicant is, to the extent of 80% of the amount certified under subsection (5), discharged from liability under section 109ZG for the cost of holding the ballot.

1		Definition	
2		(7) In this section:	
3 4		<i>cost of holding the ballot</i> has the same meaning as in section 109ZG.	
5	109ZI	Liability for cost of legal challenges	
6 7 8		 The regulations may make provision for who is liable for costs incurred in relation to legal challenges to matters connected with protected action ballots. 	
9 10 11		(2) The regulations may also make provision for a person who is liable for costs referred to in subsection (1) to be indemnified by another person for some or all of those costs.	
12 13 14		(3) For the purposes of sections 109ZG and 109ZH, <i>costs of holding the ballot</i> do not include costs referred to in subsection (1) of this section.	
15	Subdi	vision G—Miscellaneous	
10	10 0110 012	vision of viscentineous	
16		Identity of certain persons not to be disclosed by Commission	n
		Identity of certain persons not to be disclosed by Commission(1) The Commission must not disclose information that the Commission has reasonable grounds to believe will identify a	n
16 17 18		 Identity of certain persons not to be disclosed by Commission (1) The Commission must not disclose information that the Commission has reasonable grounds to believe will identify a person as: (a) an applicant who is represented by an applicant's agent; or (b) a relevant employee who was one of the prescribed number of employees supporting an application for a ballot order (as 	
16 17 18 19 20 21 22		 Identity of certain persons not to be disclosed by Commission (1) The Commission must not disclose information that the Commission has reasonable grounds to believe will identify a person as: (a) an applicant who is represented by an applicant's agent; or (b) a relevant employee who was one of the prescribed number 	

1 2	(b) the person whose identity is disclosed has, in writing, authorised the disclosure.
3	109ZK Persons not to disclose identity of certain persons
4	(1) A person commits an offence if:
5	(a) the person discloses information; and
6	(b) the information is protected information; and
7	(c) the person has reasonable grounds to believe that the
8	information will identify another person as a person referred
9	to in paragraph 109ZJ(1)(a), (b), (c) or (d); and
10	(d) the disclosure is not made by the person in the course of
11	performing functions or duties:
12	(i) as a Registry official; or
13	(ii) as, or on behalf of, an authorised ballot agent; or
14	(iii) as an authorised independent adviser; and
15	(e) the disclosure is not required or authorised by this Act or by
16	another Act, by regulations made for the purposes of another provision of this Act, or by regulations made for the purposes
17 18	of another Act; and
19	(f) the person whose identity is disclosed has not, in writing,
20	authorised the disclosure.
21	Penalty: Imprisonment for 6 months.
22	(2) In this section:
23	protected information, in relation to a person, means information
24	that the person acquired:
25	(a) in the course of performing functions or duties as a Registry
26	official; or
27	(b) in the course of performing functions or duties as, or on behalf of, an authorised ballot agent; or
28	(c) from a person referred to in paragraph (a) or (b) who
29 30	acquired the information as mentioned in paragraph (a) or
31	(b).
32	Registry official means:
33	(a) the Industrial Registrar; or
34	(b) a member of the staff of the Industrial Registry (including a
35	Deputy Industrial Registrar).

1	109ZL Immunity if person acted in good faith on ballot results
2	(1) If:
3 4 5	 (a) the results of a protected action ballot, as declared by the authorised ballot agent, purported to authorise particular industrial action; and
6 7 8	 (b) an organisation or person, acting in good faith on the declared ballot results, organised or engaged in that industrial action; and
9 10	(c) it is subsequently determined that the action was not authorised by the ballot;
11 12 13	no action lies against the organisation or person under any law (whether written or unwritten) in force in a State or Territory in respect of the action unless the action involved:
14 15 16	(d) personal injury; or(e) wilful or reckless destruction of, or damage to, property; or(f) the unlawful taking, keeping or use of property.
17 18 19	(2) Subsection (1) does not prevent an action for defamation being brought in respect of anything that occurred in the course of industrial action.
20	109ZM Limits on challenges etc. to ballot orders etc.
21 22 23 24	(1) An order of the Commission that a person hold a protected action ballot, and any order, direction or decision of the Commission in connection with the order:(a) is final and conclusive; and
24 25 26 27	(a) is final and conclusive, and(b) must not be challenged, appealed against, reviewed, quashed, set aside or called in question in any court on any ground; and
28 29 30	 (c) is not subject to mandamus, prohibition, certiorari or injunction, or the making of a declaratory or other order, in any court on any ground;
31	unless subsection (2) applies to the order or decision.
32 33 34	(2) This subsection applies to an order for a protected action ballot, or to an order, direction or decision of the Commission in connection with the order, if:

- Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005 263

1 2 3	 (a) in proceedings relating to the order, direction or decision, as the case requires, a person claims that another person or persons:
4 5 6	 (i) contravened this Division, or an order or direction of the Commission under this Division, if the contravention is not merely a technical breach; or
7 8 9	(ii) misled the Commission (whether by a false statement or by an omission) in such a way as to affect the order, direction or decision; and
10 11	(b) the court is satisfied that there are reasonable grounds for the claim.
12	109ZN Limits on challenges etc. to ballots
13 14	(1) If a protected action ballot has been conducted, or has purportedly been conducted:
15 16	(a) the declaration of the results of the ballot is final and conclusive; and
17 18	(b) the declaration of the results of the ballot must not be quashed or set aside by any court on any ground; and
19 20 21 22	 (c) the conduct of the ballot, and the declaration of the results of the ballot, must not be challenged, appealed against, reviewed or called in question, as applicable, in any court on any ground; and
23 24 25 26	(d) the conduct of the ballot, and the declaration of the results of the ballot, are not subject to mandamus, prohibition, certiorari or injunction, or the making of a declaratory or other order, as applicable, in any court on any ground;
27	unless subsection (2) applies to the conduct or declaration.
28 29	(2) This subsection applies to the conduct of a protected action ballot, and to the declaration of the results of a ballot, if:
30 31	(a) in proceedings relating to the conduct or declaration, as the case requires, a person claims that another person or persons:
32 33 34	 (i) contravened this Division, or an order or direction of the Commission under this Division, if the contravention is not merely a technical breach; or
35 36	(ii) acted fraudulently in relation to the conduct or declaration; or

1 2 3 4	(iii) acted in such a way as to cause an irregularity in relation to the conduct or declaration, being an irregularity that affected the outcome of the ballot; and(b) the court is satisfied that there are reasonable grounds for the
5	claim.
6	(3) In this section:
7 8	<i>conduct</i> , in relation to a protected action ballot, includes, but is not limited to, the compilation of the roll of voters for the ballot.
9 10 11	<i>irregularity</i> , in relation to the conduct or declaration of a protected action ballot, includes, but is not limited to, an act or omission by means of which:
12	(a) the full and free recording of votes by all persons entitled to
13 14	record votes and by no other persons; or (b) a correct ascertainment or declaration of the results of the
14	voting;
16	is, or is attempted to be, prevented or hindered.
17	109ZO Penalties not affected
17 18 19 20	109ZO Penalties not affected Nothing in section 109ZM or 109ZN is to be taken to prevent a penalty being imposed upon a person for a contravention of this Act.
18 19	Nothing in section 109ZM or 109ZN is to be taken to prevent a penalty being imposed upon a person for a contravention of this
18 19 20	Nothing in section 109ZM or 109ZN is to be taken to prevent a penalty being imposed upon a person for a contravention of this Act.
18 19 20 21	 Nothing in section 109ZM or 109ZN is to be taken to prevent a penalty being imposed upon a person for a contravention of this Act. 109ZP Preservation of roll of voters, ballot papers etc.
18 19 20 21 22	 Nothing in section 109ZM or 109ZN is to be taken to prevent a penalty being imposed upon a person for a contravention of this Act. 109ZP Preservation of roll of voters, ballot papers etc. A person commits an offence if:
18 19 20 21 22 23	 Nothing in section 109ZM or 109ZN is to be taken to prevent a penalty being imposed upon a person for a contravention of this Act. 109ZP Preservation of roll of voters, ballot papers etc. A person commits an offence if: (a) the person has conducted a protected action ballot; and (b) the person was the authorised ballot agent for the ballot; and (c) the person fails to keep the following for a period of one year
18 19 20 21 22 23 24	 Nothing in section 109ZM or 109ZN is to be taken to prevent a penalty being imposed upon a person for a contravention of this Act. 109ZP Preservation of roll of voters, ballot papers etc. A person commits an offence if: (a) the person has conducted a protected action ballot; and (b) the person was the authorised ballot agent for the ballot; and (c) the person fails to keep the following for a period of one year after the day on which the ballot closed:
18 19 20 21 22 23 24 25 26 27	 Nothing in section 109ZM or 109ZN is to be taken to prevent a penalty being imposed upon a person for a contravention of this Act. 109ZP Preservation of roll of voters, ballot papers etc. A person commits an offence if: (a) the person has conducted a protected action ballot; and (b) the person was the authorised ballot agent for the ballot; and (c) the person fails to keep the following for a period of one year after the day on which the ballot closed: (i) the roll of voters;
18 19 20 21 22 23 24 25 26	 Nothing in section 109ZM or 109ZN is to be taken to prevent a penalty being imposed upon a person for a contravention of this Act. 109ZP Preservation of roll of voters, ballot papers etc. A person commits an offence if: (a) the person has conducted a protected action ballot; and (b) the person was the authorised ballot agent for the ballot; and (c) the person fails to keep the following for a period of one year after the day on which the ballot closed:

1	109ZQ Conferral of function on Australian Electoral Commission
2	(1) If the Australian Electoral Commission is the authorised ballot
3	agent for a protected action ballot, it is a function of the Australian
4	Electoral Commission to conduct the ballot.
5	(2) If the Australian Electoral Commission is:
6	(a) the ballot agent nominated in an application for a ballot
7	order; or
8	(b) the authorised ballot agent for such a ballot;
9	the Australian Electoral Commission cannot make a submission or
0	an application to the Commission seeking to cease having that
1	status in relation to the ballot.
2	109ZR Regulations
3	The regulations may make provision in relation to the following
4	matters:
5	(a) the qualifications and appointment of applicants' agents;
16	(b) procedures to be followed in relation to the conduct of a
17	ballot, or class of ballot, under this Division;
18 19	(c) the qualifications, appointment, powers and duties of scrutineers;
20	(d) the powers and duties of authorised independent advisers;
21	(e) the manner in which ballot results are to be published under
22	section 109ZD.
23	Division 5—Industrial action not to be engaged in before
24	nominal expiry date of workplace agreement or
25	workplace determination
06	110 Industrial action etc. must not be taken before nominal expiry
26 27	date of collective agreement or workplace determinations
27	uate of conective agreement of workplace determinations
28	(1) From the day when:
29	(a) a collective agreement; or
30	(b) a workplace determination;
	comes into exerction until its nominal expired data has passed an
	comes into operation until its nominal expiry date has passed, an
31 32	employee, organisation or officer covered by subsection (2) must not organise or engage in industrial action affecting the employer

1 2			or not that action relates to a matter dealt with in the nt or determination).
3		Note 1:	This subsection is a civil remedy provision: see subsection (4).
4 5		Note 2:	Action that contravenes this subsection is not protected action (see section 108E).
6 7	(2)	For the p this subs	purposes of subsection (1), the following are covered by ection:
8 9			employee who is bound by the agreement or termination;
10 11			organisation of employees that is bound by the agreement determination;
12 13			officer or employee of such an organisation acting in that pacity.
14	(3)	From the	e time when:
15	. ,	(a) a c	ollective agreement; or
16		(b) a v	vorkplace determination;
17		is made	until its nominal expiry date has passed, the employer must
18		•	ge in industrial action against an employee whose
19			nent is subject to the agreement or determination (whether
20 21			at industrial action relates to a matter dealt with in the nt or determination).
22		Note 1:	This subsection is a civil remedy provision: see subsection (4).
23 24		Note 2:	Action that contravenes this subsection is not protected action (see section 108E).
25		Civil ren	nedy provisions
26	(4)	Subsecti	ons (1) and (3) are civil remedy provisions.
27	(5)	The Cou	rt may make one or more of the following orders in
28		relation	to a person who has contravened subsection (1) or (3):
29		(a) an	order imposing a pecuniary penalty on the person;
30			unctions, and any other orders, that the Court considers
31		neo	cessary to stop the contravention or remedy its effects.
32	(6)	The pecu	iniary penalty under paragraph (5)(a) cannot be more than
33			alty units for a body corporate or 60 penalty units in any
34		other cas	Se.

1 (7) An application for an order under subsection (5), in relation to a contravention of subsection (1), may be made by: 3 (a) the employer concerned; or 4 (b) a workplace inspector; or 5 (c) any other person prescribed by the regulations. 6 (8) An application for an order under subsection (5), in relation to a contravention of subsection (3), may be made by: 8 (a) the employee concerned; or 9 (b) an organisation of employees if: 10 (i) a member of the organisation is employed by the employer concerned; and 11 (ii) the contravention relates to, or affects, the member of the organisation or work carried on by the member for that employer; or 15 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 For other provisions about civil remedy provisions, see Division 4 of Part VIII. 19 110A Industrial action must not be taken before nominal expiry date of AWA 21 (1) From the day when an AWA comes into operation until its nomina expiry date, the employee must not engage in industrial action in relation to the employeer must not engage in industrial action against the employe. 22 Note 1: This subsection is a civil remedy provision: see subsection (3). 23 Note 2: Action that contravenes this subsection is not protected	1		
3 (a) the employer concerned; or 4 (b) a workplace inspector; or 5 (c) any other person prescribed by the regulations. 6 (8) An application for an order under subsection (5), in relation to a contravention of subsection (3), may be made by: 8 (a) the employee concerned; or 9 (b) an organisation of employees if: 10 (i) a member of the organisation is employed by the employer concerned; and 11 (ii) the contravention relates to, or affects, the member of the organisation or work carried on by the member for that employer; or 15 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII. 19 110A Industrial action must not be taken before nominal expiry date of AWA 21 (1) From the day when an AWA comes into operation until its nomina expiry date, the employment to which the AWA relates. 22 Note 1: This subsection is a civil remedy provision: see subsection (3). 23 Note 2: Action that contravenes this subsection is not protected action agains the employee. 33 Civil remedy provisions			
4 (b) a workplace inspector; or 5 (c) any other person prescribed by the regulations. 6 (8) An application for an order under subsection (5), in relation to a contravention of subsection (3), may be made by: 8 (a) the employee concerned; or 9 (b) an organisation of employees if: 10 (i) a member of the organisation is employed by the employer concerned; and 11 (ii) the contravention relates to, or affects, the member of the organisation or work carried on by the member for that employer; or 15 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII. 19 110A Industrial action must not be taken before nominal expiry date of AWA 21 (1) From the day when an AWA comes into operation until its nomina expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. 23 Note 1: This subsection is a civil remedy provision: see subsection (3). 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Action that contravenes this subsection is not protected action: see section 108E. 27 (2) From the day when an AWA comes into	2		
5 (c) any other person prescribed by the regulations. 6 (8) An application for an order under subsection (5), in relation to a contravention of subsection (3), may be made by: 8 (a) the employee concerned; or 9 (b) an organisation of employees if: 10 (i) a member of the organisation is employed by the employer concerned; and 11 (ii) the contravention relates to, or affects, the member of the organisation or work carried on by the member for that employer; or 13 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII. 19 110A Industrial action must not be taken before nominal expiry date of AWA 21 (1) From the day when an AWA comes into operation until its nomina expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Note 2: Action that contravenes this subsection is not protected action: see section 108E. 27 (2) From the day when an AWA comes into operation until its nomina expiry date, the employer must not engage in industrial action against the employee. 30 Note 1: This subsection is a civil remedy provision: see subs	3		
6 (8) An application for an order under subsection (5), in relation to a contravention of subsection (3), may be made by: 8 (a) the employee concerned; or 9 (b) an organisation of employees if: 10 (i) a member of the organisation is employed by the employer concerned; and 11 (ii) the contravention relates to, or affects, the member of the organisation or work carried on by the member for that employer; or 15 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII. 19 110A Industrial action must not be taken before nominal expiry date of AWA 21 (1) From the day when an AWA comes into operation until its nomina expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Note 2: Action that contravenes this subsection is not protected action: see section 108E. 27 (2) From the day when an AWA comes into operation until its nomina expiry date, the employee. 30 Note 1: This subsection is a civil remedy provision: see subsection (3). 28 Note 1: This subsection is not protected action: see section 108E.	4	(b) a workplace inspector; or	
7 contravention of subsection (3), may be made by: 8 (a) the employee concerned; or 9 (b) an organisation of employees if: 10 (i) a member of the organisation is employed by the employer concerned; and 12 (ii) the contravention relates to, or affects, the member of the organisation or work carried on by the member for that employer; or 13 (c) a workplace inspector; or 14 (d) any other person prescribed by the regulations. 17 Note: 18 For other provisions about civil remedy provisions, see Division 4 of Part VIII. 19 110A Industrial action must not be taken before nominal expiry date of AWA 21 (1) From the day when an AWA comes into operation until its nomina expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Action that contravenes this subsection is not protected action: see section 108E. 27 (2) From the day when an AWA comes into operation until its nomina expiry date, the employee 30 Note 1: This subsection is a civil remedy provision: see subsection (3). 31 Note 2: Action that contravenes this subsection is not protected action against the employee. 33	5	(c) any other person prescribed by the regulations.	
8 (a) the employee concerned; or 9 (b) an organisation of employees if: 10 (i) a member of the organisation is employed by the 11 employer concerned; and 12 (ii) the contravention relates to, or affects, the member of 13 the organisation or work carried on by the member for 14 the organisation or work carried on by the member for 14 the organisation or work carried on by the member for 14 the organisation or work carried on by the member for 15 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of 18 Part VIII. 19 110A Industrial action must not be taken before nominal expiry 20 date of AWA 21 (1) From the day when an AWA comes into operation until its nomina 22 expiry date, the employee must not engage in industrial action in 23 relation to the employem to which the AWA relates. 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Note 2: Action that contravenes this subsection is not protected action (s	6	(8) An application for an order under subsection (5), in relation to a	
 (b) an organisation of employees if: (i) a member of the organisation is employed by the employer concerned; and (ii) the contravention relates to, or affects, the member of the organisation or work carried on by the member for that employer; or (c) a workplace inspector; or (d) any other person prescribed by the regulations. 110A Industrial action must not be taken before nominal expiry date of AWA (1) From the day when an AWA comes into operation until its nomina expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. (2) From the day when an AWA comes into operation until its nomina expiry date, the employee must not engage in industrial action is a civil remedy provision: see subsection (3). Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action (see section 108E). <i>Civil remedy provisions</i> 	7	contravention of subsection (3), may be made by:	
10 (i) a member of the organisation is employed by the 11 (ii) the contravention relates to, or affects, the member of 12 (ii) the contravention relates to, or affects, the member of 13 the organisation or work carried on by the member for 14 the organisation or work carried on by the member for 14 the organisation or work carried on by the member for 14 that employer; or 15 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of 18 110A Industrial action must not be taken before nominal expiry 20 date of AWA 21 (1) From the day when an AWA comes into operation until its nomina 22 expiry date, the employee must not engage in industrial action in 23 relation to the employment to which the AWA relates. 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Note 2: Action that contravenes this subsection is not protected action: see 26 section 108E. 10 27 (2) From the day when an AWA comes into operation until its n	8	(a) the employee concerned; or	
11 employer concerned; and 12 (ii) the contravention relates to, or affects, the member of 13 the organisation or work carried on by the member for 14 that employer; or 15 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of 18 110A Industrial action must not be taken before nominal expiry 20 date of AWA 21 (1) From the day when an AWA comes into operation until its nomina 22 expiry date, the employee must not engage in industrial action in 23 relation to the employment to which the AWA relates. 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Action that contravenes this subsection is not protected action: see 26 From the day when an AWA comes into operation until its nomina 27 (2) From the day when an AWA comes into operation until its nomina 28 section 108E. Section 108E. 29 adate, the employee Section 108E. 30 Note 1: This subsection is a civil remedy	9	(b) an organisation of employees if:	
12 (ii) the contravention relates to, or affects, the member of 13 the organisation or work carried on by the member for 14 that employer; or 15 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of 18 110A Industrial action must not be taken before nominal expiry 20 date of AWA 21 (1) From the day when an AWA comes into operation until its nominate expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Action that contravenes this subsection is not protected action: see section 108E. 27 (2) From the day when an AWA comes into operation until its nominate expiry date, the employer must not engage in industrial action against the employee. 30 Note 1: This subsection is a civil remedy provision: see subsection (3). 31 Note 2: Action that contravenes this subsection is not protected action (see section 108E). 33 <i>Civil remedy provisions</i>			
13 the organisation or work carried on by the member for 14 that employer; or 15 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of 18 110A Industrial action must not be taken before nominal expiry 20 date of AWA 21 (1) From the day when an AWA comes into operation until its nominal expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Note 2: Action that contravenes this subsection is not protected action: see section 108E. 27 (2) From the day when an AWA comes into operation until its nominal expiry date, the employee. 29 against the employee. 20 Note 1: This subsection is a civil remedy provision: see subsection (3). 28 Note 1: This subsection is a civil remedy provision: see subsection (3). 31 Note 2: Action that contravenes this subsection is not protected action (see section 108E). 33 <i>Civil remedy provisions</i>	12		:
14 that employer; or 15 (c) a workplace inspector; or 16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII. 19 110A Industrial action must not be taken before nominal expiry 20 date of AWA 21 (1) 22 (1) 23 relation to the employee must not engage in industrial action in relation to the employment to which the AWA relates. 24 Note 1: 25 Note 2: 26 Action that contravenes this subsection is not protected action: see section 108E. 27 (2) 30 Note 1: 31 Note 2: 32 Action that contravenes this subsection is not protected action against the employee. 33 Civil remedy provision: see subsection (3).	13		
16 (d) any other person prescribed by the regulations. 17 Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII. 19 110A Industrial action must not be taken before nominal expiry 20 date of AWA 21 (1) From the day when an AWA comes into operation until its nominal expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. 24 Note 1: 25 Note 1: 26 Action that contravenes this subsection is not protected action: see section 108E. 27 (2) From the day when an AWA comes into operation until its nominal expiry date, the employer must not engage in industrial action against the employee. 30 Note 1: This subsection is a civil remedy provision: see subsection (3). 31 Note 1: This subsection is a civil remedy provision: see subsection (3). 33 <i>Civil remedy provisions</i>	14		
17 Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII. 19 110A Industrial action must not be taken before nominal expiry 20 date of AWA 21 (1) From the day when an AWA comes into operation until its nominal expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. 24 Note 1: 25 Note 2: 26 Action that contravenes this subsection is not protected action: see section 108E. 27 (2) From the day when an AWA comes into operation until its nominal expiry date, the employer must not engage in industrial action against the employee. 30 Note 1: This subsection is a civil remedy provision: see subsection (3). 31 Note 2: Action that contravenes this subsection is not protected action against the employee. 33 Civil remedy provisions	15	(c) a workplace inspector; or	
18 Part VIII. 19 110A Industrial action must not be taken before nominal expiry date of AWA 20 (1) From the day when an AWA comes into operation until its nominal expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Action that contravenes this subsection is not protected action: see section 108E. 27 (2) From the day when an AWA comes into operation until its nominal expiry date, the employer must not engage in industrial action against the employee. 30 Note 1: This subsection is a civil remedy provision: see subsection (3). 31 Note 2: Action that contravenes this subsection is not protected action expiry date, the employee. 33 Civil remedy provisions	16	(d) any other person prescribed by the regulations.	
110A Industrial action must not be taken before nominal expiry 20 (1) From the day when an AWA comes into operation until its nominal expiry date, the employee must not engage in industrial action in 21 (1) From the day when an AWA comes into operation until its nominal expiry date, the employee must not engage in industrial action in 23 relation to the employment to which the AWA relates. 24 Note 1: This subsection is a civil remedy provision: see subsection (3). 25 Note 2: Action that contravenes this subsection is not protected action: see section 108E. 27 (2) From the day when an AWA comes into operation until its nominal expiry date, the employer must not engage in industrial action against the employee. 30 Note 1: This subsection is a civil remedy provision: see subsection (3). 31 Note 2: Action that contravenes this subsection is not protected action (see section 108E). 33 Civil remedy provisions	17	Note: For other provisions about civil remedy provisions, see Division 4 d	of
20date of AWA21(1) From the day when an AWA comes into operation until its nomina expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates.24Note 1: This subsection is a civil remedy provision: see subsection (3).25Note 2: Action that contravenes this subsection is not protected action: see section 108E.27(2) From the day when an AWA comes into operation until its nomina expiry date, the employer must not engage in industrial action against the employee.30Note 1: This subsection is a civil remedy provision: see subsection (3).31Note 2: Action that contravenes this subsection is not protected action (see section 108E).33Civil remedy provisions	18	Part VIII.	
20date of AWA21(1) From the day when an AWA comes into operation until its nomina expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates.24Note 1: This subsection is a civil remedy provision: see subsection (3).25Note 2: Action that contravenes this subsection is not protected action: see section 108E.27(2) From the day when an AWA comes into operation until its nomina expiry date, the employer must not engage in industrial action against the employee.30Note 1: This subsection is a civil remedy provision: see subsection (3).31Note 2: Action that contravenes this subsection is not protected action (see section 108E).33Civil remedy provisions	10	1104 Industrial action must not be taken before nominal evolution	
21(1) From the day when an AWA comes into operation until its nominal expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates.24Note 1: This subsection is a civil remedy provision: see subsection (3).25Action that contravenes this subsection is not protected action: see section 108E.27(2) From the day when an AWA comes into operation until its nominal expiry date, the employer must not engage in industrial action against the employee.30Note 1: This subsection is a civil remedy provision: see subsection (3).31Note 2: Action that contravenes this subsection is not protected action (3).33Civil remedy provisions			
 expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. (2) From the day when an AWA comes into operation until its nomina expiry date, the employer must not engage in industrial action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action (see section 108E). <i>Civil remedy provisions</i> 	20	uate of AWA	
 relation to the employment to which the AWA relates. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. (2) From the day when an AWA comes into operation until its nomina expiry date, the employer must not engage in industrial action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action (see section 108E). <i>Civil remedy provisions</i> 	21		
25Note 2:Action that contravenes this subsection is not protected action: see section 108E.27(2) From the day when an AWA comes into operation until its nomina expiry date, the employer must not engage in industrial action against the employee.30Note 1:31This subsection is a civil remedy provision: see subsection (3).31Note 2:33Civil remedy provisions	21	(1) From the day when an AWA comes into operation until its nomin	nal
26 section 108E. 27 (2) From the day when an AWA comes into operation until its nominal expiry date, the employer must not engage in industrial action against the employee. 30 Note 1: This subsection is a civil remedy provision: see subsection (3). 31 Note 2: Action that contravenes this subsection is not protected action (see section 108E). 33 Civil remedy provisions	22	expiry date, the employee must not engage in industrial action in	
28expiry date, the employer must not engage in industrial action against the employee.30Note 1: This subsection is a civil remedy provision: see subsection (3).31Note 2: Action that contravenes this subsection is not protected action (see section 108E).33Civil remedy provisions	22 23	expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates.	
29against the employee.30Note 1: This subsection is a civil remedy provision: see subsection (3).31Note 2: Action that contravenes this subsection is not protected action (see section 108E).33Civil remedy provisions	22 23 24 25	expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates.Note 1: This subsection is a civil remedy provision: see subsection (3).Note 2: Action that contravenes this subsection is not protected action: see	1
30 Note 1: This subsection is a civil remedy provision: see subsection (3). 31 Note 2: Action that contravenes this subsection is not protected action (see section 108E). 33 Civil remedy provisions	22 23 24 25 26	 expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. 	1
31 Note 2: Action that contravenes this subsection is not protected action (see section 108E). 33 Civil remedy provisions	22 23 24 25 26 27	 expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. (2) From the day when an AWA comes into operation until its nomin 	1
32 section 108E). 33 Civil remedy provisions	22 23 24 25 26 27 28	 expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. (2) From the day when an AWA comes into operation until its nomin expiry date, the employer must not engage in industrial action 	1
	22 23 24 25 26 27 28 29	 expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. (2) From the day when an AWA comes into operation until its nomin expiry date, the employer must not engage in industrial action against the employee. 	1
(3) Subsections (1) and (2) are civil remedy provisions	22 23 24 25 26 27 28 29 30 31	 expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. (2) From the day when an AWA comes into operation until its nomin expiry date, the employer must not engage in industrial action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action (see 	inal
(5) Subsections (1) and (2) are ervin remedy provisions.	22 23 24 25 26 27 28 29 30 31 32	 expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. (2) From the day when an AWA comes into operation until its nomin expiry date, the employer must not engage in industrial action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action (see section 108E). 	inal
	22 23 24 25 26 27 28 29 30 31 32	 expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action: see section 108E. (2) From the day when an AWA comes into operation until its nomin expiry date, the employer must not engage in industrial action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action against the employee. Note 1: This subsection is a civil remedy provision: see subsection (3). Note 2: Action that contravenes this subsection is not protected action (see section 108E). 	inal

1	(4) The Court may make one or more of the following orders in
2	relation to a person who has contravened subsection (1) or (2):
3	(a) an order imposing a pecuniary penalty on the person;
4	(b) injunctions, and any other orders, that the Court considers
5	necessary to stop the contravention or remedy its effects.
6	(5) The pecuniary penalty under paragraph $(4)(a)$ cannot be more than
7	300 penalty units for a body corporate or 60 penalty units in any
8	other case.
9	(6) An application for an order under subsection (4), in relation to a
10	contravention of subsection (1), may be made by:
11	(a) the employer concerned; or
12	(b) a workplace inspector; or
13	(c) any other person prescribed by the regulations.
14	(7) An application for an order under subsection (4), in relation to a
15	contravention of subsection (2), may be made by:
16	(a) the employee concerned; or
17	(b) an organisation of employees that represents that employee
18	if:
19	(i) that employee has requested the organisation to apply
20	on that employee's behalf; and
21	(ii) a member of the organisation is employed by that
22	employee's employer; and
23	(iii) the organisation is entitled, under its eligibility rules, to
24	represent the industrial interests of that employee in
25	relation to work carried on by that employee for the
26	employer; or
27	(c) a workplace inspector; or
28	(d) any other person prescribed by the regulations.
29 30	Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII.
20	1 411 / 111.

Division 6—Orders and injunctions against industrial action

3	111 Orders and injunctions against industrial action—general
4 5	Orders relating to action by federal-system employees and employers
6 7 8	 If it appears to the Commission that industrial action by an employee or employees, or by an employer, that is not, or would not be, protected action:
9 10	(a) is happening; or(b) is threatened, impending or probable; or
11	(c) is being organised;
12 13	the Commission must make an order that the industrial action stop, not occur and not be organised.
14 15	Orders relating to action by non-federal system employees and employers
16 17 18	(2) If it appears to the Commission that industrial action by a non-federal system employee or non-federal system employees, or by a non-federal system employer:
19	(a) is:
20	(i) happening; or
21 22	(ii) threatened, impending or probable; or(iii) being organised; and
22	(b) will, or would, be likely to have the effect of causing
24	substantial loss or damage to the business of a constitutional
25	corporation;
26	the Commission must make an order that the relevant industrial
27	action stop, not occur and not be organised.
28	(3) For the purposes of subsection (2), and other provisions of this Act
29	as they relate to orders under that subsection:
30	(a) <i>non-federal system employee</i> means a person who is an
31	employee, within the ordinary meaning of that word, but who
32 33	is not covered by the definition of <i>employee</i> in subsection 4AA(1); and

270

1 2 3 4 5 6 7 8	 (b) <i>non-federal system employer</i> means a person who is an employer, within the ordinary meaning of that word, but who is not covered by the definition of <i>employer</i> in subsection 4AB(1); and (c) section 106A (which defines <i>industrial action</i>) applies as if references in that section to employees and employers were instead references to non-federal system employees and non-federal system employers.
9 10	Order may be made on application or on Commission's own initiative
11 (4 12 13 14 15	 4) The Commission may make an order under subsection (1) or (2) on its own initiative, or on the application of: (a) a person who is affected (whether directly or indirectly), or who is likely to be affected (whether directly or indirectly), by the industrial action; or
16 17	(b) an organisation of which a person referred to in paragraph (a) is a member.
18	Applications generally to be heard and determined within 48 hours
19 (4 20 21	5) As far as practicable, the Commission must hear and determine an application for an order under subsection (1) or (2) within 48 hours after the application is made.
22 23	Interim orders if applications cannot be heard and determined within 48 hours
24 (6 25 26 27 28	5) If the Commission is unable to determine an application for an order under subsection (1) or (2) within the period referred to in subsection (5), the Commission must (within that period) make an interim order to stop and prevent engagement in, and organisation of, the industrial action referred to in subsection (1) or (2).
29 (* 30 31	7) However, the Commission must not make such an interim order if the Commission is satisfied that it would be contrary to the public interest to do so.
32 (8 33	 An interim order is to have effect until the application is determined.

1			Commission does not have to specify the industrial action
2		(9)	In ordering under subsection (1) , (2) or (6) that industrial action
3			stop, not occur and not be organised, the Commission does not
4			have to specify the particular industrial action.
5			Obligation to comply with orders
6		(10)	A person to whom an order under subsection (1) , (2) or (6) is
7		()	expressed to apply must comply with the order.
8		(11)	Subsection (10) is a civil remedy provision.
9		(12)	The Court may, on application by a person affected by an order of
10			the Commission under subsection (1), (2) or (6), grant an
11			injunction on such terms as the Court considers appropriate if it is
12			satisfied that another person:
13			(a) has engaged in conduct that constitutes a contravention of
14			subsection (10); or
15			(b) is proposing to engage in conduct that would constitute such
16			a contravention.
17 18			Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII.
19			Orders do not apply to protected action
20		(13)	An order under subsection (1), or under subsection (6) that relates
21			to an application for an order under subsection (1), does not apply
22			to protected action.
23	111A	Inju	nction against industrial action if pattern bargaining
24			engaged in in relation to proposed collective agreement
25			The Court may grant an injunction in such terms as the Court
26			considers appropriate if, on application by any person, the Court is
27			satisfied that:
28			(a) industrial action in relation to a proposed collective
29			agreement is being engaged in, or is threatened, impending or
30			probable; and
31			(b) the industrial action is or would be for the purpose of
32			supporting or advancing claims made by a negotiating party
33			to the proposed collective agreement; and

1	(c) the party is engaged in pattern bargaining in relation to the	
2	proposed collective agreement.	
3	Note: For other provisions relating to pattern bargaining, see:	
4	(a) section 107H; and	
5	(b) section 108D; and	
6	(c) section 109L.	
7	Division 7—Ministerial declarations terminating	
8	bargaining periods	
9	112 Minister's declaration	
10	Making of declaration	
11	(1) The Minister may make a written declaration terminating a	
12	specified bargaining period, or specified bargaining periods, if the	e
13	Minister is satisfied that:	
14	(a) industrial action is being taken, or is threatened, impending	
15	or probable; and	
16	(b) the industrial action is adversely affecting, or would	
17	adversely affect, the employer or employers who are	
18 19	negotiating parties, or employees of the employer or employers; and	
20	(c) the industrial action is threatening, or would threaten:	
21	(i) to endanger the life, the personal safety or health, or the	ne
22	welfare, of the population or of part of it; or	10
23	(ii) to cause significant damage to the Australian economy	y
24	or an important part of it.	
25	Note: See also Division 8 (about workplace determinations once a	
26	bargaining period has been terminated).	
27	(2) The declaration takes effect on the day that it is made.	
28	Making persons aware of the declaration	
29	(3) The Minister must publish the declaration in the <i>Gazette</i> .	
30	(4) The Minister must inform the Commission of the making of the	
31	declaration.	

1	(5) The Minister must, as soon as reasonably practicable, take all reasonable steps to make the negotiating parties to the proposed
2 3	collective agreement or agreements concerned aware:
4	(a) of the making of the declaration; and
5	(b) of the effect of Division 8 (about workplace determinations
6	once a bargaining period has been terminated); and
7	(c) that the negotiating parties may agree to submit the matters at
8	issue to an alternative dispute resolution process conducted
9	by the Commission or another provider (see Divisions 4 and
10	6 of Part VIIA).
11	Restriction on initiating new bargaining period
12	(6) The Minister may specify in the declaration that, during a specified
13	period beginning on the day that the declaration is made, a
14	specified person:
15	(a) is not allowed to initiate a new bargaining period in relation
16	to specified matters that are dealt with by the proposed
17	collective agreement or agreements concerned; or
18 19	(b) may initiate such a bargaining period only on specified conditions.
20	Declaration not a legislative instrument
21	(7) A declaration made under subsection (1) is not a legislative
22	instrument.
23	112A Minister's directions to remove or reduce the threat
24	(1) If the Minister makes a declaration under 112, the Minister may
25	make the following kinds of written directions if the Minister is
26	satisfied that they are reasonably directed to removing or reducing
27	the threat referred to in paragraph $112(1)(c)$:
28	(a) directions requiring specified negotiating parties, or specified
29	employees of an employer who is a negotiating party, to take
30	specified actions;
31	(b) directions requiring specified negotiating parties, or specified
32 33	employees of an employer who is a negotiating party, to refrain from taking specified actions.
55	remain from taking specified actions.

	Making persons aware of the directions
(2)	The Minister must, as soon as reasonably practicable, take all reasonable steps to make the specified persons concerned aware of the directions.
	Directions not legislative instruments
(3)	Directions made under subsection (1) are not legislative instruments.
	Compliance with directions
(4)	A person must comply with a direction under this section.
	Civil remedy provisions
(5)	Subsection (4) is a civil remedy provision.
(6)	The Court may order a person who has contravened subsection (4) to pay a pecuniary penalty.
(7)	The pecuniary penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.
(8)	An application for an order under subsection (6) may be made by workplace inspector.
	Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII.
Division	8—Workplace determinations
113 Appl	ication of Division
	This Division applies if a bargaining period has been terminated:
	(a) on the ground set out in subsection 107G(3); or
	(b) because a declaration has been made under Division 7.
113A Def	initions
	In this Division:
	<i>matters at issue</i> means the matters that were at issue during the bargaining period.

1		<i>negotiating period</i> has the meaning given by section 113B.
2	113B	Negotiating period
3		(1) The <i>negotiating period</i> is the period that:
4		(a) starts on the day on which the bargaining period was
5		terminated; and
6		(b) ends:
7 8		 (i) if the Commission has not extended the period under subsection (2)—21 days after that day; or
9		(ii) if the Commission has so extended the period—42 days
10		after that day.
11		(2) The Commission must extend the period if:
12		(a) all of the negotiating parties apply to the Commission for an
13		extension under this subsection within 21 days after the day
14		on which the bargaining period was terminated; and
15	•	(b) the negotiating parties have not settled the matters at issue
16		(whether or not by making a workplace agreement).
17	113C	When Full Bench must make workplace determination
18		(1) The Commission must make a determination (a <i>workplace</i>
19		<i>determination</i>) under this section if:
20		(a) the negotiating period has ended; and
21		(b) the negotiating parties have not settled the matters at issue
22		(whether or not by making a workplace agreement).
23		(2) The workplace determination can be made only by a Full Bench.
24		(3) The Full Bench must make the workplace determination as quickly
25		as practicable after the end of the negotiating period.
26		(4) For the purposes of paragraph $(1)(b)$, the negotiating parties are
20		taken not to have settled the matters at issue if:
28		(a) the negotiating parties make a workplace agreement
29		purporting to settle the matters at issue; and
30		(b) the workplace agreement is not approved in accordance with
31		section 98C.
32		(5) Workplace determinations are not legislative instruments.

113	D Content of workplace determination
	(1) The workplace determination must contain terms that, in the opinion of the Full Bench, deal with the matters at issue.
	(2) The workplace determination comes into operation on the day on which it is made.
	(3) The workplace determination must contain a term specifying a nominal expiry date for the determination that is no later than 5 years after the date on which the determination commences operating.
	(4) The workplace determination must not contain prohibited content
	(5) In deciding which terms to include in the workplace determination the Full Bench must have regard to the following factors only:(a) the matters at issue;
	(b) the merits of the case;
	(c) the interests of the negotiating parties and the public interest
	(d) how productivity might be improved in the business or part of the business concerned;
	(e) the extent to which the conduct of the negotiating parties during the bargaining period was reasonable;
	(f) incentives to encourage parties to pursue negotiated outcomes at a later stage;
	(g) the employer's capacity to pay;
	(h) decisions of the AFPC;
	(i) any other factors specified in the regulations.
	(6) The workplace determination must require disputes about matters
	arising under the determination to be dealt with in accordance wit the model dispute resolution process (see Part VIIA).
	(7) The workplace determination must not contain any terms other
	than those required by this section.
113	E Who is bound by a workplace determination?
	A workplace determination binds:
	(a) the negotiating parties referred to in subsection 113C(1)(b); and

1 2	(b) all employees whose employment is subject to the determination.
3 4	113F Act applies to workplace determination as if it were a collective agreement
5 6	(1) Subject to this section, this Act applies to the workplace determination as if it were a collective agreement in operation.
7 8 9 10 11	 (2) The following provisions do not apply to the workplace determination: (a) section 100D (persons bound by workplace agreements); (b) Subdivision A of Division 7 of Part VB (content of workplace agreements); (c) Division 8 of Part VB (varying workplace agreements).
13 14 15 16	(3) Subdivision B of Division 9 of Part VB (termination by approval (pre-lodgment procedures)) applies in relation to the workplace determination, but only after the determination has passed its nominal expiry date.
17 18 19 20	(4) Despite sections 100(5), the workplace determination ceases to be in operation in relation to an employee if a collective agreement that binds the employee is lodged, even if this happens before the nominal expiry date of the determination.
21 22	Division 9—Payments in relation to periods of industrial action
23 24	114 Payments not to be made or accepted in relation to periods of industrial action
25 26 27	(1) This section applies if an employee engaged, or engages, in industrial action (whether or not protected action) in relation to an employer on a day.
28 29 30 31 32 33	 (2) The employer must not make a payment to an employee in relation to: (a) if the total duration of the industrial action on that day is less than 4 hours—4 hours of that day; or (b) otherwise—the total duration of the industrial action on that day.

1	Note: This subsection is a civil remedy provision: see subsection (6).
2 (3) If:
3 4	(a) the industrial action is during a shift (or other period of work); and
5 6	(b) the shift (or other period of work) occurs partly on 1 day and partly on the next day;
7 8 9	then, for the purposes of this section, the shift is taken to be a day and the remaining parts of the days are taken not to be part of that day.
10 11 12 13 14 15	 Example: An employee, who is working a shift from 10 pm on Tuesday until 7 am on Wednesday, engages in industrial action from 11 pm on Tuesday until 1 am on Wednesday. That industrial action would prevent the employer making a payment to the employee in relation to 4 hours of the shift, but would not prevent the employer from making a payment in relation to the remaining 5 hours of the shift.
16 (17	4) For the purposes of subsection (3), overtime is taken not to be a separate shift.
18 (19	5) An employee must not accept a payment from an employer if the employer would contravene subsection (2) by making the payment.
20	Note: This subsection is a civil remedy provision: see subsection (6).
21	Civil remedy provisions
22 (6) Subsections (2) and (5) are civil remedy provisions.
23 (24 25	7) The Court may make one or more of the following orders in relation to a person who has contravened subsection (2) or (5):(a) an order imposing a pecuniary penalty on the person;
26 27 28	(b) injunctions, and any other orders, that the Court considers necessary to stop the contravention or remedy its effects;(c) any other consequential orders.
29 (30 31	 The pecuniary penalty under paragraph (7)(a) cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.
32 (33 34 35	 9) An application for an order under subsection (7) may be made by: (a) a workplace inspector; or (b) a person who has an interest in the matter; or (c) any other person prescribed by the regulations.

1 2		Note:	For other provisions about civil remedy provisions, see Division 4 of Part VIII.
3	(10) A reg	gulation prescribing persons for the purposes of
4	× ×		graph (9)(c) may limit its application to specified
5		circu	mstances.
6	114A Or	-	itions not to take action for payments in relation to
7		peri	ods of industrial action
8	(1) An o	rganisation, or an officer, member or employee of an
9	· ·		nisation, must not:
10		(a)	make a claim for an employer to make a payment to an
11 12			employee in relation to a day during which the employee engaged, or engages, in industrial action; or
13		(h)	organise or engage in, or threaten to organise or engage in,
14		(0)	industrial action against an employer with intent to coerce the
15			employer to make such a payment.
16		Note:	This subsection is a civil remedy provision: see subsection (4).
17	(2) For t	he purposes of subsection (1), action done by one of the
18		follo	wing bodies or persons is taken to have been done by an
19		orgai	nisation:
20		(a)	the committee of management of the organisation;
21		(b)	an officer, employee or agent of the organisation acting in
22			that capacity;
23 24		(c)	a member or group of members of the organisation acting under the rules of the organisation;
25		(d)	a member of the organisation, who performs the function of
26		(u)	dealing with an employer on behalf of the member and other
27			members of the organisation, acting in that capacity.
28	(3) Parag	graphs (2)(c) and (d) do not apply if:
29		(a)	a committee of management of the organisation; or
30		(b)	a person authorised by the committee; or
31		(c)	an officer of the organisation;
32			aken reasonable steps to prevent the action.
33		Civil	remedy provisions
34	(4) Subs	ection (1) is a civil remedy provision.

1	(5)	The Court may make one or more of the following orders in
2		relation to a person who has contravened subsection (1):
3		(a) an order imposing a pecuniary penalty on the person;
4		(b) an order requiring the person to pay to the employer
5		concerned compensation of such amount as the Court thinks
6		appropriate;
7		(c) injunctions, and any other orders, that the Court considers
8		necessary to stop the contravention or remedy its effects;
9		(d) any other consequential orders.
10	(6)	The pecuniary penalty under paragraph (5)(a) cannot be more than
11		300 penalty units for a body corporate or 60 penalty units in any
12		other case.
13	(7)	The Court must not make an order under paragraph (5)(b) if the
14		employer concerned has contravened subsection 114(2) in
15		connection with the contravention of subsection (1) of this section.
16	(8)	An application for an order under subsection (5) may be made by:
17	(-)	(a) the employer concerned; or
18		(b) a workplace inspector; or
19		(c) a person who has an interest in the matter; or
20		(d) any other person prescribed by the regulations.
21 22		Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII.
23	(9)	A regulation prescribing persons for the purposes of
24		paragraph (8)(d) may limit its application to specified
25		circumstances.
26	11/R Dom	sons not to goorgo noonlo for normonts in relation to
26 27	114D Ferr	sons not to coerce people for payments in relation to periods of industrial action
21		perious of multistrial action
28	(1)	A person must not take, or threaten to take, action that would have
29		the effect of directly or indirectly prejudicing the engagement, or
30		possible engagement, of another person as an independent
31		contractor with the intention of coercing the other person to make a
32 22		payment to an employee of the other person in relation to a day on which the employee engaged or engages in industrial action
33 34		(whether or not protected action).
54		(whener of not protected action).

1	Civil remedy provisions
2	(2) Subsection (1) is a civil remedy provision.
3	(3) The Court may make one or more of the following orders in
4	relation to a person who has contravened subsection (1):
5	(a) an order imposing a pecuniary penalty on the person;
6	(b) injunctions, and any other orders, that the Court considers
7	necessary to stop the contravention or remedy its effects;
8	(c) any other consequential orders.
9	(4) The pecuniary penalty under paragraph $(3)(a)$ cannot be more than
10	300 penalty units for a body corporate or 60 penalty units in any
11	other case.
12	(5) An application for an order under subsection (3) may be made by:
13	(a) the other person referred to in subsection (1); or
14	(b) a workplace inspector; or
15	(c) a person who has an interest in the matter; or
16	(d) any other person prescribed by the regulations.
17	Note: For other provisions about civil remedy provisions, see Division 4 of
18	Part VIII.
19	(6) A regulation prescribing persons for the purposes of
20	paragraph (5)(d) may limit its application to specified
21	circumstances.
22	Interpretation
23	(7) In this section, a reference to an independent contractor is not
24	confined to a natural person.
	Dent VI Awanda
25	Part VI—Awards
26	Division 1—Preliminary
27	115 Objects of Part
28	The objects of this Part are:
29	(a) to ensure that minimum safety net entitlements are protected
30	through a system of enforceable awards maintained by the

Commission; and

31

282 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1 2	(b) to ensure that awards are rationalised and simplified so they are less complex and are more conducive to the efficient	
3	performance of work; and	
4 5	(c) to ensure that the Commission performs its functions under this Part in a way that:	
6	(i) encourages the making of agreements between	
7 8	employers and employees at the workplace or enterpris level; and	e
o 9	(ii) protects the competitive position of young people in the	-
9 10	labour market, promotes youth employment, youth	-
11	skills and community standards, and assists in reducing	Į
12	youth unemployment.	,
13	115A Performance of functions by the Commission	
14	(1) The Commission must perform its functions under this Part in a	
15	way that furthers the objects of this Act and, in particular, the	
16	objects of this Part.	
17	(2) In performing its functions under this Part, the Commission must	
18	have regard to:	
19 20	(a) the desirability of high levels of productivity, low inflation, creation of jobs and high levels of employment; and	
21	(b) decisions of the AFPC, and, in particular, the need to ensure	
22	that Commission decisions are not inconsistent with AFPC	
23	decisions; and	
24	(c) the importance of providing minimum safety net entitlement	S
25	that do not act as a disincentive to bargaining at the	
26	workplace level.	
27	115B This Part does not apply in relation to prescribed employees in	n
28	Australia	
29	(1) This Part does not apply in relation to:	
30	(a) an employee in Australia who is prescribed by the regulation	ıs
31	as an employee in relation to whom this Part does not apply	,
32	or	
33	(b) the employee's employer.	
34	Note 1: In this context, <i>Australia</i> includes the Territory of Christmas Island,	
35 36	the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the <i>Acts Interpretation Act 1901</i> .	
20		

1 2		Note 2:	The regulations may prescribe the employee by reference to a class. See subsection 13(3) of the <i>Legislative Instruments Act 2003</i> .
3	(2)	Before	the Governor-General makes regulations prescribing an
4	(-)		yee as an employee in relation to whom this Part does not
5		-	the Minister must be satisfied that this Part should not apply
6			employee because there is not a sufficient connection
7			en the employee's employment and Australia.
8	115C Ext	raterri	torial extension
9 10	(1)	This P extend	art, and the rest of this Act so far as it relates to this Part,
11 12			o an employee outside Australia who meets any of the conditions in this section; and
13 14			to the employee's employer (whether the employer is in or butside Australia); and
15		(c) t	o acts, omissions, matters and things relating to the
16			employee (whether they are in or outside Australia).
17 18 19		Note:	In this context, <i>Australia</i> 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 <i>Acts Interpretation Act 1901</i> .
20		In Aus	tralia's exclusive economic zone
21 22	(2)		ondition is that the employee is in Australia's exclusive mic zone and either:
23		(a) i	s an employee of an Australian employer and is not
24			prescribed by the regulations as an employee to whom this
25		-	subsection does not apply; or
26		(b) i	s an employee prescribed by the regulations as an employee
27			o whom this subsection applies.
28 29		Note:	The regulations may prescribe the employee by reference to a class. See subsection 13(3) of the <i>Legislative Instruments Act 2003</i> .
30		On Au	stralia's continental shelf outside exclusive economic zone
31	(3)		er condition is that the employee:
32			s outside the outer limits of Australia's exclusive economic
33			zone, but is in, on or over a part of Australia's continental
34			shelf prescribed by the regulations for the purposes of this
35		S	subsection, in connection with the exploration of the

1 2		continental shelf or the exploitation of its natural resources; and
2	(b)	meets the requirements that are prescribed by the regulations
4	(0)	for that part.
5 6 7	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.
8	Outs	ide Australia's exclusive economic zone and continental shelf
9	(4) Anot	her condition is that the employee:
10	(a)	is neither in Australia's exclusive economic zone nor in, on
11 12		or over a part of Australia's continental shelf described in paragraph (3)(a); and
13	(b)	is an Australian-based employee of an Australian employer;
14		and
15	(c)	is not prescribed by the regulations as an employee to whom
16		this subsection does not apply.
17	Defin	nition
18	(5) In the	is section:
19 20		Act includes the Registration and Accountability of nisations Schedule and regulations made under it.
21	Division 2—7	Ferms that may be included in awards
22	Subdivision A	—Allowable award matters
23	116 Allowable	award matters
24	(1) Subi	ect to this Part, an award may include terms about the
25		wing matters (<i>allowable award matters</i>) only:
26	(a)	ordinary time hours of work and the time within which they
27		are performed, rest breaks, notice periods and variations to
28		working hours;
29	(b)	incentive-based payments and bonuses;
30	(c)	annual leave loadings;
31	(d)	ceremonial leave;

1	(e)	observance of days declared by or under a law of a State or Territory to be observed generally within that State or
2 3		Territory, or a region of that State or Territory, as public
4		holidays by employees who work in that State, Territory or
5		region, and entitlements of employees to payment in respect
6		of those days;
7	(f)	monetary allowances for:
8	(-)	(i) expenses incurred in the course of employment; or
9		(ii) responsibilities or skills that are not taken into account
10		in rates of pay for employees; or
11		(iii) disabilities associated with the performance of particular
12		tasks or work in particular conditions or locations;
13	(g)	loadings for working overtime or for shift work;
14	(h)	penalty rates;
15	(i)	redundancy pay, within the meaning of subsection (4);
16	(j)	stand-down provisions;
17	(k)	dispute settling procedures, but only as provided by
18		section 116A;
19	(1)	type of employment, such as full-time employment, casual
20		employment, regular part-time employment and shift work;
21	(m)	conditions for outworkers, but only to the extent necessary to
22		ensure that their overall conditions of employment are fair
23		and reasonable in comparison with the conditions of
24		employment specified in a relevant award or awards for
25		employees who perform the same kind of work at an
26		employer's business or commercial premises.
27 28	Note 1	: The matters referred to in subsection 116(1) have a meaning that is affected by section 116B.
	N	
29 30	Note 2	2: Entitlements relating to certain matters that were allowable award matters immediately before the reform commencement are preserved
31		under Division 3.
32	Note 3	Certain allowable award matters are protected in workplace
33		agreements as <i>protected award conditions</i> —see section 101B.
34	(2) A ma	tter referred to in subsection (1) is an allowable award matter
35		to the extent that the matter pertains to the relationship
36		een employers bound by the award and employees of those
37	emple	oyers.

1 2	(3) An award may include terms about the matters referred to in subsection (1) only to the extent that the terms provide minimum
3	safety net entitlements.
4 5	(4) For the purposes of paragraph (1)(i), <i>redundancy pay</i> means redundancy pay in relation to a termination of employment that is:
6	(a) by an employer of 15 or more employees; and
7	(b) either:
8	(i) at the initiative of the employer and on the grounds of
9	operational requirements; or
10	(ii) because the employer is insolvent.
11	(5) For the purposes of paragraph $(4)(a)$:
12	(a) whether an employer employs 15 or more employees, or
12	fewer than 15 employees, is to be worked out as at the time
14	(the <i>relevant time</i>):
15	(i) when notice of the redundancy is given; or
16	(ii) when the redundancy occurs;
17	whichever happens first; and
18	(b) a reference to employees includes a reference to:
19	(i) the employee who becomes redundant and any other
20	employee who becomes redundant at the relevant time;
21	and
22	(ii) any casual employee who, at the relevant time, has been
23	engaged by the employer on a regular and systematic
24	basis for at least 12 months (but not including any other
25	casual employee).
26	(6) For the purposes of paragraph (1)(m):
27	conditions does not include pay.
28	outworker means an employee who, for the purposes of the
29	business of the employer, performs work at private residential
30	premises or at other premises that are not business or commercial
31	premises of the employer.
32	116A Dispute settling procedures
33	Each award is taken to include a term that specifies a model
34	dispute resolution process in the same terms as the model dispute
35	resolution process set out in Division 1 of Part VIIA, and a term

1 2 3	providing for any other dispute settling process or procedure is taken not to be about an allowable award matter for the purposes of paragraph $116(1)(k)$.
4	116B Matters that are not allowable award matters
5	(1) For the purposes of subsection $116(1)$, matters that are not
6	allowable award matters within the meaning of that subsection
7	include, but are not limited to, the following:
8	(a) rights of an organisation of employers or employees to
9	participate in, or represent an employer or employee in, the
10	whole or part of a dispute settling procedure, unless the
11 12	organisation is the representative of the employer's or employee's choice;
13	(b) transfers from one type of employment to another type of
14	employment;
15	(c) the number or proportion of employees that an employer may
16	employ in a particular type of employment;
17	(d) prohibitions (whether direct or indirect) on an employer
18	employing employees in a particular type of employment;
19	(e) the maximum or minimum hours of work for regular
20	part-time employees;
21	(f) restrictions on the range or duration of training arrangements;
22	(g) restrictions on the engagement of independent contractors
23	and requirements relating to the conditions of their
24	engagement;
25	(h) restrictions on the engagement of labour hire workers, and
26	requirements relating to the conditions of their engagement,
27	imposed on an entity or person for whom the labour hire
28	worker performs work under a contract with a labour hire
29	agency;
30	(i) union picnic days; (i) talliagi
31	(j) tallies;
32	(k) dispute resolution training leave;(b) tende services training leaves;
33	(l) trade union training leave;
34	(m) any other matter prescribed by the regulations.
35	(2) Paragraph (1)(e) does not prevent any of the following being
36	included in an award:

1 2 3 4	(a) terms setting a minimum number of consecutive hours that an employer may require a regular part-time employee to work;(b) terms facilitating a regular pattern in the hours worked by regular part-time employees.
5	(3) In this section:
6 7 8 9	<i>labour hire agency</i> means an entity or a person who conducts a business that includes the employment or engagement of workers for the purpose of supplying those workers to another entity or person under a contract with that other entity or person.
10 11	<i>labour hire worker</i> means a person:(a) who:
12 13 14	(i) is employed by a labour hire agency; or(ii) is engaged by a labour hire agency as an independent contractor; and
15 16 17	(b) who performs work for another entity or person under a contract between that entity or person and the labour hire agency.
18 19	116C Matters provided for by the Australian Fair Pay and Conditions Standard
20 21 22	 A matter for which provision is made by the Australian Fair Pay and Conditions Standard is not an allowable award matter, except as mentioned in subsection (2).
23 24	(2) Despite subsection (1), an award may include a term about ordinary time hours of work.
25	Note: An award may also include preserved award terms (see section 116G).
26 27	116D Awards may not include terms involving discrimination and preference
28 29 30 31	To the extent that a term of an award requires or permits, or has the effect of requiring or permitting, any conduct that would contravene Part XA, it is taken not to be about allowable award matters.

	Awards may not include certain terms about rights of entry
	To the extent that a term of an award requires or authorises an
	officer or employee of an organisation:
	(a) to enter premises:
	(i) occupied by an employer that is bound by the award; or(ii) in which work to which the award applies is being carried on; or
	(b) to inspect or view any work, material, machinery, appliance, article, document or other thing on such premises; or
	(c) to interview an employee on such premises;
	it is taken not to be about allowable award matters.
1 16F	Awards may not include enterprise flexibility provisions
	To the extent that a term of an award is an enterprise flexibility
	provision within the meaning of section 113A of this Act as in
	force immediately before the reform commencement, it is taken not
	to be about allowable award matters.
Subc	livision B—Other terms that are permitted to be in awards
	livision B—Other terms that are permitted to be in awards Preserved award terms
	-
116G	Preserved award terms
116G	Preserved award terms An award may include preserved award terms (see Division 3).
116G	 Preserved award terms An award may include preserved award terms (see Division 3). Facilitative provisions
116G	 Preserved award terms An award may include preserved award terms (see Division 3). Facilitative provisions (1) An award may include a facilitative provision that allows agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how a term in
116G	 Preserved award terms An award may include preserved award terms (see Division 3). Facilitative provisions (1) An award may include a facilitative provision that allows agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how a term in the award about an allowable award matter or a preserved award
16G	 Preserved award terms An award may include preserved award terms (see Division 3). Facilitative provisions (1) An award may include a facilitative provision that allows agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how a term in
116G	 Preserved award terms An award may include preserved award terms (see Division 3). Facilitative provisions (1) An award may include a facilitative provision that allows agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how a term in the award about an allowable award matter or a preserved award
116G	 Freserved award terms An award may include preserved award terms (see Division 3). Facilitative provisions (1) An award may include a facilitative provision that allows agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how a term in the award about an allowable award matter or a preserved award term is to operate.
116G	 Preserved award terms An award may include preserved award terms (see Division 3). Facilitative provisions (1) An award may include a facilitative provision that allows agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how a term in the award about an allowable award matter or a preserved award term is to operate. (2) A facilitative provision must not require agreement between a majority of employees and an employer, but must permit agreement between an individual employee and an employer, on
116G	 Freserved award terms An award may include preserved award terms (see Division 3). Facilitative provisions (1) An award may include a facilitative provision that allows agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how a term in the award about an allowable award matter or a preserved award term is to operate. (2) A facilitative provision must not require agreement between a majority of employees and an employer, but must permit agreement between an individual employee and an employer, on how a term in an award about an allowable award matter or a
116G	 Freserved award terms An award may include preserved award terms (see Division 3). Facilitative provisions (1) An award may include a facilitative provision that allows agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how a term in the award about an allowable award matter or a preserved award term is to operate. (2) A facilitative provision must not require agreement between a majority of employees and an employee and an employer, on

1 2	(4) A facilitative provision is of no effect to the extent that it does not comply with subsections (2) and (3).
3	116I Incidental and machinery terms
4	(1) An award may include terms that are:
5	(a) incidental to an allowable award matter about which there is
6	a term in the award; and
7 8	(b) essential for the purpose of making a particular term operate in a practical way.
9	(2) For the purposes of this section, to the extent that a term of an
10	award is about a matter that is not an allowable award matter
11	because of the operation of section 116B, 116D, 116E or 116F, the
12 13	term is not, and cannot be, incidental to an allowable award matter, and is of no effect to that extent.
14 15	(3) An award may include machinery provisions including, but not limited to, provisions about the following:
16	(a) commencement;
17	(b) definitions;
18	(c) titles;
19	(d) arrangement;
20	(e) employers, employees and organisations;
21	(f) term of the award.
22	116J Anti-discrimination clauses
23	An award may include a model anti-discrimination clause.
24	116K Boards of reference
25	(1) An award may include, in accordance with subsection (2) or (3), a
26	term:
27	(a) appointing, or giving power to appoint, for the purposes of
28	the award, a board of reference consisting of a person or 2 or
29	more persons; and
30	(b) assigning to the board of reference functions as described in $\frac{1}{2}$
31	subsection (4).

1	(2) A term of a pre-reform award that appoints, or gives power to
2	appoint, a board of reference is taken:
3	(a) to continue in effect after the reform commencement, to the
4	extent that it complies with subsection (4); and
5	(b) to cease to have effect after the reform commencement, to the
6	extent that it does not comply with subsection (4).
7	(3) An award (the <i>rationalised award</i>) made under section 118E or
8	varied under section 118J may include a term that appoints, or
9	gives power to appoint, a board of reference, but the term has
10	effect only to the extent that:
11	(a) the term was included in one or more of the following awards
12	(the <i>replaced award</i>):
13	(i) any award that the rationalised award has the effect of
14	replacing;
15	(ii) if the rationalised award is an award varied under
16	section 118J—the award as in force immediately before
17	the variation; and
18	(b) the functions of the board of reference that relate to preserved
19	award terms relate only to preserved award terms that were
20	included in the replaced award immediately before the
21	making or variation of the rationalised award; and
22	(c) the term complies with subsection (4).
23	(4) A term of an award that appoints, or gives power to appoint, a
24	board of reference:
25	(a) may confer upon the board of reference an administrative
26	function in respect of allowing, approving, fixing or dealing
27	with, in the manner and subject to the conditions specified in
28	the award, a matter or thing that, under the award, may from
29	time to time be required to be allowed, approved, fixed or
30	dealt with; and
31	(b) must not confer upon the board of reference a function of
32	settling or determining disputes about any matter arising under the award.
33	under the award.
34	(5) A function conferred under subsection (4) may relate only to
35	allowable award matters or terms permitted by this Subdivision to
36	be included in the award.
37	(6) A board of reference may consist of or include a Commissioner.

1 2 3 4 5 6	 (7) Subject to this section, the regulations may make provision in relation to: (a) a particular board of reference; or (b) boards of reference in general; including, but not limited to, the functions and powers of the board or boards.
7	Subdivision C—Terms in awards that cease to have effect
8 9	116L Terms in awards that cease to have effect after the reform commencement
10 11 12 13	(1) Immediately after the reform commencement, a term of an award ceases to have effect to the extent that it is about matters that are not allowable award matters, except to the extent (if any) that the term is permitted by Subdivision B to be included in the award.
14 15	(2) This section does not affect the operation of preserved award terms.
16	Subdivision D—Regulations relating to part-time employees
17	116M Award conditions for part-time employees
 18 19 20 21 22 23 24 25 26 27 28 	 (1) The regulations may do either or both of the following in relation to an award: (a) provide for the award to have effect so that a part-time employee is entitled to conditions to which a full-time employee is entitled under the award; (b) provide for the award to have effect so that conditions to which a part-time employee is otherwise entitled under the award (including because of paragraph (a)) are adjusted (in accordance with the regulations or a method set out in the regulations) in proportion to the hours worked by the part-time employee.
29	(2) The award has effect accordingly.

Division 3—Preserved award entitlements

2 1	17 Preservation of certain award terms
3 4	(1) A <i>preserved award term</i> is a term of an award that is about a matter referred to in subsection (2), and:
5	(a) if the award is a pre-reform award that has not been varied
6 7	under section 118J—was in effect immediately before the reform commencement; or
8 9	(b) in any other case—is taken to be included in the award because of the operation of section 117A.
10 11 12	Note: Section 116L, which provides for certain terms of awards to cease immediately after the reform commencement, does not affect the operation of preserved award terms—see subsection 116L(2).
13	(2) For the purposes of subsection (1), the matters are as follows:
14	(a) annual leave;
15	(b) personal/carer's leave;
16	(c) parental leave, including maternity and adoption leave;
17	(d) long service leave;
18	(e) notice of termination;
19	(f) jury service;
20	(g) superannuation.
21	(3) If a term of an award referred to in subsection (1) is about both
22	matters referred to in subsection (2) and other matters, it is taken to
23	be a preserved award term only to the extent that it is about the
24	matters referred to in subsection (2).
25	(4) A preserved award term about the matter referred to in
26	paragraph $(2)(g)$ (superannuation) ceases to have effect at the end
27	of 30 June 2008.
28	(5) A preserved award term continues to have effect for the purposes
29	of this Act.
30	Note: Preserved award terms may not be varied.
31	(6) In this section:
32 33	<i>personal/carer's leave</i> includes war service sick leave, infectious diseases sick leave and other like forms of sick leave.

294

1(7) The regulations may provide that for the purposes of2subsection (2):3(a) parental leave does not include special mater4(within the meaning of section 94C); and5(b) personal/carer's leave does not include one of6following:7(i) compassionate leave (within the meaning8section 93Q);9(ii) unpaid carer's leave (within the meaning	
 4 (within the meaning of section 94C); and 5 (b) <i>personal/carer's leave</i> does not include one of following: 7 (i) compassionate leave (within the meaning section 93Q); 	nity leave
 (b) <i>personal/carer's leave</i> does not include one of following: (i) compassionate leave (within the meaning section 93Q); 	
 following: (i) compassionate leave (within the meanin section 93Q); 	or both of the
8 section 93Q);	
-	g of
(ii) unneid coner's locus (within the meaning	
 9 (ii) unpaid carer's leave (within the meaning 10 section 93D). 	g of
11Note:The effect of excluding these forms of leave is that under the Australian Fair Pay and Conditions Stand these forms of leave will automatically apply.	
14 (8) Regulations under subsection (7) may be expressed	to apply
15 generally or in respect of employees engaged in spe	
16 employment, such as full-time employment, part-time	
17 employment, casual employment, regular part-time	employment or
18 shift work.	
19 117A Preserved award terms of rationalised awards	
20 (1) This section applies to an award (the <i>rationalised a</i>	ward) if:
(a) the award is made under section 118E or is va	aried under
section 118J; and	
23 (b) immediately before the making or variation, a	-
	e following
award term was included in one or more of th	8
awards (the <i>replaced award</i>):	-
 awards (the <i>replaced award</i>): (i) any award that the rationalised award has 	-
 awards (the <i>replaced award</i>): (i) any award that the rationalised award ha replacing; 	is the effect of
 awards (the <i>replaced award</i>): (i) any award that the rationalised award ha replacing; (ii) if the rationalised award is an award var 	ied under
 awards (the <i>replaced award</i>): (i) any award that the rationalised award have replacing; (ii) if the rationalised award is an award var section 118J—the award as in force immediate award aw	ied under
 awards (the <i>replaced award</i>): (i) any award that the rationalised award have replacing; (ii) if the rationalised award is an award var section 118J—the award as in force imm the variation. 	is the effect of ied under nediately before
 awards (the <i>replaced award</i>): (i) any award that the rationalised award have replacing; (ii) if the rationalised award is an award var section 118J—the award as in force immediate award aw	is the effect of ied under nediately before der section 118E or
 awards (the <i>replaced award</i>): (i) any award that the rationalised award ha (i) any award that the rationalised award ha (ii) if the rationalised award is an award var section 118J—the award as in force imn the variation. 	as the effect of ied under nediately before der section 118E or been varied).
 awards (the <i>replaced award</i>): (i) any award that the rationalised award have replacing; (ii) if the rationalised award is an award var section 118J—the award as in force imm the variation. Note: A replaced award may be either an award made un a pre-reform award (which may subsequently have 	as the effect of ied under nediately before der section 118E or been varied).
25awards (the <i>replaced award</i>):26(i) any award that the rationalised award ha replacing;28(ii) if the rationalised award is an award var section 118J—the award as in force imn the variation.30The preserved award may be either an award made un a pre-reform award (which may subsequently have included in the rationalised award.33(2) The preserved award term of the replaced award is included in the rationalised award.35(3) The preserved award term is taken to have the effect	as the effect of ied under nediately before der section 118E or been varied). taken to be
25awards (the <i>replaced award</i>):26(i) any award that the rationalised award ha replacing;28(ii) if the rationalised award is an award var section 118J—the award as in force imm the variation.30The preserved award may be either an award made un a pre-reform award (which may subsequently have33(2) The preserved award term of the replaced award is included in the rationalised award.	as the effect of ied under nediately before der section 118E or been varied). taken to be ct that: es that had

1		award have corresponding entitlements under the rationalised
2	(1)	award; and
3	(b)	employees belonging to any class of employees that did not
4		have entitlements under the preserved award term of the
5		replaced award do not gain entitlements under the rationalised award.
6		rationalised award.
7	Note:	This means that the class of employees who had preserved award
8 9		entitlements under replaced awards retain those preserved award entitlements after award rationalisation, but the class of employees
10		who have such entitlements is not expanded.
11	(4) The p	preserved award term is taken to have the effect that:
12	(a)	only an employer bound by the preserved award term of the
13		replaced award is bound by the corresponding preserved
14		award term of the rationalised award; and
15	(b)	other employers are not so bound.
16	Note 1	\mathbf{r}
17		terms is not expanded as a result of award rationalisation.
18 19	Note 2	2: The operation of this subsection is affected by Part VIAA, which deals with transmission of business.
17		
20	(5) For th	he purposes of subsection (3), whether an employee belongs
21		lass of employees that had entitlements under a preserved
22		d term of a replaced award is to be determined without
23		ence to whether the employee was employed before or after
24	the m	aking of the rationalised award.
25	117B When pro	eserved award entitlements have effect
26	(1) This	section applies to an employee if:
27		the employee's employment is regulated by an award that
28	(4)	includes a preserved award term about a matter; and
29	(h)	the employee has an entitlement (the <i>preserved award</i>
30	(0)	<i>entitlement</i>) in relation to that matter under the preserved
31		award term.
32	(2) If:	
33	(a)	the preserved award term is about a matter referred to in
34		paragraph $117(2)(a)$, (b) or (c); and
35	(b)	the employee's preserved award entitlement in relation to the
36		matter is more generous than the employee's entitlement in

1			elation to the corresponding matter under the Australian Fair
2			ay and Conditions Standard;
3		the employee's entitlement under the Australian Fair Pay and	
4			ons Standard is excluded, and the employee's preserved
5			entitlement has effect in accordance with the preserved
6			erm. Otherwise, the employee's entitlement under the
7 °		Note:	ian Fair Pay and Conditions Standard has effect.
8			See section 117C for the meaning of <i>more generous</i> .
9	(3)		
10			e preserved award term is about a matter referred to in
11		-	aragraph 117(2)(a), (b) or (c) and the employee has no
12			ntitlement in relation to the corresponding matter under the
13			ustralian Fair Pay and Conditions Standard; or
14 15			he preserved award term is about a matter referred to in aragraph 117(2)(d), (e), (f) or (g);
16		the emp	bloyee's preserved award entitlement has effect in
17		-	nce with the preserved award term.
18		Note 1:	Preserved award terms relating to matters referred to in paragraph
19 20			117(2)(g) cease to have effect at the end of 30 June 2008—see subsection 117(4).
21		Note 2:	Subsection 7C(2) provides that State laws dealing with long service
22			leave, jury service or superannuation (among other things) are not
23 24			excluded by this Act, but section 7D provides that awards prevail over State laws to the extent of any inconsistency.
25	117C Mea	ning of	f more generous
20			
26	(1)	Whethe	er an employee's entitlement under a preserved award term
27			ion to a matter is <i>more generous</i> than the employee's
28			nent in relation to the corresponding matter under the
29		Austral	ian Fair Pay and Conditions Standard:
30			as specified in, or as worked out in accordance with a
31		m	ethod specified in, regulations made under this paragraph;
32		01	r
33			the extent that regulations made under paragraph (a) do not
34			specify—is to be ascertained in accordance with the
35		O	rdinary meaning of the term <i>more generous</i> .
36	(2)	If a mat	tter to which an entitlement under a preserved award term
37			does not correspond directly to a matter to which the
38		Austral	ian Fair Pay and Conditions Standard relates, regulations

1 2		made under paragraph (1)(a) may nevertheless specify that the matters correspond for the purposes of this Division.
3	117D	Modifications that may be prescribed—personal/carer's leave
4		(1) The regulations may provide that a preserved award term about
5		personal/carer's leave is to be treated as a separate preserved award
6		term about separate matters, to the extent that the preserved award
7		term is about any of the following:
8		(a) war service sick leave;
9		(b) infectious diseases sick leave;
10		(c) any other like form of sick leave.
11 12		(2) If the regulations so provide, sections 117, 117A, 117B and 117C have effect in relation to each separate matter.
13		Note: There is no entitlement in relation to war service sick leave, infectious
14		diseases sick leave or any other like form of sick leave under the
15 16		Australian Fair Pay and Conditions Standard, so there is no corresponding matter for the purposes of subsection 117B(3).
10		corresponding matter for the purposes of subsection (17)(5).
17	117E	Modifications that may be prescribed—parental leave
18		(1) The regulations may provide that a preserved award term about
19		parental leave is to be treated as being about separate matters to the
20		extent that it is about paid and unpaid parental leave.
21		(2) If the regulations provide that a preserved award term about
22		parental leave is to be treated as being about separate matters to the
23		extent that it is about paid and unpaid parental leave:
24		(a) sections 117, 117A and 117B have effect in relation to each
25		separate matter; and
26		(b) in accordance with section 94D, the entitlement that an
27		employee would have to unpaid parental leave under the
28		Australian Fair Pay and Conditions Standard is reduced by
29		any amount of paid parental leave to which the employee is
30		entitled under the preserved award term.
31		Note 1: There is no entitlement in relation to paid parental leave under
32 33		the Australian Fair Pay and Conditions Standard, so there is no corresponding matter for the purposes of subsection 117B(3).
34		Note 2: Paragraph (b) does not have the effect of reducing entitlements.
35		It simply ensures that the operation of section 94D is not affected
36 37		by treating paid and unpaid parental leave separately under the
51		regulations.

1 2	117F Preserved award terms—employers bound after reform commencement
3 4 5 6	An employer that was not bound by a particular award immediately before the reform commencement, but is subsequently bound by the award under section 120, is not bound by any preserved award terms included in the award.
7 8	Division 4—Award rationalisation and award simplification
9	Subdivision A—Award rationalisation
10	118 Commission's award rationalisation function
11 12	(1) It is a function of the Commission to undertake award rationalisation.
13 14 15	(2) Award rationalisation is to be carried out in accordance with a written request (an <i>award rationalisation request</i>) made to the President by the Minister.
 16 17 18 19 20 21 22 23 	 (3) Each award rationalisation request must specify: (a) the award rationalisation process that is to be undertaken under this section; and (b) the principles to be applied by the Commission in undertaking the award rationalisation process; and (c) the time by which the award rationalisation process must be completed, which must not be later than 3 years after the making of the request.
24 25 26 27 28 29 30 31 32	 (4) Principles under paragraph (3)(b) relating to an award rationalisation request may include, but are not limited to the following: (a) the awards to which the award rationalisation process relates; (b) the nature of, and the extent of the coverage of, awards that may be made as a result of the award rationalisation process; (c) subject to this Act, the matters that may be included in such awards and limits on the matters that may be included in such awards.

1 2		(5) An award rationalisation request may be varied or revoked by the Minister by written instrument.
3		(6) The following are not legislative instruments:
4		(a) an award rationalisation request;
5		(b) an instrument under subsection (5).
5		
6	118A	Commission must deal with State-based differences
7 8		(1) In undertaking the first award rationalisation process requested under subsection 118(2), the Commission must ensure that:
9 10 11		 (a) terms and conditions of employment included in awards are not determined by reference to State or Territory boundaries; and
12		(b) awards have effect in each State and Territory.
13		(2) If the award rationalisation request under which the first award
14		rationalisation process is undertaken is not expressed to relate to all
15		awards, the Commission must nevertheless review all awards as
16		part of that award rationalisation process to the extent necessary to
17		satisfy the requirements of subsection (1).
18 19		(3) In undertaking subsequent award rationalisation processes, the Commission must ensure that:
20		(a) terms and conditions of employment included in awards
20		made or varied as a result of the subsequent award
22		rationalisation process are not determined by reference to
23		State or Territory boundaries; and
24		(b) an award made or varied as a result of the subsequent award
25		rationalisation process has effect in each State and Territory.
26		(4) This section does not affect the operation of Division 3.
27	118B	Award rationalisation to be undertaken by Full Bench
28		As soon as practicable after receiving an award rationalisation
29		request, the President must establish one or more Full Benches to
30		undertake the award rationalisation process requested.

1	118C	Award ration	onalisation request to be published
2		(1) As soon	as practicable after receiving an award rationalisation
3		request,	the President must give a copy of the request to a
4		Registra	ır.
5		(2) The Reg	gistrar must publish the request as follows:
6 7			requirements relating to publication are prescribed by the gulations—in accordance with those requirements;
8 9		. ,	no such requirements are prescribed—in such manner as e Registrar thinks appropriate.
10	118D	Minister ma	ay intervene
11 12			nister may intervene in a proceeding that relates to an ationalisation process.
13	118E	Making awa	ards as a result of award rationalisation
14 15			Bench may make one or more awards to give effect to the e of an award rationalisation process.
16	118F	Making awa	ards as a result of award rationalisation
17 18		The Consection	mmission must not make an award other than under 118E.
19	118G	Awards ma	y not include certain terms
20		A Full I	Bench must not include a term in an award made under
21			118E if the term may not be included in the award because
22		of the o	peration of Division 2.
23	118H	Awards mu	ist include term about regular part-time
24		employ	· ·
25 26			Bench must include in an award made under section 118E a oviding for regular part-time employment.
		Note:	Clauses 15.3.1 to 15.3.5 of the Hospitality Industry—
27 28		note.	Accommodation, Hotels, Resorts and Gaming Award 1998 provide a
29			model (see the Award Simplification Decision at P7500).

1 1181 Who is bound by awards

2 3	(1)	An award made under section 118E binds the employers, employees and organisations that it is expressed to bind.
4 5		Note: An award may be expressed to bind additional employers, employees and organisations under Division 6.
6	(2)	An award must be expressed to bind the following:
7	~ /	(a) specified employers;
8		(b) specified employees of employers bound by the award, in
9		respect of work that is expressed to be regulated by the
10		award.
11 12	(3)	An award may be expressed to bind one or more specified organisations.
13	(4)	For the purposes of subsections (2) and (3):
13	(-)	(a) employers may be specified by name or by inclusion in a
14		specified class or specified classes; and
16		(b) employees must be specified by inclusion in a specified class
17		or specified classes; and
18		(c) organisations must be specified by name.
19	(5)	Without limiting the way in which a class may be described for the
20		purposes of subsection (4), the class may be described by reference
21		to a particular industry or particular kinds of work.
22	(6)	The power of the Commission under subsections (2) and (3) must
23		be exercised in accordance with the terms of the award
24		rationalisation request to which the making of the award relates.
25	118J Vari	ation of awards as part of award rationalisation
26	(1)	The Commission may make an order varying an award to give
27		effect to the outcome of an award rationalisation process.
28	(2)	The Commission must not vary an award under this section in such
29		a way that the award includes a term that may not be included in
30		the award because of the operation of Division 2.
31	(3)	If the Commission varies an award under this section, the
32		Commission must include in the award a term providing for regular

1 2		ent, unless such a term is already included in
3 4 5	4 Accommoda	1 to 15.3.5 of the Hospitality Industry— tion, Hotels, Resorts and Gaming Award 1998 provide a he Award Simplification Decision at P7500).
6 7 8	specify the addition	varies an award under this section, it must al employers, employees and organisations (if ward.
9 10 11 12	organisations must the same limitations	subsection (4), employers, employees and be specified in the same manner, and subject to a, as provided in subsections 118I(2) to (6) in made under section 118E.
13	118K Revocation of awards	as part of award rationalisation
14 15		ay make an order revoking an award to give e of an award rationalisation process.
16	5 118L Preserved award tern	IS
17 18 19	make or vary an aw	Commission's power under this Division to ard is subject to, and must not be exercised in a assistent with, Division 3.
20	Subdivision B—Award sin	nplification
21	118M Review and simplific	ation of awards
22 23 24	determining whethe	ust review all awards for the purpose of r the awards include terms that may not be under this Part.
25	5 Note: Division 2 d	eals with terms that may be included in awards.
26 27		ay review awards for this purpose at the same tem for other purposes.
28 29 30 31	(a) within the per (b) in accordance	ust carry out the review: iod prescribed by the regulations; and with any directions prescribed by the

1	(4) A	After reviewing an award, the Commission must make an order
2		arying the award to the extent (if any) necessary to ensure that the
3	a	ward includes only terms that may be included under this Part.
4	(5) A	After reviewing an award, the Commission must make an order
5	re	evoking the award if the Commission is satisfied that the award is
6	0	bsolete or no longer capable of operating.
7	118N Princi	iples for award simplification
8	(1) T	The Commission may (subject to section 118M) establish
9		rinciples for the review and simplification of awards under
10	S	ection 118M.
11	(2) T	The Commission may establish principles relating to the following:
12		(a) the making or varying of awards in relation to each of the
13		allowable award matters;
14		(b) terms that may be included in awards (including, subject to
15		Division 2, about allowable award matters).
16	(3) A	After principles (if any) have been established under
17	SI	ubsections (1) and (2), the power of the Commission to vary an
18		ward is exercisable only in a manner consistent with those
19	р	principles.
20	(4) T	The President or a Full Bench may, in relation to the exercise of
21	р	owers under this section, direct a member of the Commission to
22	p	provide a report in relation to a specified matter.
23	(5) A	After making such investigation (if any) as is necessary, a member
24	Ų.	given a direction under subsection (4) must provide a report to the
25	Р	President or Full Bench.
26	1180 Minis	ster may intervene
27	Т	The Minister may intervene in a proceeding that relates to an
28	a	ward simplification process.

Subdivision C—Special technical requirements

2	118P Inclusio	on of preserved award terms in written awards
3 4 5	Div	is section applies if a preserved award term is taken under vision 3 to be included in an award (a <i>rationalised award</i>) made der section 118E or varied under section 118J.
6 7		reducing the rationalised award to writing as required by to the total state of total st
7 8 9		a) include the preserved award term in the rationalised award; and
10	(t	b) identify it as a preserved award term; and
11 12	(0	c) identify the employers bound by the preserved award term; and
13	(0	d) identify the employees bound by the preserved award term.
14 15	Not	e: Section 117A deals with the employers bound by preserved award terms.
16 17 18	effe	nore than one preserved award term to the same substantive ect is taken under Division 3 to be included in the rationalised ard:
19 20	(2	a) paragraph (2)(a) requires that the preserved award term be included only once in the rationalised award; and
21 22 23	(1	b) to avoid doubt, paragraphs (2)(b), (c) and (d) have effect according to their terms in relation to the preserved award term.
24	(4) For	r the purposes of paragraphs (2)(c) and (d) respectively:
25 26		a) employers may be identified by name or by inclusion in a specified class or specified classes; and
27 28	(t	 employees must be identified by inclusion in a specified class or specified classes.
29	(5) Wi	thout limiting the way in which a class may be described for the
30		poses of this section, the class may be described by reference to
31	a p	articular industry or particular kinds of work.
32	118Q Reprin	ts of varied awards
33 34		an award is varied under this Division, the Registrar must, as on as practicable after receiving a copy of the order varying the

1 2	award under subsection 121(2), publish a consolidated reprint of the award as varied.
3 4	(2) To avoid doubt, this requirement is in addition to, and not instead of, the requirements of Division 7.
5	Division 5—Variation and revocation of awards
6	Subdivision A—Variation of awards
7	119 Variation of awards—general
8	(1) The Commission must not make an order varying an award except:
9	(a) as a result of an award rationalisation process; or
10	(b) as a result of an award simplification process; or
11	(c) if the variation is essential to the maintenance of minimum
12	safety net entitlements (see section 119A); or
13	(d) on a ground set out in section 119B; or
14 15	(e) to bind additional employers, employees or organisations in accordance with section 120; or
16	(f) under section 273; or
17	(g) in circumstances prescribed by the regulations for the
18	purposes of this paragraph.
19 20	Note: The variation that the Commission can make as a result of an award rationalisation process is affected by sections 117F and 118P.
21	(2) The Commission must not vary a preserved award term.
22	(3) The Commission must not vary a facilitative provision within the
23	meaning of section 116H except:
24	(a) as a result of an award rationalisation process; or
25	(b) as a result of an award simplification process; or
26	(c) on a ground set out in section 119B.
27	(4) The Commission must not vary a term taken to be included in an
28	award by section 116A (which deals with dispute settling
29	procedures).

1 2	119A Variation of awards if essential to maintain minimum safety net entitlements
3	(1) An employer, employee or organisation bound by an award may
4	apply to the Commission for an order varying the award on the
5	ground that the variation is essential to the maintenance of
6	minimum safety net entitlements.
7	. (2) If an application is made under subsection (1), the Commission
8	must take such steps as it thinks appropriate to ensure that each
9	employer, employee and organisation bound by the award, and any
10	other interested persons and bodies, are made aware of the
11	application.
12	(3) The Minister may intervene in relation to the application.
13	(4) The Commission may make an order under this subsection varying
14	the award only if the Commission is satisfied that:
15	(a) the variation is essential to the maintenance of minimum
16	safety net entitlements; and
17	(b) all of the following conditions are met:
18 19	(i) the award as varied would not be inconsistent with decisions of the AFPC;
20 21	(ii) the award as varied would provide only minimum safety net entitlements for employees bound by the award;
22	(iii) the award as varied would not be inconsistent with the
23	outcomes (if any) of award simplification and award
24	rationalisation;
25	(iv) the making of the variation would not operate as a
26	disincentive to agreement-making at the workplace
27	level;
28	(v) such other requirements prescribed by the regulations (if
29 30	any) for the purposes of this paragraph have been satisfied.
31	119B Variation of awards—other grounds
32	(1) The Commission may, if it considers that an award or a term of an
33	award is ambiguous or uncertain, make an order varying the award
34	so as to remove the ambiguity or uncertainty.

1 2 3	(2) If an award is referred to the Commission under section 46PW of the <i>Human Rights and Equal Opportunity Commission Act 1986</i> , the Commission must convene a hearing to review the award.
4 5 6 7 8 9	 (3) In a review under subsection (2): (a) the Commission must take such steps as it thinks appropriate to ensure that each employer, employee and organisation bound by the award is made aware of the hearing; and (b) the Sex Discrimination Commissioner may intervene in the proceeding.
10 11 12 13	(4) If the Commission considers that an award reviewed under subsection (2) is a discriminatory award, the Commission must take the necessary action to remove the discrimination by making an order varying the award.
14 15 16 17	(5) The Commission may, on application by an employer, employee or organisation bound by an award, make an order varying a term of the award referring by name to an employer, employee or organisation bound by the award:
18 19 20	(a) to reflect a change in the name of the employer, employee or organisation; or(b) if:
21 22 23	(i) the registration of the organisation has been cancelled; or(ii) the employer, employee or organisation has ceased to
24 25	exist; to omit the reference to its name.
26 27	(6) The onus of demonstrating that an award should be varied as set out in an application under subsection (5) rests with the applicant.
28	(7) In this section:
29	discriminatory award means an award that:
30	(a) has been referred to the Commission under section 46PW of
31 32	the <i>Human Rights and Equal Opportunity Commission Act</i> 1986; and
32 33	(b) requires a person to do any act that would be unlawful under
33 34	Part II of the <i>Sex Discrimination Act 1984</i> , except for the fact
35	that the act would be done in direct compliance with the
36	award.

1 2 3	For the purposes of this definition, the fact that an act is done in direct compliance with the award does not of itself mean that the act is reasonable.
4	Subdivision B—Revocation of awards
5	119C Revocation of awards—general
6 7	The Commission must not make an order revoking an award except:
8	(a) as a result of an award rationalisation process; or
9	(b) as a result of an award simplification process; or
10 11	(c) if the award is obsolete or no longer capable of operating (see section 119D).
12 13	119D Revocation of awards—award obsolete or no longer capable of operating
14 15 16	(1) An employer, employee or organisation bound by an award may apply to the Commission to have the award revoked on the ground that the award is obsolete or is no longer capable of operating.
17 18 19 20	(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 is made aware of the application.
21	(3) The Commission must make an order revoking the award if it is
22	satisfied that:
23	(a) the award is obsolete or is no longer capable of operating;
24	and
25 26	(b) revocation of the award would not be contrary to the public interest.

Division	6—Binding additional employers, employees and organisations to awards
120 Bindi	ng additional employers, employees and organisations to an award
(1)	The Commission may make an order varying an award to bind an employer, employee or organisation to the award.
	Note 1: Section 118E enables the Commission to make awards binding specified employers, employees and organisations.
	Note 2: Pre-reform awards are taken to bind certain employers, employees and organisations. A pre-reform award may be varied under section 118J in a manner that affects who is bound.
(2)	The Commission may make an order varying an award under subsection (1) only in accordance with this Division.
120A App	lication to be bound by an award—agreement between employer and employees
(1)	An employer may apply to the Commission for an order varying a specified award to bind the employer and a specified class or specified classes of employees of the employer.
(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 is made aware of the application.
(3)	The Commission may make an order varying the award as specified in the application if it is satisfied that:
	(a) a valid majority of the employees of the employer who would be bound by the award support the application; and
	(b) the award is appropriate to regulate the terms and conditions of employment of those employees; and
	(c) the employer is not already bound by an award that regulates the terms and conditions of employment of those employees.
(4)	The Commission may make the order without holding a hearing unless the Commission considers that it cannot be satisfied of the matters referred to in paragraphs (3)(a) and (b) based on the information provided.

1 2	120B App	lication to be bound by an award—no agreement between employer and employees
3 4 5 6	(1)	An employer, or an employee or employees of an employer, may apply to the Commission for an order varying an award specified in the application to bind the employer and a specified class or specified classes of employees of the employer.
7 8 9	(2)	An employer may make an application under subsection (1) even if a valid majority of the employees of the employer who would be bound by the award do not support the application.
10 11 12	(3)	An employee or employees of an employer may make an application under subsection (1) even if the employer does not support the application.
13 14 15 16	(4)	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 is made aware of the application.
17 18 19 20 21 22	(5)	 The Commission may make an order varying the award as specified in the application only if the Commission is satisfied: (a) that the employer, and the employees of the employer who would be bound by the award, have been unable to make a workplace agreement, despite having made reasonable efforts to do so; and
23 24 25 26		(b) the award is appropriate to govern the terms and conditions of employment of those employees; and(c) the employer is not already bound by an award that regulates the terms and conditions of employment of those employees.
27 28 29 30	(6)	An organisation may make an application under subsection (1) on behalf of an employee or employees, and may represent the employee or employees in proceedings relating to the application, if:
31 32 33 34		(a) the employee or employees have requested that the organisation do so; and(b) the organisation is entitled (under its eligibility rules) to represent the interests of the employee or employees.
35	(7)	In this section:

	reasonable efforts does not require the taking of protected action.
120C App	lication to be bound by an award—new organisations
(1)	A new organisation may apply to the Commission for an order varying an award to bind the organisation.
(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 an other interested persons and bodies, are made aware of the application.
(3)	The Minister may intervene in relation to the application.
(4)	The Commission may make the order if the Commission is satisfied that:
	 (a) the new organisation has at least one member bound by the award whose industrial interests the new organisation is entitled (under its eligibility rules) to represent; and
	(b) the making of the order is necessary to enable the new organisation to represent properly the industrial interests of those of its members who are bound by the award; and
	(c) the award regulates an industry in respect of which the new organisation has traditionally been entitled to represent the industrial interests of its members.
(5)	In this section:
	<i>new organisation</i> means:
	 (a) an association granted registration as an organisation under the Registration and Accountability of Organisations Schedule on or after the reform commencement; or
	(b) a transitionally registered association registered under clause 2 of Schedule 17.
120D App	lication by new organisation to be bound by an award— additional matters
(1)	An application under subsection 120C(1) must be made within the period of one year commencing on the day on which the new

312 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1 2	organisation was registered under the Registration and Accountability of Organisations Schedule or Schedule 17.
3	(2) If an application under subsection $120C(1)$ relates to an award
4 5	made under section 118E or an award that has been varied under section 118J, a Full Bench must consider the application.
6	120E Process for valid majority of employees
7	The regulations may prescribe the meaning of, or the method for
8	establishing what constitutes, a valid majority of the employees of
9 10	an employer or of a class of employees of an employer, for the purposes of this Division.
11	120F General provisions
12	(1) Without limiting the way in which a class of employees may be
13	described for the purposes of this Division, the class may be
14 15	described by reference to a particular industry or particular kinds of work.
16	(2) For the purposes of making an order binding an employer,
17	employee or organisation to an award:
18 19	 (a) employers may be specified by name or by inclusion in a specified class or specified classes; and
20 21	 (b) employees must be specified by inclusion in a specified class or specified classes; and
22	(c) organisations must be specified by name.
23	Division 7—Technical matters
24	121 Making and publication of awards and award-related orders
25	(1) An award or award-related order must:
26	(a) be reduced to writing; and
27	(b) be signed by:
28	(i) in the case of an award or order made by a Full Bench— at least one member of the Full Bench, an
29	at least one member of the Full Bench; or
30 31	(ii) in the case of any other order—at least one member of the Commission; and
32	(c) show the day on which it is signed.

1 2	(2) If the Commission makes an award or an award-related order, the Commission must promptly give to a Registrar:
3	(a) a copy of the award or order; and
4	(b) written reasons for the award or order; and
	(c) a list specifying the employers, employees and organisations
5 6	bound by the award or order.
7	(3) A Registrar who receives a copy of an award or an award-related
8	order under subsection (2) must promptly:
9	(a) make available a copy of the award or order and the written
10	reasons received by a Registrar in respect of the making of
11	the award or order to each employer, employee and
12 13	organisation shown on the list given to the Registrar under paragraph $(2)(c)$; and
14	(b) ensure that a copy of the award or order and the written
15	reasons received by the Registrar in respect of the making of
16	the award or order are available for inspection at each
17	registry; and
18	(c) ensure that the award or order and any written reasons
19	received by the Registrar in respect of the making of the
20	award or order are published as soon as practicable.
20 21	121A Awards and award-related orders must meet certain
21 22 23	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related
21 22 23 24	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order:
21 22 23 24 25	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more
21 22 23 24 25 26	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or
21 22 23 24 25 26 27	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and
21 22 23 24 25 26 27 28	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and (b) does not prescribe work practices or procedures that restrict
21 22 23 24 25 26 27 28 29	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and (b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and
21 22 23 24 25 26 27 28 29 30	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and (b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and (c) does not include terms that have the effect of restricting or
21 22 23 24 25 26 27 28 29 30 31	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and (b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and (c) does not include terms that have the effect of restricting or hindering productivity, having regard to fairness to
21 22 23 24 25 26 27 28 29 30	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and (b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and (c) does not include terms that have the effect of restricting or
21 22 23 24 25 26 27 28 29 30 31	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and (b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and (c) does not include terms that have the effect of restricting or hindering productivity, having regard to fairness to
21 22 23 24 25 26 27 28 29 30 31 32	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and (b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and (c) does not include terms that have the effect of restricting or hindering productivity, having regard to fairness to employees.
21 22 23 24 25 26 27 28 29 30 31 32 33	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and (b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and (c) does not include terms that have the effect of restricting or hindering productivity, having regard to fairness to employees.
21 22 23 24 25 26 27 28 29 30 31 32 33 34	 121A Awards and award-related orders must meet certain requirements (1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order: (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and (b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and (c) does not include terms that have the effect of restricting or hindering productivity, having regard to fairness to employees. (2) The Commission must, when making an award or an award-related order, ensure that the award or order:

1 2		employers and employees (including individual employees), on how the award terms are to apply; and
3	(b)	includes terms providing for the employment of regular
4		part-time employees; and
5		Note: Clauses 15.3.1 to 15.3.5 of the Hospitality Industry—
6 7		Accommodation, Hotels, Resorts and Gaming Award 1998 provide a model (see the Award Simplification Decision at
8		P7500).
9	(c)	is expressed in plain English and is easy to understand in
10		structure and content; and
11	(d)	does not include terms that are obsolete or that need
12		updating; and
13	(e)	does not include terms that discriminate against an employee
14		because of, or for reasons including, race, colour, sex, sexual
15		preference, age, physical or mental disability, marital status,
16		family responsibilities, pregnancy, religion, political opinion,
17		national extraction or social origin.
18	(3) An a	ward or an award-related order does not discriminate against
19	an er	nployee for the purposes of paragraph (2)(e) merely because:
20	(a)	it discriminates, in respect of particular employment, on the
21		basis of the inherent requirements of that employment; or
22	(b)	it discriminates, in respect of employment as a member of the
23		staff of an institution that is conducted in accordance with the
24		teachings or beliefs of a particular religion or creed:
25		(i) on the basis of those teachings or beliefs; and
26		(ii) in good faith.
27	121B Registrar	's powers if member ceases to be a member
28	If:	
29	(a)	a member of the Commission ceases to be a member at a
30	()	time after an award or an award-related order has been made
31		by the Commission constituted by the member; and
32	(b)	at that time, the award or order has not yet been reduced to
33		writing or has been reduced to writing but has not yet been
34		signed by the member;
35		Registrar must reduce the award or order to writing, sign it and
36		t with the seal of the Commission, and the award or order has
37	effec	t as if it had been signed by the member of the Commission.

1	121C Form of awards
2 3 4	An award or an award-related order is to be framed so as best to express the decision of the Commission and to avoid unnecessary technicalities.
5	121D Date of awards
6 7	The date of an award or an award-related order is the day on which the award or order was signed under section 121.
8	121E Commencement of awards
9 10	(1) An award or an award-related order is to be expressed to come into force on a specified day.
11 12 13 14	(2) Unless the Commission is satisfied that there are exceptional circumstances, the day specified in an award or an award-related order for the purposes of subsection (1) must not be earlier than the date of the award or order.
15	121F Continuation of awards
16 17	An award continues in force until it is revoked under a provision referred to in section 119C.
18	121G Awards of Commission are final
19 20 21 22 23	 (1) Subject to this Act, an award or an award-related order (including an award or order made on appeal): (a) is final and conclusive; and (b) must not be challenged, appealed against, reviewed, quashed or called in question in any court; and
24 25	(c) is not subject to prohibition, mandamus or injunction in any court on any account.
26 27 28	(2) An award or an award-related order is not invalid because it was made by the Commission constituted otherwise than as provided by this Act.

1 121H Reprints of awards as varied

2	A document purporting to be a copy of a reprint of an award as
3	varied, and purporting to have been printed by the Government
4	Printer, is in all courts evidence of the award as varied.

5 1211 Expressions used in awards

6	Unless the contrary intention appears in an award or an
7	award-related order, an expression used in the award or order has
8	the same meaning as it has in an Act because of the Acts
9	Interpretation Act 1901 or as it has in this Act.

Part VIAA—Transmission of business rules

11	Division 1—Intr	oductory
----	------------------------	----------

12 **122 Object**

13	The object of this Part is to provide for the transfer of employer
14	obligations under certain instruments when the whole, or a part, of
15	a person's business is transmitted to another person.

16 **122A Simplified outline**

17	(1) Division 2 describes the transmission of business situation this Part
18	is designed to deal with. It identifies the <i>old employer</i> , the <i>new</i>
19	employer, the business being transferred, the time of transmission
20	and the <i>transferring employees</i> .
21	(2) Divisions 3 to 6 deal with the transmission of particular
22	instruments as follows:
23	(a) Division 3 deals with the transmission of AWAs;
24	(b) Division 4 deals with the transmission of collective
25	agreements;
26	(c) Division 5 deals with the transmission of awards;
27	(d) Division 6 deals with the transmission of APCSs.
28	(3) Division 7 deals with what happens with entitlements under the
29	Australian Fair Pay and Conditions Standard when there is a
30	transmission of business.

24

25

26

27

28

1	(4) Division 8 deals with notification requirements, the lodgment of
2	notices with the Employment Advocate and the enforcement of
3	employer obligations by pecuniary penalties.
4	(5) Division 9 allows regulations to be made to deal with other
5	transmission of business issues.
6	122B Definitions
7	In this Part:
8	business being transferred has the meaning given by subsection
9	123(2).
10	<i>Court</i> means the Federal Court of Australia or the Federal
11	Magistrates Court.
12	<i>new employer</i> has the meaning given by subsection 123(1).
13	old employer has the meaning given by subsection 123(1).
14	operational reasons has the meaning given by subsection
15	170CE(5D).
16	parental leave has the same meaning as in subsection 94ZZB(3).
17	<i>time of transmission</i> has the meaning given by subsection 123(3).
18	transferring employee has the meaning given by sections 123A
19	and 123B.
20	transmission period has the meaning given by subsection 123(4).
21	Division 2—Application of Part
22	123 Application of Part

- (1) This Part applies if a person (the *new employer*) becomes the successor, transmittee or assignee of the whole, or a part, of a business of another person (the *old employer*).
 - (2) The business, or the part of the business, to which the new employer is successor, transmittee or assignee is the *business being transferred* for the purposes of this Part.

1 2 3	(3) The time at which the new employer becomes the successor, transmittee or assignee of the business being transferred is the <i>time</i> of transmission for the purposes of this Part.
4 5	(4) The period of 12 months after the time of transmission is the <i>transmission period</i> for the purposes of this Part.
6	123A Transferring employees
7	(1) A person is a <i>transferring employee</i> for the purposes of this Part if:
8 9	(a) the person is employed by the old employer immediately before the time of transmission; and
10	(b) the person:
11	(i) ceases to be employed by the old employer; and
12	(ii) becomes employed by the new employer in the business
13	being transferred;
14	within 2 months after the time of transmission.
15	(2) A person is also a <i>transferring employee</i> for the purposes of this Part if:
16	
17 18	 (a) the person is employed by the old employer at any time within the period of 1 month before the time of transmission; and
19	
20 21	(b) the person's employment with the old employer is terminated by the old employer before the time of transmission for
21	genuine operational reasons or for reasons that include
23	genuine operational reasons; and
24	(c) the person becomes employed by the new employer in the
25	business being transferred within 2 months after the time of
26	transmission.
27	(3) In applying section 123B and Divisions 3 to 7 in relation to a
28	person who is a transferring employee under subsection (2) of this
29	section, a reference in those provisions to a particular state of
30	affairs existing immediately before the time of transmission is to be
31	read as a reference to that state of affairs existing immediately
32	before the person last ceased to be an employee of the old
33	employer.

1	123B	Fransferring employees in relation to particular instrument
2 3		(1) A transferring employee is a <i>transferring employee</i> in relation to a particular instrument if:
4 5 6		 (a) the instrument applied to the transferring employee's employment with the old employer immediately before the time of transmission; and
7 8 9 10 11		(b) when the transferring employee becomes employed by the new employer, the nature of the transferring employee's employment with the new employer is such that the instrument is capable of applying to employment of that nature.
12 13		(2) The transferring employee ceases to be a <i>transferring employee</i> in relation to the instrument if:
14 15		(a) the transferring employee ceases to be employed by the new employer after the time of transmission; or
16 17 18 19		(b) the nature of the transferring employee's employment with the new employer changes so that the instrument is no longer capable of applying to employment of that nature; or(c) the transmission period ends.
20		Paragraph (c) does not apply if the instrument is an APCS.
21 22		(3) This section applies to a preserved APCS as if it were an instrument.
23	Divisi	on 3—Transmission of AWA
24	124 Ti	ransmission of AWA
25		New employer bound by AWA
26		(1) If:
27		(a) immediately before the time of transmission:
28		(i) the old employer; and
29		(ii) an employee;
30		were bound by an AWA; and
31		(b) the employee is a transferring employee in relation to the
32 33		AWA; the new employer is bound by the AWA by force of this section.

1 2 3	Note:	The new employer must notify the transferring employee and lodge a copy of the notice with the Employment Advocate (see sections 129 and 129A).
4	Period	for which new employer remains bound
5 6	. ,	w employer remains bound by the AWA, by force of this , until whichever of the following first occurs:
7 8	(a) th	e AWA is terminated (see Division 9 of Part VB as odified by section 124A);
9 10 11	a	e AWA ceases to be in operation because it is replaced by nother AWA between the new employer and the transferring mployee (see paragraph 100(4)(b));
12 13	(c) th	e transferring employee ceases to be a transferring mployee in relation to the AWA;
14	(d) th	e transmission period ends.
15 16		ployer's rights and obligations that arose before time of ission not affected
17	(3) This se	ction does not affect the rights and obligations of the old
18		er that arose before the time of transmission.
18 19	employ	ę ę
	employ 124A Terminatio	er that arose before the time of transmission.
19 20 21	employ 124A Terminatio <i>Modifie</i> (1) The AV	er that arose before the time of transmission. on of transmitted AWA <i>ed operation of subsections 103K(2) and 103L(2)</i> VA cannot be terminated under subsection 103K(2) or
19 20	employ 124A Terminatio <i>Modifie</i> (1) The AV 103L(2)	er that arose before the time of transmission. ON OF TRANSMITTED AWA <i>Ped operation of subsections 103K(2) and 103L(2)</i>
19 20 21 22	employ 124A Termination <i>Modifie</i> (1) The AV 103L(2) passed	er that arose before the time of transmission. on of transmitted AWA <i>ed operation of subsections 103K(2) and 103L(2)</i> VA cannot be terminated under subsection 103K(2) or) during the transmission period (even if the AWA has
 19 20 21 22 23 24 25 	employ 124A Termination <i>Modifie</i> (1) The AV 103L(2 passed <i>Subsect</i> (2) Despite	er that arose before the time of transmission. on of transmitted AWA <i>ed operation of subsections $103K(2)$ and $103L(2)$</i> WA cannot be terminated under subsection $103K(2)$ or) during the transmission period (even if the AWA has its nominal expiry date). <i>tion $103R(1)$ does not apply</i> e subsection $103R(1)$, a workplace agreement or an award
 19 20 21 22 23 24 25 26 	employ 124A Terminatio <i>Modifie</i> (1) The AV 103L(2 passed <i>Subsect</i> (2) Despite may ha	er that arose before the time of transmission. on of transmitted AWA <i>ed operation of subsections $103K(2)$ and $103L(2)$</i> WA cannot be terminated under subsection $103K(2)$ or) during the transmission period (even if the AWA has its nominal expiry date). <i>tion $103R(1)$ does not apply</i> e subsection $103R(1)$, a workplace agreement or an award ve effect in relation to the transferring employee's
 19 20 21 22 23 24 25 	employ 124A Terminatio <i>Modifie</i> (1) The AV 103L(2 passed <i>Subsect</i> (2) Despite may ha employ	er that arose before the time of transmission. on of transmitted AWA <i>ed operation of subsections $103K(2)$ and $103L(2)$</i> WA cannot be terminated under subsection $103K(2)$ or) during the transmission period (even if the AWA has its nominal expiry date). <i>tion $103R(1)$ does not apply</i> e subsection $103R(1)$, a workplace agreement or an award
 19 20 21 22 23 24 25 26 27 	employ 124A Terminatio <i>Modifie</i> (1) The AV 103L(2 passed <i>Subsect</i> (2) Despite may ha employ (a) th (b) th	er that arose before the time of transmission. ON OF TRANSMITTED AWA <i>Ed operation of subsections $103K(2)$ and $103L(2)$</i> WA cannot be terminated under subsection $103K(2)$ or) during the transmission period (even if the AWA has its nominal expiry date). <i>tion $103R(1)$ does not apply</i> e subsection $103R(1)$, a workplace agreement or an award ve effect in relation to the transferring employee's ment with the new employer even if:

Division 4—Transmission of collective agreement

2 Subdivision A—General

3	125 Transmiss	sion of collective agreement
4	New	employer bound by collective agreement
5	(1) If:	
6	(a)) immediately before the time of transmission:
7		(i) the old employer; and
8		(ii) employees of the old employer;
9		were bound by a collective agreement; and
10 11	(b)) there is at least one transferring employee in relation to the collective agreement;
12 13		new employer is bound by the collective agreement by force of section.
14 15 16	Note	1: The new employer must notify transferring employees and lodge a copy of a notice with the Employment Advocate (see sections 129 and 129A).
17 18	Note	2: See also section 125A for the interaction between the collective agreement and other industrial instruments.
19	Peri	iod for which new employer remains bound
20		new employer remains bound by the collective agreement, by
21	forc	e of this section, until whichever of the following first occurs:
22	(a)) the collective agreement is terminated (see Division 9 of
23		Part VB as modified by section 125C);
24	(b)) there cease to be any transferring employees in relation to the
25		collective agreement;
26	(c)) the new employer ceases to be bound by the collective
27 28		agreement in relation to all the transferring employees in relation to the collective agreement;
29	(h)) the transmission period ends.
30	Note	*

1 2		Period for which new employer remains bound in relation to particular transferring employee
3 4	(3)	The new employer remains bound by the collective agreement in relation to a particular transferring employee, by force of this
5		section, until whichever of the following first occurs:
6		(a) the collective agreement ceases to be in operation in relation
7		to the transferring employee's employment with the new
8 9		employer because the new employer makes an AWA with the transferring employee (see subsection 125B(2));
10		(b) the collective agreement ceases to be in operation in relation
11		to the transferring employee's employment with the new
12		employer because it has been replaced by another collective
13		agreement in relation to the transferring employee's
14		employment with the new employer (see subsection 100(5)
15		as modified by subsection 125B(3));
16		(c) the employer ceases to be bound by the collective agreement
17		under subsection (2).
18		New employer bound only in relation to employment of
19		transferring employees in the business being transferred
20	(4)	The new employer is bound by the collective agreement, by force
21		of this section, only in relation to the employment, in the business
22		being transferred, of employees who are transferring employees in
23		relation to the collective agreement.
24		New employer bound subject to Commission order
25	(5)	Subsections (1), (2) and (3) have effect subject to any order of the
26		Commission under section 125E.
27		Old employer's rights and obligations that arose before time of
28		transmission not affected
29	(6)	This section does not affect the rights and obligations of the old
30		employer that arose before the time of transmission.

125A	Interaction rules
	Transmitted agreement
	 This section applies if subsection 125(1) applies to a collective agreement (the <i>transmitted collective agreement</i>).
	Existing collective agreement
	(2) If:
	 (a) the new employer is bound by a collective agreement (the <i>existing collective agreement</i>) immediately before the time of transmission; and
	(b) a person is a transferring employee in relation to the transmitted collective agreement; and
	 (c) the existing collective agreement would, but for this subsection, apply, according to its terms, to the transferring employee when the transferring employee becomes employed by the new employer;
	the existing collective agreement does not apply to the transferring employee.
	(3) Subsection (2) ceases to apply at the end of the transmission period.
125B	Transmitted collective agreement ceasing in relation to transferring employee
	Transmitted agreement
	(1) This section applies if subsection 125(1) applies to a collective agreement (the <i>transmitted collective agreement</i>).
	AWA
	(2) Despite subsection 100A(2), the transmitted collective agreement ceases to be in operation in relation to a transferring employee's employment with the new employer if the new employer makes an AWA with the transferring employee after the time of transmission.
	Note: Subsection 100A(2) provides that a collective agreement is normally only suspended while an AWA is in operation. The effect of

1 2		transmitted collective agreement in relation to the transferring employee's employment when the AWA is made.
3		Replacement collective agreement
4	(3)	Despite subsection 100(5), the transmitted collective agreement
5		ceases to be in operation in relation to a transferring employee if
6		the transmitted collective agreement has been replaced by another
7 8		collective agreement in relation to the employee (even if the transmitted collective agreement has not passed its nominal expiry
9		date).
10	125C Terr	mination of transmitted collective agreement
11		Transmitted agreement
12	(1)	This section applies if subsection 125(1) applies to a collective
13		agreement (the transmitted collective agreement).
14		Modified operation of subsections $103K(2)$ and $103L(2)$
15	(2)	The transmitted collective agreement cannot be terminated under
16		subsection 103K(2) or 103L(2) during the transmission period
17		(even if the transmitted collective agreement has passed its
18		nominal expiry date).
19		Subsection 103R(1) does not apply
20	(3)	Despite subsection 103R(1), a workplace agreement or an award
21		may have effect in relation to a transferring employee's
22		employment with the new employer if:
23		(a) the transmitted collective agreement is terminated during the
24		transmission period; or
25 26		(b) the new employer ceases to be bound by the transmitted collective agreement because the transmission period ends.
27		Note: Paragraph (3)(b) is included for the avoidance of doubt. Subsection
28		103R(1) only applies if a workplace agreement is terminated.
29		Technically, the end of the transmission period does not terminate the
30		transmitted collective agreement. The new employer merely ceases to
31		be bound by it.

	Special rule for transmitted workplace determination		
(4)	If the transmitted collective agreement is a workplace		
(-)	determination, subsection 113F(3) ceases to apply to the		
	transmitted collective agreement at the time of transmission.		
	Note 1: Subsection 113F(1) provides that this Act generally applies to a		
	workplace determination as if it were a collective agreement.		
	Note 2: Subsection 113F(3) would otherwise prevent the transmitted		
	workplace determination from being terminated under Subdivision E of Division 9 of Part VB before it had passed its nominal expiry date		
Subdivisi	on B—Commission's powers		
125D App	olication and terminology		
(1)	The Subdivision applies if:		
	(a) a person is bound by a collective 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 Subdivision:		
	(a) the <i>outgoing employer</i> is the person referred to in		
	paragraph (1)(a); and		
	(b) the <i>incoming employer</i> is the person first referred to in paragraph (1)(b); and		
	(c) the <i>business concerned</i> 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 <i>transfer time</i> is the time at which the incoming employe		
	becomes, or is likely to become, the successor, transmittee of		
	assignee of the business concerned.		
125E Con	nmission may make order		
(1)	The Commission may make an order that the incoming employer:		
	(a) is not, or will not be, bound by the collective agreement; or		

1 2 3		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.
4 5 6 7		(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 collective agreement but only for the period specified in the order.
8 9 10		(3) To avoid doubt, the Commission cannot make an order under subsection (1) that would have the effect of extending the transmission period.
11	125F	When application for order can be made
12 13		An application for an order under subsection $125E(1)$ may be made before, at or after the transfer time.
14	125G	Who may apply for order
15 16		 Before the transfer time, an application for an order under subsection 125E(1) may be made only by the outgoing employer.
17 18		(2) At or after the transfer time, an application for an order under subsection 125E(1) may be made only by:
19		(a) the incoming employer; or
20 21		(b) a transferring employee in relation to the collective agreement; or
22 23		(c) an organisation of employees that is bound by the collective agreement; or
24		(d) an organisation of employees that:
25		(i) is entitled, under its eligibility rules, to represent the
26		industrial interests of a transferring employee; and
27		(ii) has been requested by the transferring employee to
28		apply for the order on the transferring employee's
29		behalf.
30	125H	Applicant to give notice of application
31		The applicant for an order under subsection 125E(1) must take
32		reasonable steps to give written notice of the application to the
		^ ^

1 2	persons who may make submissions in relation to the application (see section 125I).
3	1251 Submissions in relation to application
4	(1) Before deciding whether to make an order under subsection
5	125E(1) in relation to the collective agreement, the Commission
6	must give the following an opportunity to make submissions:
7	(a) the applicant;
8 9	(b) before the transfer time—the persons covered by subsection (2);
10 11	(c) at and after the transfer time—the persons covered by subsection (3).
12	(2) For the purposes of paragraph (1)(b), this subsection covers:
13	(a) an employee of the outgoing employer:
14	(i) who is bound by the collective agreement; and
15	(ii) who is employed in the business concerned; and
16	(b) the incoming employer; and
17	(c) an organisation of employees that is bound by the collective
18	agreement; and
19	(d) an organisation of employees that:
20	(i) is entitled, under its eligibility rules, to represent the
21	industrial interests of an employee referred to in
22	paragraph (a); and
23	(ii) has been requested by the employee to make
24 25	submissions on the employee's behalf in relation to the application for the order under subsection 125E(1).
26	(3) For the purposes of paragraph $(1)(c)$, this subsection covers:
27	(a) the incoming employer; and
28	(b) a transferring employee in relation to the collective
29	agreement; and
30 31	(c) an organisation of employees that is bound by the collective agreement; and
32	(d) an organisation of employees that:
33	(i) is entitled, under its eligibility rules, to represent the
33 34	industrial interests of a transferring employee; and
35	(ii) has been requested by the transferring employee to
36	make submissions on the transferring employee's behalf

1 2	in relation to the application for the order under subsection $125E(1)$.
3	Division 5—Transmission of award
4	126 Transmission of award
5	New employer bound by award
6	(1) If:
7 8 9	 (a) the old employer was, immediately before the time of transmission, bound by an award that regulated the employment of employees of the old employer; and
10 11	(b) there is at least one transferring employee in relation to the award; and
12 13 14	(c) but for this section, the new employer would not be bound by the award in relation to the transferring employees in relation to the award;
15	the new employer is bound by the award by force of this section.
16 17 18	Note 1: Paragraph (c)—the award might already bind the new employer, for example, because the new employer happens to be a respondent to the award.
19 20 21	Note 2: The new employer must notify transferring employees and lodge a copy of a notice with the Employment Advocate (see sections 129 and 129A).
22 23	Note 3: See also section 126A for the interaction between the award and other industrial instruments.
24	Period for which new employer remains bound
25 26	(2) The new employer remains bound by the award, by force of this section, until whichever of the following first occurs:
27	(a) the award is revoked;
28 29	(b) there cease to be any transferring employees in relation to the award;
30 31	(c) the new employer ceases to be bound by the award in relation to all the transferring employees in relation to the award;
32	(d) the transmission period ends.
33	Note: Paragraph (c)—see subsection (3).

1 2	Period for which new employer remains bound in relation to particular transferring employee
3 4	(3) The new employer remains bound by the award in relation to a particular transferring employee, by force of this section, until
5	whichever of the following first occurs:
6	(a) the award ceases to be in operation in relation to the
7	transferring employee's employment with the new employer
8	because the new employer makes an AWA with the
9 10	transferring employee after the time of transmission (see subsection 126B(2));
	(b) the award ceases to be in operation in relation to the
11 12	transferring employee's employment with the new employer
12	because a collective agreement comes into operation, after
14	the time of transmission, in relation to the transferring
15	employee's employment with the new employer (see
16	subsection 126B(3));
17	(c) the employer ceases to be bound by the award under
18	subsection (2).
10	New medance have developing addition to see the second of
19	<i>New employer bound only in relation to employment of transferring employees</i>
20	transferring employees
21	(4) The new employer is bound by the award, by force of this section,
22	only in relation to the employment of employees who are
23	transferring employees in relation to the award.
24	Commission order
25	(5) Subsections (1), (2) and (3) have effect subject to any order of the
26	Commission.
27	(6) To avoid doubt, the Commission cannot make an order under
28	subsection (5) that would have the effect of extending the
29	transmission period.
30	Old employer's rights and obligations that arose before time of
31	transmission not affected
32	(7) This section does not affect the rights and obligations of the old
33	employer that arose before the time of transmission.

, 2005

1	126A	Inte	eraction rules
2			Transmitted award
3 4		(1)	This section applies if subsection 126(1) applies to an award (the <i>transmitted award</i>).
5			Collective agreement
6		(2)	Subsection 126(1) has effect in relation to the transmitted award
7 8			subject to section 100B (award has no effect in relation to an employee's employment while a collective agreement operates in
9 10			relation to that employment) so far as it relates to a collective agreement that is in operation at the time of transmission.
11 12 13			Note: Section 126B modifies the operation of section 100B in relation to AWAs and collective agreements that come into operation after the time of transmission.
14	126B	Tra	nsmitted award ceasing in relation to transferring
15			employee
16			Transmitted award
17 18		(1)	This section applies if subsection 126(1) applies to an award (the <i>transmitted award</i>).
19			AWA
20		(2)	Despite section 100B, the transmitted award ceases to be in
21			operation in relation to a transferring employee's employment with
22			the new employer if the new employer makes an AWA with the
23			transferring employee after the time of transmission.
24			Note: Section 100B provides that an award is normally only suspended
25			while an AWA is in operation. The effect of subsection (2) of this
26 27			section is to terminate the operation of the transmitted award in relation to the transferring employee when the AWA is made.
28			Collective agreement
29		(3)	Despite section 100B, the transmitted award ceases to be in
30			operation in relation to a transferring employee's employment with
31			the new employer if a collective agreement comes into operation in
32			relation to the transferring employee's employment with the new
33			employer after the time of transmission.

1 2 3 4 5	Ν	lote:	Section 100B provides that an award is normally only suspended while a collective agreement is in operation. The effect of subsection (3) of this section is to terminate the operation of the transmitted award in relation to the transferring employee when the collective agreement is made.
6	Division 6-	—Tra	nsmission of APCS
7	127 Transm	nission	of APCS
8	Ν	Vew em	ployer bound by APCS
9	(1) I	f:	
10		(a) im	mediately before the time of transmission, an employee's
11 12		en an	ployment with the old employer was covered by an APCS;
12			e employee is a transferring employee in relation to the
14			PCS; and
15		(c) bu	t for this section, the transferring employee's employment
16		wi	th the new employer would not be covered by the APCS;
17 18			ferring employee's employment with the new employer is by the APCS by force of this section.
19	E	Employe	ee ceasing to be transferring employee
20	(2) 7	The tran	sferring employee's employment with the new employer
21			b be covered by the APCS, by force of this section, if the
22			e ceases to be a transferring employee in relation to the
23	A	APCS.	
24	(Old emp	loyer's rights and obligations that arose before time of
25		-	ssion not affected
26			tion does not affect the rights and obligations of the old
27	e	mploye	er that arose before the time of transmission.
28 29	Division 7- and Condi		titlements under the Australian Fair Pay Standard
30	128 Parents	al leav	e entitlements
			-

31 (1) At the time of transmission:

1 2 3	 (a) the new employer becomes liable for a transferring employee's entitlements (if any) in relation to parental leave that are:
4 5	(i) entitlements under the Australian Fair Pay and Conditions Standard; and
6 7	(ii) entitlements for which the old employer was liable immediately before the time of transmission; and
8	(b) the old employer ceases to be liable for those entitlements.
9 10	(2) The following count as service with the new employer for the purpose of working out a transferring employee's entitlement to
11 12	parental leave under the Australian Fair Pay and Conditions Standard:
13 14 15	 (a) the transferring employee's service with the old employer that counted for the purposes of working out the transferring employee's entitlement to parental leave;
16	(b) any service with a previous employer that the old employer
17	recognised as service with the old employer for the purposes
18	of working out the transferring employee's entitlement to
19	parental leave.
20	(3) If:
20 21	(a) documentation for parental leave, required under Division 6
	(a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring
21 22	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and
21 22 23	(a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring
21 22 23 24	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair
21 22 23 24 25	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and
21 22 23 24 25 26	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and (d) the old employer notifies the new employer of the
21 22 23 24 25 26 27	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and (d) the old employer notifies the new employer of the documentation under subsection (4);
21 22 23 24 25 26 27 28 29 30	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and (d) the old employer notifies the new employer of the documentation under subsection (4); the documentation is treated as if it had been given to the new
21 22 23 24 25 26 27 28 29	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and (d) the old employer notifies the new employer of the documentation under subsection (4);
21 22 23 24 25 26 27 28 29 30	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and (d) the old employer notifies the new employer of the documentation under subsection (4); the documentation is treated as if it had been given to the new
21 22 23 24 25 26 27 28 29 30 31	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and (d) the old employer notifies the new employer of the documentation under subsection (4); the documentation is treated as if it had been given to the new employer. (4) The old employer must notify the new employer of: (a) any person who:
21 22 23 24 25 26 27 28 29 30 31 32	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and (d) the old employer notifies the new employer of the documentation under subsection (4); the documentation is treated as if it had been given to the new employer. (4) The old employer must notify the new employer of: (a) any person who: (b) is, or who is likely to be, a transferring employee; and
21 22 23 24 25 26 27 28 29 30 31 32 33	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and (d) the old employer notifies the new employer of the documentation under subsection (4); the documentation is treated as if it had been given to the new employer. (4) The old employer must notify the new employer of: (a) any person who: (b) is, or who is likely to be, a transferring employee; and (c) is on parental leave at the time of transmission on the
21 22 23 24 25 26 27 28 29 30 31 32 33 34	 (a) documentation for parental leave, required under Division 6 of Part VA, is given to the old employer by a transferring employee before the time of transmission; and (b) the leave applied for has not started before the time of transmission; and (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and (d) the old employer notifies the new employer of the documentation under subsection (4); the documentation is treated as if it had been given to the new employer. (4) The old employer must notify the new employer of: (a) any person who: (b) is, or who is likely to be, a transferring employee; and

1 2		(b) documentation for parental leave that is given to the old employer before the time of transmission by a person who is, or is likely to be, a transferring employee if the
3 4 5		documentation was given to the old employee in the an entitlement under the Australian Fair Pay and Conditions
6		Standard.
7		The notification must be given in writing within 14 days after the
8		time of transmission.
9		Note: This is a civil remedy provision, see section 129C.
10	128A I	New employer assuming liability for particular entitlements
11 12		(1) This section applies if the new employer agrees, in writing, before the time of transmission:
13		(a) to assume liability for; or
14		(b) to recognise continuity of service in relation to;
15		a transferring employee's entitlements in relation to a particular
16		matter.
17		(2) At the time of transmission:
18		(a) the new employer becomes liable for the transferring
19		employee's entitlements (if any):
20 21 22		 (i) that accrued under the Australian Fair Pay and Conditions Standard in relation to that matter before the time of transmission; and
22		(ii) that are not entitlements in relation to parental leave;
23		and
25		(iii) for which the old employer was liable immediately
26		before the time of transmission; and
27		(b) the old employer ceases to be liable for those accrued
28		entitlements.
29		(3) The following count as service with the new employer for the
30		purpose of working out the transferring employee's entitlements
31		under the Australian Fair Pay and Conditions Standard in relation
32		to that matter:
33		(a) the transferring employee's service with the old employer
34		that counted for the purposes of working out the transferring employee's entitlements in relation to that matter;
35		(b) any service with a previous employer that the old employer
36 37		recognised as service with the old employer for the purposes
51		recognised as service with the ord employer for the purposes

1 2	of working out the transferring employee's entitlements in relation to that matter.
3	128B New employer assuming entitlements generally
4 5	 This section also applies if the new employer agrees in writing before the time of transmission:
6 7	(a) to assume liability for a transferring employee's entitlements generally; or
8 9	(b) to recognise continuity of service in relation to a transferring employee generally.
10	(2) At the time of transmission:
11 12	(a) the new employer becomes liable for the transferring employee's entitlements (if any):
13 14	 (i) that accrued under the Australian Fair Pay and Conditions Standard before the time of transmission;
15	and
16 17	(ii) that are not entitlements in relation to parental leave; and
18 19	(iii) for which the old employer was liable immediately before the time of transmission; and
20 21	(b) the old employer ceases to be liable for those accrued entitlements.
22	(3) The following count as service with the new employer for the
23	purpose of working out the transferring employee's entitlements
24 25	under the Australian Fair Pay and Conditions Standard in relation to a particular matter:
23 26	(a) the transferring employee's service with the old employer
20 27	that counted for the purposes of working out the transferring
28	employee's entitlements in relation to that matter;
29	(b) any service with a previous employer that the old employer
30	recognised as service with the old employer for the purposes
31 32	of working out the transferring employee's entitlements in relation to that matter.

1	Division 8—Notice requirements and enforcement
2 3	129 Informing transferring employees about transmission of instrument
4	(1) This section applies if:
5	(a) an employer is bound by an instrument (the <i>transmitted</i>
6 7	<i>instrument</i>) in relation to a transferring employee by force of:
8	(i) section 124 (AWA); or
9	(ii) section 125 (collective agreement); or
10	(iii) section 126 (award); and
11 12	(b) a person is a transferring employee in relation to the transmitted instrument.
13 14	The provision referred to in paragraph (a) is the <i>transmission provision</i> .
15	(2) Within 28 days after the transferring employee starts being
16	employed by the employer, the employer must take reasonable
17	steps to give the transferring employee a written notice that
18	complies with subsection (3).
19	Note: This is a civil remedy provision, see section 129C.
20	(3) The notice must:
21	(a) identify the transmitted instrument; and
22	(b) state that the employer is bound by the transmitted
23	instrument; and
24 25	(c) specify the date on which the transmission period for the transmitted instrument ends; and
26	(d) state that the employer will remain bound by the transmitted
27	instrument until the end of the transmission period unless the
28	transmitted instrument is terminated, or otherwise ceases to
29	be in operation, before the end of that period; and
30 31	(e) specify the kinds of instruments (if any) that can replace, or exclude the operation of, the transmitted instrument; and
32	(f) set out the source for the terms and conditions that the
33	employer intends to apply to the matters that are dealt with
34	by the transmitted instrument when the transmitted
35	instrument ceases to bind the employer; and
36	(g) identify any collective agreement or award that binds:

1	(i) the employer; and
2	(ii) employees of the employer who are not transferring
3	employees in relation to the transmitted instrument;
4	and that would bind the transferring employee but for the
5	transmission provision.
6	(4) Subsection (2) does not apply if:
7	(a) the transmitted instrument is an award and the new employer
8	and the transferring employee become bound by:
9	(i) a collective agreement that is capable of applying to the
10	transferring employee's employment with the new
11	employer and that is in operation at the time of
12	transmission; or
13	(ii) an AWA or a collective agreement at the time of
14	transmission or within 14 days after the time of
15	transmission; or
16	(b) the transmitted instrument is a workplace agreement and the
17 18	new employer and the transferring employee become bound by an AWA within 14 days after the time of transmission.
10	
19	129A Lodging copy of notice with Employment Advocate
19	129A Lodging copy of notice with Employment Advocate
19 20	 129A Lodging copy of notice with Employment Advocate <i>Only one transferring employee</i> (1) If an employer: (a) gives a notice under subsection 129(2) to a transferring
19 20 21	 129A Lodging copy of notice with Employment Advocate Only one transferring employee (1) If an employer: (a) gives a notice under subsection 129(2) to a transferring employee in relation to an AWA; or
19 20 21 22	 129A Lodging copy of notice with Employment Advocate Only one transferring employee (1) If an employer: (a) gives a notice under subsection 129(2) to a transferring employee in relation to an AWA; or (b) gives a notice under subsection 129(2) to the only person
19 20 21 22 23	 129A Lodging copy of notice with Employment Advocate Only one transferring employee (1) If an employer: (a) gives a notice under subsection 129(2) to a transferring employee in relation to an AWA; or (b) gives a notice under subsection 129(2) to the only person who is a transferring employee in relation to a collective
 19 20 21 22 23 24 	 129A Lodging copy of notice with Employment Advocate Only one transferring employee (1) If an employer: (a) gives a notice under subsection 129(2) to a transferring employee in relation to an AWA; or (b) gives a notice under subsection 129(2) to the only person who is a transferring employee in relation to a collective agreement or award;
 19 20 21 22 23 24 25 26 27 	 129A Lodging copy of notice with Employment Advocate Only one transferring employee (1) If an employer: (a) gives a notice under subsection 129(2) to a transferring employee in relation to an AWA; or (b) gives a notice under subsection 129(2) to the only person who is a transferring employee in relation to a collective agreement or award; the employer must lodge a copy of the notice with the Employment
 19 20 21 22 23 24 25 26 27 28 	 129A Lodging copy of notice with Employment Advocate Only one transferring employee (1) If an employer: (a) gives a notice under subsection 129(2) to a transferring employee in relation to an AWA; or (b) gives a notice under subsection 129(2) to the only person who is a transferring employee in relation to a collective agreement or award; the employer must lodge a copy of the notice with the Employment Advocate within 14 days after the notice is given to the transferring
 19 20 21 22 23 24 25 26 27 28 29 	 129A Lodging copy of notice with Employment Advocate Only one transferring employee (1) If an employer: (a) gives a notice under subsection 129(2) to a transferring employee in relation to an AWA; or (b) gives a notice under subsection 129(2) to the only person who is a transferring employee in relation to a collective agreement or award; the employer must lodge a copy of the notice with the Employment Advocate within 14 days after the notice is given to the transferring employee. The copy must be lodged in accordance with
 19 20 21 22 23 24 25 26 27 28 29 30 	 129A Lodging copy of notice with Employment Advocate Only one transferring employee (1) If an employer: (a) gives a notice under subsection 129(2) to a transferring employee in relation to an AWA; or (b) gives a notice under subsection 129(2) to the only person who is a transferring employee in relation to a collective agreement or award; the employer must lodge a copy of the notice with the Employment Advocate within 14 days after the notice is given to the transferring employee. The copy must be lodged in accordance with subsection (4).
 19 20 21 22 23 24 25 26 27 28 29 	 129A Lodging copy of notice with Employment Advocate Only one transferring employee (1) If an employer: (a) gives a notice under subsection 129(2) to a transferring employee in relation to an AWA; or (b) gives a notice under subsection 129(2) to the only person who is a transferring employee in relation to a collective agreement or award; the employer must lodge a copy of the notice with the Employment Advocate within 14 days after the notice is given to the transferring employee. The copy must be lodged in accordance with

1 2		Multiple day	transferring employees and notices all given on the one
3	(2)	If:	
4	()		employer gives a number of notices under subsection
5 6		129	P(2) to people who are transferring employees in relation a collective agreement or award; and
7			of those notices are given on the one day;
8			over must lodge a copy of one of those notices with the
8 9 10		Employn	ment Advocate within 14 days after that notice is given. must be lodged in accordance with subsection (4).
11		Note 1:	This is a civil remedy provision, see section 129C.
12 13		Note 2:	Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for providing false or misleading information or documents.
14		Multiple	transferring employees and notices given on different
15		days	
16	(3)	If:	
17	. ,	(a) an	employer gives a number of notices under subsection
18		129	P(2) to people who are transferring employees in relation
19			a collective agreement or award; and
20		(b) the	notices are given on different days;
21			over must lodge a copy of the notice, or one of the notices
22			given on the earliest of those days, with the Employment
23			e within 14 days after that notice is given. The copy must
24		be lodged	d in accordance with subsection (4).
25		Note 1:	This is a civil remedy provision, see section 129C.
26		Note 2:	Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for
27			providing false or misleading information or documents.
28		Lodgmen	t with Employment Advocate
29	(4)	A notice	is lodged with the Employment Advocate in accordance
30	. ,		subsection only if it is actually received by the
31			nent Advocate.
32		Note:	This means that section 29 of the Acts Interpretation Act 1901 (to the
33			extent that it deals with the time of service of documents) does not
34			apply to lodgment of a notice.

1	129B	Employment Advocate must issue receipt for lodgment
2 3		(1) If a notice is lodged under section 129A, the Employment Advocate must issue a receipt for the lodgment.
4 5		(2) The receipt must state that the notice was lodged under section 129A on a particular day.
6 7		(3) The Employment Advocate must give a copy of the receipt to the person who lodged the notice under section 129A.
8	129C	Civil penalties
9 10		(1) The following are <i>civil remedy provisions</i> for the purposes of this section:
11		(a) subsection 128(4);
12		(b) subsection 129(2);
13		(c) subsections 129A(1), (2) and (3).
14 15		Note: Division 4 of Part VIII contains other provisions relevant to civil remedies.
16 17		(2) The Court may order a person who has contravened a civil remedy provision to pay a pecuniary penalty.
18 19		(3) The penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in other cases.
20 21		(4) An application for an order under subsection (1) in relation to subsection 128(4) (parental leave entitlements) may be made by:
22		(a) a transferring employee mentioned in that subsection; or
23		(b) an organisation of employees that is entitled, under its
24 25		eligibility rules, to represent the industrial interests of a transferring employee mentioned in that subsection and has
25 26		been requested by the transferring employee to apply for the
27		order on the transferring employee's behalf; or
28		(c) a workplace inspector; or
29		(d) the new employer mentioned in that subsection.
30		(5) An application for an order under subsection (1) in relation to an
31		instrument listed in the following table may be made by a person
32		specified in the item of the table relating to that kind of instrument:
33		

Item	Instrument	People with standing to apply for order
1	AWA	(a) the transferring employee; or
		 (b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of the transferring employee and has been requested by the transferring employee to apply for the order on the transferring employee's behalf; or
		(c) a workplace inspector
2	collective agreement	(a) the transferring employee; or
		 (b) an organisation of employees that is bound by the agreement; or
		 (c) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee and has been requested by the transferring employee to apply for the order on the transferring employee's behalf; or
		(d) a workplace inspector
3	award	(a) a transferring employee; or
		(b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee; or
		(c) a workplace inspector

Division 9—Miscellaneous

2 130 Regulations

3 4 The regulations may make provision in relation to the effects that the succession, transmission or assignment of a business, or a part

	and conditions of employees.
72 Be	fore Division 2 of Part VIA
]	Insert:
Divisio	on 1—Entitlement to meal breaks
170AA	Meal breaks
	An employer must not require an employee to work for more than 5 hours continuously without an unpaid interval of at least 30 minutes for a meal.
	Note: Compliance with this section is dealt with in Part VIII.
170AB	Displacement of entitlement to meal breaks
	Section 170AA does not apply in relation to particular employmen of an employee while any of the following operates in relation to the employee in relation to the employment:
	(a) an award; (b) a worked as a superment.
	(b) a workplace agreement;(c) an industrial instrument prescribed by the regulations.
170AC	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.
170AD	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).

of a business, have on the obligations of employers and the terms

1

1 2 3	No	te: In this context, <i>Australia</i> 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 <i>Acts Interpretation Act 1901</i> .
4	En	nployee in Australia's exclusive economic zone
5 6		ne condition is that the employee is in Australia's exclusive onomic zone and either:
7 8 9	((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
10 11	(b) is an employee prescribed by the regulations as an employee to whom this subsection applies.
12 13	No	te: The regulations may prescribe the employee by reference to a class. See subsection 13(3) of the <i>Legislative Instruments Act 2003</i> .
14	Or	n Australia's continental shelf outside exclusive economic zone
15	(3) Ai	nother condition is that the employee:
16	((a) is outside the outer limits of Australia's exclusive economic
17		zone, but is in, on or over a part of Australia's continental
18		shelf prescribed by the regulations for the purposes of this
19		subsection, in connection with the exploration of the
20		continental shelf or the exploitation of its natural resources;
21	/	and
22 23	(b) meets the requirements that are prescribed by the regulations for that part.
24	No	
25 26		different parts of Australia's continental shelf. The regulations may need to do so to give effect to Australia's international obligations.
20		need to do so to give effect to Australia's international congations.
27	Oı	utside Australia's exclusive economic zone and continental shelf
28	(4) Ai	nother condition is that the employee:
29	((a) is neither in Australia's exclusive economic zone nor in, on
30		or over a part of Australia's continental shelf described in
31		paragraph (3)(a); and
32	(b) is an Australian-based employee of an Australian employer;
33		and
34	(c) is not prescribed by the regulations as an employee to whom
35		this subsection does not apply.

1	Definition
	·
2	(5) In this section:
3	this Act includes the Registration and Accountability of
4	Organisations Schedule and regulations made under it.
5	73 At the end of section 170BA
6	Add:
7 8	Note: <i>Employer</i> , <i>employee</i> and <i>employment</i> have their ordinary meaning in this Division. See sections 4AA, 4AB and 4AC and Schedule 1.
9	74 After section 170BA
10	Insert:
11	170BAB Relationship of this Division to other laws providing
12	alternative remedies
13	(1) The Commission must not deal with an application under this
14	Division if the Commission is satisfied that there is available to the
15	applicant, or to the employees whom the applicant represents, an
16	adequate alternative remedy that:
17 18	(a) exists under a law of the Commonwealth (other than this Division) or under a law of a State or Territory; and
19	(b) will ensure, for the employees concerned, equal remuneration
20	for work of equal value.
21	(2) The Commission must not deal with an application under this
21 22	(2) The Commission must not deal with an application under this Division for an order to secure equal remuneration for work of
22	equal value for an employee if proceedings for an alternative
24	remedy:
25	(a) to secure such remuneration for the employee; or
26	(b) against unequal remuneration for work of equal value for the
27	employee;
28	have begun:
29	(c) under another provision of this Act; or
30	(d) under another law of the Commonwealth; or
31	(e) under a law of a State or Territory.

(3) Subsection (2) does not prevent the Commission from dealing with
an application under this Division if the proceedings for the alternative remedy:
(a) have been discontinued by the party who initiated the
proceedings; or
(b) have failed for want of jurisdiction.
(4) If an application has been made for an order under this Division to
secure equal remuneration for work of equal value for an
employee, a person is not entitled to take proceedings for an
alternative remedy under a provision or law of a kind referred to in subsection (2):
(a) to secure such remuneration for the employee; or
(b) against unequal remuneration for work of equal value for the
employee.
(5) Subsection (4) does not prevent the taking of proceedings for an
alternative remedy if the proceedings under this Division:
(a) have been discontinued by the party who initiated the
proceedings; or
(b) have failed for want of jurisdiction.
(6) A remedy under a law of the Commonwealth, a State or a Territory
relating to discrimination in relation to employment, that consists
solely of compensation for past actions, is not an alternative
remedy, or an adequate alternative remedy, for the purposes of this
section.
AC Relationship of this Division to orders, determinations or
decisions of the AFPC
(1) The Commission is to have regard to decisions of the AFPC in
making orders under this Division.
(2) The Commission must not deal with an application for an order
under this Division if:
(a) the comparator group of workers (see subsection (3)) is being
paid a wage set by the AFPC; or
(b) enforcement of the order applied for would have the effect of changing a wage set by the AFPC; or
(c) the order applied for would be inconsistent with a decision of the AFPC that is in force.

1	(3) In subsection (2):
2 3 4	<i>comparator group of workers</i> means workers whom the applicant contends are performing work of equal value to the work performed by the employees to whom the application relates.
5	75 Subsection 170BC(2)
6 7	Omit "including minimum rates", substitute "other than those set by the AFPC".
8	76 Paragraph 170BC(3)(b)
9	Repeal the paragraph, substitute:
10 11 12	 (b) the order can reasonably be regarded as appropriate and adapted to giving effect to one or more of the following: (i) the Anti-Discrimination Conventions;
13 14	(ii) the provisions of Recommendations referred to in paragraphs 170BA(b) and (c).
15	77 After section 170BD
16	Insert:
17	170BDA Conciliation or mediation
18 19 20	 If an application is made for an order under this Division, the Commission must, before starting to hear and determine the matter to which the application relates:
21	(a) attempt to settle the matter by conciliation; or
22	(b) at the request or with the consent of both the applicant and
23	any employer of employees who, if the order applied for
24	were made, would be covered by it—refer the matter for
25 26	mediation by an independent person specified in the request or consent.
27	(2) The Commission may order
27	(2) The Commission may order:
28 29	(a) the applicant, or a representative of the applicant; and(b) each employer of employees who, if the order applied for
29 30	were made, would be covered by it, or a representative of
31	those employers;
32	to attend the conciliation or mediation.

1 2	(3) The Commission may order that the employees who, if the order applied for were made, would be covered by it, or a representative
3	of those employees, be allowed to attend the conciliation or
4	mediation.
5	(4) The Commission may order that:
6	(a) the applicant; or
7 8	(b) each employer of employees who, if the order applied for were made, would be covered by it;
9	inform the employees concerned of:
10 11	(c) the making of the application for an order under this Division; and
12	(d) the details of the application and the order applied for; and
13	(e) the time and place at which conciliation or mediation will
14	take place.
15	170BDB If conciliation or mediation is unsuccessful
16	(1) If:
17	(a) the Commission forms the view that all reasonable attempts
18 19	to settle the matter, or part of the matter, to which the application relates by conciliation have been unsuccessful; or
20	(b) if the Commission referred the matter to an independent
21	person for mediation—the independent person informs the
22	Commission that all reasonable attempts to settle the matter,
23	or part of the matter, by mediation have been unsuccessful;
24	the Commission must advise accordingly the applicant and each
25	employer of employees who, if the order applied for were made,
26	would be covered by it.
27	(2) The Commission may order that:
28	(a) the applicant; or
29	(b) each employer of employees who, if the order applied for
30	were made, would be covered by it;
31	inform the employees concerned of the Commission's advice under
32	subsection (1).
33	(3) If the Commission advises persons under subsection (1) , the
34	Commission is to proceed to hear and determine the matter, or part,
35	that was not settled.

	(1) If a member of the Commission has exercised conciliation powers
	under section 170BDA in relation to a matter, the member must no
	hear or determine, or take part in the hearing or determination of,
	the matter if a person who was present at the conciliation objects.
	(2) The member is not taken to have exercised conciliation powers in relation to the matter merely because:
	(a) the member arranged for a conference of the parties or their
	representatives to be presided over by the member, but the
	conference did not take place or was not presided over by the member; or
	(b) the member arranged for the parties or their representatives t
	confer among themselves at a conference at which the
	member was not present.
78	Section 170BE
	Repeal the section.
79	After section 170BG
	Insert:
17	0BGA Employer not to prejudice employee
17	
17	
17	(1) An employer must not, for the reason, or for reasons including the
17	(1) An employer must not, for the reason, or for reasons including the reason, that an application or order has been made under this
17	(1) An employer must not, for the reason, or for reasons including the reason, that an application or order has been made under this Division, do or threaten to do any of the following:
17	 (1) An employer must not, for the reason, or for reasons including the reason, that an application or order has been made under this Division, do or threaten to do any of the following: (a) dismiss an employee; (b) injure an employee in his or her employment;
17	 (1) An employer must not, for the reason, or for reasons including the reason, that an application or order has been made under this Division, do or threaten to do any of the following: (a) dismiss an employee;
	 (1) An employer must not, for the reason, or for reasons including the reason, that an application or order has been made under this Division, 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 prejudic
	 (1) An employer must not, for the reason, or for reasons including the reason, that an application or order has been made under this Division, 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 prejudic (2) Subsection (1) is a civil remedy provision. 0BGB Penalties etc. for contravention of section 170BGA (1) The Court, or the Federal Magistrates Court, on application by an
	 (1) An employer must not, for the reason, or for reasons including the reason, that an application or order has been made under this Division, 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 prejudic (2) Subsection (1) is a civil remedy provision. 0BGB Penalties etc. for contravention of section 170BGA (1) The Court, or the Federal Magistrates Court, on application by an eligible person, may make one or more of the following orders in
	 (1) An employer must not, for the reason, or for reasons including the reason, that an application or order has been made under this Division, 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 prejudic (2) Subsection (1) is a civil remedy provision. 0BGB Penalties etc. for contravention of section 170BGA (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 a person (the <i>defendant</i>) who has contravened
	 (1) An employer must not, for the reason, or for reasons including the reason, that an application or order has been made under this Division, 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 prejudic (2) Subsection (1) is a civil remedy provision. 0BGB Penalties etc. for contravention of section 170BGA (1) The Court, or the Federal Magistrates Court, on application by an eligible person, may make one or more of the following orders in

1 2	(b) an order requiring the defendant to pay a specified amount to another person as compensation for damage suffered by the
3	other person as a result of the contravention;
4	(c) any other order that the court considers appropriate.
•	
5	(2) The maximum pecuniary penalty under paragraph $(1)(a)$ is 300
6	penalty units if the defendant is a body corporate and otherwise 60
7	penalty units.
8	(3) The orders that may be made under paragraph $(1)(c)$ include:
9	(a) injunctions; and
10	(b) any other orders that the court considers necessary to stop the
11	conduct or remedy its effects.
12	(4) In this section:
13	eligible person means any of the following:
14	(a) a workplace inspector;
15	(b) a person affected by the contravention;
16	(c) an organisation of employees that:
17	(i) has been requested in writing, by the employee
18	concerned, to apply on the employee's behalf; and
19	(ii) has a member employed by the employee's employer;
20	and
21	(iii) is entitled, under its eligibility rules, to represent the
22	industrial interests of the employee in relation to work
23	carried on by the employee for the employer;
24	(d) the Sex Discrimination Commissioner;
25	(e) a person prescribed by the regulations for the purposes of this
26	paragraph.
27	(5) A regulation prescribing persons for the purposes of paragraph (e)
28	of the definition of <i>eligible person</i> may provide that a person is
29	prescribed only in relation to circumstances specified in the
30	regulation.
31	170BGC Proof not required of the reason for conduct
32	(1) If:
52	(1) 11.

	(a) in an application under section 170BGB 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 170BGA;
	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.
170	BGD Extraterritorial extension
	(1) This Division, and the rest of this Act so far as it relates to this
	Division, extends to an employee whose remuneration is
	determined by or under this Act, a law of a State or Territory or a
	contract of employment made in Australia, even though one or both of the following apply:
	(a) the employee is employed wholly or partly in work outside
	Australia;
	(b) the employee's employer operates, exists, is incorporated, or
	is otherwise established, outside Australia.
	Note: In this context, <i>Australia</i> 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 <i>Acts Interpretation Act 1901</i> .
	(2) In this section:
	<i>this Act</i> includes the Registration and Accountability of Organisations Schedule and regulations made under it.
	organisations benedule and regulations made under it.
80	Sections 170BH, 170BHA and 170BI
	Repeal the sections.
81	Paragraph 170CA(1)(e)
	Omit "Subdivisions D and E", substitute "Subdivision E".
82	After section 170CA

1	170	CAA Meaning of employee, employer and employment
2		In this Division, unless the contrary intention appears:
3		<i>employee</i> means:
4		(a) to the extent that a provision applies to, or in relation to, the
5		termination of employment of an employee within the
6		meaning of subsection 4AA(1)—an employee within the
7		meaning of that subsection; or
8		(b) otherwise—an employee within the ordinary meaning of the
9		expression.
10		employer means:
11		(a) to the extent that a provision applies to, or in relation to, the
12		termination of employment of an employee within the
13		meaning of subsection $4AA(1)$ —an employer within the
14		meaning of subsection 4AB(1); or
15		(b) otherwise—an employer within the ordinary meaning of the
16		expression.
17		employment means:
18		(a) to the extent that a provision applies to, or in relation to, the
19		termination of employment of an employee within the
20		meaning of subsection $4AA(1)$ —employment within the
21		meaning of subsection 4AC(1); or
22		(b) otherwise—the employment of an employee (within the
23		ordinary meaning of the expression) by an employer (within the ordinary meaning of the expression)
24		the ordinary meaning of the expression).
25	83	Subsection 170CB(1)
26		Omit all the words after "before", substitute "the termination, an
27		employee within the meaning of subsection 4AA(1).".
28	84	Subsection 170CB(2)
29		Omit "170CL, 170CM and 170CN", substitute "170CL and 170CM".
20	95	Subcostion 170CB(2)
30	05	Subsection 170CB(3)
31		Omit "Subdivisions C, D", substitute "Subdivisions C".
32	86	Subsection 170CB(4)
33		Omit "Subdivisions C, D", substitute "Subdivisions C".

1	87	Subsection 170CB(4)
2 3		Omit all the words after "termination", substitute "of employment of an employee within the meaning of subsection 4AA(1).".
4	88	Subsection 170CB(5)
5		Omit "Subdivisions C, D", substitute "Subdivisions C".
6	89	Subsection 170CBA(1)
7		Omit "D,".
8	Note	The heading to subsection 170CBA(1) is altered by omitting " <i>D</i> ,".
9	90	Subparagraph 170CBA(1)(f)(i)
10 11		Omit "award conditions", substitute "award-derived conditions (see subsection 170CD(3))".
12	91	At the end of subsection 170CBA(1)
13		Add:
14 15		; (g) an employee engaged on a seasonal basis, within the meaning of subsection (6A).
16	92	Subsection 170CBA(1) (note 2)
17 18		Omit "a State law", substitute "a provision of a State law that is not excluded under section 7C".
19	93	After subsection 170CBA(1)
20		Insert:
21 22		(1A) Despite the exclusion of an employee from the operation of Subdivisions B and F because of subsection (1):
23		(a) the employee may make an application under section 170CE
24		for relief in respect of the termination of his or her
25 26		employment on the ground of an alleged contravention of section 170CK; and
27		(b) if the employee does so, those Subdivisions have effect, in so
28 29		far as they relate to that application, as if the employee had not been excluded from their operation.
30	94	Subsection 170CBA(2)
31		Omit "Subdivision B, D", substitute "Subdivision B".

95	Subsection 170CBA(4)
	Repeal the subsection.
96	After subsection 170CBA(6)
	Insert:
	(6A) For the purposes of paragraph $(1)(g)$, an employee is engaged on
	seasonal basis if the employee is engaged to perform work for the duration of a specified season.
	(6B) For the purposes of subsection (6A), a <i>season</i> is a period that:
	(a) is determined at the commencement of the employee's engagement (the <i>commencement time</i>); and
	(b) begins at the commencement time; and
	(c) ends at a time in the future that:
	(i) is uncertain at the commencement time; and
	(ii) is related to the nature of the work to be performed by the employee; and
	(iii) is objectively ascertainable when it occurs.
	Note: Examples of seasons are:
	(a) the part of a year characterised by particular conditions of weather or temperature;
	(b) the part of a year when a product is best or available;
	(c) the part of a year marked by certain conditions, festivities or other activities.
	(6C) The regulations may provide that a particular period is, or is not, <i>season</i> for the purposes of subsection (6A).
97	Subsection 170CBA(7)
	Omit "Subdivisions D and E", substitute "Subdivision E".
Note:	The heading to subsection 170CBA(7) is altered by omitting "Subdivisions D and E" and substituting "Subdivision E".
98	Subsection 170CBA(7) (note 1)
	Omit "a State law", substitute "a provision of a State law that is not excluded under section 7C".
99	After section 170CCA
	Insert:

1 170CCB Extraterritorial extension

2	(1) This Division, and the rest of this Act so far as it relates to this
3	Division, extend to the termination, or proposed termination, of the
4	employment of an Australian-based employee even though one or
5	both of the following apply:
6	(a) the employee was employed outside Australia at the time of
7	the termination, the proposed time of termination or the time
8	of the making of the proposal to terminate;
9	(b) the act causing termination, or the proposal to terminate,
10	occurred outside Australia.
11	Note: In this context, Australia includes the Territory of Christmas Island,
12	the Territory of Cocos (Keeling) Islands and the coastal sea. See
13	section 15B and paragraph 17(a) of the Acts Interpretation Act 1901.
14	(2) However, subsection (1) does not apply in relation to the employee
15	if either:
16	(a) all the following conditions are met at the time of the
17	termination, the proposed time of termination or the time of
18	the making of the proposal to terminate:
19	(i) the employee's employer is not an Australian employer;
20	(ii) the employee's primary place of work is in Australia's
21	exclusive economic zone or Australia's continental
22	shelf;
23	(iii) the employee is not prescribed by the regulations as an
24	employee in relation to whom subsection (1) applies
25	despite this subsection; or
26	(b) the employee is prescribed by the regulations as an employee
27	in relation to whom subsection (1) does not apply.
28	(3) In this section:
29	Australian-based employee means a person who would be an
30	Australian-based employee (as defined in subsection $4(1)$) if the
31	definition of <i>employee</i> in section 170CAA applied to the definition
32	of Australian-based employee in that subsection.
33	Australian employer means a person who would be an Australian
34	employer (as defined in subsection $4(1)$) if the definition of
35	employer in section 170CAA applied to the definition of
36	Australian employer in that subsection.

	<i>this Act</i> includes the Registration and Accountability of Organisations Schedule and regulations made under it.
	Subsection 170CD(1) (definition of <i>Commonwealth public</i> tor employee)
	Repeal the definition.
101	Subsection 170CD(1)
	Insert:
	<i>Court</i> means the Federal Court of Australia or the Federal Magistrates Court.
	Subsection 170CD(1) (paragraph (a) of the definition of y hire employee)
	Repeal the paragraph, substitute:
	(a) whose employment:
	 (i) is regulated by an award or a workplace agreement; and (ii) under the award or workplace agreement is, or is normally, apart from the application to the employee of this Division:
	(A) terminated at the end of each day or shift; or(B) able to be terminated by the employer giving to the employee not more than 1 day's notice; and
	Subsection 170CD(1) (definition of <i>Federal award</i>
•	Repeal the definition.
	Subsection 170CD(1) (definition of <i>State or Territory</i>
	Repeal the definition.
105	After subsection 170CD(1) Insert:
	(1A) For the purposes of paragraph (b) of the definition of <i>daily hire employee</i> in subsection (1), <i>award</i>, <i>old IR agreement</i>, <i>State award</i> and <i>State employment agreement</i> have the meanings given by

subsection 4(1) of this Act as in force immediately before the reform commencement.
Subsection 170CD(2)
Omit "Subdivision C, D", substitute "Subdivision C".
Subsection 170CD(3)
Omit all the words after "under", substitute:
award-derived conditions if the employer is bound:
(a) in relation to the employee's wages and conditions of
employment—by an award or a workplace agreement; or
(b) in relation to:
(i) the employee's wages—by an APCS; and
(ii) in relation to the employee's conditions of employment—by an award or a workplace agreement.
employment—by an award of a workplace agreement.
Subsection 170CE(1)
Omit "subsections (5) and (5A)", substitute "subsections (5), (5A), (5C)
and (5E)".
Paragraph 170CE(1)(b)
Omit "170CL, 170CM or 170CN", substitute "170CL or 170CM".
Subsection 170CE(3)
Omit "170CK, 170CM and 170CN", substitute "170CK and 170CM".
Paragraph 170CE(5B)(a)
Omit "3", substitute "6".
After subsection 170CE(5B)
Insert:
(5C) An application under subsection (1) must not be made on the
ground referred to in paragraph (1)(a), or on grounds that include
that ground, if the employee's employment was terminated for
genuine operational reasons or for reasons that include genuine
operational reasons.
(5D) For the purposes of subsection (5C), operational reasons are
reasons of an economic, technological, structural or similar nature

1 2 3	relating to the employer's undertaking, establishment, service or business, or to a part of the employer's undertaking, establishment, service or business.
4	113 Before subsection 170CE(6)
5	Insert:
6 7 8 9	(5E) An application under subsection (1) must not be made on the ground referred to in paragraph (1)(a), or on grounds that include that ground, if, at the relevant time, the employer employed 100 employees or fewer, including:
10 11 12 13	 (a) the employee whose employment was terminated; and (b) any casual employee who had been engaged by the employer on a regular and systematic basis for at least 12 months; but not including any other casual employee.
14	(5F) For the purposes of subsection (5E):
15 16 17 18	 (a) the <i>relevant time</i> is the time when the employee the notice of termination, or the time when the employee terminated the employee's employment, whichever happened first; and
19 20 21	 (b) for the purposes of calculating the number of employees employed by the employer, <i>employee</i> has the same meaning as in paragraph 170CAA(1)(b).
22	114 At the end of section 170CEA
23	Add:
24 25 26 27 28	 (4) If a respondent has moved for the dismissal of an application made, or 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; subsection (5) applies to the application.
29 30 31 32 33 34 35	 (5) If the Commission is satisfied that an application to which this subsection applies cannot be made under subsection 170CE(1) on the ground referred to in paragraph 170CE(1)(a): (a) because the employee is excluded from the operation of Subdivision B by section 170CBA; or (b) because of the operation of subsection 170CE(5A) (which relates to qualifying periods); or

1 2	(c) because of the operation of subsection 170CE(5E) (which relates to employers of 100 employees or fewer);
2	the Commission must:
4	(d) if paragraph (4)(a) applies—make an order that the
5	application is not a valid application; or
6	(e) if paragraph (4)(b) applies—make an order that the
7	application is not a valid application to the extent that it is
8	made on the ground referred to in paragraph $170CE(1)(a)$.
9 10	(6) The Commission is not required to hold a hearing in relation to the making of an order under subsection (5).
11	115 After section 170CEA
12	Insert:
13	170CEB Applications that are frivolous, vexatious or lacking in
14	substance
15	(1) If:
16 17	(a) an application is made, or purported to have been made, under subsection 170CE(1):
18	(i) on the ground referred to in paragraph $170CE(1)(a)$; or
19	(ii) on grounds that include that ground; and
20	(b) the respondent moves for dismissal of an application on the
21	ground that it is frivolous, vexatious or lacking in substance;
22	and
23	(c) the Commission is satisfied that the application is frivolous,
24	vexatious or lacking in substance, in relation to the ground referred to in paragraph 170 CE(1)(a):
25	referred to in paragraph 170CE(1)(a); the Commission must:
26	
27 28	(d) if subparagraph (a)(i) applies—make an order dismissing the application; or
29	(e) if subparagraph (a)(ii) applies—make an order dismissing the
30	application to the extent that it is made on the ground referred
31	to in paragraph 170CE(1)(a).
32	(2) The Commission is not required to hold a hearing in relation to the
33	making of an order under subsection (1).

170CEC I	Extension of time applications may be decided without a hearing
	If:
	(a) an employee whose employment has been terminated by an
	employer makes an application (the <i>extension of time</i>
	<i>application</i>) under subsection 170CE(7) requesting the Commission to allow an application to be lodged under
	subsection 170CE(1) after the period of 21 days after the
	termination took effect; and
	(b) the proposed application under subsection 170CE(1) is an application:
	(i) on the ground referred to in paragraph $170CE(1)(a)$; or
	(ii) on grounds that include that ground;
	the Commission is not required to hold a hearing in relation to the
	extension of time application.
170CED N	Matters that do not require a hearing
(1)	The Commission must, in deciding whether or not to hold a
	hearing for the purposes of deciding:
	(a) whether to make an order under subsection 170CEA(5) or 170CEB(1); or
	(b) whether to grant an extension of time application within the meaning of section 170CEC;
	take into account the cost that would be caused to the business of
	the employer concerned by requiring the employer to attend a
	hearing.
(2)	If the Commission decides not to hold a hearing, the Commission must, before making a decision:
	(a) invite the employee and the employer concerned to provide
	further information that relates to whether the order should be
	made or the extension of time granted; and
	(b) take account of any such information.
(3)	If, as a result of information provided as mentioned in
	subsection (2), the Commission considers that it would be desirable
	to hold a hearing, the Commission may do so.
	An invitation under paragraph (2)(a) must:

1 2	(a) be given by notice in writing to the employee and the employer concerned; and
3 4	(b) specify the time by which the information referred to in the invitation is to be provided.
5 6	170CEE Dismissal of application relating to termination for operational reasons
7	(1) If:
8 9	 (a) an application is made, or is purported to have been made, under subsection 170CE(1):
10	(i) on the ground referred to in paragraph $170CE(1)(a)$; or
11	(ii) on grounds that include that ground; and
12	(b) either:
13	(i) the respondent has moved for the dismissal of the
14	application on the ground that the application is outside
15	the jurisdiction of the Commission because the
16	employee's employment was terminated for genuine operational reasons or for reasons that include genuine
17 18	operational reasons or for reasons that menude genuine
19	(ii) it appears to the Commission, on the face of all the
20	materials before it, that the employee's employment
21	may have been terminated for genuine operational
22	reasons or for reasons that include genuine operational
23	reasons;
24	the Commission must hold a hearing to deal with the operational
25	reasons issue before taking any further action in relation to the
26	application.
27	(2) If, as a result of the hearing, the Commission is satisfied that the
28	operational reasons relied on by the respondent were genuine, the
29	Commission must:
30	(a) if subparagraph $(1)(a)(i)$ applies—make an order that the
31	application is not a valid application; or
32	(b) if subparagraph $(1)(a)(ii)$ applies—make an order that the
33	application is not a valid application to the extent that it is made on the ground referred to in performed $170 CE(1)(a)$
34	made on the ground referred to in paragraph $170CE(1)(a)$.
35	(3) Subject to any right of appeal to a Full Bench of the Commission, a
36	finding by the Commission that it is not satisfied that the
37	operational reasons relied on by the respondent were genuine is

1 2		final and binding between the parties in any proceedings before the Commission.
3		(4) In this section:
4 5		<i>operational reasons</i> has the meaning given by subsection 170CE(5D).
6	116	Paragraph 170CFA(3)(b)
7		Omit "170CK, 170CL and 170CN", substitute "170CK and 170CL".
8	117	Subsection 170CFA(4)
9		Omit "170CL, 170CM and 170CN", substitute "170CL and 170CM".
10	118	Paragraph 170CFA(5)(c)
11		Omit "170CK, 170CL and 170CN", substitute "170CK and 170CL".
12	119	Subsection 170CFA(7)
13		Omit all the words after "period" (second occurring).
14	120	Subsection 170CFA(8)
15		Repeal the subsection, substitute:
16 17 18		(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.
19 20		(9) An appeal to a Full Bench under section 45 may not be made in relation to the discontinuance of an application under
21		subsection (7).
22	121	Paragraph 170CG(3)(a)
23		Omit "the capacity or conduct of the employee", substitute "the
24 25		employee's capacity or conduct (including its effect on the safety and welfare of other employees)".
26	122	Paragraph 170CG(3)(a)
27		Omit "or to the operational requirements of the employer's undertaking,
28		establishment or service".
29	123	After section 170CG

	Insert:
1700	CGA Exercise of arbitration powers by member who has exercised conciliation powers
	(1) If a member of the Commission has exercised conciliation power
	in relation to an application under this Division, the member mu
	not exercise, or take part in the exercise of, arbitration powers in relation to the application if a party to the arbitration proceeding
	objects.
	(2) The member is not taken to have exercised conciliation powers i relation to the application merely because:
	(a) the member arranged for a conference of the parties or the
	representatives to be presided over by the member, but the
	conference did not take place or was not presided over by member; or
	(b) the member arranged for the parties or their representatives
	confer among themselves at a conference at which the
	member was not present.
124	Paragraph 170CH(4)(b)
	Omit "subject to subsection (5)", substitute "subject to subsections (4
	and (5)".
125	After subsection 170CH(4)
	Insert:
	(4A) In determining an amount for the purposes of an order under paragraph (4)(b), the Commission must have regard to:
	(a) the amount of any income earned by the employee from
	employment or other work during the period between the
	termination and the making of the order for reinstatement; and
	(b) the amount of any income reasonably likely to be so earned
	by the employee during the period between the making of order for reinstatement and the actual reinstatement.
126	Subsection 170CH(7)
	Omit "Subject to subsection (8)", substitute "Subject to
	subsections (7A), (7B), (8) and (9)".

1	127	After paragraph 170CH(7)(d)
2		Insert:
3		(da) any misconduct of the employee that contributed to the
4		employer's decision to terminate the employee's
5		employment; and
6	128	After subsection 170CH(7)
7		Insert:
8		(7A) An amount ordered by the Commission under subsection (4) or (6)
9		to be paid to an employee may not include a component by way of
10		compensation for shock, distress or humiliation, or other analogous
11 12		hurt, caused to the employee by the manner of terminating the employee's employment.
13	129	Before subsection 170CH(8)
14		Insert:
15		(7B) If the Commission is satisfied that misconduct of the employee
16		contributed to the employer's decision to terminate the employee's
17		employment, the Commission must reduce the amount it would
18 19		otherwise fix under subsection (6) by an appropriate amount on account of the misconduct.
20	130	Subsections 170CH(8) and (9)
21 22		Omit "award conditions", substitute "award-derived conditions (see subsection 170CD(3))".
23	131	After subsection 170CJ(3)
24		Insert:
25		(3A) If the Commission is satisfied:
26		(a) that a person (the <i>representative</i>) representing a party to a
27		proceeding relating to an application made under
28 29		section 170CE caused costs to be incurred by the other party to the proceeding; and
30		(b) that the representative caused the costs to be incurred because
31		of the representative's unreasonable act or omission in
32		connection with the conduct of the proceeding;
33		the Commission may, on an application by the other party, make
34		an order for costs against the representative.

1	132	Section 170CN
2		Repeal the section.
3	133	Section 170CO
4		Omit "170CL, 170CM or 170CN", substitute "170CL or 170CM".
5	134	Subsection 170CP(1)
6		Omit "170CK, 170CL and 170CN", substitute "170CK and 170CL".
7 8	Note:	The heading to section 170CP is altered by omitting " 170CL , 170CM or 170CN " and substituting " 170CL or 170CM ".
9	135	Subsection 170CP(2)
10		Omit "a court of competent jurisdiction", substitute "an eligible court".
11	136	Subsection 170CP(3)
12		Omit "170CK, 170CM and 170CN", substitute "170CK and 170CM".
13	137	Subsection 170CP(5)
14		Omit "170CL, 170CM or 170CN", substitute "170CL or 170CM".
15	138	Subsection 170CR(1)
16		Omit "or 170CN".
17	139	Paragraph 170CR(1)(c)
18		Omit "subject to subsection (2)", substitute "subject to
19		subsections (1A), (2), (2A) and (2B)".
20	140	After subsection 170CR(1)
21		Insert:
22		(1A) An amount of compensation ordered by the Court under
23		paragraph (1)(c) or (d) to be paid to an employee may not include a
24 25		component by way of compensation for shock, distress or humiliation, or other analogous hurt, caused to the employee by the
25 26		manner of terminating the employee's employment.
27	141	Subsection 170CR(2)
28		Repeal the subsection, substitute:

144	Subdivision D of Division 3 of Part VIA Repeal the Subdivision.
14	Omit "170CL, 170CM or 170CN", substitute "170CL or 170CM".
1//3	Section 170CR (note)
	Omit "170CL, 170CM or 170CN", substitute "170CL or 170CM".
142	Subsection 170CR(6)
	the amount required in instalments specified in the order.
	(2B) For the avoidance of doubt, an order by the Court under paragraph (1)(c) or (d) may permit the employer concerned to pay
	whichever is the lower amount.
	accordance with a formula prescribed by the regulations;
	(b) the amount of \$32,000, as indexed from time to time in
	or
	the employee were an employee covered by the subsection;
	(a) the total of the amounts determined under subsection (2) if
	exceeds:
	before the termination, the Court must not fix an amount that
	(2A) In fixing an amount under paragraph (1)(c) for an employee who was not employed under award-derived conditions immediately
	-
	employee for the period of leave in accordance with the regulations.
	amount of remuneration taken to have been received by the
	while so employed during any part of that period—the
	(b) if the employee was on leave without pay or without full pay
	pay); and
	the termination (other than any period of leave without full
	(whichever is higher) for any period of employment with the employer during the period of 6 months immediately before
	(ii) to which the employee was entitled; (whichever is higher) for any period of employment with the
	(i) received by the employee; or
	(a) the total amount of remuneration:
	the termination, the Court must not fix an amount that exceeds the total of the following amounts:
	was employed under award-derived conditions immediately before
	(2) In fixing an amount under paragraph $(1)(c)$ for an employee who

145	Subsection 170GA(2)
	Omit "The", substitute "Subject to subsection (2A), the".
146	After subsection 170GA(2)
	Insert:
	(2A) The power to make orders under subsection (2) does not include
	the power to make orders for any of the following:
	(a) reinstatement of an employee;
	(b) withdrawal of a notice of termination if the notice period not expired;
	(c) payment of an amount in lieu of reinstatement;
	(d) payment of severance pay;
	(e) disclosure of confidential information or commercially
	sensitive information relating to the employer, unless the
	recipient of such information gives an enforceable undertaking not to disclose the information to any other
	person;
	(f) disclosure of personal information relating to a particular
	employee, unless the employee has given written consent
	the disclosure of the information and the disclosure is in
	accordance with that consent.
147	At the end of section 170GA
	Add:
	(4) For the purposes of subsection (2A), <i>commercially sensitive</i>
	information, confidential information and personal information
	have their ordinary meanings unless the regulations provide
	otherwise.
148	After section 170GB
	Insert:
1807	
1700	GBA Powers and procedures of Commission for dealing with applications
	The Commission may, in relation to an application for an order under section 170GA, attempt to settle the matter to which the application relates by conciliation.

1 2	149 Section 170GD Repeal the section.
3 4	150 Subdivision F of Division 3 of Part VIA (heading) Repeal the heading, substitute:
5	Subdivision F—Rights relating to termination of employment
6 7	151 Section 170HA Repeal the section.
8 9	152 Section 170HB Repeal the section, substitute:
10 11	170HB Limitation on applications alleging termination on paragraph 170CE(1)(a) grounds
12 13 14 15 16 17	(1) An application under subsection 170CE(1) alleging termination of employment on the ground referred to in paragraph 170CE(1)(a), or grounds that include that ground, must not be made if other termination proceedings have already been commenced in respect of the termination of employment, unless the other termination proceedings:
18 19 20	(a) have been discontinued by the employee who commenced the proceedings; or(b) have failed for want of jurisdiction.
21	Note: Subsection (3) defines <i>other termination proceedings</i> .
22 23 24 25 26 27 28	 (2) An employee must not commence other termination proceedings in respect of a termination of employment if an application under subsection 170CE(1) alleging termination of employment on the ground referred to in paragraph 170CE(1)(a), or on grounds that include that ground, has already been made, unless the application: (a) has been discontinued by the employee; or (b) has failed for want of jurisdiction.
29 30 31	 (3) In this section: <i>other termination proceedings</i> means proceedings, in respect of a termination of the employment of an employee:

1	(a) for a remedy in respect of the termination:
2	(i) under a provision of this Act other than section 170CE;
3	or
4	(ii) under another law of the Commonwealth; or
5	(iii) under a provision of a law of a State or Territory that is
6	not excluded by section 7C; and
7	(b) that allege that the termination was unlawful for any reason
8	(other than a failure by the employer to provide a benefit to
9	which the employee was entitled on the termination).
10 11	Note: Section 7C provides for the exclusion of certain State and Territory laws.
12	(4) For the avoidance of doubt, a proceeding seeking compensation, or
13	the imposition of a penalty, because an employer has failed, in
14	relation to a termination of employment, to meet an obligation:
15	(a) to give adequate notice of the termination; or
16	(b) to provide a severance payment as a result of the termination;
17	or
18	(c) to provide any other entitlement payable as a result of the
19	termination;
20	is taken to be a proceeding alleging that the termination was
21 22	unlawful because of a failure to provide a benefit to which the employee was entitled on the termination.
22	employee was entitled on the termination.
23	153 Section 170HC
24	Repeal the section, substitute:
25	170HC Limitation on applications alleging unlawful termination
26	(1) An application alleging unlawful termination of employment must
27	not be made by an employee if other termination proceedings have
28	already been commenced in respect of the termination of
29	employment, unless the other termination proceedings:
30	(a) have been discontinued by the employee; or
31	(b) have failed for want of jurisdiction.
32 33	Note: Subsection (3) defines an <i>application alleging unlawful termination</i> and <i>other termination proceedings</i> .
34	(2) An employee must not commence other termination proceedings in
35	respect of a termination of employment if an application alleging

1		unlawful termination of the employment has already been made,
2		unless the application:
3		(a) has been discontinued by the employee; or
4		(b) has failed for want of jurisdiction.
5		(3) In this section:
6		application alleging unlawful termination means an application
7		under section 170CE, in respect of a termination of employment,
8		on the ground that the termination constitutes a contravention of
9		section 170CK because it was done for a reason set out in
10		subsection 170CK(2).
11 12		<i>other termination proceedings</i> means proceedings, in respect of a termination of employment:
13		(a) for a remedy in respect of the termination:
14		(i) under a provision of this Act other than section 170CE;
15		or
16		(ii) under another law of the Commonwealth; or
17		(iii) under a provision of a law of a State or Territory that is
18		not excluded by section 7C; and
19		(b) that allege that the termination was:
20		(i) harsh, unjust or unreasonable (however described); or
21		(ii) unlawful;
22		for any reason (other than a failure by the employer to
23		provide a benefit to which the employee was entitled on the
24		termination).
25		Note: Section 7C provides for the exclusion of certain State or Territory
26		laws.
27	154	Subsection 170JC(1)
28		Repeal the subsection.
29	155	Subsection 170JC(2)
30		Omit "For the purpose of applying Part VIII in that way, an", substitute
31		"An".
32	156	Subsection 170JC(3)
33		Omit "(as it applies in accordance with this section)".

157 Paragraph 170JC(3)(a) 1 After "the Court" (wherever occurring), insert "or the Federal 2 Magistrates Court". 3 158 Paragraph 170JC(3)(b) 4 Omit "a court of competent jurisdiction", substitute "an eligible court". 5 159 At the end of section 170JD 6 Add: 7 (4) This section does not apply to an order under subsection 8 170CEA(5) or section 170CEB or to a decision on an extension of 9 time application within the meaning of section 170CEC. 10 160 Section 170JE 11 Repeal the section. 12 161 Section 170JEA 13 Omit " or the Court", substitute ", the Court or the Federal Magistrates 14 Court". 15 162 Sections 170JEB and 170JEC 16 Repeal the sections. 17 163 At the end of section 170JF 18 Add: 19 (3) An appeal to a Full Bench under section 45 may not be made in 20 relation to an order under subsection 170CEA(5) or 21 section 170CEB or in relation to a decision on an extension of time 22 application within the meaning of section 170CEC. 23 164 Section 170JG 24 Omit ", or certified agreement or AWA,", substitute "or workplace 25 agreement". 26 165 Section 170JH 27 Repeal the section. 28 166 At the end of Division 4 of Part VIA 29

А	dd:
---	-----

2	170JI Meaning of employee and employer
3	To avoid doubt, the expression <i>employee</i> or <i>employer</i> , when used
4	in a provision of this Division, is taken to have the same meaning
5	as in the provision of this Act to which the provision of this
6	Division relates.
7	167 Division 5 of Part VIA
8	Repeal the Division, substitute:
9	Division 5—Parental leave
10	170KA Object and application of Division
11	The object of this Division is to give effect, or further effect, to:
12	(a) the Family Responsibilities Convention; and
13	(b) the Workers with Family Responsibilities Recommendation,
14	1981, which the General Conference of the International
15	Labour Organisation adopted on 23 June 1981 and is also
16	known as Recommendation No. 165;
17	by providing for a system of unpaid parental leave, and a system of
18 19	unpaid adoption leave, that will help men and women workers who have responsibilities in relation to their dependent children:
20 21	 (c) to prepare for, enter, participate in or advance in economic activity; and
22	(d) to reconcile their employment and family responsibilities.
23 24	Note: <i>Employer, employee</i> and <i>employment</i> have their ordinary meaning in this Division. See sections 4AA, 4AB and 4AC and Schedule 1.
25	170KB Entitlement to parental leave
26	The provisions of Division 6 of Part VA are taken to apply in
27	relation to an employee:
28	(a) who is not an employee within the meaning of subsection
29	4AA(1); and
30	(b) if the employee is a casual employee—who would be an
31	eligible casual employee within the meaning of Division 6 of

1	Part VA, if he or she were an employee within the meaning	
2	of subsection 4AA(1);	
3	as if he or she were an employee to whom Division 6 of Part VA	
4	applied.	
5	Note 1: Employees within the meaning of subsection 4AA(1) are entitled to	
6 7 8	the key minimum entitlements of employment provided by the Australian Fair Pay and Conditions Standard. These include an entitlement to parental leave (see Division 6 of Part VA).	
9	Note 2: Compliance with this section is dealt with in Part VIII.	
10	170KC Division supplements other laws	
11	This Division is intended to supplement, not to override,	
12	entitlements under other Commonwealth, State and Territory	
13	legislation and awards.	
14	170KD Model dispute resolution process	
15 16	The model dispute resolution process applies to a dispute under this Division.	
17	Note: The model dispute resolution process is set out in Part VIIA.	
18	168 Parts VIB, VID, VIE and VII	
19	Repeal the Parts, substitute:	
20	Part VIIA—Dispute resolution processes	
21	Division 1—Preliminary	
22	171 Object	
23	The objects of this Part are:	
24	(a) to encourage employers and employees who are parties to a	
25	dispute to resolve it at the workplace level; and	

27 28 (b) to introduce greater flexibility for the resolution of disputes by allowing the parties to determine the best forum in which to resolve them.

1 172 Court process

		in this Part affects the right of a party to a dispute to take on to resolve the dispute.
Div	ision 2—Moc	lel dispute resolution process
173	Model dispute	resolution process
	This Divi	ision sets out the model dispute resolution process.
	Note:	The model dispute resolution process is used to resolve 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 application of awards (see section 116A); a
	(c)	disputes about the terms of a workplace agreement, where the agreement itself does not include an alternative (see section 101A); and
	(d)	disputes about the application of a workplace determination (s section 113D); and
	(e)	disputes under Division 1 of Part VIA, which deals with meal breaks (see section 170AC); and
	(f)	disputes under Division 5 of Part VIA, which deals with parer leave (see section 170KD).
174	Resolving disp	oute at workplace level
	-	es to a dispute must genuinely attempt to resolve the the workplace level.
	Note:	This may involve an affected employee first discussing the matter i dispute with his or her supervisor, then with more senior management
175	Where dispute	e cannot be resolved at workplace level
	Alternativ	ve dispute resolution process using an agreed provider
	party to the	er in dispute cannot be resolved at the workplace level, a he dispute may elect to use an alternative dispute in process in an attempt to resolve the matter.
		native dispute resolution process is to be conducted by a greed between the parties in dispute on the matter.

1	1 Where parties cannot agree on a provi	ider
2 3 4	³ alternative dispute resolution process,	a party to the dispute on the
5 6		
7 8 9 10 11	 dispute resolution process within the c to the dispute on the matter may apply the alternative dispute resolution proce 	onsideration period, a party to the Commission to have
12 13 14	dispute on a matter, the parties to the d	lispute must genuinely
15	15 (7) In this section:	
16 17 18	which the Industrial Registrar gives the	e prescribed information to a
19	19 176 Conduct during dispute	
20 21 22 23 24 25 26 27	 being resolved: (a) continue to work in accordance v employment, unless the employe about an imminent risk to his or (b) comply with any reasonable dire employer to perform other availa 	with his or her contract of the has a reasonable concern her health or safety; and ction given by his or her able work, either at the same
28 29 30 31 32 33 34	employer must have regard to: (a) the provisions (if any) of the law a State or Territory dealing with safety that apply to that employe (b) whether that work is appropriate	of the Commonwealth or of occupational health and e or that other work; and

1	Division 3—Alternative dispute resolution process
2	conducted by Commission under model dispute
3	resolution process
4	176A Alternative dispute resolution process
5 6	An <i>alternative dispute resolution process</i> is a procedure for the resolution of disputes, and includes:
7	(a) conferencing; and
8	(b) mediation; and
9	(c) assisted negotiation; and
10	(d) neutral evaluation; and
11	(e) case appraisal; and
12	(f) conciliation; and
13 14	(g) arbitration, or other determination of the rights and obligations of the parties in dispute; and
15	(h) a procedure or service specified in the regulations.
16	176B Application
17 18 19	 A person may apply to the Commission to have an alternative dispute resolution process conducted by the Commission under this Division in relation to a matter or matters in dispute if:
20 21 22 23	 (a) the dispute is one that may (whether under an award, a workplace determination, a workplace agreement, a provision of this Act or otherwise) be resolved using the model dispute resolution process; and
24 25	(b) the parties to the dispute on the matter or matters have been unable to resolve the dispute at the workplace level.
26 27	(2) An application to have an alternative dispute resolution process conducted by the Commission under this Division must:
28	(a) be in the form (if any) prescribed by the regulations; and
29	(b) describe the matter, or matters, in dispute in relation to which
30	the alternative dispute resolution process is to be conducted;
31	and
32 33	(c) be signed by the party to the dispute on that matter or those matters who is making the application; and

	(d) specify that the alternative dispute resolution process is to be conducted under the model dispute resolution process.
(.	3) The Commission may request the parties to provide further
	information about:
	(a) the matter or matters in dispute; and
	(b) the steps taken to resolve the matter at the workplace level.
(4	4) The Commission may do either of the following in relation to an application under this section:
	(a) allow the amendment, on any terms that it thinks appropriate, of the application;
	(b) correct, amend or waive any error, defect or irregularity whether in substance or form in the application.
176C R	efusing application
(1) The Commission must refuse to conduct an alternative dispute
	resolution process under this Division if the dispute is not one that
	may be resolved using the model dispute resolution process.
(2	2) The Commission may refuse to conduct an alternative dispute
	resolution process under this Division if the parties in dispute on the matter have not made a genuine attempt:
	(a) to resolve the dispute at the workplace level; or
	(b) to reach agreement on who would conduct the alternative
	dispute resolution process.
176D C	ommission's powers
(1) If the Commission conducts an alternative dispute resolution
	process under this Division, the Commission must take such action
	as is appropriate to assist the parties to resolve the matter.
(2	2) The action that the Commission may take includes:
	(a) arranging conferences of the parties or their representatives at
	which the Commission is present; and
	(b) arranging for the parties or their representatives to confer
	among themselves at conferences at which the Commission is not present.

1	(a) quickly; and
2	(b) in a way that avoids unnecessary technicalities and legal
3	forms; and
4	(c) if the parties have agreed that an aspect of the process is to be
5	conducted in a particular way—subject to subsection (4), in
6	accordance with that agreement.
7	(4) The Commission does not have power:
8	(a) to compel a person to do anything; or
9	(b) to arbitrate the matter, or matters, in dispute; or
10	(c) to otherwise determine the rights or obligations of a party to
11	the dispute; or
12	(d) to make an award in relation to the matter, or matters, in
13	dispute; or
14	(e) to make an order in relation to the matter, or matters, in
15	dispute; or
16	(f) to appoint a board of reference.
17	(5) The Commission does not have the power to do any of the things
18	mentioned in paragraph (4)(a), (d), (e) or (f), even if the parties
19	agree that the Commission should do it.
20	(6) The Commission may, subject to any reasonable limitations
21	imposed by the Commission, permit a party to the dispute on the
22	matter to be represented in the alternative dispute resolution
23	process.
24	(7) If the parties request the Commission to make recommendations
25	about particular aspects of a matter about which they are unable to
26	reach agreement, then the Commission may make
27	recommendations about those aspects of the matter.
28	(8) Subdivision B of Division 3A of Part II of this Act does not apply
29	in relation to the conduct of the alternative dispute resolution
30	process by the Commission under this Division.
31	176E Privacy
32	(1) The Commission must conduct the alternative dispute resolution
33	process in private.

1 2 3	d	The Commission must not disclose or use any information or ocument that is given to the Commission in the course of onducting the alternative dispute resolution process to any person,
4	u	nless:
5		(a) the information or document is disclosed or used for the
6		purpose of conducting the process; or
7		(b) the parties to the process consent to the disclosure or use; or
8		(c) the information or document is disclosed or used in
9		circumstances specified in regulations made for the purposes
10		of this paragraph; or
11		(d) the disclosure or use is otherwise required or authorised by
12		law.
13	(3) E	Evidence of anything said, or any act done, in the alternative
14		ispute resolution process is not admissible in proceedings relating
15	to	o the dispute:
16		(a) in any court; or
17 18		(b) before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence; or
19 20		(c) before a person authorised by the consent of the parties to hear evidence;
21	u	nless:
22		(d) the parties agree to the evidence being admissible; or
23		(e) the evidence is admitted in circumstances specified in
24		regulations made for the purposes of this paragraph.
25	176F When	alternative dispute resolution process complete
26	Т	The alternative dispute resolution process is completed when:
27		(a) the parties agree that the matters in dispute are resolved; or
28		(b) the party who elected to use the alternative dispute resolution
29		process has informed the Commission that the party no
30		longer wishes to continue with the process.

Division 4—Alternative dispute resolution process used to resolve other disputes

176G Application

3

4	(1) A person may apply to the Commission to have an alternative
5	dispute resolution process conducted by the Commission under this
6	Division in relation to a matter or matters in dispute if:
7	(a) the dispute on the matter or matters arises in the course of
8	bargaining in relation to a proposed collective agreement (as
9	defined for the purposes of Part VC); and
10	(b) all parties to the dispute agree that the process is to be
11	conducted by the Commission.
12	(2) An application to have an alternative dispute resolution process
13	conducted by the Commission under this Division must:
14	(a) be in the form (if any) prescribed by the regulations; and
15	(b) describe the matter, or matters, in dispute in relation to which
16	the alternative dispute resolution process is to be conducted;
17	and
18	(c) be signed by the party to the dispute on that matter or those
19	matters who is making the application; and
20	(d) specify that the alternative dispute resolution process is to be
21	conducted in relation to a dispute on a matter or matters
22	arising in the course of bargaining in relation to a proposed
23	collective agreement (as defined for the purposes of
24	Part VC).
25	(3) The Commission may request the parties to provide further
26	information about the matter or matters in dispute.
27	176H Grounds on which Commission must refuse application
28	The Commission must refuse to conduct the alternative dispute
29	resolution process if the circumstances mentioned in subsection
30	176G(1) do not exist.

1 1761 Powers of the Commission

2 3 4	 If the Commission conducts an alternative dispute resolution process under this Division, the Commission must take such action as is appropriate to assist the parties to resolve the matter.
5	(2) The action that the Commission may take includes:
6	(a) arranging conferences of the parties or their representatives at
7	which the Commission is present; and
8	(b) arranging for the parties or their representatives to confer
9	among themselves at conferences at which the Commission
10	is not present.
11	(3) The Commission must, as far as is practicable, act:
12	(a) quickly; and
13	(b) in a way that avoids unnecessary technicalities and legal
14	forms; and
15	(c) if the parties have agreed that an aspect of the process is to be
16	conducted in a particular way—subject to subsection (4), in accordance with that agreement.
17	accordance with that agreement.
18	(4) The Commission does not have power:
19	(a) to compel a person to do anything; or
20	(b) to arbitrate the matter, or matters, in dispute; or
21 22	(c) to otherwise determine the rights or obligations of a party to the dispute; or
23	(d) to make an award in relation to the matter, or matters, in
24	dispute; or
25	(e) to make an order in relation to the matter, or matters, in
26	dispute; or
27	(f) to appoint a board of reference.
28	(5) The Commission does not have power to do any of the things
29	mentioned in subsection (4), even if the parties agree that the
30	Commission should do it.
31	(6) The Commission may, subject to any reasonable limitations
32	imposed by the Commission, permit a party to the dispute on the
33	matter to be represented in the alternative dispute resolution
34	process.

1 2 3 4	(7) If the parties request the Commission to make recommendations about particular aspects of a matter about which they are unable to reach agreement, then the Commission may make recommendations about those aspects of the matter.
5 6 7	(8) Subdivision B of Division 3A of Part II of this Act does not apply in relation to the conduct of the alternative dispute resolution process by the Commission under this Division.
8	176J Privacy
9 10	(1) The Commission must conduct the alternative dispute resolution process in private.
11 12 13 14	(2) The Commission must not disclose or use any information or document that is given to the Commission in the course of conducting the alternative dispute resolution process to any person, unless:
15 16	(a) the information or document is disclosed or used for the purpose of conducting the process; or
17 18 19 20	 (b) the parties to the process consent to the disclosure or use; or (c) the information or document is disclosed or used in circumstances specified in regulations made for the purposes of this paragraph; or
21 22	(d) the disclosure or use is otherwise required or authorised by law.
23 24 25	(3) Evidence of anything said, or any act done, in the alternative dispute resolution process is not admissible in proceedings relating to the dispute:
26 27	(a) in any court; or(b) before a person authorised by a law of the Commonwealth or
28 29 20	of a State or Territory to hear evidence; or(c) before a person authorised by the consent of the parties to hear evidence;
30 31	unless:
32	(d) the parties agree to the evidence being admissible; or
33 34	(e) the evidence is admitted in circumstances specified in regulations made for the purposes of this paragraph.

4 5	Division 5—Dispute resolution process conducted by the Commission under workplace agreement
5	
6	176L Application
7 8 9	 A person may apply to the Commission to have a dispute resolution process conducted by the Commission under this Division in relation to a matter or matters in dispute if:
10 11 12	 (a) the dispute is one that, under the terms of a workplace agreement, may be resolved using a dispute resolution process conducted by the Commission; and
13 14 15	(b) any steps that, under the terms of agreement, must be taken before the matter is referred to the Commission have been taken.
16 17	(2) An application to have a dispute resolution process conducted by the Commission under this Division must:
18 19 20	(a) be in the form (if any) prescribed by the regulations; and(b) describe the matter, or matters, in dispute in relation to which the dispute resolution process is to be conducted; and
21 22	(c) be signed by the parties to the dispute on that matter or those matters; and
23 24 25	 (d) specify that the dispute resolution process is to be conducted under the terms of a workplace agreement and not under the model dispute resolution process.
26 27	(3) The Commission may request the parties to provide further information about:
28 29	(a) the matter or matters in dispute; and(b) the steps that have been taken to resolve the dispute.
30 31 32 33	Note: Under section 101A, a workplace agreement must include a dispute resolution process. That process may be something other than the model dispute resolution process, and may involve applying to have the Commission conduct an alternative dispute resolution process.

176K When alternative dispute resolution process complete

parties agree that the matters in dispute are resolved.

The alternative dispute resolution process is completed when the

1

2

3

176M	Grounds on which Commission must refuse application
	The Commission must refuse to conduct a dispute resolution
	process under this Division in relation to a matter in dispute if:
	(a) the dispute is not one that, under the terms of the workplace agreement, may be resolved using a dispute resolution
	process conducted by the Commission; or
	(b) any of the steps that, under the terms of agreement, must be taken before the matter is referred to the Commission have not been taken.
176N	Commission's powers
	(1) In conducting the dispute resolution process under this Division,
	the Commission has, subject to subsection (2), the functions and
	powers:
	(a) given to it under the workplace agreement; or
	(b) otherwise agreed by the parties.
	(2) The Commission does not have the power to make orders.
	(3) The Commission must, as far as is practicable, act:
	(a) quickly; and
	(b) in a way that avoids unnecessary technicalities and legal forms; and
	(c) if the parties have agreed, either in the workplace agreement
	or otherwise, that an aspect of the process is to be conducted in a particular way—in accordance with that agreement.
	(4) Subdivision B of Division 3A of Part II of this Act does not apply
	in relation to the conduct of the dispute resolution process by the Commission under this Division.
1760	Privacy
	(1) The Commission must conduct the dispute resolution process in private.
	(2) The Commission must not disclose or use any information or document that is given to the Commission in the course of conducting the dispute resolution process to any person, unless:

1		
	(a)	the information or document is disclosed or used for the
2		purpose of conducting the process; or
3		the parties to the process consent to the disclosure or use; or
4	(c)	the information or document is disclosed or used in
5		circumstances specified in regulations made for the purposes
6	(4)	of this paragraph; or the disclosure or use is otherwise required or authorized by
7 8	(u)	the disclosure or use is otherwise required or authorised by law.
9	(3) Evic	lence of anything said, or any act done, in the dispute
10		lution process is not admissible in any proceedings relating to
11		lispute:
12		in any court; or
13 14	(b)	before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence; or
15	(c)	before a person authorised by the consent of the parties to
16		hear evidence;
17	unle	
18		the parties agree to the evidence being admissible; or
19 20	(e)	the evidence is admitted in circumstances specified in regulations made for the purposes of this paragraph.
20		regulations made for the purposes of this purugraph.
20	Division 6—	Dispute resolution process conducted by
21	and	Dispute resolution process conducted by
21 22 23	and 176P Applicat	Dispute resolution process conducted by other provider ion of this Division
21 22 23	and 176P Applicat This	Dispute resolution process conducted by other provider
21 22 23 24	and 176P Applicat This disp	Dispute resolution process conducted by other provider ion of this Division Division applies to a dispute resolution process in relation to a
21 22 23 24 25	and 176P Applicat This disp	Dispute resolution process conducted by other provider ion of this Division Division applies to a dispute resolution process in relation to a ute on a matter or matters that is not conducted by the mission.
21 22 23 24 25 26	and 176P Applicat This disp Con 176Q Represe	Dispute resolution process conducted by other provider ion of this Division Division applies to a dispute resolution process in relation to a ute on a matter or matters that is not conducted by the mission.
21 22 23 24 25 26 27	and 176P Applicat This disp Con 176Q Represe (1) If th	Dispute resolution process conducted by other provider ion of this Division Division applies to a dispute resolution process in relation to a ute on a matter or matters that is not conducted by the mission.
21 22 23 24 25 26 27 28	and 176P Applicat This disp Con 176Q Represe (1) If th proc repr	Dispute resolution process conducted by other provider ion of this Division Division applies to a dispute resolution process in relation to a ute on a matter or matters that is not conducted by the mission. Intation e dispute resolution process is an alternative dispute resolution
21 22 23 24 25 26 27 28 29 30	and 176P Applicat This disp Con 176Q Represe (1) If th proc repr belia	 Dispute resolution process conducted by other provider ion of this Division Division applies to a dispute resolution process in relation to a ute on a matter or matters that is not conducted by the mission. ntation e dispute resolution process is an alternative dispute resolution ress, the person conducting the process may allow a party to be esented in the process if the person conducting the process

1	(3) If:
2 3	(a) the dispute resolution process is conducted under the terms of a workplace agreement; and
4	(b) the agreement makes provision for a party to the dispute to be
5	represented in the process;
6 7	the person conducting the dispute resolution process must allow the party to be represented in accordance with the agreement.
8	176R Privacy
9 10	 The person conducting the dispute resolution process must do so in private.
11	(2) A person who is conducting, or has conducted, a dispute resolution
12	process must not disclose or use any information or document that
13	is given to the person in the course of conducting that process to
14	any person, unless:(a) the information or document is disclosed or used for the
15 16	purpose of conducting the process; or
17	(b) the parties to the process consent to the disclosure or use; or
18	(c) the information or document is disclosed or used in
19	circumstances specified in regulations made for the purposes
20	of this paragraph; or
21	(d) the disclosure or use is otherwise required or authorised by
22	law.
23	(3) Subsections (1) and (2) are civil remedy provisions.
24	(4) Evidence of anything said, or any act done, in the dispute
25	resolution process is not admissible in proceedings relating to the
26	dispute:
27	(a) in any court; or
28	(b) before a person authorised by a law of the Commonwealth or
29	of a State or Territory to hear evidence; or
30 31	(c) before a person authorised by the consent of the parties to hear evidence;
32	unless:
33	(d) the parties agree to the evidence being admissible; or
34	(e) the evidence is admitted in circumstances specified in
35	regulations made for the purposes of this paragraph.

1 2	(5) The Court may make an order imposing a pecuniary penalty on a person who has contravened subsection (1) or (2).
3 4	(6) The pecuniary penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.
5 6	(7) An application for an order under subsection (5) may be made by:(a) a party to the dispute in relation to which the dispute
7	resolution process is conducted; or
8	(b) an organisation that has at least one member who is an
9 10	employee bound by the agreement, and that is entitled to represent the industrial interests of at least one such amployees or
11 12	employee; or (c) a workplace inspector; or
12	(d) any other person prescribed by the regulations.
14 15	Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII.
16	169 Division 1 of Part VIII (heading)
17	Repeal the heading, substitute:
18	Division 1—Definitions
19	170 Section 177A
20	Repeal the section, substitute:
21	177A Definitions
22	In this Part:
23	<i>applicable provision</i> , in relation to a person, means:
24	(a) a term of one of these that applies to the person:
25	(i) an AWA;
26	(ii) the Australian Fair Pay and Conditions Standard;
27	(iii) an award;
28	(iv) a collective agreement;
29 30	(v) an order of the Commission (except one made under Division 4 of Part VC); and
31	(b) section 170AA (meal breaks); and
32	(c) section 170KB (extended entitlement to parental leave).

1	Note 1	I I I I I I I I I I I I I I I I I I I
2		they were collective agreements (see section 113F). Undertakings are
3 4		treated the same way (see section 103M). This means that a term of one of these is an applicable provision for the purposes of this Part.
5	Note 2	
5 6	Note 2	orders made under that Division are dealt with under section 109V.
7	eligib	<i>le court</i> means:
8	(a)	the Court; or
9	(b)	the Federal Magistrates Court; or
10	(c)	a District, County or Local Court; or
11	(d)	a magistrate's court; or
12	(e)	the Industrial Relations Court of South Australia; or
13	(f)	any other State or Territory court that is prescribed by the
14		regulations.
15	171 Before se	action 178
15		
16	Insert:	
17	Division 2—P	Penalties and other remedies for contravention
18	of a	pplicable provisions
19	177AA Standin	g to apply for penalties or remedies under this
20	Divis	
21	(1) The t	able sets out the persons who may apply for a penalty or other
22		dy under this Division in relation to a breach of an applicable
23	provi	•
24		
	Standing	

Item	If the applicable provision is	These persons may apply
1	a term of an AWA	(a) an employer that is bound by the AWA;
		(b) an employee who is bound by the AWA;
		 (c) an organisation of employees that represents an employee who is bound by the AWA (subject to subsection (2));
		(d) an inspector

Standing		
Item	If the applicable provision is	These persons may apply
2	a term of the Australian Fair Pay and Conditions Standard	(a) an employee whose employment is subject to the Standard;
		(b) an organisation of employees (subject to subsection (3));
		(c) an inspector
3	a term of an award	(a) an employer that is bound by the award;
		(b) an employee whose employment is subject to the award;
		(c) an organisation of employers that has a member affected by the breach;
		 (d) an organisation of employees, a member of which is employed by the respondent employer and whose industrial interests the organisation is entitled, under its eligibility rules, to represent in relation to work carried on by the member for the employer;
		(e) an inspector
4	a term of a collective	(a) an employer that is bound by the agreement
	agreement	(b) an employee who is bound by the agreement;
		(c) an organisation of employees (subject to subsection (3));
		(d) an inspector
5	a term of an order of the	(a) a person who is bound by the order;
	Commission	(b) an organisation of employers that has a member affected by the breach;
		 (c) an organisation of employees, a member of which is employed by the respondent employer and whose industrial interests the organisation is entitled, under its eligibility rules, to represent in relation to work carried on by the member for the employer;
		(d) an inspector

Item	If the applicable provision is	These persons may apply
6	section 170AA (meal breaks)	(a) an employee to whom section 170AA applies;
		(b) an organisation of employees (subject to subsection (3));
		(c) an inspector
7	section 170KB (extended entitlement to	(a) an employee to whom section 170KB applies;
	parental leave)	(b) an organisation of employees (subject to subsection (3));
		(c) an inspector
		llective agreements (see section 113F). Undertakings are me way (see section 103M). This means that they are able item 4
	-	
	(2) An organisation of e bound by an AWA r penalty or other rem	employees that represents an employee who is nust not apply on behalf of the employee for a ledy under this Division in relation to a breach
	 (2) An organisation of e bound by an AWA r penalty or other rem of an applicable prov (a) the employee l 	employees that represents an employee who is must not apply on behalf of the employee for a ledy under this Division in relation to a breach vision of the AWA unless: has requested, in writing, the organisation to
	 (2) An organisation of e bound by an AWA r penalty or other rem of an applicable prov (a) the employee l apply on the error 	employees that represents an employee who is nust not apply on behalf of the employee for a ledy under this Division in relation to a breach vision of the AWA unless: has requested, in writing, the organisation to mployee's behalf; and he organisation is employed by the employee's
	 (2) An organisation of e bound by an AWA r penalty or other rem of an applicable prov (a) the employee l apply on the er (b) a member of th employer; and (c) the organisation represent the in 	employees that represents an employee who is nust not apply on behalf of the employee for a ledy under this Division in relation to a breach vision of the AWA unless: has requested, in writing, the organisation to mployee's behalf; and he organisation is employed by the employee's
	 (2) An organisation of e bound by an AWA r penalty or other rem of an applicable prov (a) the employee I apply on the er (b) a member of th employer; and (c) the organisation represent the in to work carried (3) An organisation of e remedy under this D 	employees that represents an employee who is nust not apply on behalf of the employee for a ledy under this Division in relation to a breach vision of the AWA unless: has requested, in writing, the organisation to mployee's behalf; and he organisation is employed by the employee's on is entitled, under its eligibility rules, to ndustrial interests of the employee in relation
	 (2) An organisation of e bound by an AWA in penalty or other remined of an applicable provision that is: (a) the employee I apply on the end of the employer; (b) a member of the employer; and (c) the organisation of end of the employer; (3) An organisation of end of the employer of the employer is and is: (a) a term of the America and the employer of the employer. 	employees that represents an employee who is nust not apply on behalf of the employee for a ledy under this Division in relation to a breach vision of the AWA unless: has requested, in writing, the organisation to mployee's behalf; and he organisation is employed by the employee's on is entitled, under its eligibility rules, to ndustrial interests of the employee in relation d on by the employee for the employer. employees must not apply for a penalty or othe bivision in relation to a breach of an applicable Australian Fair Pay and Conditions Standard; o
	 (2) An organisation of e bound by an AWA r penalty or other rem of an applicable prov (a) the employee I apply on the er (b) a member of th employer; and (c) the organisation represent the into work carried (3) An organisation of e remedy under this D provision that is: (a) a term of the A (b) a term of a col 	employees that represents an employee who is nust not apply on behalf of the employee for a ledy under this Division in relation to a breach vision of the AWA unless: has requested, in writing, the organisation to mployee's behalf; and he organisation is employed by the employee's on is entitled, under its eligibility rules, to ndustrial interests of the employee in relation d on by the employee for the employer. employees must not apply for a penalty or othe bivision in relation to a breach of an applicable Australian Fair Pay and Conditions Standard; o lective agreement; or
	 (2) An organisation of e bound by an AWA in penalty or other remined of an applicable provision that is: (a) the employee I apply on the end of the employer; (b) a member of the employer; and (c) the organisation of end of the employer; (3) An organisation of end of the employer of the employer is and is: (a) a term of the America and the employer of the employer. 	employees that represents an employee who is nust not apply on behalf of the employee for a ledy under this Division in relation to a breach vision of the AWA unless: has requested, in writing, the organisation to mployee's behalf; and he organisation is employed by the employee's on is entitled, under its eligibility rules, to ndustrial interests of the employee in relation d on by the employee for the employer. employees must not apply for a penalty or othe bivision in relation to a breach of an applicable Australian Fair Pay and Conditions Standard; o lective agreement; or A; or
	 (2) An organisation of e bound by an AWA if penalty or other rem of an applicable prov (a) the employee I apply on the end (b) a member of the employer; and (c) the organisation of end (c) the organisation of end (d) An organisation of end (e) provision that is: (a) a term of the A (b) a term of a col (c) section 170AA 	employees that represents an employee who is nust not apply on behalf of the employee for a ledy under this Division in relation to a breach vision of the AWA unless: has requested, in writing, the organisation to mployee's behalf; and he organisation is employed by the employee's on is entitled, under its eligibility rules, to ndustrial interests of the employee in relation d on by the employee for the employer. employees must not apply for a penalty or othe bivision in relation to a breach of an applicable Australian Fair Pay and Conditions Standard; o lective agreement; or A; or

1 2 3	(f) the breach relates to, or affects, the member of the organisation or work carried on by the member for the employer.
4	172 Subsection 178(1)
5	Repeal the subsection, substitute:
6 7 8 9	 (1) An eligible court may impose a penalty in accordance with this Division on a person if: (a) the person is bound by an applicable provision; and (b) the person breaches the provision.
10 11 12 13	 173 Paragraph 178(2)(a) Repeal the paragraph, substitute: (a) 2 or more breaches of an applicable provision are committed by the same person; and
14 15	174 Paragraph 178(2)(b) Omit "organisation or".
16	175 Subsection 178(3)
17	Repeal the subsection, substitute:
18 19 20 21	(3) Subsection (2) does not apply to a breach of an applicable provision that is committed by a person after an eligible court has imposed a penalty on the person for an earlier breach of the provision.
22	176 Subsections 178(4) to (5A)
23	Repeal the subsections, substitute:
24 25 26 27	 (4) The maximum penalty that may be imposed under subsection (1) for a breach of an applicable provision is: (a) 60 penalty units for an individual; or (b) 300 penalty units for a body corporate.
28 29 30 31 32	(5) If, in a proceeding under this section in relation to an AWA, it appears to the eligible court that a party to the AWA has suffered loss or damage as a result of a breach of the AWA by the other party, the court may order the other party to pay the amount of the loss or damage to the first-mentioned party.

1	177	Subsection 178(6)
2		Omit "court concerned", substitute "eligible court".
3	178	Subsection 178(6)
4 5		Omit "award, order or agreement", substitute "applicable provision (except a term of an AWA)".
6	179	Subsection 178(6A)
7		Omit "court concerned", substitute "eligible court".
8	180	Subsection 178(6A)
9 10		Omit "award, order or agreement", substitute "applicable provision (except a term of an AWA)".
11	181	Subsection 178(6B)
12		Omit "court concerned", substitute "eligible court".
13	182	Subsection 178(7)
14		Omit "shall", substitute "must".
15	183	Subsection 178(8)
16 17		Omit "a term of an award, order or agreement shall", substitute "an applicable provision must".
18	184	Subsection 178(9)
19		Repeal the subsection.
20	185	Section 179
21		Repeal the section, substitute:
22	179	Recovery of wages etc.
23		If an employer is required by an applicable provision (except a
24 25		term of an AWA) to pay an amount to an employee or to pay an amount to a superannuation fund on behalf of an employee, the
26		employee, or an inspector on behalf of the employee, may, not later
27		than 6 years after the employer was required to make the payment
28		to the employee or fund, sue for the amount of the payment in an
29		eligible court.

1 179AA Damages for breach of AWA

- A party to an AWA who suffers loss or damage as a result of a breach of the AWA by the other party may recover the amount of the loss or damage in an eligible court.
 - (2) The action must be brought within 6 years after the date on which the cause of action arose.

7 186 Subsection 179A(1)

2

3

4

5

6

8

9

10

15

24

- Omit "subsection 178(6) or in a proceeding under section 179, the Court or a court of competent jurisdiction", substitute "subsection 178(5) or (6) or in a proceeding under section 179 or 179AA, the eligible court".
- 11 187 Paragraph 179A(1)(a)
- Omit "Court or a court of competent jurisdiction, as the case may be,", substitute "eligible court".

14 **188 Section 179B**

Repeal the section, substitute:

16 **179B Interest on judgment**

17A debt under a judgment or order of an eligible court made under18subsection 178(5) or (6) or section 179 or 179AA carries interest19from the date on which the judgment is entered or order made at20such rate as would apply under section 52 of the *Federal Court of*21Australia Act 1976 if the debt were a judgment debt to which that22section applies.

23 **189 Paragraph 179C(a)**

After "section 179", insert "or 179AA".

25 **190 Paragraph 180(1)(a)**

26 Omit "award, order or certified agreement", substitute "applicable 27 provision".

191 Division 3 of Part VIII

29 Repeal the Division.

30 192 At the end of Part VIII

1	Add:
2	Division 4—General provisions relating to civil remedies
3	188 Operation of this Division
4 5	(1) This Division sets out rules that apply for the purposes of these provisions:
6	(a) section 178; and
7 8	(b) another provision of this Act that is declared (whether by that provision or by another provision of this Act) to be a civil
9	remedy provision (whether or not for the purposes of a particular segment of this Act); and
10 11	(c) another provision of this Act that provides a remedy for a
12	contravention of a provision referred to in paragraph (b).
13	(2) Those provisions are called the <i>civil remedy provisions</i> .
14 15	189 Involvement in contravention treated in same way as actual contravention
16 17	(1) A person who is involved in a contravention of a civil remedy provision is treated as having contravened that provision.
18 19	(2) For this purpose, a person is <i>involved in</i> a contravention of a civil remedy provision if, and only if, the person:
20 21	(a) has aided, abetted, counselled or procured the contravention;or
22 23	(b) has induced the contravention, whether by threats or promises or otherwise; or
24	(c) has been in any way, by act or omission, directly or
25	indirectly, knowingly concerned in or party to the
26	contravention; or
27	(d) has conspired with others to effect the contravention.
28	190 Civil evidence and procedure rules for civil remedy orders
29	A court hearing a proceeding under a civil remedy provision must
30	apply the rules of evidence and procedure for civil matters.

1	191	Recovery of pecuniary penalties
2		A pecuniary penalty payable under a civil remedy provision may
3		be recovered as a debt due to the person to whom the penalty is
4		payable.
5	192	Civil proceedings after criminal proceedings
6		A court must not make an order under a civil remedy provision
7		requiring a person to pay a pecuniary penalty if the person has been
8		convicted of an offence constituted by conduct that is substantially
9 10		the same as the conduct in relation to which the order would be made.
11	193	Criminal proceedings during civil proceedings
12		(1) Proceedings for an order under a civil remedy provision requiring a
13		person to pay a pecuniary penalty are stayed if:
14 15		(a) criminal proceedings are started or have already been started against the person for an offence; and
16		(b) the offence is constituted by conduct that is substantially the
17		same as the conduct in relation to which the order would be
18		made.
19		(2) The proceedings for the order may be resumed if the person is not
20		convicted of the offence. Otherwise, the proceedings for the order
21		are dismissed.
22	194	Criminal proceedings after civil proceedings
23		Criminal proceedings may be started against a person for conduct
24		that is substantially the same as conduct in relation to which an
25		order under a civil remedy provision requiring the person to pay a
26 27		pecuniary penalty could be made regardless of whether such an order has been made against the person.
21		order has been made against the person.
28	195	Evidence given in proceedings for pecuniary penalty not
29		admissible in criminal proceedings
30		Evidence of information given or evidence of production of
31		documents by an individual is not admissible in criminal
32		proceedings against the individual if:

1	(a) the individual previously gave the evidence or produced the
2	documents in proceedings for an order under a civil remedy
3	provision requiring the individual to pay a pecuniary penalty
4	(whether or not the order was made); and
5	(b) the conduct alleged to constitute the offence is substantially
6	the same as the conduct in relation to which the order was
7	sought.
8	However, this does not apply to a criminal proceeding in respect of
9	the falsity of the evidence given by the individual in the
10	proceedings under the civil remedy provision.
11	196 Civil double jeopardy
12	If a person is ordered to pay a pecuniary penalty under a civil
13	remedy provision in respect of particular conduct, the person is not
14	liable to be ordered to pay a pecuniary penalty under some other

liable to be ordered to pay a pecuniary penalty under some other
provision of a law of the Commonwealth law in respect of that
conduct.

17 193 Parts VIIIA, IX and XA

18 Repeal the Parts, substitute:

Part IX—Right of entry

20 Division 1—Preliminary

21 **197** Objects of this Part

22	In addition to the object set out in section 3, this Part has the
23	following objects:
24	(a) to establish a framework that balances:
25	(i) the right of organisations to represent their members in
26	the workplace, hold discussions with potential members
27	and investigate suspected breaches of industrial laws,
28	industrial instruments and OHS laws; and
29	(ii) the right of occupiers of premises and employers to
30	conduct their businesses without undue interference or
31	harassment;
32	(b) to ensure that permits to enter premises and inspect records
33	are only held by persons who understand their rights and

394

1 2	obligations under this Part and who are fit and proper persons to exercise those rights;
3 4	 (c) to ensure that occupiers of premises and employers understand their rights and obligations under this Part;
5	(d) to ensure that permits are suspended or revoked where rights
6	granted under this Part are misused.
7	198 Definitions
8	In this Part:
9	affected employee means:
10	(a) in relation to the entry onto premises under section 208 to
11 12	investigate a suspected breach—an employee for whom all the following are satisfied:
13	(i) the employee carries out work on the premises;
14	(ii) the employee is a member of the permit holder's
15	organisation;
16	(iii) the suspected breach relates to, or affects, the employee or the work; and
17	
18 19	(b) in relation to the entry onto premises under section 221 to hold discussions—an employee for whom all the following
20	are satisfied:
21	(i) the employee carries out work on the premises;
22	(ii) the employee is a member of the permit holder's
23	organisation or is eligible to become a member of that
24	organisation;
25	(iii) the employee is one of the employees with whom the
26	discussions are to be held.
27	affected employer means an employer of affected employees.
28	authority documents, in relation to the entry onto premises by a
29	permit holder, means:
30	(a) if the permit holder entered the premises in reliance on an
31	entry notice:
32	(i) the permit holder's permit; and
33	(ii) the entry notice; or
34	(b) if the permit holder entered the premises in reliance on an
35	exemption certificate:

1	(i) the permit holder's permit; and
2	(ii) the exemption certificate; or
3	(c) if the permit holder entered the premises in reliance on an
4	order of the Commission:
5	(i) the permit holder's permit; and
6	(ii) the order.
7	<i>Commonwealth place</i> means a place referred to in paragraph 52(i)
8	of the Constitution, other than the seat of government.
9	conduct includes an omission.
10	Court means the Federal Court of Australia or the Federal
11	Magistrates Court.
12	entry notice means an entry notice in the form approved under
13	section 199.
14	exemption certificate means an exemption certificate under
15	section 211.
16	industrial law means:
17	(a) this Act; or
18 19	(b) the Registration and Accountability of Organisations Schedule; or
20	(c) a law of the Commonwealth, however designated, that
20 21	regulates the relationships between employers and
22	employees; or
23	(d) a State or Territory industrial law.
24	official, in relation to an organisation, means an officer or
25	employee of the organisation.
26	OHS law means a law of a State or Territory prescribed by the
27	regulations for the purposes of this definition.
28	permit means a permit under this Part.
29	permit holder means a person who holds a permit.
30	permit holder's organisation, in relation to a permit, means the
31	organisation in respect of which the permit was issued.

1 2		<i>repealed Part IX</i> means Part IX of this Act, as in force at any time before the reform commencement.
3	199 Fo	rm of entry notice
4 5		(1) The Industrial Registrar must, in writing, approve a form of entry notice for the purposes of this section.
6 7 8 9 10 11 12 13		 (2) The form: (a) must require the following matters to be specified by the person using the form: (i) the premises that are proposed to be entered; (ii) the organisation in respect of which the relevant permit was issued; (iii) any other matters prescribed by the regulations; and (b) must include any other information prescribed by the
14 15 16		(3) Subsection (2) does not, by implication, limit the matters that may be contained in, or required by, the form.
17	200 Ex	traterritorial extension
18		In Australia's exclusive economic zone
 19 20 21 22 23 24 25 26 		 (1) This Part, and the rest of this Act so far as it relates to this Part, extend to premises that: (a) are in Australia's exclusive economic zone; and (b) are owned or occupied by an Australian employer. This subsection has effect subject to Australia's obligations under international law concerning jurisdiction over ships that fly the flag of a foreign country and aircraft registered under the law of a foreign country.
27		On Australia's continental shelf outside exclusive economic zone
28 29 30		(2) This Part, and the rest of this Act so far as it relates to this Part, extend to premises that:(a) are outside the outer limits of Australia's exclusive economic

1		(b) are connected with the exploration of the continental shelf or the exploitation of its natural resources; and
2		-
3 4		(c) meet the requirements that are prescribed by the regulations for that part.
5 6 7		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.
8		Definition
9	(3)	In this section:
10 11		<i>this Act</i> includes the Registration and Accountability of Organisations Schedule and regulations made under it.
12	Division	2—Issue of permits
13	201 Issue	of permit
14	(1)	An organisation may apply to a Registrar for the issue of a permit
15		to an official of the organisation. The application must be in
16		writing.
17 18	(2)	The Registrar may issue a permit to the official named in the application.
19	(3)	The permit:
20		(a) must include any conditions that are imposed by the Registrar
21		under section 202; and
22		(b) must include any conditions that are applicable under
23		section 231 at the time of issue.
24	(4)	The regulations may make provision in relation to the following
25		matters:
26		(a) the form of an application for a permit;
27		(b) the declarations and other documents that must accompany
28		the application;
29		(c) verification, by statutory declaration, of those documents;
30		(d) the form of a permit.
31 32		Note: Under the <i>Criminal Code</i> and the <i>Statutory Declarations Act 1959</i> , penalties apply to false statements etc.

1	202 Impo	osition of permit conditions at time of issue
2 3	(1)	At the time of issuing a permit, a Registrar may impose conditions that limit the circumstances in which the permit has effect.
4 5		Note: For example, the conditions could limit the premises to which the permit applies or the time of day when the permit operates.
6 7	(2)) In deciding whether to impose conditions, a Registrar must have regard to the matters specified in subsection 203(2).
8	203 Perm	nit not to be issued in certain cases
9		Official not a fit and proper person
10 11 12	(1)	A Registrar must not issue a permit to an official unless the Registrar is satisfied that the official is a fit and proper person to hold the permit.
13 14	(2)) For the purposes of subsection (1), the Registrar must have regard to the following matters:
14		(a) whether the official has received appropriate training about
15 16		the rights and responsibilities of a permit holder;
17		(b) whether the official has ever been convicted of an offence
18		against an industrial law;
19		(c) whether the official has ever been convicted of an offence
20 21		against a law of the Commonwealth, a State, a Territory or a foreign country, involving:
22		(i) entry onto premises; or
23		(ii) fraud or dishonesty; or
24		(iii) intentional use of violence against another person or
25		intentional damage or destruction of property;
26		(d) whether the official, or any other person, has ever been
27		ordered to pay a penalty under this Act or any other industrial
28		law in respect of conduct of the official;
29		(e) whether any permit issued to the official under this Part, or
30		under the repealed Part IX, has been revoked or suspended or
31		made subject to conditions;
32		(f) whether a court, or other person or body, under a State or
33 34		Territory industrial law or an OHS law, has cancelled, suspended or imposed conditions on a right of entry for

1		industrial or occupational health and safety purposes that the
2		official had under that law;
3	(g)	whether a court, or other person or body, under a State or
4		Territory industrial law or an OHS law, has disqualified the
5		official from exercising, or applying for, a right of entry for
6		industrial or occupational health and safety purposes under
7		that law;
8	(h)	any other matters that the Registrar considers relevant.
9	Note:	Part VIIC of the Crimes Act 1914 includes provisions that, in certain
10		circumstances, relieve persons from the requirement to disclose spent
11		convictions and require persons aware of such convictions to
12		disregard them.
13	Bann	ing order or disqualification applies under this Part
14	(3) A Re	gistrar must not issue a permit to an official:
15	(a)	during a disqualification period specified by a Registrar
16		under section 205; or
17	(b)	if the issue is prevented by a Commission order under
18		section 231 or 233.
19	Disq	ualification etc. applies under State law
20	(4) A Re	gistrar must not issue a permit to an official at a time when:
21	(a)	a suspension, imposed by a court or other person or body,
22		applies under a State or Territory industrial law or an OHS
23		law to a right of entry for industrial or occupational health
24		and safety purposes that the official has under that law; or
25	(b)	a disqualification, imposed by a court or other person or
26		body, prevents the official from exercising, or applying for, a
27		right of entry for industrial or occupational health and safety
28		purposes under a State or Territory industrial law or an OHS
29		law.
30	Division 3—I	Expiry, revocation, suspension etc. of permits
31	204 Expiry of J	permit
32	Unle	ss earlier revoked, a permit expires at the earlier of the
33		wing times:

(a) at the end of the third anniversary of the date of issue;

34

1 2	(b) when the permit holder ceases to be an official of the organisation that applied for the permit.
3	205 Revocation, suspension etc. by Registrar
4	(1) A workplace inspector, or a person prescribed by the regulations,
5	may apply to a Registrar to take action under this section against a
6 7	permit holder. The application must be made in accordance with the regulations.
8 9	(2) On application made under subsection (1), the Registrar may do any of the following in relation to one or more permits held by the
10	permit holder:
11 12	(a) revoke the permit (whether or not the permit is already suspended);
13	(b) suspend the permit for a specified period;
14	(c) impose conditions on the permit (whether or not the permit is
15	already suspended).
16	(3) In exercising powers under subsection (2), the Registrar must have
17	regard to the matters specified in subsection 203(2).
18	Registrar must revoke or suspend in certain circumstances
19	(4) If the Registrar is satisfied that any of the things mentioned in
20	subsection (5) has happened since the first of the permits was
21 22	issued, then the Registrar must take the following action in relation to each permit held by the permit holder:
23	(a) if the permit expires before the end of the minimum
24	disqualification period—the Registrar must revoke the
25	permit;
26	(b) if the permit does not expire before the end of the minimum
27	disqualification period—the Registrar must either:
28	(i) revoke the permit; or
29	(ii) suspend the permit for a period that does not end earlier
30	than the end of the minimum disqualification period.
31	The Registrar must also specify a disqualification period for the
32	purposes of section 203. The disqualification period cannot be
33	shorter than the minimum disqualification period.
34	(5) The things are:

1 2	(a) the permit holder was found, in proceedings under this Act, to have contravened section 229; or
3	(b) the permit holder, or another person, was ordered to pay a
4	penalty under this Act in respect of a contravention of this
5	Part by the permit holder; or
6	(c) a court, or other person or body, under a State or Territory
7	industrial law, cancelled or suspended a right of entry for
8	industrial purposes that the permit holder had under that law;
9	or
10	(d) a court, or other person or body, under a State or Territory
11	industrial law, disqualified the permit holder from exercising,
12	or applying for, a right of entry for industrial purposes under
13	that law; or
14	(e) the holder has, in exercising a right of entry under an OHS
15	law, engaged in conduct that was not authorised by that law.
16	(6) The Commission may make an order quashing or varying the
17	revocation or suspension of a permit if:
18	(a) the permit was revoked or suspended on grounds set out in
19	paragraph (5)(b) or (e); and
20	(b) the Commission is satisfied, on application by the permit
21	holder, that the revocation or suspension was harsh or
22	unreasonable in the circumstances.
23	Definition
24	(7) In this section:
25	<i>minimum disqualification period</i> , in relation to action by a
26	Registrar under subsection (4) (the <i>current action</i>), means:
27	(a) if a Registrar has never previously taken action against the
28	permit holder under that subsection—the period of 3 months
29	starting when the current action is taken; or
30	(b) if a Registrar has previously taken action against the permit
31	holder under that subsection on only one occasion-the
32	period of 12 months starting when the current action is taken;
33	or
34	(c) if a Registrar has previously taken action against the permit
35	holder under that subsection on at least 2 occasions-the
36	period of 5 years starting when the current action is taken.

1	206 Revoked etc. permit must be returned to Registrar
2	(1) If any of the following happens to a permit, then the permit holder
3	must within 7 days return the permit to a Registrar:
4	(a) the permit is revoked;
5	(b) the permit expires;
6	(c) the permit is suspended;
7	(d) conditions are imposed on the permit after it is issued.
8	(2) Subsection (1) is a civil remedy provision.
9	Note: See Division 8 for enforcement.
10	(3) In the case of a suspended permit, a Registrar must, on application
11	by the permit holder or the permit holder's organisation, return the
12 13	permit to the permit holder after the end of the suspension period if the Registrar is satisfied that the permit is then still in force.
14 15	Note: In the meantime the permit might have been revoked or might have expired.
16	207 Extra conditions to be endorsed on permit
17	If conditions are imposed on a permit by a Registrar under
18	section 205 or by the Commission under section 231, then the
19 20	permit ceases to have effect until the Registrar endorses those conditions on the permit.
21 22	Division 4—Right of entry to investigate suspected breaches
23	208 Right of entry to investigate breach
24	Right of entry for breach of Commonwealth industrial law etc.
25	(1) If a permit holder for an organisation suspects, on reasonable
26	grounds, that a breach has occurred, or is occurring, of:
27	(a) this Act; or
28	(b) an AWA; or
29	(c) an award or collective agreement or an order of the
30	Commission under this Act, being an award, collective
31	agreement or order that is binding on the permit holder's
32	organisation;

1 2 3 4 5 6		 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 these surplements.
7		those employees.
8		No right to investigate AWA breach unless employee requests
9 10 11	(2)	Paragraph (1)(b) does not apply unless the employee who is a party to the AWA makes a written request to the organisation to investigate the breach.
12	209 Rights	s of permit holder after entering premises
13	(1)	This section applies if a permit holder has entered premises under
14	(-)	section 208 for the purpose of investigating a suspected breach.
15		Inspection of work etc. and interviewing employees
16 17	(2)	While on the premises, the permit holder may, for the purpose of investigating the suspected breach:
18		(a) during working hours, inspect or view any work, material,
19		machinery, or appliance, that is relevant to the suspected
20		breach; and
21 22		(b) during working hours, interview the following persons about the suspected breach:
23		(i) employees who are members of the permit holder's
24		organisation;
25		(ii) employees who are eligible to become members of the
26		permit holder's organisation.
27	(3)	For the avoidance of doubt, a refusal or failure by a person to
28		participate in an interview under this section is not to be treated as
29		conduct covered by section 149.1 of the Criminal Code.
30		Inspection of records while on the premises
31	(4)	While on the premises, the permit holder may, for the purpose of
32	~ /	investigating the suspected breach, require an affected employer to
33		allow the permit holder, during working hours, to inspect and make

1 2	copies of, any records relevant to the suspected breach (other than non-member records) that:
3	(a) are kept on the premises by the employer; or
4	(b) are accessible from a computer that is kept on the premises
5	by the employer.
6	Inspection of records at later time
7	(5) The permit holder may, for the purpose of investigating the
8	suspected breach, by notice in writing, require an affected
9	employer, on a later day or days specified in the notice:
10	(a) to produce, or allow access to, all records, or particular
11	records, relevant to the suspected breach (other than
12	non-member records), either at the premises or at another
13	place that is agreed between the permit holder and the
14	employer; and
15	(b) to allow the permit holder, during working hours, to inspect
16	and make copies of, any of those records.
17	The permit holder may give the notice while on the premises or
18	within 5 days after the day on which the permit holder entered the
19	premises.
20	(6) A day specified in a notice to an employer under subsection (5)
21	cannot be earlier than 14 days after the notice is given to the
22	employer.
23	(7) Before issuing a requirement to an affected employer under
24	subsection (4) or (5) , the permit holder must produce the permit
25	holder's authority documents for inspection by the employer.
26	(8) If a permit holder has given a notice to an employer under
27	subsection (5) requiring the employer to produce, or allow access
28	to, records at the premises, then the permit holder is entitled to
29	enter the premises during working hours for the purpose of
30	inspecting and copying the records in accordance with the notice.
31 32	Note: The <i>Privacy Act 1998</i> has rules about the disclosure of personal information.
33	Application to Commission for access to non-member records
34 35 36	(9) The permit holder may, for the purposes of investigating the suspected breach, apply to the Commission for either or both of the following orders:

1	(a) an order to allow the permit holder to enter the premises and
2	to inspect and make copies of non-member records that are
3	relevant to the suspected breach;
4 5	(b) an order to require an affected employer to produce, or allow access to, such records for inspection and copying.
6	(10) The Commission may make such an order if it is satisfied that the
7	order is necessary to investigate the suspected breach. Before doing
8 9	so, the Commission must have regard to the conditions (if any) that apply to the permit holder's permit.
10	(11) An application for an order under subsection (9):
11	(a) must be in accordance with the regulations; and
12	(b) must set out the grounds on which the application is made.
13	Definitions
14	(12) In this section:
15	non-member record means a record that:
16	(a) relates to the employment of a person who is not a member
17	of the permit holder's organisation; and
18 19	(b) does not also relate to the employment of a person who is a member of the permit holder's organisation.
20	record relevant to the suspected breach means a record:
21	(a) that is relevant to the suspected breach; and
22	(b) that is of the following kind:
23	(i) a time sheet;
24	(ii) a pay sheet;
25	(iii) any other record or document, other than an AWA.
26	210 Limitation on rights—entry notice or exemption certificate
27	(1) Section 208 does not authorise entry to premises unless:
28	(a) the conditions in subsection (2) of this section are satisfied;
29	or
30	(b) the conditions in subsection (3) of this section are satisfied.
31	(2) The conditions are:

1	(a) the permit holder gave an entry notice to the occupier of the
2 3	premises and gave the notice during working hours at least 24 hours, but not more than 14 days, before the entry; and
4	(b) the entry notice specifies section 208 as the section that
5	authorises the entry; and
6 7	(c) the entry notice specifies particulars of the suspected breach or breaches; and
8	(d) the entry is on a day specified in the entry notice.
9	(3) The conditions are:
10	(a) the entry is on a day specified in an exemption certificate
11 12	under section 211 and the premises are the premises specified in the exemption certificate; and
13	(b) the permit holder gave a copy of the exemption certificate to
14	the occupier of the premises not more than 14 days before the
15	entry.
16	(4) Conduct after entry is not authorised by section 209 unless the
17	conduct is for the purpose of investigating a suspected breach
18	identified in the permit holder's authority documents.
19	211 Exemption from requirement to provide entry notice
19 20	211 Exemption from requirement to provide entry notice (1) An organisation may apply to a Registrar for an exemption
	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208
20	(1) An organisation may apply to a Registrar for an exemption
20 21	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. (2) If the Registrar is satisfied that there are reasonable grounds for
20 21 22 23 24	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. (2) If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under
20 21 22 23 24 25	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. (2) If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 208 might result in the destruction, concealment or
20 21 22 23 24 25 26	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. (2) If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 208 might result in the destruction, concealment or alteration of relevant evidence, then the Registrar must issue an
20 21 22 23 24 25	 An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 208 might result in the destruction, concealment or alteration of relevant evidence, then the Registrar must issue an exemption certificate in respect of entry onto those premises.
20 21 22 23 24 25 26	 An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 208 might result in the destruction, concealment or alteration of relevant evidence, then the Registrar must issue an exemption certificate in respect of entry onto those premises. An exemption certificate must:
20 21 22 23 24 25 26 27	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. (2) If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 208 might result in the destruction, concealment or alteration of relevant evidence, then the Registrar must issue an exemption certificate in respect of entry onto those premises. (3) An exemption certificate must: (a) specify the premises to which it applies; and
20 21 22 23 24 25 26 27 28	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. (2) If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 208 might result in the destruction, concealment or alteration of relevant evidence, then the Registrar must issue an exemption certificate in respect of entry onto those premises. (3) An exemption certificate must: (a) specify the premises to which it applies; and (b) specify the organisation to which it relates; and
20 21 22 23 24 25 26 27 28 29	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. (2) If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 208 might result in the destruction, concealment or alteration of relevant evidence, then the Registrar must issue an exemption certificate in respect of entry onto those premises. (3) An exemption certificate must: (a) specify the premises to which it applies; and (b) specify the organisation to which it relates; and (c) specify the day or days on which it operates; and
20 21 22 23 24 25 26 27 28 29 30	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. (2) If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 208 might result in the destruction, concealment or alteration of relevant evidence, then the Registrar must issue an exemption certificate in respect of entry onto those premises. (3) An exemption certificate must: (a) specify the premises to which it applies; and (b) specify the organisation to which it relates; and (c) specify the day or days on which it operates; and (d) specify particulars of the suspected breach or breaches to
20 21 22 23 24 25 26 27 28 29 30 31	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. (2) If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 208 might result in the destruction, concealment or alteration of relevant evidence, then the Registrar must issue an exemption certificate in respect of entry onto those premises. (3) An exemption certificate must: (a) specify the premises to which it applies; and (b) specify the organisation to which it relates; and (c) specify the day or days on which it operates; and (d) specify particulars of the suspected breach or breaches to which it relates; and
20 21 22 23 24 25 26 27 28 29 30 31 32	 (1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 208 to investigate a suspected breach. (2) If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 208 might result in the destruction, concealment or alteration of relevant evidence, then the Registrar must issue an exemption certificate in respect of entry onto those premises. (3) An exemption certificate must: (a) specify the premises to which it applies; and (b) specify the organisation to which it relates; and (c) specify the day or days on which it operates; and (d) specify particulars of the suspected breach or breaches to

1 2 3 4	 (4) The regulations may make provision in relation to the following matters: (a) the form of an application for an exemption certificate; (b) the form of an exemption certificate.
5 6	212 Limitation on rights—failure to comply with requests of occupier or affected employer
7 8 9 10	(1) This Division does not authorise a permit holder to enter, or remain on, premises if the permit holder fails to produce the permit holder's authority documents for inspection when requested to do so by an affected employer or by the occupier of the premises.
11 12	(2) This Division does not authorise a permit holder to enter, or remain on, premises if:(a) an affected employer or the occupier of the premises requests
13 14 15	(a) an affected employer of the occupier of the premises requests the permit holder to comply with an occupational health and safety requirement that applies to the premises; and
16	(b) the request is a reasonable request; and
17	(c) the permit holder fails to comply with the request.
18 19	Note: The Commission may make an order under section 232 if the request is unreasonable.
20 21	(3) This Division does not authorise a permit holder to enter, or remain on, premises if:
22 23	(a) an affected employer or the occupier of the premises requests the permit holder to do either or both of the following:
24 25	 (i) to conduct interviews in a particular room or area of the premises;
26 27	(ii) to take a particular route to reach a particular room or area of the premises; and
28	(b) the request is a reasonable request; and
29	(c) the permit holder fails to comply with the request.
30 31	Note: The Commission may make an order under section 232 if the request is unreasonable.
32	(4) For the purposes of subsection (3), if an affected employer or the
33	occupier requests the permit holder to hold discussions in a
34	particular room or area, or to take a particular route to reach a
35	particular room or area, the request is not unreasonable only

408

1 2	because it is not the room, area or route that the permit holder would have chosen.
3	213 Limitation on rights—residential premises
4 5	This Division does not authorise a person to enter any part of premises that is used for residential purposes.
6	214 Limitation on rights—permit conditions
7 8	 A permit holder's rights under this Division in respect of a permit are subject to any conditions that apply to the permit.
9 10	(2) Subsection (1) does not apply to rights of a permit holder under an order by the Commission under section 209.
11	215 Burden of proving reasonable grounds for suspecting breach
12	Whenever it is relevant to determine whether a permit holder had
13	reasonable grounds for suspecting a breach, as mentioned in
14 15	section 208, the burden of proving the existence of reasonable grounds lies on the person asserting the existence of those grounds.
16	Division 5—Entry for OHS purposes
17	216 OHS entries to which this Division applies
18	(1) This Division has effect in relation to a right to enter premises
19	under an OHS law if:
20	(a) the premises are occupied or otherwise controlled by:
21	(i) a constitutional corporation; or
22	(ii) the Commonwealth; or
23	(b) the premises are located in a Territory; or
24	(c) the premises are, or are located in, a Commonwealth place; or
25 26	(d) the right relates to requirements to be met by:
20	(i) a constitutional corporation or the Commonwealth in its
28	capacity as an employer; or
29	(ii) an employee of a constitutional corporation or the
30	Commonwealth; or

1	(iii) a contractor providing services for a constitutional
2	corporation or the Commonwealth; or
3 4	(e) the right relates to conduct engaged in, or activity undertaken or controlled, by:
5	(i) a constitutional corporation or the Commonwealth in its
6	capacity as an employer; or
7 8	(ii) an employee of a constitutional corporation or the Commonwealth; or
9	(iii) a contractor providing services for a constitutional
10	corporation or the Commonwealth; or
11	(f) the exercise of the right will have a direct effect on:
12	(i) a constitutional corporation or the Commonwealth in its
13	capacity as an employer; or
14	(ii) an employee of a constitutional corporation or the
15	Commonwealth; or
16	(iii) a contractor providing services for a constitutional
17	corporation or the Commonwealth.
18	(2) In this section:
19	constitutional corporation includes:
19 20	<i>constitutional corporation</i> includes:(a) a Commonwealth authority; and
	-
20	(a) a Commonwealth authority; and
20 21	(a) a Commonwealth authority; and(b) a body corporate incorporated in a Territory.
20 21 22	(a) a Commonwealth authority; and(b) a body corporate incorporated in a Territory.217 Permit required for OHS entry
20 21 22 23	 (a) a Commonwealth authority; and (b) a body corporate incorporated in a Territory. 217 Permit required for OHS entry (1) An official of an organisation who has a right under an OHS law to
20 21 22 23 24	 (a) a Commonwealth authority; and (b) a body corporate incorporated in a Territory. 217 Permit required for OHS entry (1) An official of an organisation who has a right under an OHS law to enter premises must not exercise that right unless the official:
20 21 22 23 24 25	 (a) a Commonwealth authority; and (b) a body corporate incorporated in a Territory. 217 Permit required for OHS entry (1) An official of an organisation who has a right under an OHS law to enter premises must not exercise that right unless the official: (a) holds a permit under this Part; and
20 21 22 23 24 25 26	 (a) a Commonwealth authority; and (b) a body corporate incorporated in a Territory. 217 Permit required for OHS entry (1) An official of an organisation who has a right under an OHS law to enter premises must not exercise that right unless the official: (a) holds a permit under this Part; and (b) exercises the right during working hours.
20 21 22 23 24 25 26 27	 (a) a Commonwealth authority; and (b) a body corporate incorporated in a Territory. 217 Permit required for OHS entry (1) An official of an organisation who has a right under an OHS law to enter premises must not exercise that right unless the official: (a) holds a permit under this Part; and (b) exercises the right during working hours. (2) Subsection (1) is a civil remedy provision.
20 21 22 23 24 25 26 27 28	 (a) a Commonwealth authority; and (b) a body corporate incorporated in a Territory. 217 Permit required for OHS entry (1) An official of an organisation who has a right under an OHS law to enter premises must not exercise that right unless the official: (a) holds a permit under this Part; and (b) exercises the right during working hours. (2) Subsection (1) is a civil remedy provision. Note: See Division 8 for enforcement.
20 21 22 23 24 25 26 27 28 29	 (a) a Commonwealth authority; and (b) a body corporate incorporated in a Territory. 217 Permit required for OHS entry (1) An official of an organisation who has a right under an OHS law to enter premises must not exercise that right unless the official: (a) holds a permit under this Part; and (b) exercises the right during working hours. (2) Subsection (1) is a civil remedy provision. Note: See Division 8 for enforcement. 218 Rights to inspect employment records after entering premises

1		(b) has a right under the OHS law to inspect or otherwise access
2		employment records on the premises;
3		must not exercise the right unless he or she has complied with
4		subsection (2).
5	(2)	At least 24 hours before the entry, the person must have given the
6	()	occupier of the premises written notice of his or her intention to
7		exercise the right and the reasons for doing so.
8	(3)	Subsection (1) is a civil remedy provision.
9		Note: See Division 8 for enforcement.
10		Definition
11	(4)	In this section:
12		<i>employment record</i> means a record that relates to the employment
13		of a person.
14	219 Limit	ation on OHS entry—failure to comply with requests of
15		occupier
	(1)	
16	(1)	A permit holder must not enter, or remain on, premises under an
17 18		OHS law unless the permit holder produces his or her permit for inspection when requested to do so by the occupier of the premises.
10		inspection when requested to do so by the occupier of the premises.
19	(2)	Subsection (1) is a civil remedy provision.
20		Note: See Division 8 for enforcement.
21	(3)	A permit holder must not enter, or remain on, premises under an
22		OHS law if:
23		(a) the occupier of the premises requests the permit holder to
24		comply with an occupational health and safety requirement
25		that applies to the premises; and
26		(b) the request is a reasonable request; and
27		(c) the permit holder fails to comply with the request.
28		Note: The Commission may make an order under section 232 if the request
29		is unreasonable.
30	(4)	Subsection (3) is a civil remedy provision.
31		Note: See Division 8 for enforcement.
51		TYOU. SEE DIVISION O TOF CHIOFCEMENT.

1	220 Limitation on OHS entry—permit conditions
2 3	A permit holder's right to enter premises under an OHS law in accordance with section 217 is subject to any conditions that apply
4	to the permit.
5	Division 6—Right of entry to hold discussions with
6	employees
7	221 Right of entry to hold discussions with employees
8	A permit holder for an organisation may enter premises for the
9 10	purposes of holding discussions with any eligible employees who wish to participate in those discussions. For this purpose, <i>eligible</i>
11	<i>employee</i> means any employee who:(a) on the premises, carries out work that is covered by an award
12 13	or collective agreement that is binding on the permit holder's
14	organisation; and (b) is a member of the permit holder's organisation or is aligible
15 16	(b) is a member of the permit holder's organisation or is eligible to become a member of that organisation.
17	222 Limitation on rights—times of entry and discussions
18	The permit holder may only enter the premises under section 221
19	during working hours and may only hold the discussions during the
20	employees' mealtime or other breaks.
21	223 Limitation on rights—conscientious objection certificates
22	(1) This Division does not authorise entry to premises, or subsequent
23	conduct on the premises, if all of the following conditions are
24	satisfied:
25 26	(a) no more than 20 employees are employed to work at the premises;
27	(b) all the employees at the premises are employed by an
28	employer who is the holder of a conscientious objection
29 20	certificate in force under section 180 of the Registration and
30	Accountability of Organisations Schedule, that has been endorsed by a Registrar under subsection (2) of this section,
31 32	or under section 285C of the repealed Part IX;
	or ander beetion 2000 or the repeated rate fri,

1 2	(c)) none of the employees employed at the premises is a member of an organisation.
3	(2) A R	egistrar may, on the application of an employer, endorse a
4	cert	ficate issued to that employer under section 180 of the
5	Reg	istration and Accountability of Organisations Schedule if the
6	Reg	istrar is satisfied that the employer is a practising member of a
7	relig	gious society or order whose doctrines or beliefs preclude
8	men	nbership of an organisation or body other than the religious
9	soci	ety or order of which the employer is a member.
10	(3) An a	application under subsection (2) may be made at the time of an
11	appl	ication under section 180 of the Registration and
12	Acc	ountability of Organisations Schedule or at any later time.
13	(4) The	endorsement of a Registrar under subsection (2) remains in
14	forc	e for the period that the certificate remains in force.
15	Note	∂
16		Accountability of Organisations Schedule remains in force for the
17		period (not exceeding 12 months) specified in the certificate, but may be renewed. A Registrar's endorsement under subsection (2) does not
18 19		remain in force when a certificate is renewed, but a new application
20		for endorsement may be made.
21	224 Limitation	n on rights—entry notice
22	This	Division does not authorise entry to premises, or subsequent
23	cone	duct on the premises, unless all the following conditions are
24	satis	sfied:
25	(a)) the permit holder gave an entry notice to the occupier of the
26		premises at least 24 hours, but not more than 14 days, before
27		the entry;
28	(b [*]) the entry notice specifies section 221 as the section that
29		authorises the entry;
30	(c)) the entry is on a day specified in the entry notice.
31	225 Limitation	n on rights—residential premises
32	This	Division does not authorise a person to enter any part of
33		nises that is used for residential purposes.
55	pror	and a used for restantial purposes.

1 2	226 Limitation on rights—failure to comply with requests of occupier or affected employer
3	(1) This Division does not authorise a permit holder to enter, or remain
4	on, premises if the permit holder fails to produce the permit
5	holder's authority documents for inspection when requested to do
6	so by an affected employer or by the occupier of the premises.
7	(2) This Division does not authorise a permit holder to enter, or remain
8	on, premises if:
9	(a) an affected employer or the occupier of the premises requests
10 11	the permit holder to comply with an occupational health and safety requirement that applies to the premises; and
12	(b) the request is a reasonable request; and
12	(c) the permit holder fails to comply with the request.
14 15	Note: The Commission may make an order under section 232 if the request is unreasonable.
16	(3) This Division does not authorise a permit holder to enter, or remain
17	on, premises if:
18 19	(a) an affected employer or the occupier of the premises requests the permit holder to do either or both of the following:
20	(i) to hold discussions in a particular room or area of the
21	premises;
22	(ii) to take a particular route to reach a particular room or area of the premises; and
23	-
24	(b) the request is a reasonable request; and
25	(c) the permit holder fails to comply with the request.
26 27	Note: The Commission may make an order under section 232 if the request is unreasonable.
28	(4) For the purposes of subsection (3), if an affected employer or the
29	occupier requests the permit holder to hold discussions in a
30	particular room or area, or to take a particular route to reach a
31	particular room or area, the request is not unreasonable only
32	because it is not the room, area or route that the permit holder
33	would have chosen.
34	227 Limitation on rights—permit conditions
35	A permit holder's rights under this Division in respect of a permit
36	are subject to any conditions that apply to the permit.

414 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

Division 7—Prohibitions

2	228	Hinde	ring, obstruction etc. in relation to this Part
3 4 5 6 7		(1)	 A permit holder exercising, or seeking to exercise, rights: (a) under section 208, 209 or 221; or (b) under an OHS law in accordance with section 217 or 218; must not intentionally hinder or obstruct any person, or otherwise act in an improper manner.
8		(2)	Subsection (1) is a civil remedy provision.
9			Note: See Division 8 for enforcement.
10 11 12 13 14		(3)	 A person must not refuse or unduly delay entry to premises by a permit holder who is entitled to enter the premises: (a) under section 208, subsection 209(8) or (10) or section 221; or (b) under an OHS law in accordance with section 217.
15		(4)	Subsection (3) is a civil remedy provision.
16			Note: See Division 8 for enforcement.
17 18		(5)	An employer must not refuse or fail to comply with a requirement under subsection 209(4) or (5).
19		(6)	Subsection (5) is a civil remedy provision.
20			Note: See Division 8 for enforcement.
21 22 23 24		(7)	A person must not otherwise intentionally hinder or obstruct a permit holder exercising rights:(a) under section 208, 209 or 221; or(b) under an OHS law in accordance with section 217 or 218.
25		(8)	Subsection (7) is a civil remedy provision.
26			Note: See Division 8 for enforcement.
27 28 29		(9)	To avoid doubt, a failure to agree on a place as mentioned in paragraph 209(5)(a) does not constitute hindering or obstructing a permit holder exercising rights under section 209.
30		(10)	Without limiting subsection (7), that subsection:

1	(a)	extends to hindering or obstructing that occurs after the entry
2		notice is given but before the permit holder enters the
3		premises; and
4	(b)	applies whether or not the person who is hindering or
5		obstructing knows at the time which permit holder will be
6		exercising the rights in respect of the entry notice.
7 8 9 10	Note:	For example, if an entry notice is given to the occupier and a person then destroys, conceals or manufactures evidence relating to the suspected breach, that conduct would amount to hindering or obstructing.
11	229 Misreprese	entations about right of entry
12	(1) A pe	rson must not, in the circumstances mentioned in
13		ection (2), engage in conduct:
14	(a)	with the intention of giving a second person the impression;
15		or
16	(b)	reckless as to whether a second person would get the
17		impression;
18 19		he first person, or a third person, is authorised by this Part to particular thing.
20	(2) The	circumstances are:
21		the first person or the third person (as the case requires) is not
22	()	authorised by this Part to do that thing; and
23	(b)	the first person knows, or has reasonable grounds to believe,
24		that the first person or the third person (as the case requires)
25		is not authorised by this Part to do that thing.
26	(3) Subs	ection (1) is a civil remedy provision.
27	Note:	See Division 8 for enforcement.
28	Division 8—I	Enforcement
29	230 Penalties e	tc. for contravention of civil remedy provisions
30	(1) The	Court, on application by an eligible person, may make one or
31	more	of the following orders in relation to a person (the <i>defendant</i>)
32		has contravened a civil remedy provision of this Part:
33	(a)	an order imposing a pecuniary penalty on the defendant;

416 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1	(b) an order requiring the defendant to pay a specified amount to
2 3	another person as compensation for damage suffered by the other person as a result of the contravention;
4	(c) any other order that the Court considers appropriate.
5	(2) The maximum pecuniary penalty under paragraph (1)(a) is 300
6 7	penalty units if the defendant is a body corporate and otherwise 60 penalty units.
8	(3) The orders that may be made under paragraph (1)(c) include:
9	(a) injunctions; and (b) only other orders that the Court considers reconserve to stor
10 11	(b) any other orders that the Court considers necessary to stop the conduct or remedy its effects.
12	(4) Each of the following is an <i>eligible person</i> for the purposes of this
13	section:
14	(a) a workplace inspector;(b) a person affected by the contravention;
15 16	(c) a person prescribed by the regulations for the purposes of this
17	paragraph.
18	(5) A regulation prescribing persons for the purposes of
19	paragraph (4)(c) may provide that a person is prescribed only in
20	relation to circumstances specified in the regulation.
21 22	Note: Division 4 of Part VIII contains other provisions relevant to civil remedies.
23	Division 9—Powers of the Commission
24	231 Orders by Commission for abuse of system
25	(1) If the Commission is satisfied that an organisation, or any official
26	of an organisation, has abused the rights conferred by this Part,
27	then the Commission may make whatever orders it considers
28	appropriate to restrict the rights of the organisation, or officials of
29	the organisation, under this Part.
30	(2) The Commission may make the orders:
31	(a) on its own initiative; or
32	(b) on application by a workplace inspector.
33	(3) The orders may include:

1 2 3 4 5		(a) an order that revokes or suspends some or all of the permits that have been issued in respect of the organisation; and(b) an order that imposes limiting conditions on some or all of the permits that have been issued in respect of the organisation or that might in future be issued in respect of the
6 7 8 9 10 11 12		 organisation; and (c) an order that bans, for a specified period, the issue of permits in respect of the organisation, either generally or to specified persons. For the purposes of this subsection, <i>limiting condition</i> means a condition that limits the circumstances in which a permit has effect.
13 14	(4)	An organisation, or an official of an organisation, who is subject to an order under this section must comply with the order.
15 16	(5)	Subsection (4) is a civil remedy provision.Note:See Division 8 for enforcement.
17 18 19 20 21 22	(6)	 The powers of the Commission under this section are exercisable by: (a) the President; or (b) a Presidential Member assigned by the President for the purposes of the matter concerned; or (c) a Full Bench, if the President so directs.
23 24 25 26 27	(7)	Without limiting subsection (1), a permit holder abuses rights conferred by this Part if, in exercising rights under Division 6, the permit holder engages in recruitment conduct that is unduly disruptive, either because the permit holder's exercise of powers of entry is excessive in the circumstances or for some other reason.
28 29	(8)	In this section: <i>recruitment conduct</i> means encouraging employees to become
29 30		members of an organisation.
31		asonable requests by occupier or affected employer
32	(1)	If the Commission is satisfied that:

1 2 3	 (a) an affected employer or the occupier of premises has made a request to a permit holder as mentioned in section 212, 219 or 226; and
4	(b) the request is not a reasonable request;
5	then the Commission may make whatever orders it considers
6	appropriate in respect of the rights of the organisation, or officials
7	of the organisation, to investigate breaches as mentioned in
8	section 208, to enter premises under an OHS law in accordance
9	with section 217 or to hold discussions with employees as
10	mentioned in section 221, as the case requires.
11	Note: Unreasonable requests might amount to a breach of subsection 228(7).
12	(2) Without limiting subsection (1), the Commission may order that,
13	for a specified period, the permit holder who was exercising or
14	seeking to exercise rights under section 209 or 221 or under an
15	OHS law in accordance with section 217 or 218 is entitled to enter
16	specified premises, or a specified part of specified premises, for a
17	specified period, and exercise those rights.
18	(3) The powers of the Commission under this section are exercisable
19	by:
20	(a) the President; or
21	(b) a Presidential Member assigned by the President for the
22	purposes of the matter concerned; or
23	(c) a Full Bench, if the President so directs.
24	(4) The Commission may make an order under this section on its own
25	initiative or on application in accordance with the regulations.
26	233 Disputes about the operation of this Part
27	(1) The Commission may make orders for the purposes of settling
28	disputes about the operation of this Part.
29	(2) The Commission may make orders under subsection (1) on
30	application by:
31	(a) a permit holder; or
32	(b) a permit holder's organisation; or
33	(c) an affected employer; or
34	(d) an occupier of, or an employer who employs employees who
35	carry out work on, OHS premises.

1	(3)	In making orders under subsection (1), the Commission:
2		(a) must have regard to fairness between the parties concerned;
3		and
4 5		(b) must not confer rights that are additional to, or inconsistent with, rights exercisable under this Part.
6 7	(4)	However, the Commission does have power, under subsection (1), to:
8 9		(a) revoke or suspend a permit issued to a person under this Part; or
10 11		(b) impose limiting conditions on a permit issued to a person under this Part.
12		If the Commission does so, it may make any order that it considers
13		appropriate, for the purpose of settling the dispute, about the issue
14		of any further permit to the person, or of any permit or further
15		permit to any other person, under this Part.
16	(5)	In this section:
17		<i>limiting condition</i> means a condition that limits the circumstances
18		in which a permit has effect.
19		OHS premises means premises in relation to which a person must
20		hold a permit in order to exercise a right of entry under an OHS
21		law.
22	234 Powe	rs of inspection
23	(1)	For the purposes of dealing with a proceeding under this Part, a
24		member of the Commission may at any time during working hours
25		do one or more of the following:
26		(a) enter prescribed premises;
27		(b) inspect or view any work, material, machinery, appliance,
28		article, document or other thing on the prescribed premises;
29		(c) interview, on the prescribed premises, any employee who is
30		usually engaged in work on the prescribed premises.
31	(2)	In this section:
32		prescribed premises means premises in relation to which a person
33		must hold a permit in order to exercise a right of entry under:
34		(a) this Part; or

1	(b) an OHS law.
2	235 Parties to proceedings
3 4	The Commission may direct that parties be joined or struck out as parties to proceedings under this Part.
5	236 Kinds of orders
6 7	The orders that the Commission may make under this Part include the following:
8	(a) orders by consent of the parties to the proceedings;
9	(b) provisional or interim orders;
10	(c) orders including, or varying orders to include, a provision to
11	the effect that engaging in conduct in breach of a specified
12	term of the order is to be taken to constitute the commission
13	of a separate breach of the term on each day on which the conduct continues.
14	conduct continues.
15	237 Relief not limited to claim
16	In making an order in proceedings under this Part, the Commission
17	is not restricted to the specific relief claimed by the parties
18	concerned, but may include in the order anything which the
19 20	Commission considers necessary or expedient for the purposes of dealing with the proceeding.
21	238 Publishing orders
22	(1) If the Commission makes an order under this Part, the Commission
23	must promptly:
24	(a) reduce the order to writing that:
25	(i) is signed by at least one member of the Commission;
26	and
27	(ii) shows the day on which it is signed; and
28	(b) give to a Registrar:
29	(i) a copy of the order; and
30	(ii) a list specifying each party who appeared at the hearing
31	of the proceeding concerned.

1 2 3	(2) The Commission must ensure that an order under this Part is expressed in plain English and is easy to understand in structure and content.
4	(3) A Registrar who receives a copy of an order under subsection (1)
5	must promptly:
6	(a) provide a copy of:
7	(i) the order; and
8 9	(ii) any written reasons received by the Registrar for the order;
10 11	to each party shown on the list given to the Registrar under subparagraph (1)(b)(ii); and
12	(b) ensure that copies of each of the following are available for
13	inspection at each registry:
14	(i) the order;
15	(ii) any written reasons received by the Registrar for the
16	order.
17	(4) The Industrial Registrar must ensure that the following are
18	published as soon as practicable:
19	(a) an order under this Part;
20	(b) any written reasons for the order that are received by a
21	Registrar.
22	(5) If a member of the Commission ceases to be a member:
23	(a) after an order under this Part has been made by the
24	Commission constituted by the member; but
25	(b) before the order has been reduced to writing or before it has
26	been signed by the member;
27	a Registrar must reduce the order to writing, sign it and seal it with
28	the seal of the Commission, and the order has effect as if it had
29	been signed by the member of the Commission.

Part XA—Freedom of association

2 **Division 1—Preliminary**

3 **239** Objects of Part

4 5 6

7

8

9

10

11

12

13

14

15

16

17

18

19

In addition to the object set out in section 3, this Part has the
following objects:
(a) to ensure that employers employees and independent

- (a) to ensure that employers, employees and independent contractors are free to become, or not become, members of industrial associations;
- (b) to ensure that employers, employees and independent contractors are not discriminated against or victimised because they are, or are not, members or officers of industrial associations;
- (c) to provide effective relief to employers, employees and independent contractors who are prevented or inhibited from exercising their rights to freedom of association;
- (d) to provide effective remedies to penalise and deter persons who engage in conduct which prevents or inhibits employers, employees or independent contractors from exercising their rights to freedom of association.

20 240 Definitions

21	(1) In this Part:
22	bargaining services means services provided by (or on behalf of)
23	an industrial association in relation to an agreement, or a proposed
24	agreement, under Part VB (including the negotiation, making,
25	approval, lodgment, operation, extension, variation or termination
26	of the agreement).
27	bargaining services fee means a fee (however described) payable:
28	(a) to an industrial association; or
29	(b) to someone else in lieu of an industrial association;
30	wholly or partly for the provision, or purported provision, of
31	bargaining services, but does not include membership dues.
32	<i>Commonwealth place</i> means a place referred to in paragraph 52(i)
33	of the Constitution, other than the seat of government.

1	conduct includes an omission.
2	<i>Court</i> means the Federal Court of Australia or the Federal Magistrates Court
3	Magistrates Court.
4	industrial association means:
5	(a) an association of employees and/or independent contractors,
6	or an association of employers, that is registered or
7	recognised as such an association (however described) under
8	an industrial law; or
9	(b) an association of employees and/or independent contractors a
10	principal purpose of which is the protection and promotion of
11	their interests in matters concerning their employment, or
12	their interests as independent contractors, as the case
13	requires; or
14	(c) an association of employers a principal purpose of which is
15	the protection and promotion of their interests in matters concerning employment and/or independent contractors;
16	
17	and includes a branch of such an association, and an organisation.
18	<i>industrial body</i> means:
19	(a) the Commission; or
20	(b) a court or commission, however designated, exercising under
21	an industrial law powers and functions corresponding to
22	those conferred on the Commission by this Act; or
23	(c) a court or commission, however designated, exercising under
24	an industrial law powers and functions corresponding to
25	those conferred on the Commission by the Registration and
26	Accountability of Organisations Schedule.
27	industrial instrument means an award or agreement, however
28	designated, that:
29	(a) is made under or recognised by an industrial law; and
30	(b) concerns the relationship between an employer and the
31	employer's employees, or provides for the prevention or
32	settlement of a dispute between an employer and the
33	employer's employees.
34	industrial law means this Act, the Registration and Accountability
35	of Organisations Schedule or a law, however designated, of the
36	Commonwealth or of a State or Territory that regulates the
37	relationships between employers and employees or provides for the

1 2	prevention or settlement of disputes between employers and employees.
2	<i>objectionable provision</i> has the meaning given by section 271.
3	objectionable provision has the meaning given by section 271.
4	office, in relation to an organisation or industrial association or a
5	branch of an organisation or industrial association, has the meaning
6	given by section 242.
7	officer, in relation to an industrial association, means:
8	(a) a person who holds an office in the association; or
9	(b) a delegate or other representative of the association; or
10	(c) an employee of the association.
11	organisation includes a branch of an organisation.
12	threat means a threat of any kind, whether direct or indirect and
13	whether express or implied.
14	(2) For the purposes of this Part, the following conduct is taken to be
15	conduct of an industrial association:
16	(a) conduct of the committee of management of the industrial
17	association;
18	(b) conduct of an officer or agent of the industrial association
19	acting in that capacity;
20	(c) conduct of a member, or group of members, of the industrial
21	association where the conduct is authorised by:
22	(i) the rules of the industrial association; or
23	(ii) the committee of management of the industrial
24	association; or
25	(iii) an officer or agent of the industrial association acting in
26	that capacity;
27	(d) conduct of a member of the industrial association, who
28 29	performs the function of dealing with an employer on behalf of the member and other members of the industrial
30	association, acting in that capacity.
31	(3) Paragraphs (2)(c) and (d) do not apply if:
32	(a) a committee of management of the industrial association; or
33	(b) a person authorised by the committee; or
34	(c) an officer of the industrial association;
35	has taken reasonable steps to prevent the action.

1 2 3	(4	A reference in this Part, or in regulations made for the purposes of this Part, to an independent contractor is not confined to a natural person.
4	241 Mean	ning of industrial action
5		For the purposes of this Part, section 106A has effect as if the
6		words <i>employer</i> , <i>employee</i> and <i>employment</i> had their ordinary
7		meaning.
8	242 Mean	ning of <i>office</i>
9	(1)	In this Part:
10		office, in relation to an association, means:
11		(a) an office of president, vice president, secretary or assistant
12		secretary of the association; or
13		(b) the office of a voting member of a collective body of the
14		association, being a collective body that has power in relation
15		to any of the following functions:
16		(i) the management of the affairs of the association;
17		(ii) the determination of policy for the association;
18 19		(iii) the making, alteration or rescission of rules of the association;
20		(iv) the enforcement of rules of the association, or the
21		performance of functions in relation to the enforcement
22		of such rules; or
23		(c) an office the holder of which is, under the rules of the
24		association, entitled to participate directly in any of the
25		functions referred to in subparagraphs (b)(i) and (iv), other
26 27		than an office the holder of which participates only in accordance with directions given by a collective body or
28		another person for the purpose of implementing:
29		(i) existing policy of the association; or
30		(ii) decisions concerning the association; or
31		(d) an office the holder of which is, under the rules of the
32		association, entitled to participate directly in any of the
33		functions referred to in subparagraphs (b)(ii) and (iii); or
34		(e) the office of a person holding (whether as trustee or
35		otherwise) property:

1 2	(i) of the association; or(ii) in which the association has a beneficial interest.
3	(2) In subsection (1):
4 5	<i>association</i> means an organisation or branch of an organisation, or an industrial association or branch of an industrial association.
6 7 8	(3) A reference in this Part to an office in an organisation or industrial association includes a reference to an office in a branch of the organisation or association.
9	Division 2—Conduct to which this Part applies
10	243 Application
11 12	Divisions 3 to 8 of this Part apply only to the extent provided in this Part.
13	244 Organisations
14	This Part applies to:
15	(a) conduct by an organisation; and
16 17	(b) conduct by an officer of an organisation acting in that capacity; and
18 19	(c) conduct carried out with a purpose or intent relating to a person's membership or non-membership of an organisation.
20 21	245 Matters arising under this Act or the Registration and Accountability of Organisations Schedule
22	(1) This Part applies to conduct carried out with a purpose or intent
23	relating to a person's participation or non-participation (in any
24	capacity) in:
25	(a) any proceedings under this Act; or
26	(b) any other activity provided for by this Act; or
27	(c) any proceedings under the Registration and Accountability of
28	Organisations Schedule; or
29 30	 (d) any other activity provided for by the Registration and Accountability of Organisations Schedule.
50	Accountability of Organisations Schedule.

1 2 3 4 5 6	 (2) This Part applies to conduct carried out with a purpose or intent relating to: (a) the fact that an award or a workplace agreement applies to a person's employment; or (b) the fact that a person is bound by an award or a workplace agreement.
7	246 Constitutional corporations
8	(1) This Part applies to the following conduct:
9	(a) conduct by a constitutional corporation;
10	(b) conduct against a constitutional corporation;
11	(c) conduct that adversely affects a constitutional corporation;
12	(d) conduct carried out with intent to adversely affect a
13	constitutional corporation;
14	(e) conduct that directly affects a person in the capacity of:
15 16	(i) an employee, or prospective employee, of a constitutional corporation; or
17 18	(ii) a contractor, or prospective contractor, of a constitutional corporation;
19 20	(f) conduct carried out with intent to directly affect a person in the capacity of:
21 22	(i) an employee, or prospective employee, of a constitutional corporation; or
23 24	(ii) a contractor, or prospective contractor, of a constitutional corporation;
25 26	(g) conduct that consists of advising, encouraging or inciting a constitutional corporation:
27	(i) to take, or not to take, particular action in relation to
28	another person; or
29 30	(ii) to threaten to take, or not to take, particular action in relation to another person.
31	(2) In this section:
32	constitutional corporation includes a body corporate incorporated
33	in a Territory.

1	247 Commonwealth and Commonwealth authorities	
2	This Part applies to the following conduct:	

2	This Part applies to the following conduct:
3	(a) conduct by the Commonwealth or a Commonwealth
4	authority;
5	(b) conduct that affects, or is carried out with intent to affect, the
6	Commonwealth, or a Commonwealth authority, in its
7	relationships with its employees or contractors;
8	(c) conduct that affects, or is carried out with intent to affect, a
9	person in the capacity of an employee or contractor of the
10	Commonwealth or of a Commonwealth authority.
11	248 Territories and Commonwealth places
12	This Part applies to conduct in a Territory or a Commonwealth
13	place.
14	249 Extraterritorial extension
15	In Australia's exclusive economic zone
16	(1) This Part, and the rest of this Act so far as it relates to this Part,
17	extend to the following conduct in Australia's exclusive economic
18	zone:
19	(a) conduct that:
20	(i) is by a registered organisation, an Australian-based
21	employee or a group of persons including either a
22	registered organisation or an Australian-based
23	employee; and
24	(ii) affects adversely, or is intended to affect adversely, an
25	Australian employer;
26	(b) conduct that:
27	(i) is by an Australian employer or a group including an
28	Australian employer; and
29	(ii) affects adversely, or is intended to affect adversely, an
30 21	Australian-based employee, whether alone or with other persons;
31	*
32 33	(c) conduct that affects adversely, or is intended to affect adversely, either an independent contractor who has a
33 34	connection with Australia that is prescribed for the purposes
54	connection with Australia that is presented for the purposes

1 2	of this paragraph or a group including such an independent contractor.		
3	On Australia's continental shelf outside exclusive economic zone		
4 5	(2) This Part, and the rest of this Act so far as it relates to this Part, extend to the following conduct outside the outer limits of		
6	Australia's exclusive economic zone and in, on or over a part of		
7	Australia's continental shelf prescribed by the regulations for the		
8	purposes of this subsection:		
9	(a) conduct that:		
10	(i) is by a registered organisation, an Australian-based		
11	employee or a group of persons including either a		
12	registered organisation or an Australian-based		
13	employee; and		
14	(ii) affects adversely, or is intended to affect adversely, an		
15	Australian employer; and		
16	(iii) meets the requirements prescribed by the regulations for		
17	that part of Australia's continental shelf;		
18	(b) conduct that:		
19	(i) is by an Australian employer or a group including an		
20	Australian employer; and		
21	(ii) affects adversely, or is intended to affect adversely, an		
22	Australian-based employee, whether alone or with other		
23	persons; and		
24	(iii) meets the requirements prescribed by the regulations for		
25	that part of Australia's continental shelf;		
26	(c) conduct that:		
27	(i) affects adversely, or is intended to affect adversely,		
28	either an independent contractor who has a connection		
29	with Australia that is prescribed for the purposes of this		
30	subparagraph or a group including such an independent		
31	contractor; and		
32	(ii) meets the requirements prescribed by the regulations for		
33	that part of Australia's continental shelf.		
34	Note: The regulations may prescribe different requirements relating to		
35 36	different parts of Australia's continental shelf. The regulations may		
50	need to do so to give effect to Australia's international obligations.		

1	Outside Australia's exclusive economic zone and continental shelf
2	(3) This Part, and the rest of this Act so far as it relates to this Part,
3	extend to the following conduct outside Australia and neither in
4	Australia's exclusive economic zone nor in, on or over a part of
5	Australia's continental shelf described in subsection (2):
6	(a) conduct that:
7	(i) is by a registered organisation, an Australian-based
8	employee or a group of persons including either a
9	registered organisation or an Australian-based
10	employee; and
11	(ii) affects adversely, or is intended to affect adversely, an
12	Australian employer;
13	(b) conduct that:
14	(i) is by an Australian employer or a group including an
15	Australian employer; and
16	(ii) affects adversely, or is intended to affect adversely, an
17	Australian-based employee, whether alone or with other
18	persons;
19	(c) conduct that affects adversely, or is intended to affect
20	adversely, either an independent contractor who has a
21	connection with Australia that is prescribed for the purposes
22	of this paragraph or a group including such an independent
23	contractor.
24	Definition
25	(4) In this section:
26	this Act includes the Registration and Accountability of
27	Organisations Schedule and regulations made under it.
28	Division 3—General prohibitions relating to freedom of
29	association
30	250 Coercion
31	(1) A person must not organise or take, or threaten to organise or take,
32	any action against another person with intent to coerce the other
33	person or a third person:

1	(a) to become, or not become, an officer or member of an industrial association; or
2	
3 4	(b) to remain, or cease to be, an officer or member of an industrial association.
5	(2) Subsection (1) is a civil remedy provision.
6	Note: See Division 9 for enforcement.
7	251 False or misleading statements about membership
8	(1) A person must not make a false or misleading representation about:
9	(a) another person's obligation:
10 11	(i) to be, or become, an officer or member of an industrial association; or
12 13	(ii) not to be, not to become or to cease to be, an officer or member of an industrial association; or
14	(b) another person's obligation to disclose whether he or she, or
15	a third person, is, or has been, an officer or member of an
16	industrial association or of a particular industrial association;
17	or
18	(c) the need for another person to be, or not to be, an officer or
19	member of an industrial association, or of a particular
20	industrial association, in order for the other person to obtain
21	the benefit of an industrial instrument.
22	(2) Subsection (1) is a civil remedy provision.
23	Note: See Division 9 for enforcement.
24	252 Industrial action for reasons relating to membership
25	(1) A person must not organise or take, or threaten to organise or take,
26	industrial action against another person for the reason that, or for
27	reasons that include the reason that, a person:
28	(a) is, has been, proposes to become or has at any time proposed
29	to become an officer or member of an industrial association;
30	or
31	(b) is not, does not propose to become or proposes to cease to be,
32	an officer or member of an industrial association.
33	(2) Subsection (1) is a civil remedy provision.
34	Note: See Division 9 for enforcement.

432 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

Division 4—Conduct by employers etc.

2	253 Dismissal etc. of members of industrial associations etc.
3	(1) An employer must not, for a prohibited reason, or for reasons that
4	include a prohibited reason, do or threaten to do any of the
5	following:
6	(a) dismiss an employee;
7	(b) injure an employee in his or her employment;
8	(c) alter the position of an employee to the employee's prejudice;
9	(d) refuse to employ another person as an employee;
10	(e) discriminate against another person in the terms or conditions
11	on which the employer offers to employ the other person as
12	an employee.
13	(2) Subsection (1) is a civil remedy provision.
14	Note: See Division 9 for enforcement.
15	(3) For the purposes of paragraph $(1)(d)$, an employer does not refuse
16	to employ another person if the employer does not intend to
17	employ anyone.
18	(4) A person must not, for a prohibited reason, or for reasons that
19	include a prohibited reason, do or threaten to do any of the
20	following:
21	(a) terminate a contract for services that he or she has entered
22	into with an independent contractor;
23	(b) injure the independent contractor in relation to the terms and
24	conditions of the contract for services;
25	(c) alter the position of the independent contractor to the
26	independent contractor's prejudice;
27	(d) refuse to engage another person as an independent contractor;
28	(e) discriminate against another person in the terms or conditions
29	on which the person offers to engage the other person as an
30	independent contractor.
31	(5) Subsection (4) is a civil remedy provision.
32	Note: See Division 9 for enforcement.

1 2 3		he purposes of paragraph $(4)(d)$, a person does not refuse to ge another person if the person does not intend to engage ne.
4	254 Prohibited	reasons
5	(1) Cond	luct referred to in subsection 253(1) or (4) is for a <i>prohibited</i>
6	reaso	<i>n</i> if it is carried out because the employee, independent
7	contr	actor or other person concerned:
8	(a)	is, has been, proposes to become or has at any time proposed
9 10		to become an officer, delegate or member of an industrial association; or
11	(b)	is not, does not propose to become or proposes to cease to be,
12		a member of an industrial association; or
13	(c)	in the case of a refusal to engage another person as an
14		independent contractor-has one or more employees who are
15		not, or do not propose to become, members of an industrial
16		association; or
17	(d)	has not paid, or does not propose to pay, a fee (however
18		described) to an industrial association; or
19	(e)	has refused or failed to join in industrial action; or
20	(f)	in the case of an employee—has refused or failed to agree or
21		consent to, or vote in favour of, the making of an agreement
22		to which an industrial association of which the employee is a
23		member would be a party; or
24	(g)	has made, proposes to make or has at any time proposed to
25		make an application to an industrial body for an order under
26		an industrial law for the holding of a secret ballot; or
27	(h)	has participated in, proposes to participate in or has at any
28		time proposed to participate in a secret ballot ordered by an
29		industrial body under an industrial law; or
30	(i)	is entitled to the benefit of an industrial instrument, an order
31		of an industrial body or the Australian Fair Pay and
32		Conditions Standard; or
33	(j)	has made or proposes to make any inquiry or complaint to a
34		person or body having the capacity under an industrial law to
35		seek:
36		(i) compliance with that law; or

1 2		(ii) the observance of a person's rights under an industrial instrument; or
2	(k)	has participated in, proposes to participate in or has at any
3 4	(K)	time proposed to participate in a proceeding under an
5		industrial law; or
6	(1)	has given or proposes to give evidence in a proceeding under
7		an industrial law; or
8	(m)	in the case of an employee, or an independent contractor,
9		who is a member of an industrial association that is seeking
10		better industrial conditions—is dissatisfied with his or her
11		conditions; or
12 13	(n)	in the case of an employee or an independent contractor—has absented himself or herself from work without leave if:
14		(i) the absence was for the purpose of carrying out duties or
15		exercising rights as an officer of an industrial
16		association; and
17		(ii) the employee or independent contractor applied for
18		leave before absenting himself or herself and leave was
19		unreasonably refused or withheld; or
20	(0)	as an officer or member of an industrial association, has
21		done, or proposes to do, an act or thing for the purpose of
22		furthering or protecting the industrial interests of the
23		industrial association, being an act or thing that is:
24		(i) lawful; and
25		(ii) within the limits of an authority expressly conferred on
26		the employee, independent contractor or other person by
27		the industrial association under its rules; or
28	(p)	in the case of an employee or independent contractor—has
29		not paid, has not agreed to pay, or does not propose to pay, a
30		bargaining services fee.
31	(2) If:	
32	(a)	a threat is made to engage in conduct referred to in
33		subsection $253(1)$ or (4) ; and
34	(b)	one of the prohibited reasons in subsection (1) of this section
35		refers to a person doing or proposing to do a particular act, or
36		not doing or proposing not to do a particular act; and
37	(c)	the threat is made with the intent of dissuading or preventing
38		the person from doing the act, or coercing the person to do
39		the act, as the case requires;

1	the threat is taken to have been made for that prohibited reason.
2	255 Inducements to cease membership etc. of industrial associations
3	etc.
4	(1) An employer, or a person who has engaged an independent
5	contractor, must not (whether by threats or promises or otherwise)
6	induce an employee, or the independent contractor, as the case
7	requires:
8 9	(a) to become an officer or member of an industrial association; or
10	(b) to remain an officer or member of an industrial association;
11	or
12 13	(c) not to become an officer or member of an industrial association; or
14	(d) to cease to be an officer or member of an industrial
15	association.
16	(2) Subsection (1) is a civil remedy provision.
17	Note: See Division 9 for enforcement.
18	Division 5—Conduct by employees etc.
19	256 Cessation of work
20	(1) An employee or independent contractor must not cease work in the
21	service of his or her employer, or of the person who engaged the
22	independent contractor, as the case requires, because the employer
23	or person:
24	(a) is an officer or member of an industrial association; or
25	(b) is entitled to the benefit of an industrial instrument or an
26	order of an industrial body; or
27	(c) has made or proposes to make any inquiry or complaint to a
28	person or body having the capacity under an industrial law to
29	seek:
30	(i) compliance with that law; or
31	(ii) the observance of a person's rights under an industrial
32	instrument; or

1 2 3	 (d) has participated in, proposes to participate in or has at any time proposed to participate in any proceedings under an industrial law; or
4	(e) has given evidence in a proceeding under an industrial law.
5	(2) Subsection (1) is a civil remedy provision.
6	Note: See Division 9 for enforcement.
7	Division 6—Conduct by industrial associations etc.
8	257 Industrial associations acting against employers
9 10 11	(1) An industrial association, or an officer or member of an industrial association, must not organise or take, or threaten to organise or take, industrial action against an employer because the employer is
12	an officer or member of an industrial association.
13	(2) Subsection (1) is a civil remedy provision.
14	Note: See Division 9 for enforcement.
15 16 17 18	(3) An industrial association, or an officer or member of an industrial association, must not organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the employer:
19 20	(a) to become an officer or member of an industrial association;or
21 22	(b) to remain an officer or member of an industrial association; or
23 24	(c) not to become an officer or member of an industrial association; or
25	(d) to cease to be an officer or member of an industrial association; or
26 27	(e) to pay a fee (however described) to an industrial association.
28	(4) Subsection (3) is a civil remedy provision.
29	Note: See Division 9 for enforcement.
30 31	(5) An industrial association, or an officer or member of an industrial association, must not:
32	(a) advise, encourage or incite an employer; or

1		(b) organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the
2 3		employer;
4		to take action in relation to a person that would, if taken,
5		contravene subsection 253(1).
6	(6)	Subsection (5) is a civil remedy provision.
7		Note: See Division 9 for enforcement.
8	(7)	An industrial association, or an officer or member of an industrial
9		association, must not, because a member of the association has
10		refused or failed to comply with a direction given by the
11		association:
12		(a) advise, encourage or incite an employer; or
13		(b) organise or take, or threaten to organise or take, industrial
14		action against an employer with intent to coerce the
15		employer;
16		to prejudice the member in the member's employment or possible
17		employment.
18	(8)	Subsection (7) is a civil remedy provision.
19		Note: See Division 9 for enforcement.
20	258 Indus	trial associations acting against employees etc.
21	(1)	An industrial association, or an officer or member of an industrial
22		association, must not take, or threaten to take, action having the
23		effect, directly or indirectly, of prejudicing a person in the person's
24		employment, or prospective employment, with intent:
25		(a) to coerce the person to join in industrial action; or
26		(b) to dissuade or prevent the person from making an application
27		to an industrial body for an order under an industrial law for
28		the holding of a secret ballot.
29	(2)	Subsection (1) is a civil remedy provision.
30		Note: See Division 9 for enforcement.
31	(3)	An industrial association, or an officer or member of an industrial
32	. ,	association, must not:

1 2		take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person in the person's
3		employment or prospective employment; or
4	(b)	advise, encourage or incite a person to take action having the
5		effect, directly or indirectly, of prejudicing another person in
6		the other person's employment or prospective employment;
7		y of the following reasons, or for reasons that include any of
8	the fo	llowing reasons:
9	(c)	the person has not paid, has not agreed to pay, or does not
10		propose to pay, a bargaining services fee;
11	(d)	the person is, has been, proposes to become, or has at any
12		time proposed to become, an officer or member of an
13		industrial association;
14		the person is not, does not propose to become or proposes to
15		cease to be, a member of an industrial association;
16		the person has not paid, has not agreed to pay, or does not
17		propose to pay, a fee (however described) to an industrial
18		association;
19	(g)	the person has refused or failed to join in industrial action;
20	(h)	the person has made, or proposes to make, any inquiry or
21		complaint to a person or body having the capacity under an
22		industrial law to seek:
23		(i) compliance with that law; or
24		(ii) the observance of a person's rights under an industrial
25		instrument.
26	(4) Subse	ection (3) is a civil remedy provision.
27	Note:	See Division 9 for enforcement.
28	259 Industrial a	associations acting against members
29	(1) An in	dustrial association, or an officer or member of an industrial
30		iation, must not impose, or threaten to impose, a penalty,
31		ture or disability of any kind on a member of the association:
32	(a)	with intent to coerce the member to join in industrial action;
33	()	or
34	(b)	because the member has refused or failed to join in industrial
35		action; or
36	(c)	because the member has made, proposes to make, or has at
37		any time proposed to make, an application to an industrial

1 2		body for an order under an industrial law for the holding of a secret ballot; or
3	(b)	because the member has participated in, proposes to
4	(u)	participate in, or has at any time proposed to participate in, a
5		secret ballot ordered by an industrial body under an industrial
6		law; or
7	(e)	because the member has made, or proposes to make, any
8 9		inquiry or complaint to a person or body having the capacity under an industrial law to seek:
10		(i) compliance with that law; or
11		(ii) the observance of a person's rights under an industrial
12		instrument; or
13	(f)	because the member has refused or failed to agree or consent
14		to, or vote in favour of, the making of an agreement to which
15		the industrial association would be a party; or
16	(g)	because the member has participated in, proposes to
17		participate in, or has at any time proposed to participate in, a
18		proceeding under an industrial law; or
19	(h)	because the member has given, or proposes to give, evidence
20		in a proceeding under an industrial law.
21	(2) Subse	ection (1) is a civil remedy provision.
22	Note:	See Division 9 for enforcement.
23	260 Industrial	associations acting against independent contractors
24	etc.	
25	(1) In thi	s section:
26	discr	<i>iminatory action</i> , in relation to an eligible person, means:
27	(a)	a refusal to make use of, or to agree to make use of, services
28		offered by the eligible person; or
29	(b)	a refusal to supply, or to agree to supply, goods or services to
30		the eligible person; or
31	(c)	threatening to refuse as mentioned in paragraph (a) or (b).
32	eligil	ble person means a person who is not an employee, but who:
33	(a)	is eligible to become a member of an industrial association;
34		or
35	(b)	would be eligible to become a member of an industrial
36		association if he or she were an employee.

1	(2) An industrial association, or an officer or member of an industrial
2	association, must not:
3	(a) advise, encourage or incite a person (whether an employer or
4	not) to take discriminatory action against an eligible person
5	because the eligible person, or any person employed or
6	engaged by the eligible person:
7	(i) is, has been, proposes to become or has at any time
8	proposed to become, a member of an industrial association; or
9	
10	(ii) is not, proposes not to become or proposes to cease to
11	be, a member of an industrial association; or
12	(iii) is a member of an industrial association who has refused
13	or failed to comply with a direction given by the
14	association; or
15	(iv) has not paid, or does not propose to pay, a fee (however
16	described) to an industrial association; or
17	(v) has made or proposes to make any inquiry or complaint
18	to a person or body having the capacity under an
19	industrial law to seek compliance with that law; or
20	(vi) has made or proposes to make any inquiry or complaint
21	to a person or body having the capacity under an
22	industrial law to seek the observance of a person's rights under an industrial instrument; or
23	-
24	(b) take, or threaten to take, industrial action against a person (whether an employer or not) with intent to coerce the person
25 26	to take discriminatory action against an eligible person
20 27	because the eligible person, or any person employed or
28	engaged by the eligible person:
29	(i) is, has been, proposes to become or has at any time
30	proposed to become, a member of an industrial
31	association; or
32	(ii) is not, proposes not to become or proposes to cease to
33	be, a member of an industrial association; or
34	(iii) is a member of an industrial association who has refused
35	or failed to comply with a direction given by the
36	association; or
37	(iv) has not paid, or does not propose to pay, a fee (however
38	described) to an industrial association; or

1	(v) has made or proposes to make any inquiry or complaint
2 3	to a person or body having the capacity under an industrial law to seek compliance with that law; or
4	(vi) has made or proposes to make any inquiry or complaint
5	to a person or body having the capacity under an
6	industrial law to seek the observance of a person's
7	rights under an industrial instrument; or
8	(c) take, or threaten to take, industrial action against an eligible
9	person with intent to coerce the eligible person, or any person
10	employed or engaged by the eligible person:
11 12	(i) to become, or to remain, a member of an industrial association; or
13	(ii) not to become, or not to remain, a member of an
14	industrial association; or
15	(iii) to comply with a direction given by the association.
16	(3) Subsection (2) is a civil remedy provision.
17	Note: See Division 9 for enforcement.
18	(4) For the avoidance of doubt, nothing in subsection (2) prevents an
19	industrial association from entering into an agreement or
20	arrangement with another person for the supply of goods or
21	services to members of the industrial association (including the
22	supply on particular terms or conditions).
23	(5) An industrial association, or an officer or member of an industrial
24	association, must not:
25	(a) advise, encourage or incite a person (whether an employer or
26	not) to take discriminatory action against an eligible person
27	for a prohibited reason; or
28	(b) take, or threaten to take, industrial action against a person
29	(whether an employer or not) with intent to coerce the person
30 31	to take discriminatory action against an eligible person for a prohibited reason; or
	(c) take, or threaten to take, industrial action against an eligible
32 33	person for a prohibited reason.
34	(6) Subsection (5) is a civil remedy provision.
35	Note: See Division 9 for enforcement.
36	(7) Conduct mentioned in subsection (5) is carried out for a <i>prohibited</i>
37	<i>reason</i> if it is carried out because the eligible person concerned has

442 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

	not paid, has not agreed to pay, or does not propose to pay, a bargaining services fee.
261 In	ndustrial associations acting against independent contractors etc. to encourage contraventions
	(1) An industrial association, or an officer or member of an industrial
	association, must not:
	(a) advise, encourage or incite a person; or
	(b) organise or take, or threaten to organise or take, industrial action against a person with intent to coerce the person;
	to take action in relation to another person that would, if taken, contravene subsection 253(4).
	(2) Subsection (1) is a civil remedy provision.
	Note: See Division 9 for enforcement.
262 In	ndustrial associations not to demand bargaining services fee
	(1) An industrial association, or an officer or member of an industrial
	association, must not demand (whether orally or in writing) payment of a bargaining services fee from another person.
	(2) Subsection (1) is a civil remedy provision.
	Note: See Division 9 for enforcement.
	(3) Nothing in this section prevents an industrial association from
	demanding payment of a bargaining services fee that is payable to
	the association under a contract for the provision of bargaining services.
	(4) In this section:
	demand includes:
	(a) purport to demand; and
	(b) have the effect of demanding; and
	(c) purport to have the effect of demanding.
263 A	action to coerce person to pay bargaining services fee
	(1) An industrial association, or an officer or member of an industrial association, must not take, or threaten to take, action against

1 2	another person with intent to coerce the person, or a third person, to pay a bargaining services fee.
3	(2) Subsection (1) is a civil remedy provision.
4	Note: See Division 9 for enforcement.
5	264 Industrial associations not prevented from entering contracts
6	To avoid doubt, nothing in this Division prevents an industrial
7	association from entering into a contract for the provision of
8 9	bargaining services with a person who is not a member of the association.
10	Division 7—Conduct in relation to industrial instruments
11 12	265 Discrimination against employer in relation to industrial instruments
13 14	(1) A person (the <i>first person</i>) must not discriminate against another person (the <i>second person</i>) on the ground that:
15	(a) the employment of the second person's employees is
16	covered, or is not covered, by:
17	(i) the Australian Fair Pay and Conditions Standard; or
18	(ii) a particular kind of industrial instrument; or
19	(iii) an industrial instrument made with a particular person;
20	or
21	(b) it is proposed that the employment of the second person's
22	employees be covered, or not be covered, by:
23	(i) a particular kind of industrial instrument; or
24	(ii) an industrial instrument made with a particular person.
25	(2) Subsection (1) is a civil remedy provision.
26	Note: See Division 9 for enforcement.
27	(3) Subsection (1) does not apply to conduct that is protected action
28	(within the meaning of section 108).

Division 8—False or misleading representations about bargaining services fees etc.

266 False or misleading representations about bargaining services fees etc.

5	(1) A person must not make a false or misleading representation about:
6	(a) another person's liability to pay a bargaining services fee; or
7	(b) another person's obligation to enter into an agreement to pay
8	a bargaining services fee; or
9	(c) another person's obligation to become a member of an
10	industrial association.
11	(2) Subsection (1) is a civil remedy provision.
12	Note: See Division 9 for enforcement.
13	Division 9—Enforcement
14	267 Definition
15	In this Division:
16	<i>person</i> , in relation to a contravention of a civil remedy provision,
17	includes an industrial association.
18	Note: A person who is involved in a contravention of a civil remedy
19	provision is treated as having contravened that provision: see
20	section 189.
21	268 Penalties etc. for contravention of civil remedy provisions
22	(1) The Court, on application by an eligible person, may make one or
23	more of the following orders in relation to a person (the <i>defendant</i>)
24	who has contravened a civil remedy provision of this Part:
25	(a) an order imposing a pecuniary penalty on the defendant;
26	(b) an order requiring the defendant to pay a specified amount to

(b) an order requiring the defendant to pay a specified amount to another person as compensation for damage suffered by the other person as a result of the contravention;(c) any other order that the Court considers appropriate.

1	(2) The maximum pecuniary penalty under paragraph $(1)(a)$ is 300
2 3	penalty units if the defendant is a body corporate and otherwise 60 penalty units.
4	(3) The orders that may be made under paragraph (1)(c) include:(a) injunctions; and
5	
6 7	(b) any other orders that the Court considers necessary to stop the conduct or remedy its effects.
8 9	(4) Each of the following is an <i>eligible person</i> for the purposes of this section:
	(a) a workplace inspector;
10	
11	(b) a person affected by the contravention;
12 13	(c) a person prescribed by the regulations for the purposes of this paragraph.
14	(5) A regulation prescribing persons for the purposes of
15	paragraph (4)(c) may provide that a person is prescribed only in
16	relation to circumstances specified in the regulation.
17 18	Note: Division 4 of Part VIII contains other provisions relevant to civil remedies.
19	269 Conduct that contravenes Division 3 and another Division of
20	this Part
21	If:
22	(a) a person engages in conduct; and
23	(b) the conduct contravenes both Division 3 and another
24	Division of this Part;
25	the Court may make orders under section 268 in relation to only
26	one of those contraventions.
27	270 Proof not required of the reason for, or the intention of, conduct
28	(1) If:
29	(a) in an application under section 268 relating to a person's
30	conduct, it is alleged that the conduct was, or is being, carried
31	out for a particular reason or with a particular intent; and
32	(b) for the person to carry out the conduct for that reason or with
33	that intent would constitute a contravention of this Part;

1 2 3	it is presumed, in proceedings under this Division arising from the application, that the conduct was, or is being, carried out for that reason or with that intent, unless the person proves otherwise.
4 5	(2) This section does not apply in relation to the granting of an interim injunction.
6	Note: See section 354A for interim injunctions.
7	Division 10—Objectionable provisions
8	271 Meaning of objectionable provision
9 10 11	 (1) For the purposes of this Division, each of the following provisions (however it is described in the document concerned) is an <i>objectionable provision</i>:
12 13 14	 (a) a provision that requires or permits any conduct that would contravene this Part, or that would contravene this Part if Division 2 were disregarded;
15 16	(b) a provision that directly or indirectly requires a person:(i) to encourage another person to become, or remain, a
17 18 19	member of an industrial association; or (ii) to discourage another person from becoming, or remaining, a member of an industrial association;
20 21	(c) a provision that indicates support for persons being members of an industrial association;
22 23	 (d) a provision that indicates opposition to persons being members of an industrial association;
24 25	(e) a provision that requires or permits payment of a bargaining services fee to an industrial association.
26 27	(2) For the purpose of determining whether a provision is an objectionable provision, it does not matter whether that provision is
28	void because of section 272.
29	(3) In this section:
30	permits includes:
31	(a) purports to permit; and
32	(b) has the effect of permitting; and
33	(c) purports to have the effect of permitting.

1	<i>requires</i> includes:
2	(a) purports to require; and
3	(b) has the effect of requiring; and
4	(c) purports to have the effect of requiring.
5	272 Objectionable provisions etc. in industrial instruments etc.
6 7	 A provision of an award is void to the extent that it is an objectionable provision.
8 9 10 11	(2) A provision of an industrial instrument, or an agreement or arrangement (whether written or unwritten), is void to the extent that it requires or permits, or has the effect of requiring or permitting, any conduct that would contravene this Part.
12	273 Removal of objectionable provisions from awards
13	(1) Where, on application by a person mentioned in subsection (2), the
14	Commission is satisfied that an award contains objectionable
15	provisions, the Commission must vary the award so as to remove
16	the objectionable provisions.
17	(2) The application may be made by:
18 19	(a) an employer, employee or an organisation bound by the award; or
20	(b) an employee whose employment is subject to the award; or
21	(c) a workplace inspector.
22	Division 11—Miscellaneous
23	274 Freedom of association not dependent on certificate
24	(1) A person's rights under this Part do not depend on whether the
25	person is the holder of a conscientious objection certificate in force
26	under section 180 of Schedule 1B to this Act.
27	(2) This section is enacted for the avoidance of doubt.
28	194 Paragraph 299(1)(d)
29	Omit "Commission; or", substitute "Commission.".
30	195 Paragraph 299(1)(e)

Repeal the paragraph.

1

2	196 At the end o	f section 299
3	Add:	
4 5 6 7 8 9	Note 1:	This section is not the only provision creating an offence relating to improper influence on a member of the Commission. Sections 135.1, 135.4, 139.1, 141.1 and 142.1 of the <i>Criminal Code</i> create offences of using various dishonest means (including bribery, providing benefits and making demands with menaces) to influence a Commonwealth public official in the performance of his or her duties.
10 11 12 13 14 15	Note 2:	This section is not the only provision creating an offence relating to interference with a witness in a proceeding before the Commission. Sections 301 and 303 of this Act and sections 36A, 37, 38 and 40 of the <i>Crimes Act 1914</i> also do so. Section 39 of that Act also makes it an offence to destroy evidence that may be required in such a proceeding.
16	Contrave	ning an order of the Commission
17	(3) A person	commits an offence if:
18	(a) the	Commission has made an order under this Act (other than
19		order under Part VI (Awards)) or the Registration and
20		countability of Organisations Schedule; and
21		order binds the person; and
22	(c) the	person engages in conduct; and
23	(d) the	conduct contravenes the order.
24	Penalty:	Imprisonment for 12 months.
25	(4) In subsec	tion (3):
26	engage ii	<i>n conduct</i> means:
27	(a) do :	an act; or
28	(b) om	it to perform an act.
29	Publishir	ng false allegation of misconduct affecting Commission
30	(5) A person	commits an offence if:
31	(a) the	person publishes a statement; and
32	(b) the	statement implies or expressly states there was
33		conduct by a member (whether identified or not) of the
34		mmission in relation to the performance of the functions,
35	ore	exercise of the powers, of the Commission; and

1		(c) there was not such misconduct as implied or stated by the
2		statement; and
3		(d) the publication is likely to have a significant adverse effect
4		on public confidence that the Commission is properly performing its functions and exercising its powers.
5		
6		Penalty: Imprisonment for 12 months.
7	Note:	The following heading to subsection 299(1) is inserted "General offences".
8	197	Section 300
9		Omit "119(1)", substitute "44M(1)".
10	108	Section 305A
10	130	
11		Repeal the section.
12	199	Section 307
13		Repeal the section, substitute:
14	307	False statement in application for protected action ballot order
15		A person commits an offence if:
16		(a) the person makes, or joins with other persons in making, an
17		application for a protected action ballot order under
18		Division 4 of Part VC; and
19		(b) the application contains a statement that is false or
20		misleading in a material particular.
21		Penalty: 30 penalty units.
22	200	Section 308
23		Repeal the section.
24	201	Subsections 317(1) and (1A)
25		Repeal the subsections.
26	202	Subsections 317(2), (3) and (4)
27		After "in relation to a ballot", insert "ordered under Division 4 of
28		Part VC".
29	Note:	The heading to section 317 is replaced by the heading "Offences in relation to secret
30		ballots ordered under Division 4 of Part VC".

203	Subsection 317(5)
	Repeal the subsection.
204	Section 338
	Omit "certified", substitute "collective".
205	Subsection 347(1)
	Omit "shall", substitute "must".
206	After subsection 347(1)
	Insert:
	(1A) Despite subsection (1), if a court hearing a proceeding (including
	an appeal) in a matter arising under this Act (other than an application under section 170CP) is satisfied that a party to the
	proceeding has, by an unreasonable act or omission, caused
	another party to the proceeding to incur costs in connection with the proceeding, the court may order the first-mentioned party to
	pay some or all of those costs.
207	Subsection 347(2)
	Omit "subsection (1)", substitute "subsections (1) and (1A)".
208	After section 349
	Insert:
349 A	A Signature on behalf of body corporate
	For the purposes of this Act, a document may be signed on behalf
	of a body corporate by a duly authorised officer of the body corporate and need not be made under the body corporate's seal.
209	After section 352
	Insert:
352 <i>A</i>	A Variation of workplace agreements on grounds of sex discrimination
	(1) Subsections 119B(2), (3), (4) and (7) apply in relation to a workplace agreement, as if a reference in those subsections to an

1 2		award or a term of an award were a reference to a workplace agreement or a term of a workplace agreement.
3		(2) Before taking action under subsections 119B(2) or (4) as applied
4		by force of subsection (1) of this section, the Commission must
5		give the persons bound by the agreement and the employees whose
6		employment is subject to the agreement an opportunity to amend
7		the agreement so as to remove the discrimination.
8	352B	Court's powers in relation to unfair contracts with
9		independent contractors
10		(1) In this section and in section 352C:
11		contract means:
12		(a) a contract for services that:
13		(i) is binding on an independent contractor; and
14		(ii) relates to the performance of work by the independent
15		contractor, other than work for the private and domestic
16		purposes of the other party to the contract; and
17		(b) any condition or collateral arrangement relating to such a
18		contract.
19 20		Note: The meaning of <i>contract</i> is limited by section 352D for constitutional reasons.
21		(2) Application may be made to the Court to review a contract on
22		either or both of the following grounds:
23		(a) the contract is unfair;
24		(b) the contract is harsh.
25		(3) An application under subsection (2) may be made only by:
26		(a) a party to the contract; or
27		(b) an organisation of employees of which the independent
28		contractor is (or has applied to become) a member, if it is
29		acting with the written consent of the independent contractor;
30		or
31		(c) an organisation or association of employers of which the
32		person contracting for the services is (or has applied to become) a member if it is acting with the written consent of
33 34		become) a member, if it is acting with the written consent of the person.
35		(4) In reviewing the contract, the Court may have regard to:

1	
2 3	 (a) the relative strength of the bargaining positions of the parties to the contract and, if applicable, any persons acting on behalf of the parties; and
3	•
4 5	(b) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, a party to the contract;
6	and
7	(c) whether the contract provides total remuneration that is, or is
8	likely to be, less than that of an employee performing similar
9	work; and
10	(d) any other matter that the Court thinks relevant.
11	(5) If the Court forms the opinion that a ground referred to in
12	subsection (2) is established in relation to the whole or part of the
13	contract, it must record its opinion, stating whether the opinion
14	relates to the whole or a specified part of the contract.
15	(6) The Court may form the opinion that a ground referred to in
16	subsection (2) is established in relation to the whole or part of the
17	contract even if the ground was not canvassed in the application.
18	(7) The Court must exercise its powers under this section in a way that
19	furthers the objects of this Act as far as practicable.
20	352C Court may make orders about unfair contracts
20 21	352C Court may make orders about unfair contracts(1) If the Court records an opinion under section 352B in relation to a
	·
21	(1) If the Court records an opinion under section 352B in relation to a
21 22 23	(1) If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion:
21 22 23 24	 (1) If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract;
21 22 23	 (1) If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract; (b) an order varying the contract.
21 22 23 24	 (1) If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract; (b) an order varying the contract. (2) An order may only be made for the purpose of placing the parties
21 22 23 24 25	 (1) If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract; (b) an order varying the contract.
21 22 23 24 25 26	 (1) If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract; (b) an order varying the contract. (2) An order may only be made for the purpose of placing the parties
21 22 23 24 25 26 27	 If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract; (b) an order varying the contract. (2) An order may only be made for the purpose of placing the parties to the contract as nearly as practicable on such a footing that the ground on which the opinion is based no longer applies.
21 22 23 24 25 26 27 28 29	 If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract; (b) an order varying the contract. (2) An order may only be made for the purpose of placing the parties to the contract as nearly as practicable on such a footing that the ground on which the opinion is based no longer applies. (3) While the application is pending, the Court may make an interim
21 22 23 24 25 26 27 28 29 30	 (1) If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract; (b) an order varying the contract. (2) An order may only be made for the purpose of placing the parties to the contract as nearly as practicable on such a footing that the ground on which the opinion is based no longer applies. (3) While the application is pending, the Court may make an interim order if it thinks it is desirable to do so to preserve the position of a
21 22 23 24 25 26 27 28 29	 If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract; (b) an order varying the contract. An order may only be made for the purpose of placing the parties to the contract as nearly as practicable on such a footing that the ground on which the opinion is based no longer applies. While the application is pending, the Court may make an interim order if it thinks it is desirable to do so to preserve the position of a party to the contract.
21 22 23 24 25 26 27 28 29 30	 (1) If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract; (b) an order varying the contract. (2) An order may only be made for the purpose of placing the parties to the contract as nearly as practicable on such a footing that the ground on which the opinion is based no longer applies. (3) While the application is pending, the Court may make an interim order if it thinks it is desirable to do so to preserve the position of a party to the contract. (4) An order takes effect from the date of the order or a later date
21 22 23 24 25 26 27 28 29 30 31	 If the Court records an opinion under section 352B in relation to a contract, it may make one or more of the following orders in relation to the opinion: (a) an order setting aside the whole or part of the contract; (b) an order varying the contract. An order may only be made for the purpose of placing the parties to the contract as nearly as practicable on such a footing that the ground on which the opinion is based no longer applies. While the application is pending, the Court may make an interim order if it thinks it is desirable to do so to preserve the position of a party to the contract.

	(5) A party to the contract may apply to the Court to enforce an order by injunction or otherwise as the Court thinks fit.
	(6) This section does not limit any other rights of a party to the contract.
52D	Application of sections 352B and 352C
	(1) Sections 352B and 352C apply only as follows:
	(a) in relation to a contract to which a constitutional corporation is a party;
	 (b) in relation to a contract entered into by a constitutional corporation for the purposes of the business of the corporation;
	(c) in relation to a contract relating to work in trade or commerce to which paragraph 51(i) of the Constitution applies;
	(d) in relation to a contract so far as it affects matters that take place in or are otherwise connected with a Territory;
	(e) in relation to a contract to which the Commonwealth or a Commonwealth authority is a party.
	(2) In this section:
	<i>contract</i> has the same meaning as in section 352B.
210 \$	Subsections 353A(1) and (2)
	Omit ", a certified agreement or an AWA", substitute "or a workplace agreement".
211 A	After section 354
	Insert:
354A	Interim injunctions
	If, under a provision of this Act, a court may grant an injunction, the court may, if in its opinion it is desirable to do so, grant an interim injunction pending its decision on the granting of an injunction.
212 A	After section 355
	Insert:

	A Powers of courts
	A provision of this Act conferring a power on a court does not affect any other power of the court conferred by this Act or otherwise.
213	Section 356
	Omit "monetary penalty", substitute "pecuniary penalty".
214	Paragraph 357(1)(a)
	Omit "monetary penalty", substitute "pecuniary penalty".
215	Paragraph 357(1)(b)
	Omit "178(6)", substitute "178(5) or (6)".
216	Paragraphs 358A(1)(a) and (b)
	Repeal the paragraphs, substitute:
	(a) the period of 3 years beginning on 1 January 2004; and
	(b) the period of 3 years beginning on 1 January 2007; and(ba) the period of 5 years beginning on 1 January 2010 and each
	subsequent period of 5 years;
217	Paragraph 358A(1)(c)
	Omit "agreements covered by Parts VIB and VID", substitute "workplace agreements".
218	Paragraph 358A(1)(d)
	Omit "and young persons", substitute ", mature age persons, young persons and such other persons as are prescribed by the regulations".
219	After section 358A
	Insert:
358E	B Acquisition of property
	(1) The following laws and instruments:
	(a) this Act;
	(b) regulations, or any other instrument, made under this Act;

1 2	(d) regulations, or any other instrument, made under Schedule 1B;
3	(e) regulations made under item 1 of Schedule 4 to the
4	Workplace Relations Amendment (Work Choices) Act 2005;
5	(f) Part 2 of Schedule 4 to the Workplace Relations Amendment
6	(Work Choices) Act 2005;
7	do not apply, and are taken never to have applied, to the extent that
8	the operation of the law or instrument would result in an
9	acquisition of property from a person otherwise than on just terms.
10	(2) The repeals and amendments made by the following laws and
11	instruments:
12 13	(a) the Workplace Relations Amendment (Work Choices) Act 2005;
14	(b) any other Act, so far as it repeals or amends a provision of:
15	(i) this Act; or
16	(ii) regulations, or any other instrument, made under this
17	Act; or
18	(iii) Schedule 1B; or
19 20	(iv) regulations, or any other instrument, made under Schedule 1B;
20	(c) regulations made under item 2 of Schedule 4 to the
21	Workplace Relations Amendment (Work Choices) Act 2005;
23	(d) any other regulation or instrument, so far as it repeals or
24	amends a provision of:
25	(i) this Act; or
26	(ii) regulations, or any other instrument, made under this
27	Act; or
28	(iii) Schedule 1B; or
29	(iv) regulations, or any other instrument, made under
30	Schedule 1B;
31	do not apply, and are taken never to have applied, to the extent that
32	the repeals or amendments would result in an acquisition of
33	property from a person otherwise than on just terms.
34	(3) In this section:
35	acquisition of property has the same meaning as in paragraph
36	51(xxxi) of the Constitution.

1 2		<i>just terms</i> has the same meaning as in paragraph 51(xxxi) of the Constitution.
3	220	Paragraph 359(2)(f)
4		Omit "certified", substitute "workplace".
5	221	Paragraph 359(2)(fa)
6		Repeal the paragraph.
7	222	At the end of section 359
8		Add:
9 10		(4) If jurisdiction in relation to a provision of this Act relating to a civil remedy provision referred to in section 188 is conferred on
11		the Court or the Federal Magistrates Court, the regulations may
12 13		confer jurisdiction in relation to that provision on a specified court of a State or Territory.
14		(5) The regulations may provide for a person who is alleged to have
15 16		committed an offence against the regulations to pay a penalty to the Commonwealth as an alternative to prosecution.
17		(6) A penalty under subsection (5) must not exceed one-fifth of the
18 19		maximum fine that a court could impose on the person as a penalty for that offence.
20		(7) The regulations may make provision enabling a person who is
21		alleged to have contravened a civil remedy provision the remedy
22 23		for which consists of or includes a pecuniary penalty to pay to the Commonwealth, as an alternative to proceedings against the
24		person, a specified penalty.
25		(8) A penalty under subsection (7) must not exceed one-tenth of the
26		maximum pecuniary penalty that could have been imposed on the
27		person for contravening that civil remedy provision.
28	223	Part XIV (heading)
29		Repeal the heading, substitute:

Part XIV—Jurisdiction of the Federal Court of Australia and Federal Magistrates Court

224 At the end of section 412

Add:

3

4

5		(4) The Federal Magistrates Court has jurisdiction with respect to			
6	matters arising under this Act in relation to which:				
7		(a) applications may be made to it under this Act; or			
8		(b) actions may be brought in it under this Act; or			
9		(c) questions may be referred to it under this Act; or			
10		(d) penalties may be sued for and recovered under this Act; or			
11		(e) prosecutions may be instituted for offences against this Act.			
12 13 14		Note: A proceeding pending in the Federal Magistrates Court may be transferred to the Federal Court: see Part 5 of the <i>Federal Magistrates Act 1999</i> .			
15	225	Subsection 413(1)			
16		After "The Court", insert "or the Federal Magistrates Court".			
17	226	Subsection 413(2)			
18		After "the Court" (wherever occurring), insert "or the Federal			
19		Magistrates Court".			
20	227	Subsection 413A(1)			
21		Omit "The Court may give an interpretation of a certified agreement",			
22		substitute "The Court or the Federal Magistrates Court may give an			
23		interpretation of a collective agreement".			
24	228	Paragraph 413A(1)(b)			
25		Omit "certified".			
26	229	Subsection 413A(2)			
27		After "the Court" (wherever occurring), insert "or the Federal			
28		Magistrates Court".			
29	230	Subsection 414(1)			
30		After "the Court", insert "and the Federal Magistrates Court".			

231	At the end	of subsection 414(1)		
	Add:			
	Note:	The regulations can confer jurisdiction on a specified court of a State or Territory in relation to a civil remedy provision: see subsection 359(4).		
232	After subse	ection 469(1)		
	Insert:			
		to a proceeding before the Federal Magistrates Court in a arising under this Act or the BCII Act may appear in person.		
233	Subsection	ns 469(2) and (2B)		
	After "the C	court", insert "or the Federal Magistrates Court".		
Note:		section 469 is altered by omitting " Court " and substituting " the Court Magistrates Court ".		
234	Subsection 469(9)			
	After "the C	court", insert "or the Federal Magistrates Court".		
235	Section 470			
	Before "If",	insert "(1)".		
236	At the end	of section 470		
	Add:			
	(2) If the F	ederal Magistrates Court is of the opinion that an		
		ation, person or body should be heard in a proceeding		
		that court in a matter arising under this Act or the BCII Act, art may grant leave to the organisation, person or body to		
		ne in the proceeding.		
237	After subse	ection 471(1)		
	Insert:			
	(1A) The Mi	nister may, on behalf of the Commonwealth, by giving		
		notice to a Registrar of the Federal Magistrates Court,		
		ne in the public interest in a proceeding before that court in r arising under this Act or the BCII Act.		

Omit "the Court, the Court may", substitute "the Court or the Federal Magistrates Court, that court may".
239 Subsection 471(3)
After "the Court", insert "or the Federal Magistrates Court".
240 Part XV
Repeal the Part, substitute:
Part XV—Matters referred by Victoria
Division 1—Introduction
488 Objects
The main objects of this Part are:
(a) to extend certain provisions of this Act; and
(b) to include additional provisions in this Act;
as a result of the referral of certain matters to the Parliament of the
Commonwealth by the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria.
 489 Definitions
In this Part (other than Division 10):
employee has the same meaning as in section 3 of the
Commonwealth Powers (Industrial Relations) Act 1996 of
Victoria, but does not include:
(a) a person who is undertaking a vocational placement; or
(b) a person so far as the definition of <i>employee</i> in subsection 4AA(1) of this Act covers the person.
employer has the same meaning as in section 3 of the
Commonwealth Powers (Industrial Relations) Act 1996 of
Victoria, but does not include an employer so far as the definition of <i>employer</i> in subsection $4AB(1)$ of this Act covers the employer.
<i>employment</i> means employment of an employee, and <i>employed</i>
has a corresponding meaning.

1 4	490	Part only	has	effect if	supported	l by	reference
-----	-----	------------------	-----	-----------	-----------	------	-----------

2	A provision of this Part (other than paragraph 493(b) or Division 9
3	or 10) has effect only for so long, and in so far, as the
4	Commonwealth Powers (Industrial Relations) Act 1996 of Victoria
5	refers to the Parliament of the Commonwealth a matter or matters
6	that result in the Parliament of the Commonwealth having

8	Division	2—Pay	and	conditions
---	----------	-------	-----	------------

9	491	Additional	effect of Act—AFPC's powers
10			out affecting its operation apart from this section, Part IA also
11			ffect in relation to the employment of any employee in
12			bria, and for this purpose, each reference in paragraph $7J(2)(d)$
13			employee (within the meaning of that paragraph) is to be read reference to an employee (within the meaning of this Division)
14 15			ctoria.
16		(2) Subs	ection (1) has effect subject to:
17		(a)	sections 495, 496, 497, 498 and 525; and
18		(b)	clause 30 of Schedule 14.
19	492	Additional	effect of Act—Australian Fair Pay and Conditions
20		Stan	dard
21		(1) With	out affecting its operation apart from this section, Part VA
22		also l	has effect in relation to the employment of any employee in
23		Victo	oria, and for this purpose:
24		(a)	each reference in that Part to an employer (within the
25			meaning of that Part) is to be read as a reference to an
26			employer (within the meaning of this Division) in Victoria;
27			and
28		(b)	each reference in that Part to an employee (within the
29			meaning of that Part) is to be read as a reference to an
30			employee (within the meaning of this Division) in Victoria;
31			and
32		(c)	each reference in that Part to employment (within the
33			meaning of that Part) is to be read as a reference to the

sufficient legislative power for the provision so to have effect.

1	employment of an employee (within the meaning of this
2	Division) in Victoria; and
3	(d) Division 2 of Part VA has effect as if the following
4	provisions had not been enacted:
5	(i) Subdivisions D, E, F, I, K and L of that Division;
6	(ii) sections 90ZA, 90ZB, 90ZC, 90ZL and 90ZM;
7	(iii) subsections 90F(3) and (4);
8	(iv) paragraphs $90H(3)(b)$ and $90W(2)(b)$; and
9	(e) Division 2 of Part VA has effect as if an order that was in
10	force under repealed section 501 or 501A on the reform
11	comparison day (within the meaning of that Division) were a
12	pre-reform federal wage instrument (within the meaning of
13	that Division); and
14	(f) section 89E has effect as if Part VIIA had been modified in a
15	corresponding way to the way in which Part VA is modified
16	by paragraphs (a), (b) and (c); and
17	(g) Part VA has effect as if Division 6 of that Part had not been
18	enacted.
19	(2) Subsection (1) has effect subject to:
20	(a) sections 495, 496, 497, 498 and 525; and
21	(b) clause 30 of Schedule 14.
22	(3) The repeal of sections 501 and 501A by the <i>Workplace Relations</i>
23	Amendment (Work Choices) Act 2005 does not affect the continuity
24	of an APCS (within the meaning of Part VA) derived from an order
25	under either of those sections.
26	493 Application of the Australian Fair Pay and Conditions Standard
26	to employees in Victoria
27	to employees in victoria
28	For the purposes of the application of a provision of this Act (other
29	than this Division or Divisions 3 to 9) to an employee in Victoria, a
30	reference in the provision to the Australian Fair Pay and
31	Conditions Standard:
32	(a) is to be read as a reference to the Australian Fair Pay and
33	Conditions Standard that applies to the employee because of
34	section 492; and
35	(b) includes a reference to the provisions of Division 6 of
36	Part VA as they apply to the employee because of
37	section 170KB.

is Act, sections 495, 496, 497 and 498 are of the Australian Fair Pay and Conditions to an employee in Victoria because of
of the Australian Fair Pay and Conditions
to an employee in Victoria because of
an APCS if the adjustment:
ployment of one or more employees in
sion or casual loading provision.
n APCS under subsection (1) is subject to:
90A; and
1
1
nd
7 and 498.
ction 90ZK, an adjustment under
section is taken to be an adjustment under ion 2 of Part VA.
<i>ion</i> has the same meaning as in Division 2 of
same meaning as in Division 2 of Part VA.
same meaning as in Division 2 of Part VA. of minimum wage standards
of minimum wage standards its wage-setting powers so as to set or adjust employees in Victoria:
of minimum wage standards its wage-setting powers so as to set or adjust employees in Victoria: justment has no effect unless the employees
a of minimum wage standards its wage-setting powers so as to set or adjust employees in Victoria: justment has no effect unless the employees k classification; and
of minimum wage standards its wage-setting powers so as to set or adjust employees in Victoria: justment has no effect unless the employees

1 2	(2) If a provision of the Australian Fair Pay and Conditions Standard sets or adjusts a minimum wage for employees in Victoria:
3	(a) the setting or adjustment has no effect unless the employees
4	are within a work classification; and
5	(b) the setting or adjustment has no effect, in relation to a
6	particular employee, while the employee is subject to an
7	award or agreement under this Act.
8	(3) In this section:
9	<i>minimum wage</i> has the same meaning as in subsection 4(7) of the
10	Commonwealth Powers (Industrial Relations) Act 1996 of
11	Victoria.
12	work classification means a work classification that, immediately
13	before the commencement of subsection $4(7)$ of the
14	Commonwealth Powers (Industrial Relations) Act 1996 of
15	Victoria:
16 17	 (a) was a declared work classification under the <i>Employee</i> Relations Act 1992 of Victoria; or
18	(b) had been declared by the Employee Relations Commission of
19	Victoria to be an interim work classification.
20 21	Note: See also clauses 89, 95 and 102 of Schedule 13 (extended meaning of award).
22	497 Guarantee against reductions below pre-reform basic periodic
23	rates of pay
24	(1) This section applies if:
25	(a) the AFPC proposes to exercise its power under subsection
26	495(1) to adjust a preserved APCS; and
27	(b) immediately after the exercise of the power takes effect, there
28	will, under section 90F, be a guaranteed basic periodic rate of
29	pay (the <i>resulting guaranteed basic periodic rate</i>) for a
30	particular employee (within the meaning of this Division) in
31	Victoria who is affected by the exercise of the power; and
32	(c) immediately after the reform commencement (and after any
33	relevant adjustments mentioned in sections 90ZE to 90ZH
34	took effect), there would, under section 90F, have been a
35	guaranteed basic periodic rate of pay (the <i>commencement</i>
36	guaranteed basic periodic rate) for the employee if the

1 2		employee had at that time been in his or her current circumstances of employment.
3 4	(2)	The AFPC must ensure that the result of the exercise of the power, so far as it affects the employee, is such that the resulting
5		guaranteed basic periodic rate of pay for the employee will not be
6 7		less than the commencement guaranteed basic periodic rate of pay for the employee.
8	(3)	In this section:
9 10		<i>basic periodic rate of pay</i> has the same meaning as in Division 2 of Part VA.
11 12	498 Guara	antee against reductions below pre-reform casual loadings that apply to basic periodic rates of pay
13 14	(1)	This section applies in relation to the exercise by the AFPC of its power under subsection 495(1) to adjust a preserved APCS.
15 16	(2)	The AFPC must ensure that the result of the exercise of the power, so far as it affects a particular casual employee (within the meaning
17 18		of this Division) in Victoria, is such that the resulting guaranteed casual loading percentage for the employee will not be less than
19 20		the commencement guaranteed casual loading percentage for the employee.
21	(3)	For the purposes of subsection (2):
22		(a) the <i>resulting guaranteed casual loading percentage</i> for the
23		employee is the guaranteed casual loading percentage
24		referred to in section 90H for the employee, as it will be immediately after the exercise of the power takes effect; and
25		•
26 27		(b) the <i>commencement guaranteed casual loading percentage</i> for the employee is the percentage that, immediately after the
28		reform commencement (and after any relevant adjustments
29		mentioned in sections 90ZE to 90ZH took effect), would
30		have been the guaranteed casual loading percentage referred
31		to in section 90H for the employee if the employee had, at
32		that time, been in his or her current circumstances of
33		employment.

1 2	499 Additional effect of Act—enforcement of, and compliance with, the Australian Fair Pay and Conditions Standard
3	Without affecting its operation apart from this section, Part VIII
4	also has effect in relation to a term of the Australian Fair Pay and
5	Conditions Standard that applies to an employee in Victoria
6	because of section 492, and for this purpose:
7	(a) each reference in that Part to an employer (within the
8	meaning of that Part) is to be read as a reference to an
9	employer (within the meaning of this Division) in Victoria;
10	and
11	(b) each reference in that Part to an employee (within the
12	meaning of that Part) is to be read as a reference to an
13	employee (within the meaning of this Division) in Victoria; and
14	
15	(c) each reference in that Part to employment (within the meaning of that Part) is to be read as a reference to the
16 17	employment of an employee (within the meaning of this
18	Division) in Victoria; and
19	(d) each reference in that Part to the Australian Fair Pay and
20	Conditions Standard (within the meaning of that Part) is to be
21	read as a reference to the Australian Fair Pay and Conditions
22	Standard as that Standard applies to an employee in Victoria
23	because of section 492.
24	Division 3—Workplace agreements
25	500 Additional effect of Act—workplace agreements
26	(1) In addition to the effect that Part VB and related provisions of this
27	Act (other than Part VIAA) have in relation to agreements about
28	matters pertaining to the relationship between:
29	(a) an employer, or employers, within the meaning of that Part;
30	and
31	(b) an employee, or employees, within the meaning of that Part;
32	that Part and those provisions also have effect as mentioned in this
33	section.
34	(2) That Part and those provisions have effect in the same way as
35	mentioned in subsection (1) in relation to agreements about matters
36	pertaining to the relationship between:

1	(a) an employer or employers in Victoria; and
2	(b) an employee or employees in Victoria;
3	and for this purpose:
4	(c) each reference in that Part and those provisions to an
5	employer (within the meaning of that Part) is to be read as a
6	reference to an employer (within the meaning of this
7	Division) in Victoria; and
8	(d) each reference in that Part and those provisions to an
9	employee (within the meaning of that Part) is to be read as a
10	reference to an employee (within the meaning of this
11	Division) in Victoria; and
12	(e) each reference in that Part and those provisions to
13	employment (within the meaning of that Part) is to be read as
14	a reference to the employment of an employee (within the
15	meaning of this Division) in Victoria by an employer (within the meaning of this Division) in Victoria
16	the meaning of this Division) in Victoria.
17	(3) The regulations may provide that a specified provision of this Act
18	is taken to be a related provision for the purposes of this section.
10	(4) The regulations may provide that a specified provision of this Act
19 20	is taken not to be a related provision for the purposes of this
20 21	section.
22	Note: See also section 513 (transmission of business).
23	501 Workplace agreements—mandatory term about basic periodic
24	rate of pay
25	(1) This section applies to an agreement under Part VB (as that Part
26	has effect because of section 500).
27	(2) The agreement must contain an express term to the effect that, for
28	so long as an employee is subject to the agreement, the basic
29	periodic rate of pay that is payable to the employee must not be
30	less than:
31	(a) if a basic periodic rate of pay would have been applicable to
32	the employee under the Australian Fair Pay and Conditions
33	Standard if the employee had not been subject to an award or
34	the agreement—the basic periodic rate of pay that would so
35	have been applicable; or
36	(b) if:

1		(i) paragraph (a) does not apply to the employee; and
2		(ii) the employee is a junior employee, an employee with a
3		disability, or an employee to whom a training
4		arrangement applies;
5		the rate of pay specified in, or worked out in accordance with
6		a method specified in, regulations made for the purposes of
7		this paragraph; or
8 9		(c) if neither paragraph (a) nor (b) applies to the employee—the standard FMW.
10	(3) The agreement is void if the requirement in subsection (2) is not
11	(1	satisfied.
12	(4) In this section:
13		basic periodic rate of pay has the same meaning as in Division 2 of
14		Part VA.
15		employee with a disability means an employee who is qualified for
16		a disability support pension as set out in section 94 or 95 of the
17		Social Security Act 1991, or who would be so qualified but for
18		paragraph $94(1)(e)$ or $95(1)(c)$ of that Act.
19		<i>junior employee</i> means an employee who is under the age of 21.
20		standard FMW has the same meaning as in Division 2 of Part VA.
21	502 Wor	kplace agreements—mandatory term about casual loading
22	(1) This section applies to an agreement under Part VB (as that Part
23		has effect because of section 500) if a casual employee is subject to
24		the agreement.
25	(2) The agreement must contain an express term to the effect that, for
26		so long as the casual employee is subject to the agreement, the
27		casual loading that is payable to the employee must not be less than
28		the default casual loading percentage (within the meaning of Division 2 of Det VA)
29		Division 2 of Part VA).
30	(3) The agreement is void if the requirement in subsection (2) is not
31		satisfied.

Division 4—Industrial action 1

2	503 Additional effect of Act—industrial action
3 4	Without affecting its operation apart from this section, Part VC also has the effect it would have if:
5	(a) each reference in that Part to an employer (within the
6 7	meaning of that Part) were read as a reference to an employer (within the meaning of this Division) in Victoria; and
8	(b) each reference in that Part to an employee (within the
9	meaning of that Part) were read as a reference to an employee
10	(within the meaning of this Division) in Victoria; and
11	(c) each reference in that Part to employment (within the
12	meaning of that Part) were read as a reference to the
13	employment of an employee (within the meaning of this
14	Division) in Victoria by an employer (within the meaning of
15	this Division) in Victoria; and
16	(d) Division 8 of that Part had not been enacted; and
17	(e) subsections $106A(1)$ to (4) were replaced by the following
18	subsections:
19	(1) For the purposes of this Act (other than Part XA), <i>industrial action</i>
20	means any action of the following kind:
21	(a) the performance of work by an employee in a manner
22	different from that in which it is customarily performed, or
23	the adoption of a practice in relation to work by an employee,
24	the result of which is a restriction or limitation on, or a delay
25	in, the performance of the work;
26	(b) a ban, limitation or restriction on the performance of work by
27	an employee or on acceptance of or offering for work by an
28	employee;
29	(c) a failure or refusal by employees to attend for work or a
30	failure or refusal to perform any work at all by employees
31	who attend for work;
32	(d) the lockout of employees from their employment by the
33	employer of the employees;
34	but does not include the following:
35	(e) action that is not agreement-related (as defined by
36	subsection (3));

1 2	(f) action by employees that is authorised or agreed to by the employer of the employees;
3	(g) action by an employer that is authorised or agreed to by or on
4	behalf of employees of the employer;
5	(h) action by an employee if:
6	(i) the action was based on a reasonable concern by the
7 8	employee about an imminent risk to his or her health or safety; and
9	(ii) the employee did not unreasonably fail to comply with a
10	direction of his or her employer to perform other
11	available work, whether at the same or another
12	workplace, that was safe and appropriate for the
13	employee to perform.
14 15	Note 1: See also subsection (5), which deals with the burden of proof of the exception in paragraph (e) of this definition.
16 17	Note 2: See also subsection (6), which deals with the burden of proof of the exception in subparagraph (h)(i) of this definition.
18	(2) For the purposes of this Act (other than Part XA):
19	(a) conduct is capable of constituting industrial action even if the
20	conduct relates to part only of the duties that employees are
21	required to perform in the course of their employment; and
22	(b) a reference to industrial action includes a reference to a
23	course of conduct consisting of a series of industrial actions.
24	Meaning of agreement-related
25	(3) For the purposes of this section, action is <i>agreement-related</i> if:
26	(a) it relates to the negotiation or proposed negotiation of an
27	agreement under Part VB (as that Part has effect because of
28	section 500); or
29	(b) it affects or relates to work that is regulated by an agreement
30	under Part VB (as that Part has effect because of
31	section 500).
32	Meaning of lockout
33	(4) For the purposes of this section, an employer <i>locks out</i> employees
34	from their employment if the employer prevents the employees
35	from performing work under their contracts of employment
36	without terminating those contracts.

1	Burden of proof	
2 3 4	(5) Whenever a person seeks to rely on paragraph (e) of the definition of <i>industrial action</i> in subsection (1), that person has the burden proving that paragraph (e) applies.	
5 6 7	(6) Whenever a person seeks to rely on subparagraph (h)(i) of the definition of <i>industrial action</i> in subsection (1), that person has burden of proving that subparagraph (h)(i) applies.	the
8	504 Intervention in proceedings under Part VC	
9 10 11 12 13	(1) The Commission must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in proceedings under Division 2 of Part VC if one or more of the employees to be covered by the proposed agreement an employee in Victoria.	t is
14 15 16 17	(2) The Full Bench must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in an appeal against a decision of a member of the Commission if:	
18 19 20	 (a) the decision is made under Division 2 of Part VC in relation to a bargaining period for negotiating a proposed agreement and 	
21 22	(b) one or more of the employees to be covered by the propose agreement is an employee in Victoria.	ed
23 24	505 Additional effect of Act—enforcement of, and compliance with orders under Part VC	h,
25 26 27 28	Without affecting its operation apart from this section, Part VIII also has effect in relation to an order of the Commission under Part VC as Part VC applies because of section 503, and for this purpose:	
29 30 31 32	 (a) each reference in Part VIII to an employer (within the meaning of Part VIII) is to be read as a reference to an employer (within the meaning of this Division) in Victoria and 	l;
33 34	(b) each reference in Part VIII to an employee (within the meaning of Part VIII) is to be read as a reference to an	

1 2 3 4	(c)	employee (within the meaning of this Division) in Victoria; and each reference in Part VIII to employment (within the meaning of Part VIII) is to be read as a reference to the
5 6		employment of an employee (within the meaning of this Division) in Victoria.
7	Division 5—N	Aeal breaks
8	506 Additional	effect of Act—meal breaks
9 10 11	of Pa	out affecting its operation apart from this section, Division 1 rt VIA also has effect in relation to the employment of any oyee in Victoria, and for this purpose:
12 13 14 15	-	each reference in that Division to an employer (within the meaning of that Division) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and
16 17 18 19	(b)	each reference in that Division to an employee (within the meaning of that Division) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and
20 21 22 23	(c)	each reference in that Division to employment (within the meaning of that Division) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria; and
24 25 26	(d)	section 170AC has effect as if Part VIIA had been modified in a corresponding way to the way in which Division 1 of Part VIA is modified by paragraphs (a), (b) and (c).
27 28		effect of Act—enforcement of, and compliance with, on 170AA
29	With	out affecting its operation apart from this section, Part VIII
30		has effect in relation to section 170AA as that section applies
31		use of section 506, and for this purpose:
32	(a)	each reference in that Part to an employer (within the
33		meaning of that Part) is to be read as a reference to an
34 35		employer (within the meaning of this Division) in Victoria; and

472	Workplace Relations Amendment (Work Choices) Bill 2005	No.	, 2005
-----	--	-----	--------

1	(b) each reference in that Part to an employee (within the
2	meaning of that Part) is to be read as a reference to an
3	employee (within the meaning of this Division) in Victoria;
4	and
5	(c) each reference in that Part to employment (within the
6	meaning of that Part) is to be read as a reference to the
7	employment of an employee (within the meaning of this
8	Division) in Victoria; and
9	(d) each reference in that Part to section 170AA is to be read as a
10	reference to section 170AA as that section has effect because
11	of section 506.
12	Division 6—Termination of employment
12	Division of termination of employment
13	508 Additional effect of Act—termination of employment
14	Without affecting its operation apart from this section, Division 3
15	of Part VIA also has effect in relation to the termination of
16	employment, at the initiative of the employer, of any employee in
17	Victoria, and for this purpose:
18	(a) each reference in that Division to an employer within the
19	meaning of subsection $4AB(1)$ is to be read as a reference to
20	an employer (within the meaning of this Division) in
21	Victoria; and
22	(b) each reference in that Division to an employee within the
23	meaning of subsection $4AA(1)$ is to be read as a reference to
24	an employee (within the meaning of this Division) in
25	Victoria; and
26	(c) each reference in that Division to employment within the
27	meaning of subsection $4AC(1)$ is to be read as a reference to
28	the employment of an employee (within the meaning of this
29	Division) in Victoria.
30	509 Additional effect of Act—enforcement of, and compliance with,
31	orders under Division 3 of Part VIA
32	Without affecting its operation apart from this section, Part VIII
33	also has effect in relation to an order of the Commission under
34	Division 3 of Part VIA as that Division applies because of
35	section 508, and for this purpose:

1	(a) each reference in Part VIII to an employer (within the
2	meaning of Part VIII) is to be read as a reference to an
3	employer (within the meaning of this Division) in Victoria;
4	and
5	(b) each reference in Part VIII to an employee (within the
6	meaning of Part VIII) is to be read as a reference to an
7 8	employee (within the meaning of this Division) in Victoria; and
9	(c) each reference in Part VIII to employment (within the
10	meaning of Part VIII) is to be read as a reference to the
11 12	employment of an employee (within the meaning of this Division) in Victoria.
13	Division 7—Freedom of association
14	510 Additional effect of Act—freedom of association
15	(1) Without affecting its operation apart from this section, Part XA
16	also has effect in relation to conduct in Victoria.
17	(2) Subsection (1) has effect despite section 243.
18	Division 8—Right of entry
19	511 Right of entry
20	Part IX has effect, in relation to premises of an employer in
21	Victoria, as if:
22	(a) Division 4 of that Part did not authorise entering any such
23	premises for the purposes of investigating a suspected breach
24	unless the suspected breach relates to:
25	(i) a provision of this Act (as that provision has effect
26	because of this Part); or
27 28	(ii) an agreement under Part VB (as Part VB has effect because of section 500); and
29	(b) Division 6 of that Part did not authorise entering any such
30	premises for the purposes of holding discussions unless the
31	discussions relate to:
32	(i) an agreement under Part VB (as Part VB has effect
33	because of section 500); or

1 2	(ii) a proposed agreement under Part VB (as Part VB has effect because of section 500).
3 4	512 Additional effect of Act—enforcement of, and compliance with, orders under Part IX
5	Without affecting its operation apart from this section, Part VIII
6	also has effect in relation to an order of the Commission under
7	Part IX in relation to premises of an employer in Victoria, and for
8	this purpose:
9	(a) each reference in Part VIII to an employer (within the
10	meaning of Part VIII) includes a reference to an employer
11	(within the meaning of this Division) in Victoria; and
12	(b) each reference in Part VIII to an employee (within the
13	meaning of Part VIII) includes a reference to an employee
14	(within the meaning of this Division) in Victoria; and
15	(c) each reference in Part VIII to employment (within the
16	meaning of Part VIII) includes a reference to the employment
17	of an employee (within the meaning of this Division) in Victoria.
18	victoria.
19	Division 9—Transmission of business
19 20	Division 9—Transmission of business 513 Additional effect of Act—transmission of business
	513 Additional effect of Act—transmission of business(1) Without affecting its operation apart from this section, Part VIAA
20	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if:
20 21	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the
20 21 22 23 24	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer
20 21 22 23	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and
20 21 22 23 24 25 26	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and (b) each reference in that Part to an employee (within the
20 21 22 23 24 25 26 27	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and (b) each reference in that Part to an employee (within the meaning of that Part) included a reference to an employee
20 21 22 23 24 25 26 27 28	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and (b) each reference in that Part to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of this Division) in Victoria; and
20 21 22 23 24 25 26 27 28 29	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and (b) each reference in that Part to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of this Division) in Victoria; and (c) each reference in that Part to employment (within the
20 21 22 23 24 25 26 27 28 29 30	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and (b) each reference in that Part to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of this Division) in Victoria; and (c) each reference in that Part to employment (within the meaning of that Part) included a reference to the employment
20 21 22 23 24 25 26 27 28 29 30 31	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and (b) each reference in that Part to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of this Division) in Victoria; and (c) each reference in that Part to employment (within the meaning of that Part) included a reference to the employment of an employee (within the meaning of this Division) in
20 21 22 23 24 25 26 27 28 29 30 31 32	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and (b) each reference in that Part to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of this Division) in Victoria; and (c) each reference in that Part to employment (within the meaning of that Part) included a reference to the employment of an employee (within the meaning of this Division) in Victoria; and
20 21 22 23 24 25 26 27 28 29 30 31 32 33	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and (b) each reference in that Part to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to the employee (within the meaning of that Part) included a reference to the employee (within the meaning of that Part) included a reference to the employment of an employee (within the meaning of this Division) in Victoria; and
20 21 22 23 24 25 26 27 28 29 30 31 32	 513 Additional effect of Act—transmission of business (1) Without affecting its operation apart from this section, Part VIAA also has the effect it would have if: (a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and (b) each reference in that Part to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of this Division) in Victoria; and (c) each reference in that Part to employment (within the meaning of that Part) included a reference to the employment of an employee (within the meaning of this Division) in Victoria; and

1		meaning of this Division) in Victoria by an employer (within
2	()	the meaning of this Division) in Victoria; and
3		Division 5 of that Part had not been enacted; and
4	(f)	each reference in that Part to an AWA (within the meaning of
5		that Part) included a reference to an AWA made under
6		Part VB (as Part VB has effect because of section 500); and
7	(g)	each reference in that Part to a post-reform AWA (within the
8		meaning of that Part) included a reference to a post-reform
9		AWA made under Part VB (as Part VB has effect because of
10		section 500); and
11	(h)	each reference in that Part to a collective agreement (within
12		the meaning of that Part) included a reference to a collective
13		agreement made under Part VB (as Part VB has effect
14		because of section 500); and
15	(i)	each reference in that Part to a workplace agreement (within
16		the meaning of that Part) included a reference to a workplace
17		agreement made under Part VB (as Part VB has effect
18		because of section 500); and
19	(j)	each reference in that Part to the Australian Fair Pay and
20		Conditions Standard (within the meaning of that Part)
21		included a reference to the Australian Fair Pay and
22		Conditions Standard as that Standard has effect because of
23		section 492; and
24	(k)	each reference in that Part to an APCS (within the meaning
25		of that Part) included a reference to an APCS in force under
26		Part VA (as Part VA has effect because of section 492).
27	(2) To th	e extent to which Part VIAA (as it has effect because of
28	subse	ection (1)) applies if an employer (within the meaning of this
29	Divis	sion) in Victoria becomes the successor, transmittee or
30	assig	nee of the whole, or a part, of a business of:
31	(a)	another employer (within the meaning of subsection
32		4AB(1)); or
33	(b)	another employer (within the meaning of this Division) in
34		Victoria;
35	that I	Part has effect only for so long, and in so far, as the
36	Com	monwealth Powers (Industrial Relations) Act 1996 of Victoria
37	refer	s to the Parliament of the Commonwealth a matter or matters
38		esult in the Parliament of the Commonwealth having
39	suffic	cient legislative power for that Part so to have effect.

1	(3) To the extent to which Subdivision B of Division 4 of Part VIAA
2	(as it has effect because of subsection (1)) applies if an employer
3	(within the meaning of this Division) in Victoria is likely to
4	become the successor, transmittee or assignee of the whole, or a
5	part, of a business of:
6 7	(a) another employer (within the meaning of subsection 4AB(1)); or
8	(b) another employer (within the meaning of this Division) in
9	Victoria;
10	that Subdivision has effect only for so long, and in so far, as the
11	Commonwealth Powers (Industrial Relations) Act 1996 of Victoria
12	refers to the Parliament of the Commonwealth a matter or matters
13	that result in the Parliament of the Commonwealth having
14	sufficient legislative power for that Subdivision so to have effect.
15	514 Additional effect of Act—enforcement of, and compliance with,
16	orders under Part VIAA
17	Without affecting its operation apart from this section, Part VIII
18	also has effect in relation to an order of the Commission under
19	Part VIAA as Part VIAA applies because of section 513, and for
20	this purpose:
21	(a) each reference in Part VIII to an employer (within the
22	meaning of Part VIII) is to be read as a reference to an
23	employer (within the meaning of this Division) in Victoria;
24	and
25	(b) each reference in Part VIII to an employee (within the
26	meaning of Part VIII) is to be read as a reference to an
27	employee (within the meaning of this Division) in Victoria;
28	and
29	(c) each reference in Part VIII to employment (within the
30	meaning of Part VIII) is to be read as a reference to the
31	employment of an employee (within the meaning of this
32	Division) in Victoria.
33	Division 10—Employment agreements
24	515 Definitions
34	

In this Division:

35

1 2 3		<i>employee</i> has the same meaning as in section 3 of the <i>Commonwealth Powers (Industrial Relations) Act 1996</i> of Victoria, but does not include a person who is undertaking a vocational placement
4		vocational placement.
5		employer has the same meaning as in section 3 of the
6		Commonwealth Powers (Industrial Relations) Act 1996 of
7		Victoria.
8 9		<i>employment</i> means employment of an employee, and <i>employed</i> has a corresponding meaning.
10		employment agreement means an agreement that, immediately
11		before the reform commencement, was continued in force by
12		Subdivision E of Division 3 of Part XV of this Act.
13 14		Note: These agreements were entered into under Part 2 of the <i>Employee</i> <i>Relations Act 1992</i> of Victoria before 1 January 1997.
15	516 Appl	ication of this Division
16	(1)	This Division applies to an employment agreement about matters
17		pertaining to the relationship between an employer (within the
18		meaning of this Division) in Victoria and an employee (within the
19		meaning of this Division) in Victoria if:
20		(a) both:
21 22		(i) the employer is also an employer within the meaning of Division 1; and
23		(ii) the employee is also an employee within the meaning of
24		Division 1; or
25		(b) both:
26		(i) the employer is also an employer within the meaning of
27		subsection 4AB(1); and
28		(ii) the employee is also an employee within the meaning of
29		subsection 4AA(1).
30	(2)	This Division, to the extent to which it applies to an employment
31	(-)	agreement because of paragraph $(1)(a)$, has effect only for so long,
32		and in so far, as the Commonwealth Powers (Industrial Relations)
33		Act 1996 of Victoria refers to the Parliament of the Commonwealth
34		a matter or matters that result in the Parliament of the
35		Commonwealth having sufficient legislative power for this
36		Division so to have effect.

1 517 Inconsistency with other Commonwealth laws

2 3 4	Subject to clause 39 of Schedule 14, this Division does not have effect to the extent of any inconsistency with a law of the Commonwealth other than this Act.
5	518 Continued operation of employment agreements
6	(1) Subject to subsection (2), for the purposes of this Act, an
7 8	employment agreement continues in force as if Part 2 of the <i>Employee Relations Act 1992</i> of Victoria had not been repealed.
9	(2) For the purposes of this Act, an employment agreement ceases to
10	be in force in relation to an employee if the employment of the
11	employee is subject to an AWA, a collective agreement or a
12	workplace determination.
13	519 Stand down provisions
14	(1) If an employment agreement does not contain provision for the
15	standing-down of the employee if the employee cannot be usefully employed because of:
16	(a) any strike; or
17	•
18	(b) any breakdown of machinery; or
19 20	(c) any stoppage of work for any cause for which the employer cannot reasonably be held responsible;
21	the agreement is taken to include the provision mentioned in
22	subsection (2).
23	(2) The provision is that:
24	(a) the employer may deduct payment for any part of a day
25	during which the employee cannot usefully be employed
26	because of:
27	(i) any strike; or
28	(ii) any breakdown of machinery; or
29	(iii) any stoppage of work for any cause for which the
30	employer cannot reasonably be held responsible; and
31	(b) this does not break the continuity of employment of the
32	employee for the purpose of any entitlements.

1 520 Model dispute resolution process

leal ent, ia;
ent,
ent,
ent,
ia;
ia;
ia;
ia;
ia;
nce
1
be
Ι
this
ia;
ia;
i

480

1 2 3	 (c) each reference in that Part to employment (within the meaning of that Part) is to be read as a reference to the employment of a person under an employment agreement;
4 5 6	and(d) each reference in that Part to an AWA is to be read as a reference to an employment agreement.
7	522 Employer to give copy of employment agreement
8 9 10	Each employer bound by an employment agreement must, on being requested to do so by the employee bound by the agreement, give a copy of the agreement to the employee as soon as possible.
11	523 Additional effect of Act—employee records and pay slips
12	Without affecting its operation apart from this section,
13	section 353A also has effect in relation to the employment of a
14	person under an employment agreement, and for this purpose:
15	(a) each reference in that section to an employer (within the
16	meaning of that section) is to be read as a reference to an
17 18	employer (within the meaning of this Division) in Victoria; and
19	(b) each reference in that section to employment (within the
20	meaning of that section) is to be read as a reference to the
21	employment of a person under an employment agreement;
22	and
23	(c) each reference in that section to an AWA is to be read as a
24	reference to an employment agreement.
25	524 Registrar not to divulge information in employment agreements
26	If a Registrar has a copy of an employment agreement, the
27	Registrar must not allow the information in the copy to become
28	available to any person other than:
29	(a) a party to the agreement; or
30	(b) a person with authority to enforce the provisions of the
31	agreement.

1 2	525 Relationship between employment agreements and Australian Fair Pay and Conditions Standard
3 4 5 6	(1) An employment agreement that operates in relation to an employee prevails over the Australian Fair Pay and Conditions Standard to the extent to which, in a particular respect, the employment agreement provides a more favourable outcome for the employee.
7 8 9 10 11	(2) The Australian Fair Pay and Conditions Standard prevails over an employment agreement that operates in relation to an employee to the extent to which, in a particular respect, the Australian Fair Pay and Conditions Standard provides a more favourable outcome for the employee.
12 13 14 15 16 17 18 19	 (3) The regulations may prescribe: (a) what a particular respect is for the purposes of this section; or (b) the circumstances in which an employment agreement provides or does not provide a more favourable outcome in a particular respect; or (c) the circumstances in which the Australian Fair Pay and Conditions Standard provides or does not provide a more favourable outcome in a particular respect.
20	526 Relationship between employment agreements and awards
21 22	An award prevails to the extent of any inconsistency with an employment agreement.
23 24	Note: See also clauses 89, 95 and 102 of Schedule 13 (extended meaning of award).
25	Division 11—Exclusion of Victorian laws
26	527 Additional effect of Act—exclusion of Victorian laws
27 28 29 30 31 32	 Without affecting their operation apart from this section, the following provisions: (a) section 7C (other than paragraph 7C(3)(f) or (m)); (b) sections 7D and 7E; also have effect in relation to the employment of any employee in Victoria, and for this purpose:

1	(c) each reference in those provisions to an employer (within the
2 3	meaning of those provisions) is to be read as a reference to an employer (within the meaning of this Division) in Victoria;
4	and
5	(d) each reference in those provisions to an employee (within the
6	meaning of those provisions) is to be read as a reference to an
7 8	employee (within the meaning of this Division) in Victoria; and
9 10 11 12	(e) each reference in those provisions to employment (within the meaning of those provisions) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria.
13 14	Note: See also clause 87 of Schedule 13 (common rules in Victoria), which has effect despite any other provision of this Act.
15	Division 12—Additional effect of other provisions of this
16	Act
17	528 Additional effect of other provisions of this Act
18 19 20	The regulations may provide that, without affecting the operation of specified provisions of this Act apart from those regulations, those provisions also have a specified effect.
21 22	Note: The regulations must deal with matters referred by Victoria (see section 490).
23	241 Section 538 (definition of <i>employee</i>)
24	Repeal the definition, substitute:
25 26	<i>employee</i> means an individual so far as he or she is employed by a constitutional corporation.
27	242 Subsection 541(1)
28	Omit "or (5) (as appropriate)".
29	243 Subsection 541(3)
30	Omit "clause 1 of Schedule 1A", substitute "a provision of the
31	Australian Fair Pay and Conditions Standard".
32	244 Subsection 541(3)

	Omit "This subsection is subject to subsection (5).".
245	Subsection 541(4)
	Omit "provisions in clause 1 of Schedule 1A that deal", substitute "a provision of the Australian Fair Pay and Conditions Standard that
	deals".
246	Subsection 541(5)
	Repeal the subsection.
247	Paragraph 548(1)(a)
	Omit "monetary penalty", substitute "pecuniary penalty".
248	Section 550 (definition of additional condition)
	Omit "a wage instrument other than a rate of pay", substitute "an award or notional agreement preserving State awards".
249	Section 550 (definition of <i>employee</i>)
	Repeal the definition.
250	Section 550 (definition of employer)
	Repeal the definition.
251	Section 550 (definition of full-time apprentice)
	Omit "wage instrument", substitute "award or notional agreement preserving State awards".
252	Section 550 (definition of State or Territory training
	authority)
	Repeal the definition.
253	Section 550 (definition of <i>training arrangement</i>)
	Repeal the definition.
254	Section 550 (definition of wage instrument)
	Repeal the definition.
255	Section 551
	Repeal the section.

1	256	Section 552
2		Repeal the section.
3	257	Subsection 553(5)
4		Repeal the subsection, substitute:
5		School-based apprentices not covered by this section
6		(5) This section does not apply to a school-based apprentice if:
7		(a) an award or notional agreement preserving State awards
8		covers the employment of the school-based apprentice; and
9		(b) the award or notional agreement preserving State awards
10		specifies additional conditions for the school-based
11		apprentice; and
12		(c) the award or notional agreement preserving State awards
13		does so by making specific provision for school-based
14		apprentices.
15	258	Subsection 554(1)
16		Omit "a wage instrument", substitute "an APCS".
17	259	Section 555
18		Repeal the section.
19	260	Subsection 556(6)
20		Repeal the subsection, substitute:
21		School-based trainees not covered by this section
22		(6) This section does not apply to a school-based trainee if:
23		(a) an award or notional agreement preserving State awards
24		covers the employment of the school-based trainee; and
25		(b) the award or notional agreement preserving State awards
26		specifies additional conditions for the school-based trainee;
27		and
28		(c) the award or notional agreement preserving State awards
29		does so by making specific provision for school-based
30		trainees.
31	261	At the end of section 557

1	Add:
2 3	(3) This section has effect as if it were a provision of the Australian Fair Pay and Conditions Standard.
4	262 Section 558
5 6	Omit "paid, or provided additional conditions," substitute "provided additional conditions".
7	263 Section 558
8	Omit "552(1), 553(2), 555(1) or 556(2)", substitute "553(2) or 556(2)".
9	264 Schedule 1A
10	Repeal the Schedule.
11	265 Section 1 of Schedule 1B
12	Omit "the objects of the Schedule", substitute "Parliament's intention in
13	enacting this Schedule".
14	266 Section 5 of Schedule 1B
15	Repeal the section, substitute:
16	5 Parliament's intention in enacting this Schedule
17	(1) It is Parliament's intention in enacting this Schedule to enhance
18	relations within workplaces between federal system employers and federal system employees and to reduce the adverse effects of
19 20	industrial disputation.
21	(2) Parliament considers that those relations will be enhanced and
22	those adverse effects will be reduced, if associations of employers
23	and employees are required to meet the standards set out in this Schedule in order to gain the rights and privileges accorded to
24 25	Schedule in order to gain the rights and privileges accorded to associations under this Schedule and the Workplace Relations Act.
26	(3) The standards set out in this Schedule:
27	(a) ensure that employer and employee organisations registered
28	under this Schedule are representative of and accountable to
29	their members, and are able to operate effectively; and
30	(b) encourage members to participate in the affairs of organisations to which they belong; and
31	organisations to which they belong; and

	 (c) encourage the efficient management of organisations and high standards of accountability of organisations to their members; and
	(d) provide for the democratic functioning and control of organisations; and
	(e) facilitate the registration of a diverse range of employer and employee organisations.
	(4) It is also Parliament's intention in enacting this Schedule to assist employers and employees to promote and protect their economic and social interests through the formation of employer and employee organisations, by providing for the registration of those associations and according rights and privileges to them once registered.
	Note: The Workplace Relations Act contains many provisions that affect the operation of this Schedule. For example, provisions of the Workplace Relations Act deal with some powers and functions of the Commission and of Registrars. Decisions made under this Schedule may be subject to procedures and rules (for example, about appeals) that are set out in the Workplace Relations Act.
267	Section 6 of Schedule 1B
	Insert:
	Australian Building and Construction Commissioner has the same meaning as in the Building and Construction Industry Improvement Act 2005.
268	Section 6 of Schedule 1B Insert:
	Australian Building and Construction Inspector has the same meaning as in the Building and Construction Industry Improvement Act 2005.
269	Section 6 of Schedule 1B (definition of AWA)
	Repeal the definition, substitute:
	AWA has the same meaning as in the Workplace Relations Act.
270	Section 6 of Schedule 1B (definition of <i>award</i>) Repeal the definition, substitute:

	award means:
	(a) an award within the meaning of the Workplace Relations
	Act; and (b) a transitional award within the meaning of Schedule 12 to the
	(b) a transitional award within the meaning of Schedule 13 to the Workplace Relations Act.
271	Section 6 of Schedule 1B (definition of <i>certified</i>
	agreement)
	Repeal the definition.
272	Section 6 of Schedule 1B
	Insert:
	collective agreement has the same meaning as in the Workplace
	Relations Act.
273	Section 6 of Schedule 1B (definition of enterprise)
	Repeal the definition, substitute:
	enterprise means:
	(a) a business that is carried on by a single employer; or
	(b) a business that is carried on by related bodies corporate, at least one of which is an employer; or
	(c) an operationally distinct part of a business mentioned in paragraph (a) or (b); or
	(d) a grouping of 2 or more operationally distinct parts of a business mentioned in paragraph (a) or (b).
	Whether bodies corporate are related is to be determined in
	accordance with the principles set out in section 50 of the
	Corporations Act 2001.
274	Section 6 of Schedule 1B (definition of <i>enterprise</i> association)
	Repeal the definition, substitute:
	<i>enterprise association</i> has the meaning given by subsection 18C(1).
275	Section 6 of Schedule 1B (definition of <i>enterprise organisation</i>)

1		Repeal the definition.
2	276	Section 6 of Schedule 1B
3		Insert:
4		federally registrable:
5 6		 (a) in relation to an association of employers—has the meaning given by section 18A; and
7 8		(b) in relation to an association of employees—has the meaning given by section 18B; and
9 10		 (c) in relation to an enterprise association—has the meaning given by section 18C.
11	277	Section 6 of Schedule 1B
12		Insert:
13 14		<i>federal system employee</i> has the meaning given by subsection 18B(2).
15	278	Section 6 of Schedule 1B
16		Insert:
17 18		<i>federal system employer</i> has the meaning given by subsection 18A(2).
19	279	Section 6 of Schedule 1B (definition of <i>industrial dispute</i>)
20		Repeal the definition.
21 22	280	Section 6 of Schedule 1B (definition of <i>old IR agreement</i>) Repeal the definition.
23	281	Section 6 of Schedule 1B
24		Insert:
25 26		<i>State award</i> has the same meaning as in the Workplace Relations Act.
27	282	Section 6 of Schedule 1B
28		Insert:

1 2 3 4	<i>State demarcation order</i> means a State award, to the extent that it relates to the rights of a State-registered association to represent the interests under a State or Territory industrial law of a particular class or group of employees.
5	283 Section 6 of Schedule 1B
6	Insert:
7 8	<i>State or Territory industrial law</i> has the same meaning as in the Workplace Relations Act.
9	284 Section 6 of Schedule 1B
10	Insert:
11 12	<i>State-registered association</i> has the meaning given by clause 1 of Schedule 17 to the Workplace Relations Act.
13	285 Section 6 of Schedule 1B
14	Insert:
15 16	<i>transitionally registered association</i> has the meaning given by clause 1 of Schedule 17 to the Workplace Relations Act.
17	286 Section 6 of Schedule 1B
18	Insert:
19	workplace inspector means a person appointed as a workplace
20	inspector under section 84 of the Workplace Relations Act.
21	287 Section 7 of Schedule 1B
22	Repeal the section, substitute:
23	7 Meaning of industrial action
24	(1) For the purposes of this Schedule, <i>industrial action</i> means any
25	action of the following kinds:
26 27	(a) the performance of work by an employee in a manner different from that in which it is customarily performed, or
28	the adoption of a practice in relation to work by an employee,
29	the result of which is a restriction or limitation on, or a delay
30	in, the performance of the work;

1 2 3	 (b) a ban, limitation or restriction on the performance of work by an employee or on acceptance of or offering for work by an employee;
4 5 6	 (c) a failure or refusal by employees to attend for work or a failure or refusal to perform any work at all by employees who attend for work;
7 8	(d) the lockout of employees from their employment by the employer of the employees;
9	but does not include the following:
	(e) action by employees that is authorised or agreed to by the
10 11	employer of the employees;
12 13	(f) action by an employer that is authorised or agreed to by or on behalf of employees of the employer;
14	(g) action by an employee if:
15	(i) the action was based on a reasonable concern by the
16	employee about an imminent risk to his or her health or
17	safety; and
18	(ii) the employee did not unreasonably fail to comply with a
19	direction of his or her employer to perform other
20	available work, whether at the same or another
21	workplace, that was safe and appropriate for the
22	employee to perform.
23 24	Note 1: See also subsection (4), which deals with the burden of proof of the exception in subparagraph $(g)(i)$ of this definition.
25	Note 2: The issue of whether action that is not industrial in character is
26	industrial action was considered by the Commission in Automotive,
27 28	Food, Metals, Engineering, Printing and Kindred Industries Union v The Age Company Limited, PR946290. In that case, the Full Bench of
28 29	the Company Limited, 1 (3402)0. In that case, the 1 different of the Commission drew a distinction between an employee who does
30	not attend for work in support of a collective demand that the
31	employer agree to alteration of the conditions of employment as being
32	clearly engaged in industrial action and an employee who does not
33	attend for work on account of illness.
34	(2) For the purposes of this Schedule:
35	(a) conduct is capable of constituting industrial action even if the
36	conduct relates to part only of the duties that employees are
37	required to perform in the course of their employment; and
38	(b) a reference to industrial action includes a reference to a
39	course of conduct consisting of a series of industrial actions.

 2 (3) For the purposes of this section, an e 3 from their employment if the employ 4 from performing work under their co 5 without terminating those contracts. 	yer prevents the employees ontracts of employment
6 Burden of proof	
 (4) Whenever a person seeks to rely on a definition of <i>industrial action</i> in sub burden of proving that subparagraph 	osection (1), that person has the
10288Section 8 of Schedule 1B11Repeal the section.	
12 289 Section 18 of Schedule 1B 13Repeal the section, substitute:	
14 18 Employer and employee associations m	nay apply
Any of the following associations m	ay apply for registration as an
16 organisation:	1
(a) a federally registrable association	
(b) a federally registrable association(c) a federally registrable enterprise	
20 18A Federally registrable employer associ	iations
21 (1) An association of employers is <i>feder</i>	rally registrable if:
(a) it is a constitutional corporatio	
(b) the majority of its members are	e federal system employers.
(2) An employer is a <i>federal system emp</i>	<i>ployer</i> if the employer is:
25 (a) a constitutional corporation; or	r
(b) an employer in relation to an e	-
27 (i) operates principally withi	-
28 (ii) is engaged principally in	
Australia and a place outs	
30(iii) is engaged principally in31States; or	trade of commerce among the

1 2	(iv) is engaged principally in trade or commerce within a Territory, between a State and a Territory or between 2
3	Territories; or
4 5	(v) is engaged principally in the supply of postal, telegraphic, telephonic or other like services; or
6 7	(vi) is engaged principally in banking (other than State banking not extending beyond the limits of a State); or
8	(vii) is engaged principally in insurance (other than State
9	insurance not extending beyond the limits of a State); or
10	(c) an employer in relation to public sector employment; or
11	(d) an employer in Victoria, provided the provisions of this
12	Schedule that would apply to the employer as a federal
13	system employer, or to an association of which the employer
14	is a member, fall within the legislative power referred to the
15	Commonwealth under the Commonwealth Powers (Industrial
16	Relations) Act 1996 of Victoria.
17	(3) An association of employers is not <i>federally registrable</i> if it has a
18	member who is not one of the following:
19	(a) an employer;
20	(b) a person (other than an employee) who carries on business;
21	(c) an officer of the association.
22	(4) An association of employers is not <i>federally registrable</i> if:
23	(a) it is only a body corporate because it is or has been registered
24	under this Schedule (whether before or after the
25	commencement of this subsection); and
26	(b) the majority of its members are not federal system
27	employers.
28	18B Federally registrable employee associations
29	(1) An association of employees is <i>federally registrable</i> if:
30	(a) it is a constitutional corporation; or
31	(b) the majority of its members are federal system employees.
32	(2) A person is a <i>federal system employee</i> if the person is:
33	(a) employed by a constitutional corporation; or
34	(b) employed in an enterprise that:
35	(i) operates principally within or from a Territory; or

1	(ii) is engaged principally in trade or commerce between Australia and a place outside Australia; or
2	*
3 4	(iii) is engaged principally in trade or commerce among the States; or
5 6	(iv) is engaged principally in trade or commerce within a Territory, between a State and a Territory or between 2
7	Territories; or
8 9	(v) is engaged principally in the supply of postal, telegraphic, telephonic or other like services; or
10	(vi) is engaged principally in banking (other than State
11	banking not extending beyond the limits of a State); or
12	(vii) is engaged principally in insurance (other than State
13	insurance not extending beyond the limits of a State); or
14	(c) employed in public sector employment; or
15	(d) employed in Victoria, provided the provisions of this
16	Schedule that would apply to the employee as a federal
17	system employee, or to an association of which the employee
18	is a member, fall within the legislative power referred to the
19	Commonwealth under the Commonwealth Powers (Industrial
20	Relations) Act 1996 of Victoria; or
21	(e) an independent contractor who, if he or she were an
22	employee performing work of the kind which he or she
23	usually performs as an independent contractor, would be an
24	employee who could be characterised in one or more of the
25	ways mentioned in paragraphs (a) to (d).
26	(3) An association of employees is not <i>federally registrable</i> if it has a
27	member who is not one of the following:
28	(a) an employee;
29	(b) a person specified in subsection (4);
30	(c) an independent contractor who, if he or she were an
31	employee performing work of the kind which he or she
32	usually performs as an independent contractor, would be an
33	employee eligible for membership of the association;
34	(d) an officer of the association.
35	(4) The persons specified for the purpose of paragraph (3)(b) are
36	persons (other than employees) who:

1 2	(a) are, or are able to become, members of an industrial organisation of employees within the meaning of the
3	Industrial Relations Act 1996 of New South Wales; or
4 5	 (b) are employees for the purposes of the <i>Industrial Relations</i> Act 1999 of Queensland; or
6 7	(c) are employees for the purposes of the <i>Industrial Relations</i> <i>Act 1979</i> of Western Australia; or
8 9	(d) are employees for the purposes of the <i>Industrial and Employee Relations Act 1994</i> of South Australia.
10	(5) An association of employees is not <i>federally registrable</i> if:
11	(a) it is only a body corporate because it is or has been registered
12	under this Schedule (whether before or after the
13	commencement of this subsection); and
14 15	 (b) the majority of the association's members are not federal system employees.
16	18C Federally registrable enterprise associations
17	(1) An <i>enterprise association</i> is an association the majority of the
18	members of which are employees performing work in the same
19	enterprise.
20	(2) An enterprise association is <i>federally registrable</i> if:
21	(a) it is a constitutional corporation; or
22	(b) the majority of its members are federal system employees; or
23	(c) the employer or employers in relation to the relevant
24	enterprise are constitutional corporations; or
25	(d) the relevant enterprise operates principally within or from a
26	Territory; or
27	(e) the relevant enterprise is engaged principally in trade or
28	commerce between Australia and a place outside Australia;
29	or
30	(f) the relevant enterprise is engaged principally in trade or
31	commerce among the States; or
32	(g) the relevant enterprise is engaged principally in trade or
33	commerce within a Territory, between a State and a Territory
34	or between 2 Territories; or
35	 (h) the relevant enterprise is engaged principally in the supply of postal, telegraphic, telephonic or other like services; or
36	

1 2	(i)	the relevant enterprise is engaged principally in banking (other than State banking not extending beyond the limits of
3		a State); or
4 5	(j)	the relevant enterprise is engaged principally in insurance (other than State insurance not extending beyond the limits of a State); or
6	$(1_{\mathbf{r}})$	
7 8	(K)	the relevant enterprise is in Victoria, and the provisions of this Schedule that would apply to the association (both before
9		and after registration), fall within the legislative power
10		referred to the Commonwealth under the Commonwealth
11		Powers (Industrial Relations) Act 1996 of Victoria.
12 13		nterprise association is not <i>federally registrable</i> if it has a ber who is not one of the following:
14		an employee performing work in the relevant enterprise;
		a person specified in subsection (4) performing work in the
15 16	(0)	enterprise;
17	(c)	an independent contractor performing work in the relevant
18	(•)	enterprise who, if he or she were an employee performing
19		work of the kind which he or she usually performs as an
20		independent contractor, would be:
21		(i) an employee who could be characterised in one or more
22		of the ways mentioned in paragraphs 18B(2)(a) to (d);
23		and
24 25		(ii) an employee who would be eligible for membership of the association;
26	(d)	an officer of the association.
27	(4) The r	persons specified for the purpose of paragraph (3)(b) are
28		ns (other than employees) who:
29	_	are, or are able to become, members of an industrial
30		organisation of employees within the meaning of the
31		Industrial Relations Act 1996 of New South Wales; or
32	(b)	are employees for the purposes of the Industrial Relations
33		Act 1999 of Queensland; or
34	(c)	are employees for the purposes of the Industrial Relations
35		Act 1979 of Western Australia; or
36	(d)	are employees for the purposes of the <i>Industrial and</i>
37		Employee Relations Act 1994 of South Australia.
38	(5) An er	nterprise association is not <i>federally registrable</i> if:

1 2 3 4	 (a) it is only a body corporate because it is or has been registered under this Schedule (whether before or after the commencement of this subsection); and (b) it does not satisfy paragraphs (b) to (k) of subsection (2).
5 18D Const	titutional validity
6	Associations of employers
7 (1) 8 9 10 11 12 13	If the Parliament would not have sufficient legislative power to provide for the registration of a particular association of employers if a particular class of employers mentioned in paragraphs 18A(2)(a) to (d) were included when working out whether the majority of its members are federal system employers, subsection 18A(2) applies as if it did not include a reference to that class of employers.
14 (2) 15 16 17 18 19 20	If the Parliament would only have sufficient legislative power to provide for the registration of a particular association of employers if the membership of the association were entirely made up of one or more of the following:(a) federal system employers;(b) persons (other than employees) who carry on business and who would, if they were employers, be federal system
21 22	employers; (c) officers of the association;
23 24 25	then, despite subsection 18A(1), the association is not <i>federally registrable</i> unless it is either a constitutional corporation or made up in that way.
26	Associations of employees
27 (3) 28 29 30 31 32	If the Parliament would not have sufficient legislative power to provide for the registration of an association of employees if a particular class of person mentioned in paragraphs 18B(2)(a) to (e) were included when working out whether the majority of its members are federal system employees, subsection 18B(2) applies as if it did not include a reference to that class of employees.
33 (4) 34	If the Parliament would only have sufficient legislative power to provide for the registration of a particular association of employees

	if the membership of the association were entirely made up of one
	or more of the following:
	(a) federal system employees;
	(b) persons specified in subsection 18B(4);
	(c) officers of the association;
	then, despite subsection 18B(1), the association is not <i>federally</i>
	registrable unless it is either a constitutional corporation or made
	up in that way.
	Enterprise associations
	(5) If the Parliament would only have sufficient legislative power to
	provide for the registration of an enterprise association if the
	membership of the association were entirely made up of one or more of the following:
	(a) federal system employees performing work in the relevant
	enterprise;
	(b) persons specified in subsection 18C(4);
	(c) officers of the association;
	then, despite subsection 18C(2), the association is not <i>federally</i>
	<i>registrable</i> unless it is either a constitutional corporation or made
	up in that way.
290	Subparagraph 19(1)(a)(i) of Schedule 1B
	Omit "section 18", substitute "paragraph 18(a) or (b)".
291	Paragraph 19(1)(i) of Schedule 1B
	Omit "the objects set out in section 5 of this Schedule and section 3 of
	the Workplace Relations Act", substitute "Parliament's intention in
	enacting this Schedule (see section 5) and the object set out in section 3 of the Workplace Relations Act".
~~~	•
292	Subsection 19(3) of Schedule 1B
	Omit "the objects set out in section 5 of this Schedule and section 3 of
	the Workplace Relations Act", substitute "Parliament's intention in
	enacting this Schedule (see section 5) and the object set out in section 3 of the Workplace Relations Act".
202	Subparagraph 20(1)(a)(i) of Schedule 1B
293	

294	Paragraph 20(1)(c) of Schedule 1B Omit "50", substitute "20".
295	Paragraph 20(1)(i) of Schedule 1B
	Omit "the objects set out in section 5 of this Schedule and section 3 of
	the Workplace Relations Act", substitute "Parliament's intention in
	enacting this Schedule (see section 5) and the object set out in section 3 of the Workplace Relations Act".
296	Subsection 20(1B) of Schedule 1B
	Repeal the subsection.
297	Paragraphs 21(3)(a), 21(4)(a) and 22(3)(a) of Schedule 1B
	Omit "paragraph 18(1)(b) or (c)", substitute "paragraph 18(b) or (c)".
298	Paragraph 28(1)(a) of Schedule 1B
	Repeal the paragraph, substitute:
	(a) the conduct of:
	(i) the organisation (in relation to its continued breach of
	an award, an order of the Commission or a collective
	agreement, or its continued failure to ensure that its members comply with and observe an award, an order
	of the Commission or a collective agreement, or in any
	other respect); or
	(ii) a substantial number of the members of the organisation
	(in relation to their continued breach of an award, an
	order of the Commission or a collective agreement, or in
	any other respect); has prevented or hindered the achievement of Parliament's
	intention in enacting this Schedule (see section 5) or of an
	object of this Schedule or the Workplace Relations Act; or
299	Paragraph 28(1)(b) of Schedule 1B
	Repeal the paragraph, substitute:
	(b) the organisation, or a substantial number of the members of
	the organisation or of a section or class of members of the
	organisation, has engaged in industrial action that has
	prevented, hindered or interfered with: (i) the activities of a faderal system employer; or
	(i) the activities of a federal system employer; or

1 2 3		<ul><li>(ii) the provision of any public service by the Commonwealth or a State or Territory or an authority of the Commonwealth or a State or Territory; or</li></ul>
4	300	Paragraphs 28(1)(d) and (e) of Schedule 1B
5		Repeal the paragraphs, substitute:
6		(d) the organisation, or a substantial number of the members of
7 8		the organisation or of a section or class of members of the organisation, has or have failed to comply with:
9 10 11		<ul> <li>(i) an injunction granted under subsection 111(12) of the Workplace Relations Act (which deals with orders to stop industrial action); or</li> </ul>
12 13 14		<ul> <li>(ii) an order made under section 114A or 114B of the Workplace Relations Act (which deals with contraventions of the strike pay provisions); or</li> </ul>
15 16		<ul><li>(iii) an order made under section 268 of the Workplace Relations Act (which deals with contraventions of the</li></ul>
17		freedom of association provisions); or
18 19		<ul><li>(iv) an interim injunction granted under section 354A of the Workplace Relations Act so far as it relates to conduct</li></ul>
20 21 22		or proposed conduct that could be the subject of an injunction or order under a provision of the Workplace Relations Act mentioned in subparagraphs (i) to (iii); or
23 24		<ul><li>(v) an order made under section 23 (which deals with contraventions of the employee associations</li></ul>
25		provisions); or (vi) an order made under subsection 131(2) (which deals
26 27		with contraventions of the withdrawal from
28		amalgamation provisions).
29	301	After subsection 28(1) of Schedule 1B
30		Insert:
31		(1A) The Industrial Registrar may apply to the Federal Court for an
32		order cancelling the registration of an organisation on the ground
33		that the organisation has failed to comply with an order of the Federal Court made under subsection 336(5) in relation to the
34 35		organisation.
36 37		Note: Section 336 deals with the situation where a Registrar is satisfied, after an investigation, that a reporting unit of an organisation has

1 2		contravened Part 3 of Chapter 8, or guidelines or rules relating to financial matters.
3	302	Subsection 28(2) of Schedule 1B
4		After "subsection (1)", insert "or (1A)".
5 6	303	Subsection 28(7) of Schedule 1B Repeal the subsection, substitute:
7 8 9 10 11		(7) A finding of fact in proceedings under section 23 or subsection 131(2) of this Schedule, or section 111, 114A, 114B or 268 of the Workplace Relations Act, is admissible as prima facie evidence of that fact in an application made on a ground specified in paragraph (1)(d).
12	304	Subsection 29(1) of Schedule 1B
13		After "subsection 28(1)", insert "or (1A)".
14	305	Paragraph 29(2)(a) of Schedule 1B
15		Omit "certified agreements or old IR agreements", substitute "collective agreements".
16		agreements .
17	306	Subparagraph 30(1)(c)(ii) of Schedule 1B
18		Repeal the subparagraph, substitute:
19 20 21		<ul> <li>(ii) the organisation is an organisation of employees, other than an enterprise association, and has fewer than 50 members who are employees; or</li> </ul>
22 22 23		<ul><li>(iii) the organisation is an enterprise association and has fewer than 20 members who are employees; or</li></ul>
24 25		<ul><li>(iv) the organisation is an organisation of employers and the members who are employers have, in the aggregate,</li></ul>
26		throughout the 6 months before the application, not
27 28		employed on an average taken per month at least 50 employees; or
29		(v) the organisation is not, or is no longer, a federally
30		registrable association.
31	307	Paragraph 32(c) of Schedule 1B
32		Omit ", certified agreement or old IR agreement", substitute "or
33		collective agreement".

1	308	Subsection 38(6) of Schedule 1B
2		Omit "certified agreement or old IR agreement", substitute "collective
3		agreement".
4	309	Paragraph 38(8)(c) of Schedule 1B
5		After "attainment of", insert "Parliament's intention in enacting this
6		Schedule (see section 5) or".
7	310	Paragraph 55(1)(d) of Schedule 1B
8 9		Omit ", certified agreements and old IR agreements", substitute "or collective agreements".
10	311	Paragraph 57(1)(b) of Schedule 1B
11		Omit ", certified agreements and old IR agreements", substitute "and
12		collective agreements".
13	312	Sub-subparagraph 73(2)(c)(ii)(A) of Schedule 1B
14		Omit "certified agreements or old IR agreements", substitute "collective
15		agreements".
16	313	Paragraph 76(a) of Schedule 1B
17 18		Omit "certified agreement or old IR agreement", substitute "collective agreement".
19	Note:	The heading to section 76 of Schedule 1B is altered by omitting "certified" and
20		substituting "collective".
21	314	Paragraphs 94(1)(b) and (c) of Schedule 1B
22		Repeal the paragraphs, substitute:
23		(b) the amalgamation occurred no less than 2 years prior to the
24		date of the application; and
25		(c) the application is made:
26		(i) if the amalgamation occurred before 31 December
27		1996—before the period of 3 years after the
28		commencement of this subparagraph has elapsed or, if a longer period is prescribed, before that longer period has
29 30		elapsed; or
31		(ii) if the amalgamation occurred after 31 December 1996—
32		before the period of 5 years after the amalgamation
33		occurred has elapsed.
		•

1	315	After paragraph 94(3)(a) of Schedule 1B
2		Insert:
3		(aa) a person authorised to make the application by the prescribed
4		number of constituent members; or
5	316	At the end of subsection 94(3) of Schedule 1B
6		Add:
7		; or (d) a person who is:
8 9		<ul><li>(i) either a constituent member or a member of a committee of management referred to in paragraph (b) or (c); and</li></ul>
10		
11 12		<ul><li>(ii) authorised to make the application by a committee of management referred to in paragraph (b) or (c).</li></ul>
13	317	At the end of section 94 of Schedule 1B
14		Add:
15		(6) The regulations may prescribe the manner in which an
16		authorisation for the purposes of paragraph (3)(aa) and
17		subparagraph (3)(d)(ii) must be made.
18	318	Paragraph 106(2)(c) of Schedule 1B
19 20		Omit "paragraph 94(3)(b) or (c)", substitute "paragraph 94(3)(aa), (b), (c) or (d)".
21	319	Paragraph 107(1)(c) of Schedule 1B
22 23		Omit "paragraph 94(3)(b) or (c)", substitute "paragraph 94(3)(aa), (b), (c) or (d)".
24	320	Subsection 113(1) of Schedule 1B
25		Omit ", a certified agreement or an old IR agreement", substitute "or a
26		collective agreement".
27 28	Note:	The heading to section 113 of Schedule 1B is replaced by the heading "Orders of the Commission, awards etc. made before withdrawal".
29	321	Subsection 113(2) of Schedule 1B
30		Omit ", certified agreement or old IR agreement", substitute "or
31		collective agreement".

ULL	After section 113 of Schedule 1B Insert:
113A	Collective agreements made after withdrawal
	<ul> <li>(1) This section applies to a collective agreement that:</li> <li>(a) is made on or after the day the registration takes effect; a</li> <li>(b) is binding on the amalgamated organisation; and</li> </ul>
	(c) covers employees who are eligible to be members of the newly registered organisation.
	(2) On and from the day the agreement becomes binding on the amalgamated organisation, it also:
	(a) becomes binding on the newly registered organisation an members; and
	<ul> <li>(b) has effect for all purposes (including the obligations of employers and organisations of employers) as if reference the agreement to the amalgamated organisation included references to the newly registered organisation.</li> </ul>
	(3) Subsection (2) ceases to have effect on the day occurring 5 year after the day on which the registration of the newly registered organisation takes effect.
323	Subsection 134(1) of Schedule 1B Repeal the subsection.
324	Subsection 134(2) of Schedule 1B Omit "(2)".
325	Section 135 of Schedule 1B (note) Repeal the note.
326	At the end of Part 2 of Chapter 4 of Schedule 1B Add:
138A	Representation rights of former State-registered associatio
	(1) Regulations made for the purposes of this subsection may mod the way in which this Chapter applies in relation to an organisa

1 2		that, before becoming registered under this Schedule, was a State-registered association or a transitionally registered
3		association.
4 5		(2) Without limiting subsection (1), the regulations may specify the weight that the Commission is to give, in making an order in
6		relation to the rights of such an organisation to represent the
7		interests under this Schedule or the Workplace Relations Act of a
8 9		particular class or group of employees, to a State demarcation order.
10	327	Paragraph 142(1)(a) of Schedule 1B
11 12		Omit ", a certified agreement or an old IR agreement", substitute "or a collective agreement".
13	328	Subparagraphs 142(1)(b)(i) and (ii) of Schedule 1B
14		Omit ", a certified agreement or an old IR agreement", substitute "or a
15		collective agreement".
16	329	Paragraph 142(1)(c) of Schedule 1B
17		Omit "the objects of this Schedule and the Workplace Relations Act and
18 19		the purposes of the registration of organisations under this Schedule", substitute "Parliament's intention in enacting this Schedule (see
20		section 5) and the objects of this Schedule and the Workplace Relations
21		Act".
22	330	Subparagraph 144(3)(a)(i) of Schedule 1B
23		Omit ", certified agreements and old IR agreements", substitute "or
24		collective agreements".
25	331	Before subparagraph 151(5)(a)(i) of Schedule 1B
26		Insert:
27		(ia) Parliament's intention in enacting this Schedule (see
28		section 5); or
29	332	Paragraph 152(6)(a) of Schedule 1B
30		After "contrary to", insert "Parliament's intention in enacting this
31		Schedule (see section 5) or".
32	333	Paragraph 159(1)(a) of Schedule 1B

1 2		Omit ", certified agreements and old IR agreements", substitute "and collective agreements".	
3	334	Subsection 177(3) of Schedule 1B	
4 5		Omit ", certified agreement or old IR agreement", substitute "or collective agreement".	
6	335	Subparagraph 180(1)(a)(i) of Schedule 1B	
7		Omit "paragraph 18(1)(a)", substitute "paragraph 18(a)".	
8	336	Subparagraph 180(1)(a)(ii) of Schedule 1B	
9 10		Omit "paragraph 18(1)(b) or 18(1)(c)", substitute "paragraph 18(b) or (c)".	
11	337	Subsection 180(5) of Schedule 1B	
12		Repeal the subsection.	
13	338	Subparagraph 246(2)(b)(i) of Schedule 1B	
14 15		Omit ", certified agreements or old IR agreements", substitute "or collective agreements".	
16	339	Subparagraph 249(5)(b)(i) of Schedule 1B	
17 18		Omit ", certified agreements or old IR agreements", substitute "or collective agreements".	
19	340	At the end of section 281 of Schedule 1B	
20		Add:	
21		Part 3 sets out the general duties of officers and employees in	
22		relation to orders or directions of the Federal Court or the	
23		Commission.	
24	341	At the end of Chapter 9 of Schedule 1B	
25		Add:	

1	Part 3—General duties in relation to orders and
2	directions

# 3 Division 1—Preliminary

## **294** Simplified outline

5 6	This Part sets out the general duties of officers and employees in relation to orders or directions of the Federal Court or the
7	Commission.
8	295 Meaning of <i>involved</i>
9	For the purposes of this Part, a person is <i>involved</i> in a
10	contravention if, and only if, the person has:
11	(a) aided, abetted, counselled or procured the contravention; or
12 13	(b) induced, whether by threats or promises or otherwise, the contravention; or
14	(c) been in any way, by act or omission, directly or indirectly,
15	knowingly concerned in or party to the contravention; or
16	(d) conspired with others to effect the contravention.
17	296 Application to officers and employees of branches
18	In this Part:
19	(a) a reference to an officer of an organisation includes a
20	reference to an officer of a branch of an organisation; and
21	(b) a reference to an employee of an organisation includes a
22	reference to an employee of a branch of an organisation.
23	Division 2—General duties in relation to orders and
24	directions
25	297 Order or direction applying to organisation—civil obligation
26	(1) This section applies if:

1		(a) the Federal Court or the Commission has made an order or a
2		direction under this Schedule or the Workplace Relations
3		Act; and
4		(b) the order or direction is in force; and
5		(c) the order or direction applies to an organisation.
6	(2)	An officer or employee of the organisation must not do anything
7		that would cause the organisation to contravene the order or
8		direction, knowing, or reckless as to whether, the doing of the thing
9		would result in the contravention.
10		Note: This subsection is a civil penalty provision (see section 305).
11	(3)	An officer or employee of the organisation who is involved in a
12		contravention of the order or direction, or of subsection (2),
13		contravenes this subsection.
14		Note: This subsection is a civil penalty provision (see section 305).
15	298 Prohi	bition order or direction applying to organisation—civil
16	<b>_</b> >0 110m	obligation
10		~~ <u>-</u>
17	(1)	This section applies if:
18 19		(a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations
20		Act; and
21		(b) the order or direction is in force; and
22		(c) the order or direction applies to an organisation; and
23		(d) the order or direction prohibits the organisation from doing
24		something.
25	(2)	An officer or employee of the organisation must not do anything
26		that would contravene the order or direction if the order or
27		direction had applied to him or her, knowing, or reckless as to
28		whether, the doing of the thing would result in such a
29		contravention.
30		Note: This subsection is a civil penalty provision (see section 305).
31	(3)	An officer or employee of the organisation who is involved in a
32		contravention of subsection (2) contravenes this subsection.
33		Note: This subsection is a civil penalty provision (see section 305).

1	299 Order	or direction applying to officer—civil obligation
2	(1)	This section applies if: (a) the Federal Court or the Commission has made an order or a
3 4		<ul> <li>(a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations Act; and</li> </ul>
5 6		(b) the order or direction is in force; and
7		<ul><li>(c) the order or direction applies to an officer of an organisation.</li></ul>
8 9		The officer must not knowingly or recklessly contravene the order or direction.
10		Note: This subsection is a civil penalty provision (see section 305).
11 12		An officer or employee of the organisation who is involved in a contravention of subsection (2) contravenes this subsection.
13		Note: This subsection is a civil penalty provision (see section 305).
14 15		bition order or direction applying to officer—civil obligation
16	(1)	This section applies if:
17 18		<ul> <li>(a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations</li> </ul>
19 20		Act; and (b) the order or direction is in force; and
20		(c) the order or direction applies to an officer of an organisation;
22		and
23		(d) the order or direction prohibits the officer from doing
24		something.
25	(2)	An officer or employee of the organisation must not do anything
26		that would contravene the order or direction if the order or
27		direction had applied to him or her, knowing, or reckless as to
28		whether, the doing of the thing would result in such a
29		contravention.
30		Note: This subsection is a civil penalty provision (see section 305).
31		An officer or employee of the organisation who is involved in a
32		contravention of subsection (2) contravenes this subsection.
33		Note: This subsection is a civil penalty provision (see section 305).

	der or direction applying to employee—civil obligation
	(1) This section applies if:
	(a) the Federal Court or the Commission has made an order or
	direction under this Schedule or the Workplace Relations
	Act; and
	(b) the order or direction is in force; and
	(c) the order or direction applies to an employee of an organisation.
	(2) The employee must not knowingly or recklessly contravene the order or direction.
	Note: This subsection is a civil penalty provision (see section 305).
	(3) An officer or employee of the organisation who is involved in a contravention of subsection (2) contravenes this subsection.
	Note: This subsection is a civil penalty provision (see section 305).
302 F	ohibition order or direction applying to employee—civil
002 1	obligation
	C C
	(1) This section applies if:
	<ul> <li>(1) This section applies if:</li> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations</li> </ul>
	<ul> <li>(1) This section applies if:</li> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> </ul>
	<ul> <li>(1) This section applies if:</li> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> <li>(b) the order or direction is in force; and</li> </ul>
	<ul> <li>(1) This section applies if:</li> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> <li>(b) the order or direction is in force; and</li> <li>(c) the order or direction applies to an employee of an</li> </ul>
	<ul> <li>(1) This section applies if:</li> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> <li>(b) the order or direction is in force; and</li> <li>(c) the order or direction applies to an employee of an organisation; and</li> </ul>
	<ul> <li>(1) This section applies if:</li> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> <li>(b) the order or direction is in force; and</li> <li>(c) the order or direction applies to an employee of an</li> </ul>
	<ul> <li>(1) This section applies if:</li> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> <li>(b) the order or direction is in force; and</li> <li>(c) the order or direction applies to an employee of an organisation; and</li> <li>(d) the order or direction prohibits the employee from doing</li> </ul>
	<ul> <li>(1) This section applies if:</li> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> <li>(b) the order or direction is in force; and</li> <li>(c) the order or direction applies to an employee of an organisation; and</li> <li>(d) the order or direction prohibits the employee from doing something.</li> </ul>
	<ol> <li>This section applies if:         <ul> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> <li>(b) the order or direction is in force; and</li> <li>(c) the order or direction applies to an employee of an organisation; and</li> <li>(d) the order or direction prohibits the employee from doing something.</li> </ul> </li> <li>(2) An officer or employee of the organisation must not do anything that would contravene the order or direction if the order or direction if the order or direction had applied to him or her, knowing, or reckless as to</li> </ol>
	<ol> <li>This section applies if:         <ul> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> <li>(b) the order or direction is in force; and</li> <li>(c) the order or direction applies to an employee of an organisation; and</li> <li>(d) the order or direction prohibits the employee from doing something.</li> </ul> </li> <li>(2) An officer or employee of the organisation must not do anything that would contravene the order or direction if the order or</li> </ol>
	<ol> <li>This section applies if:         <ul> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> <li>(b) the order or direction is in force; and</li> <li>(c) the order or direction applies to an employee of an organisation; and</li> <li>(d) the order or direction prohibits the employee from doing something.</li> </ul> </li> <li>(2) An officer or employee of the organisation must not do anything that would contravene the order or direction if the order or direction had applied to him or her, knowing, or reckless as to whether, the doing of the thing would result in such a</li> </ol>
	<ol> <li>This section applies if:         <ul> <li>(a) the Federal Court or the Commission has made an order or direction under this Schedule or the Workplace Relations Act; and</li> <li>(b) the order or direction is in force; and</li> <li>(c) the order or direction applies to an employee of an organisation; and</li> <li>(d) the order or direction prohibits the employee from doing something.</li> </ul> </li> <li>(2) An officer or employee of the organisation must not do anything that would contravene the order or direction if the order or direction if the order or direction had applied to him or her, knowing, or reckless as to whether, the doing of the thing would result in such a contravention.</li> </ol>

1 2	303 Order or direction applying to member of organisation—civil obligation
3	(1) This section applies if:
4 5 6	<ul> <li>(a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations Act; and</li> </ul>
7	(b) the order or direction is in force; and
8	(c) the order or direction applies to a member of an organisation.
9 10	(2) An officer or employee of the organisation who is involved in a contravention of the order or direction contravenes this subsection.
11	Note: This subsection is a civil penalty provision (see section 305).
12	303A Application of this Division
13	This Division applies in relation to:
14	(a) orders and directions made by the Federal Court or the
15	Commission before, on or after the commencement of this
16 17	Division; and (b) acts done or omissions made on or after that commencement.
17	(b) acts done of offissions made of of arter that commencement.
18	342 After paragraph 305(2)(zj) of Schedule 1B
19	Insert:
20 21 22	(zk) subsections 297(2) and (3), 298(2) and (3), 299(2) and (3), 300(2) and (3), 301(2) and (3), 302(2) and (3), and 303(2) (officers' duties);
23	343 After subsection 307(1) of Schedule 1B
24	Insert:
25	Compensation for damage suffered—contravention of Part 3 of
26	Chapter 9
27	(1A) The Federal Court may order a person to compensate an
28	organisation for damage suffered by the organisation if:
29 30	<ul> <li>(a) the person has contravened a civil penalty provision in Part 3 of Chapter 9 in relation to the organisation; and</li> </ul>
31	(b) the Court is satisfied that the organisation took reasonable
32	steps to prevent the contravention of the provision; and

1		(c) the damage resulted from the contravention.
2		The order must specify the amount of the compensation.
3 4	Note:	The heading to subsection 307(1) of Schedule 1B is replaced by the heading "Compensation for damage suffered—contravention of Part 2 of Chapter 9".
5	344	At the end of subsection 310(1) of Schedule 1B
6 7		Add "(other than an order in relation to a contravention of a provision covered by paragraph $305(2)(zk)$ )".
8	345	After subsection 310(1) of Schedule 1B
9		Insert:
10		Application by Minister
11		(2) The Minister, or some other person authorised in writing by the
12		Minister under this subsection to make the application, may apply
13 14		for an order under this Part in relation to a contravention of a provision covered by paragraph 305(2)(zk).
15	346	Section 317 of Schedule 1B (after the paragraph relating
16	• • •	to Part 4A)
17		Insert:
18		Part 4B confers functions and powers on the Commission in
18		relation to matters arising under this Schedule, in addition to those
20		conferred by Division 3A of Part II of the Workplace Relations
21		Act.
22	347	Subparagraphs 337A(b)(iii), (iv) and (v) of Schedule 1B
23		Repeal the subparagraphs, substitute:
24		(iii) the Australian Building and Construction
25		Commissioner;
26		(iv) an Australian Building and Construction Inspector;
27		(v) a workplace inspector; and
28	348	After Part 4A of Chapter 11 of Schedule 1B
29		Insert:

# Part 4B—Functions and powers of the Commission

337E	Additional functions and powers
	The functions and powers conferred on the Commission by a provision of this Part or this Schedule are in addition to those conferred on the Commission by Division 3A of Part II of the Workplace Relations Act.
337F	Powers of inspection
	(1) For the purpose of, or in relation to, the exercise of another power or the performance of a function, conferred by this Schedule, a member of the Commission may at any time during working hour
	(a) enter prescribed premises; and
	<ul> <li>(b) inspect or view any work, material, machinery, appliance, article, document or other thing on the prescribed premises;</li> </ul>
	and
	(c) interview, on the prescribed premises, any employee who is usually engaged in work on the prescribed premises.
	(2) In this section:
	prescribed premises means premises on which or in relation to
	which:
	(a) an industry is carried on; or
	(b) work is being, or has been done, or commenced; or
	(c) an award or an order of the Commission has been made; or (d) a collective acrossment is in operation
	(d) a collective agreement is in operation.
337G	Parties to proceedings
	The Commission may direct that parties be joined or struck out a
	parties to proceedings under this Schedule.
337H	Kinds of orders
	The orders that the Commission may make under this Schedule
	include the following:

1 2 3 4 5 6	<ul> <li>(b) provisional or interim orders;</li> <li>(c) orders including, or varying orders to include, a provision to the effect that engaging in conduct in breach of a specified term of the order is to be taken to constitute the commission of a separate breach of the term on each day on which the conduct continues.</li> </ul>
7	337J Relief not limited to claim
8 9 10 11 12	In making an order in proceedings under this Schedule, the Commission is not restricted to the specific relief claimed by the parties concerned, but may include in the order anything which the Commission considers necessary or expedient for the purposes of dealing with the proceedings.
13	337K Publishing orders
14 15	<ol> <li>If the Commission makes an order under this Schedule, the Commission must promptly:</li> </ol>
16	(a) reduce the order to writing that:
17 18	(i) is signed by at least one member of the Commission; and
19	(ii) shows the day on which it is signed; and
20	(b) give to a Registrar:
21	(i) a copy of the order; and
22 23	<ul><li>(ii) a list specifying each party who appeared at the hearing of the proceeding concerned.</li></ul>
24	(2) The Commission must ensure that an order under this Schedule is
25	expressed in plain English and is easy to understand in structure
26	and content.
27	(3) A Registrar who receives a copy of an order under subsection (1)
28	must promptly:
29	(a) provide a copy of:
30	(i) the order; and
31	(ii) any written reasons received by the Registrar for the
32	order;
33 34	to each party shown on the list given to the Registrar under subparagraph $(1)(b)(ii)$ ; and

1 2		(b) ensure that copies of each of the following are available for inspection at each registry:
3		(i) the order;
4		(ii) any written reasons received by the Registrar for the
5		order.
6		(4) The Industrial Registrar must ensure that the following are
7		published as soon as practicable:
8		(a) an order under this Schedule;
9 10		(b) any written reasons for the order that are received by the Registrar.
11		(5) If a member of the Commission ceases to be a member:
12 13		<ul> <li>(a) after an order under this Schedule has been made by the Commission constituted by the member; but</li> </ul>
13		(b) before the order has been reduced to writing or before it has
15		been signed by the member;
16		a Registrar must reduce the order to writing, sign it and seal it with
17 18		the seal of the Commission, and the order has effect as if it had been signed by the member of the Commission.
19	349	Section 345 of Schedule 1B
20		Before "Subject", insert "(1).
21	350	At the end of section 345 of Schedule 1B
22		Add:
23 24		(2) This section does not apply to protected action ballots ordered under Division 4 of Part VC of the Workplace Relations Act.
25	351	Section 346 of Schedule 1B
26		Before "A financial", insert "(1)".
27	352	At the end of section 346 of Schedule 1B
28		Add:
29 30		(2) This section does not apply to protected action ballots ordered under Division 4 of Part VC of the Workplace Relations Act.
31	353	Section 357 of Schedule 1B
32		Omit "monetary penalty", substitute "pecuniary penalty".

1	354	Paragraph 358(1)(a) of Schedule 1B
2		Omit "monetary penalty", substitute "pecuniary penalty".
3	355	Schedule 1 (heading)
4		Repeal the heading, substitute:
5	Scl	nedule 1—Extra provisions relating to
6		definitions
7	Note:	See sections 4, 4AA, 4AB and 4AC.
8 9	356	Clause 1 of Schedule 1 (definition of <i>flight crew officer's employer</i> )
10		Repeal the definition.
11	357	Clause 1 of Schedule 1 (definition of <i>waterside employer</i> )
12		Repeal the definition.
13	358	Clause 2 of Schedule 1
14		Repeal the clause, substitute:
15	2 R	eferences to employee with its ordinary meaning
16 17		Each of the following references to employee has its ordinary meaning (subject to subsections 4AA(3) and (4)):
18		(a) a reference in section 3;
19		(b) a reference in any of the following definitions in subsection
20		4(1):
21		(i) <i>applies to employment generally</i> ;
22		(ii) <i>industry</i> ;
23		(iii) State employment agreement;
24		(iv) State or Territory training authority;
25		(v) training arrangement;
26		(vi) <i>trade union</i> ;
27		(c) a reference in paragraph $7C(3)(f)$ or (m);
28		(d) a reference in section 44E;
29		(e) a reference in subsection 90G(3);

1	(f) a reference in section 90Z;
2	(g) the first reference in subsection 90ZD(1);
3	(h) a reference in Division 2 or 5 of Part VIA;
4	(i) a reference in Part IX;
5	(j) a reference in Part XA;
6	(k) a reference in Part 4, 5 or 6 of Schedule 14.
7 8 9	Note 1: Subsection 4AA(3) provides that a reference to an employee with its ordinary meaning includes a reference to a person who is usually an employee.
10 11 12	Note 2: Subsection 4AA(4) provides that a reference to an employee with its ordinary meaning does not include a reference to a person on a vocational placement.
13	Note 3: The regulations may amend this clause. See clause 5.
14	<b>3</b> References to employer with its ordinary meaning
15	Each of the following references to employer has its ordinary
16	meaning (subject to subsection 4AB(3)):
17	(a) a reference in section 3;
18	(b) a reference in any of the following definitions in subsection
19	4(1):
20	(i) <i>applies to employment generally</i> ;
21	(ii) <i>industry</i> ;
22	(iii) State employment agreement;
23	(iv) <i>training arrangement</i> ;
24	(v) vocational placement;
25	(c) a reference in paragraph 7C(3)(m);
26	(d) a reference in section 90Z;
27	(e) a reference in Division 2 or 5 of Part VIA;
28	(f) a reference in Part IX;
29	(g) a reference in Part XA;
30	(h) a reference in Division 2 of Part 2 of Schedule 14.
31 32 33	Note 1: Subsection 4AB(3) provides that a reference to employer with its ordinary meaning includes a reference to a person who is usually an employer.
34	Note 2: The regulations may amend this clause. See clause 5.

1	4 References to employment with its ordinary meaning
2	Each of the following references to employment has its ordinary
3	meaning:
4	(a) a reference in section 3;
5	(b) a reference in any of the following definitions in subsection
6	4(1), except a reference forming part of the defined term
7	itself:
8	(i) applies to employment generally;
9	(ii) <i>public sector employment</i> ;
10	(iii) State employment agreement;
11	(iv) State or Territory industrial law;
12	(v) <i>trade union</i> ;
13	(c) a reference in section 44A, 44D or 44E;
14	(d) a reference in section 90Z;
15	(e) a reference in Division 2 or 5 of Part VIA;
16	(f) a reference in Part IX;
17	(g) a reference in Part XA.
18	Note: The regulations may amend this clause. See clause 5.
19	5 Regulations may amend clauses 2, 3 and 4
20	(1) The regulations may amend clauses 2, 3 and 4.
21	(2) For the purposes of the Amendments Incorporation Act 1905,
22 23	amendments of any of clauses 2, 3 and 4 made by regulations are to be treated as if they had been made by an Act.
24 25	Note: Subclause (2) ensures that the amendments can be incorporated into a reprint of this Act.
26	359 After Schedule 12
27	Insert:
28	Schedule 13—Transitional arrangements for
29	parties bound by federal awards
30	Note: See section 4A.

# **Part 1—Preliminary**

# 2 **Division 1—Objects of Schedule**

## 3 **1 Objects of Schedule**

4	(1) This Schedule provides transitional arrangements for certain
5	employers (transitional employers) that were bound immediately
6	before the reform commencement by an award (a transitional
7	award), and their employees (transitional employees).
8	(2) The objects of this Schedule are to ensure that, during the
9	transitional period:
10	(a) transitional awards continue in operation and are maintained
11	by the Commission, within the limits specified in this
12	Schedule; and
13	(b) transitional employers and their employees are able to cease
14	to be bound by a transitional award in appropriate
15	circumstances, including by making agreements under State
16	laws; and
17	(c) the Commission's functions and powers to vary transitional
18	awards are exercised so that wages and other monetary
19	entitlements are not inconsistent with wage-setting decisions
20	of the AFPC; and
21	(d) appropriate compliance and enforcement mechanisms remain
22	available.

## 23 Division 2—Interpretation

## 24 **2 Definitions**

25	(1) In this Schedule:
26	allowable transitional award matters means the matters covered
27	by subclause 17(1).
28 29	Note: The matters referred to in subclause 17(1) have a meaning that is affected by clause 18.
30	arbitration powers means the powers of the Commission in
31	relation to arbitration.

1 2	<i>award</i> means an award within the meaning of subsection 4(1) of this Act as in force immediately before the reform commencement.
3	breach includes non-observance.
4	<i>cease dealing</i> , in relation to an industrial dispute, means:
5	(a) to dismiss the whole or a part of a matter to which the
6	industrial dispute relates; or
7	(b) to refrain from further hearing or from determining the
8	industrial dispute or part of the industrial dispute.
9	<i>committee of management</i> , in relation to an organisation,
10	association or branch of an organisation or association, means the
11	group or body of persons (however described) that manages the
12	affairs of the organisation, association or branch.
13	conciliation powers means the powers of the Commission in
14	relation to conciliation.
15	Court means the Federal Court of Australia or the Federal
16	Magistrates Court.
17	<i>employee</i> means an individual so far as:
18	(a) he or she is employed by an excluded employer, except on a
19	vocational placement; or
20	(b) his or her usual occupation involves being employed by an
21	excluded employer, except on a vocational placement.
22	<i>employer</i> means an excluded employer.
23	<i>employment</i> means employment of an employee within the
24	meaning of this Schedule.
25	excluded employer means an employer (within the ordinary
26	meaning of the term) so far as the definition of employer in
27	subsection $4AB(1)$ does not cover the employer.
28	<i>industrial action</i> has the meaning given by clause 3.
29	industrial dispute means:
30	(a) an industrial dispute (including a threatened, impending or
31	probable industrial dispute):
32	(i) extending beyond the limits of any one State; and

1	(ii) that is about allowable transitional award matters
2 3	pertaining to the relationship between transitional employers and transitional employees; or
4	(b) a situation that is likely to give rise to an industrial dispute of
4 5	the kind referred to in paragraph (a).
6	For the purposes of subparagraph (a)(ii) of this definition, matters
7	pertaining to the relationship between transitional employers and
8	transitional employees do not include matters pertaining to the
9	relationship between a transitional employer and a third party (for
10	example an independent contractor).
11	outworker means a transitional employee who, for the purposes of
12	the business of a transitional employer, performs work at private
13	residential premises or at other premises that are not business or
14	commercial premises of the employer.
15	preserved transitional award term has the meaning given by
16	subclause 22(2).
17	reform commencement means the time at which this Schedule
18	commences.
19	relevant Presidential Member, in relation to an industrial dispute,
20	means the Presidential Member who has been given the
21	responsibility by the President for organising and allocating the
22	work of the panel to which the industry concerned has been
23	assigned or, if the industry concerned has not been assigned to a
24	panel, the President.
25	State award means an award, order, decision or determination of a
26	State industrial authority.
27	State employment agreement means an agreement:
28	(a) between an employer and either or both of the following:
29	(i) one or more employees of the employer;
30	(ii) one or more trade unions; and
31	(b) that regulates wages and conditions of employment of one or
32	more employees; and
33	(c) that is made under a law of a State that provides for such
34	agreements; and
35	(d) that prevails over an inconsistent State award.
36	State industrial authority means:

1	(a) a board or court of conciliation or arbitration, or tribunal,
2	body or persons, having authority under a State Act to
3	exercise any power of conciliation or arbitration in relation to industrial disputes within the limits of the States or
4	industrial disputes within the limits of the State; or
5 6	<ul> <li>(b) a special board constituted under a State Act relating to factories; or</li> </ul>
7	(c) any other State board, court, tribunal, body or official
8	prescribed for the purposes of this definition.
9	transitional award means an award as continued in force on and
10	from the reform commencement by subclause $4(2)$ , and, to avoid
11	doubt, includes any variations made under this Schedule.
12	transitional award-related order means an order varying, revoking
13	or suspending a transitional award under this Schedule.
14	transitional employee means an employee of a transitional
15	employer.
16	transitional employer means an excluded employer that is bound
17	by a transitional award.
18 19	<i>transitional period</i> means the period of 5 years beginning on the reform commencement.
20	Vistorian reference award means on sword mode under this Ast in
20 21	<i>Victorian reference award</i> means an award made under this Act in its operation in accordance with repealed subsection 493(1).
22	(2) In this Schedule, a reference to an industrial dispute includes a
23	reference to:
24	(a) a part of an industrial dispute; and
25	(b) an industrial dispute so far as it relates to a matter in dispute;
26	and
27	(c) a question arising in relation to an industrial dispute.
28	(3) In this Schedule, a reference to engaging in conduct includes a
29	reference to being, whether directly or indirectly, a party to or
30	concerned in the conduct.
31	(4) A reference in this Schedule to a term of a transitional award
32	includes a reference to a provision of a transitional award.
	•

# **3 Meaning of** *industrial action*

2 3	(1) For the purposes of this Schedule, <i>industrial action</i> means any action of the following kinds:
4	(a) the performance of work by a transitional employee in a
5	manner different from that in which it is customarily
6	performed, or the adoption of a practice in relation to work
7	by a transitional employee, the result of which is a restriction
8	or limitation on, or a delay in, the performance of the work,
9	where:
10	(i) the terms and conditions of the work are prescribed,
11	wholly or partly, by a transitional award; or
12 13	(ii) the work is performed, or the practice is adopted, in connection with an industrial dispute;
14	(b) a ban, limitation or restriction on the performance of work by
15	a transitional employee, or on acceptance of or offering for
16	work by a transitional employee, in accordance with the
17	terms and conditions prescribed by a transitional award;
18	(c) a ban, limitation or restriction on the performance of work by
19	a transitional employee, or on acceptance of or offering for
20	work by a transitional employee, that is adopted in
21	connection with an industrial dispute;
22	(d) a failure or refusal by transitional employees to attend for
23	work or a failure or refusal to perform any work at all by
24	transitional employees who attend for work, if:
25	(i) the transitional employees are members of an
26	organisation and the failure or refusal is in accordance
27	with a decision made, or direction given, by an
28	organisation, the committee of management of the
29	organisation, or an officer or a group of members of the
30	organisation acting in that capacity; or
31	(ii) the failure or refusal is in connection with an industrial
32	dispute;
33	(e) the lockout of transitional employees from their employment
34	by the transitional employer of the employees if:
35	(i) the terms and conditions of the employment are
36	prescribed, wholly or partly, by a transitional award; or
37	(ii) the lockout is in connection with an industrial dispute;
38	but does not include any of the following:

1 2	(f) action by transitional employees that is authorised or agreed to by the transitional employer of the employees;
3 4	(g) action by a transitional employer that is authorised or agreed to by or on behalf of transitional employees of the employer;
5	(h) action by a transitional employee if:
6	(i) the action was based on a reasonable concern by the
7	transitional employee about an imminent risk to his or
8	her health or safety; and
9	(ii) the transitional employee did not unreasonably fail to
10	comply with a direction of his or her employer to
11	perform other available work, whether at the same or
12	another workplace, that was safe and appropriate for the
13	employee to perform.
14	Note 1: See also subclause (4) which deals with the burden of proof of the
15	exception in subparagraph (h)(i) of this definition.
16	Note 2: The issue of whether action that is not industrial in character is
17	industrial action was considered by the Commission in Automotive,
18	Food, Metals, Engineering, Printing and Kindred Industries Union
19	and Others v The Age Company Limited, PR946290. In that case, the
20	Full Bench of the Commission drew a distinction between an
21	employee who does not attend for work in support of a collective
22	demand that the employer agree to alteration of the conditions of
23	employment as being clearly engaged in industrial action and an
24	employee who does not attend for work on account of illness.
25	(2) For the purposes of this Schedule:
26	(a) conduct is capable of constituting industrial action even if the
27	conduct relates to part only of the duties that transitional
28	employees are required to perform in the course of their
29	employment; and
30	(b) a reference to industrial action includes a reference to a
31	course of conduct consisting of a series of industrial actions.
32	(3) For the purposes of this clause, a transitional employer <i>locks out</i>
33	transitional employees from their employment if the transitional
34	employer prevents the transitional employees from performing
35	work under their contracts of employment without terminating
36	those contracts.
37	(4) Whenever a person seeks to rely on subparagraph $(1)(h)(i)$ , that
38	person has the burden of proving that subparagraph $(1)(h)(i)$
39	applies.
	uppnos.

# **Division 3—Continuing operation of awards**

2	4 Continuing operation of awards in force before reform
3	commencement
4 5	(1) Despite the repeals and amendments made by the <i>Workplace</i> <i>Relations Amendment (Work Choices) Act 2005</i> , an award in force
6	immediately before the reform commencement continues in force,
7 8	on and from the reform commencement, in accordance with this clause.
9	(2) To the extent that the award regulates excluded employers in
10	respect of the employment of their employees, the award continues
11 12	in force, subject to this Schedule, in respect of that employment and binds the following:
12	(a) all excluded employers that were bound by the award
14	immediately before the reform commencement;
15	(b) any successor, assignee or transmittee (whether immediate or
16	not) to or of the business or part of the business of an
17	excluded employer referred to in paragraph (a), if the successor, assignee or transmittee is a transitional employer
18 19	at the time of acquiring or taking over the business or part of
20	the business;
21	(c) all organisations that were bound by the award immediately
22	before the reform commencement;
23	(d) all employees who, immediately before the reform
24 25	commencement, were members of organisations that were bound by the award.
23	·
26	(3) To avoid doubt, an award that is continued in force by this clause
27 28	binds an excluded employer that was bound by the award immediately before the reform commencement, whether the
29	employer was bound:
30	(a) in its own right or as a member of an organisation; or
31	(b) because of the operation of paragraph 149(1)(d), as in force
32	immediately before the reform commencement.
33 34	Note: Clause 69 provides for who is bound by an order varying a transitional award.
35	(4) An award that that is continued in force by this clause is called a
36	transitional award.

## **5** Particular rules about transitional awards

2	(1)	If an excluded employer was, immediately before the reform
3		commencement, regulated by a State employment agreement in
4		respect of the employment of an employee, the employer is not
5		bound by a transitional award in respect of the employment of that
6		employee at any time after the reform commencement.
7	(2)	If a transitional employer that is bound by a transitional award as a
8		member of an organisation ceases to be a member of that
9		organisation, the transitional employer ceases to be bound by the
10		transitional award at the time the transitional employer ceases to be
11		a member of the organisation, unless the transitional employer is
12		otherwise bound by the transitional award.
13	(3)	If a transitional employee who is bound by a transitional award as a
14		member of an organisation ceases to be a member of that
15		organisation, the transitional employee ceases to be bound by the
16		transitional award at the time the transitional employee ceases to be
17		a member of the organisation.
18	6 Cessatio	on of transitional awards
19 20	(1)	A transitional award that has not ceased to be in force during the transitional period ceases to be in force at the end of that period.
21	(2)	To avoid doubt, this clause does not affect any rights accrued or
21 22	(2)	liabilities incurred under a transitional award before it ceases to be
22		in force.
24 25	Part 2—	-Performance of Commission's functions
26	7 General	functions of Commission
27	(1)	The functions of the Commission under this Schedule are to
28	(-)	prevent and settle industrial disputes:
29		(a) so far as possible, by conciliation; and
		(b) as a last resort and within the limits of the Commission's
30		
31		powers under this Schedule, by arbitration.

1 2 3	(2) In performing its functions under paragraph (1)(b), the Commission may vary a transitional award as permitted by clause 29.
4	(3) However, the Commission must not make any new awards.
5	8 Performance of Commission's functions under this Schedule
6 7	<ol> <li>The Commission must perform its functions under this Schedule in a way that furthers the objects of this Schedule.</li> </ol>
8 9 10 11	<ul><li>(2) In performing its functions under this Schedule, the Commission must ensure that minimum safety net entitlements are maintained for wages and other specified monetary entitlements, having regard to:</li></ul>
12 13	(a) the desirability of high levels of productivity, low inflation, creation of jobs and high levels of employment; and
14 15 16 17	<ul> <li>(b) the principle that the wages and other monetary entitlements of transitional employees should not place them at a disadvantage compared with the entitlements of employees (within the meaning of subsection 4AA(1)); and</li> </ul>
18 19 20 21	<ul> <li>(c) the principle that the costs to transitional employers of wages and other monetary entitlements should not place them at a competitive disadvantage in relation to employers (within the meaning of subsection 4AB(1)).</li> </ul>
22 23	(3) In having regard to the factors referred to in paragraph (2)(a), the Commission must have regard to:
24	(a) wage-setting decisions of the AFPC; and
25	(b) in particular, any statements by the AFPC about the effect of
26 27	wage increases on productivity, inflation and levels of employment.
28 29	<ul><li>(4) In performing its functions under this Schedule, the Commission must have regard to:</li></ul>
30	(a) the desirability of its decisions being consistent with
31	wage-setting decisions of the AFPC; and (b) the importance of providing minimum safety net antitlements
32 33	(b) the importance of providing minimum safety net entitlements that act as an incentive to bargaining at the workplace level.

# **9** Anti-discrimination considerations

<ul> <li>this Schedule, the Commission must:</li> <li>(a) apply the principle that men and women should receive eq remuneration for work of equal value; and</li> <li>(b) have regard to the need to provide pro-rata disability pay methods for transitional employees with disabilities; and</li> <li>(c) take account of the principles embodied in the <i>Racial</i> <i>Discrimination Act 1975</i>, the <i>Sex Discrimination Act 1984</i> the <i>Disability Discrimination Act 1992</i> and the <i>Age</i> <i>Discrimination Act 2004</i> relating to discrimination in relat to employment; and</li> </ul>	on
<ul> <li>remuneration for work of equal value; and</li> <li>(b) have regard to the need to provide pro-rata disability pay methods for transitional employees with disabilities; and</li> <li>(c) take account of the principles embodied in the <i>Racial</i></li> <li><i>Discrimination Act 1975</i>, the <i>Sex Discrimination Act 1984</i></li> <li>the <i>Disability Discrimination Act 1992</i> and the <i>Age</i></li> <li><i>Discrimination Act 2004</i> relating to discrimination in relat</li> </ul>	on
<ul> <li>methods for transitional employees with disabilities; and</li> <li>(c) take account of the principles embodied in the <i>Racial</i></li> <li><i>Discrimination Act 1975</i>, the <i>Sex Discrimination Act 1984</i></li> <li>the <i>Disability Discrimination Act 1992</i> and the <i>Age</i></li> <li><i>Discrimination Act 2004</i> relating to discrimination in relat</li> </ul>	on
<ul> <li>(c) take account of the principles embodied in the <i>Racial</i></li> <li><i>Discrimination Act 1975</i>, the <i>Sex Discrimination Act 1984</i></li> <li>the <i>Disability Discrimination Act 1992</i> and the <i>Age</i></li> <li><i>Discrimination Act 2004</i> relating to discrimination in relation</li> </ul>	on
9Discrimination Act 1975, the Sex Discrimination Act 198410the Disability Discrimination Act 1992 and the Age11Discrimination Act 2004 relating to discrimination in relat	on
10the Disability Discrimination Act 1992 and the Age11Discrimination Act 2004 relating to discrimination in relation	on
11 Discrimination Act 2004 relating to discrimination in relat	
to employment; and	
13 (d) take account of the principles embodied in the Family	
14 Responsibilities Convention, in particular those relating to	
15 (i) preventing discrimination against workers who have	
16 family responsibilities; or	
17 (ii) helping workers to reconcile their employment and	
18 family responsibilities; and	
19 (e) ensure that its decisions do not contain provisions that	
20 discriminate on the grounds of race, colour, sex, sexual	
21 preference, age, physical or mental disability, marital statu	
22 family responsibilities, pregnancy, religion, political opini	on,
23 national extraction or social origin.	
24 (2) For the purposes of the Acts referred to in paragraph (1)(c) and	
25 paragraph (1)(e), the Commission does not discriminate against	
26 transitional employee or transitional employees by (in accordance	
27 with this Schedule) determining or adjusting terms in a transition	al
award that determine a basic periodic rate of pay for:	
29 (a) all junior transitional employees, or a class of junior	
30 transitional employees; or	
31 (b) all transitional employees with a disability, or a class of	
32 transitional employees with a disability; or	
33 (c) all transitional employees to whom training arrangements	
34 apply, or a class of transitional employees to whom trainin	3
35 arrangements apply.	

528

1 2	10 Commission to have regard to operation of Superannuation Guarantee legislation
3	In varying a term dealing with rates of pay in a transitional award,
4	the Commission must have regard to the operation of:
5	(a) the Superannuation Guarantee Charge Act 1992; and
6	(b) the Superannuation Guarantee (Administration) Act 1992.
7	11 Commission to encourage agreement on procedures for
8	preventing and settling disputes
9	In dealing with an industrial dispute, the Commission must, if it
10	appears practicable and appropriate, encourage the parties to agree on procedures for preventing and settling, by discussion and
11 12	agreement, further disputes between the parties or any of them.
13	12 Commission to have regard to compliance with disputes
14	procedures
15	If the parties to an industrial dispute are bound by a transitional
16	award that provides for procedures for preventing or settling
17	industrial disputes between them, the Commission must, in
18	considering whether or when it will exercise its powers in relation
19	to the industrial dispute, have regard to the extent to which the
20 21	procedures (if applicable to the industrial dispute) have been complied with by the parties and the circumstances of any
21 22	compliance or non-compliance with the procedures.
23	13 No automatic flow-on of terms of certain agreements
24	(1) The Commission does not have power to vary a transitional award
25	to include in it terms that are based on the terms of a workplace
26	agreement, a pre-reform certified agreement or a section 170MX
27	award unless the Commission is satisfied that including the terms
28	in the award:
29 30	<ul><li>(a) would not be inconsistent with the objects of this Schedule set out in clause 1; and</li></ul>
31	(b) would not be inconsistent with wage-setting decisions of the
32	AFPC; and
33	(c) would not be otherwise contrary to the public interest.
34	(2) In this clause:

	<i>pre-reform certified agreement</i> has the same meaning as in Schedule 14.
	section 170MX award has the same meaning as in Schedule 14.
14 Comm	ission to act quickly
(1)	The Commission must perform its functions under this Schedule as quickly as practicable.
(2)	However, the Commission must give a higher priority to performing its other functions under this Act than it gives to performing its functions under this Schedule.
15 Comm	ission not required to have regard to certain matters
	Section 44A does not apply to the performance of a function by the Commission under this Schedule.
Part 3–	–Powers and procedures of Commission for dealing with industrial disputes
Division	1—Settlement of industrial disputes
Subdivisi	1—Settlement of industrial disputes
Subdivisi 16 Scope	1—Settlement of industrial disputes on A—Scope of industrial disputes
Subdivisi 16 Scope (1)	<ul> <li>1—Settlement of industrial disputes</li> <li>on A—Scope of industrial disputes</li> <li>of industrial disputes</li> <li>For the purposes of dealing with an industrial dispute by conciliation, an industrial dispute may be about any allowable transitional award matter.</li> <li>An industrial dispute is taken to be only about the allowable transitional award matters referred to in subclause 29(2) for the</li> </ul>
Subdivisi 16 Scope (1)	<ul> <li>1—Settlement of industrial disputes</li> <li>on A—Scope of industrial disputes</li> <li>of industrial disputes</li> <li>For the purposes of dealing with an industrial dispute by conciliation, an industrial dispute may be about any allowable transitional award matter.</li> <li>An industrial dispute is taken to be only about the allowable transitional award matters referred to in subclause 29(2) for the following purposes: <ul> <li>(a) dealing with an industrial dispute by arbitration;</li> </ul> </li> </ul>
Subdivisi 16 Scope (1)	<ul> <li><b>1—Settlement of industrial disputes</b></li> <li><b>on A—Scope of industrial disputes</b></li> <li><b>of industrial disputes</b></li> <li><b>For the purposes of dealing with an industrial dispute by conciliation, an industrial dispute may be about any allowable transitional award matter.</b></li> <li>An industrial dispute is taken to be only about the allowable transitional award matters referred to in subclause 29(2) for the following purposes:</li> </ul>

## **Subdivision B—Allowable transitional award matters**

2	17 Allowable to	ransitional award matters
3	(1) Subje	ect to this Division, a transitional award may include terms
4	abou	t the following matters (allowable transitional award matters)
5	only:	
6 7	(a)	classifications of transitional employees and skill-based career paths;
8 9 10	(b)	ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours;
11 12 13 14	(c)	rates of pay generally (such as hourly rates and annual salaries), rates of pay for juniors and transitional employees to whom training arrangements apply, and rates of pay for transitional employees under the supported wage system;
15	(d)	incentive-based payments, piece rates and bonuses;
16	(e)	annual leave and annual leave loadings;
17	(f)	personal/carer's leave;
18	(g)	ceremonial leave;
19	(h)	parental leave, including maternity and adoption leave;
20 21	(i)	observance of days declared by or under a law of a State or Territory to be observed generally within that State or
22		Territory, or a region of that State or Territory, as public
23		holidays by employees who work in that State, Territory or
24 25		region, and entitlements of transitional employees to payment in respect of those days;
26	(j)	monetary allowances for:
27		(i) expenses incurred in the course of employment; or
28		(ii) responsibilities or skills that are not taken into account
29		in rates of pay for transitional employees; or
30		(iii) disabilities associated with the performance of particular
31		tasks or work in particular conditions or locations;
32		loadings for working overtime or for casual or shift work;
33		penalty rates;
34	(m)	redundancy pay, within the meaning of subclause (3);
35	(n)	stand-down provisions;
36	(0)	dispute settling procedures;

1 2	<ul><li>(p) type of employment, such as full-time employment, casual employment, regular part-time employment and shift work;</li></ul>
3	(q) pay and conditions for outworkers, but only to the extent
4	necessary to ensure that their overall pay and conditions of
5	employment are fair and reasonable in comparison with the
6	pay and conditions of employment specified in a relevant
7	transitional award or transitional awards for transitional
8	employees who perform the same kind of work at a
9	transitional employer's business or commercial premises.
10 11	Note 1: The matters referred to in subclause (1) have a meaning that is affected by clause 18.
12	Note 2: Entitlements relating to certain matters that were allowable award
13 14	matters immediately before the reform commencement are preserved under clause 22.
15	(2) For the purposes of paragraph (1)(f), <i>personal/carer's leave</i>
16	includes war service sick leave, infectious diseases sick leave and
17	other like forms of sick leave.
18	(3) For the purposes of paragraph $(1)(m)$ , <i>redundancy pay</i> means
19	redundancy pay in relation to a termination of employment that is:
20	(a) by a transitional employer of 15 or more transitional
21	employees; and
22	(b) either:
23	(i) at the initiative of the transitional employer and on the
24	grounds of operational requirements; or
25	(ii) because the transitional employer is insolvent.
26	(4) For the purposes of paragraph $(3)(a)$ :
27	(a) whether a transitional employer employs 15 or more
28	transitional employees, or fewer than 15 transitional
29	employees, is to be worked out as at the time (the <i>relevant</i>
30	time):
31	(i) when notice of the redundancy is given; or
32	(ii) when the redundancy occurs;
33	whichever happens first; and
34	(b) a reference to transitional employees includes a reference to:
35	(i) the transitional employee who becomes redundant and
36	any other transitional employee who becomes redundant
37	at the relevant time; and

1 2 3 4 5		<ul> <li>(ii) any casual transitional employee who, at the relevant time, has been engaged by the transitional employer on a regular and systematic basis for at least 12 months (but not including any other casual transitional employee).</li> </ul>
6	18 Matters tha	t are not allowable transitional award matters
7	(1) For t	he purposes of subclause 17(1), matters that are not allowable
8		itional award matters within the meaning of that subclause
9	inclu	de, but are not limited to, the following:
10	(a)	rights of an organisation to participate in, or represent a
11		transitional employer or transitional employee in, the whole
12		or part of a dispute settling procedure, unless the organisation
13		is the representative of the employer's or employee's choice;
14 15	(0)	transfers from one type of employment to another type of employment;
15	(c)	the number or proportion of transitional employees that a
10	(0)	transitional employer may employ in a particular type of
18		employment or in a particular classification;
19	(d)	prohibitions (whether direct or indirect) on a transitional
20		employer employing transitional employees in a particular
21		type of employment or in a particular classification;
22	(e)	the maximum or minimum hours of work for regular
23		part-time transitional employees;
24		restrictions on the range or duration of training arrangements;
25	(g)	restrictions on the engagement of independent contractors
26		and requirements relating to the conditions of their
27	(1-)	engagement;
28	(h)	restrictions on the engagement of labour hire workers, and
29 30		requirements relating to the conditions of their engagement, imposed on an entity or person for whom the labour hire
31		worker performs work under a contract with a labour hire
32		agency;
33	(i)	union picnic days;
34		tallies;
35	(k)	dispute resolution training leave;
36	(1)	trade union training leave;
37	(m)	any other matter prescribed by the regulations.

1	(2) Paragraph $(1)(e)$ does not prevent any of the following being
2	included in a transitional award:
3	(a) terms setting a minimum number of consecutive hours that a transitional employer may require a regular part time.
4 5	transitional employer may require a regular part-time transitional employee to work;
6	(b) terms facilitating a regular pattern in the hours worked by
7	regular part-time transitional employees.
8	(3) In this clause:
9	<i>labour hire agency</i> means an entity or a person who conducts a
10	business that includes the employment or engagement of workers
11	for the purpose of supplying those workers to another entity or
12	person under a contract with that other entity or person.
13	labour hire worker means a person:
14	(a) who:
15	(i) is employed by a labour hire agency; or
16	(ii) is engaged by a labour hire agency as an independent
17	contractor; and
18	(b) who performs work for another entity or person under a
19 20	contract between that entity or person and the labour hire agency.
21	19 Terms involving discrimination and preference not to be included
22	To the extent that a term of a transitional award requires or
23	permits, or has the effect of requiring or permitting, any conduct
24	that would contravene Part XA, it is taken not to be about
25	allowable transitional award matters.
26	20 Terms about rights of entry not to be included
27	To the extent that a term of a transitional award requires or
28	authorises an officer or employee of an organisation:
29	(a) to enter premises:
30	(i) occupied by a transitional employer who is bound by
31	the award; or
32	(ii) in which work to which the award applies is being
33	carried on; or

1 2	(b) to inspect or view any work, material, machinery, appliance, article, document or other thing on such premises; or
3	(c) to interview a transitional employee on such premises;
4	it is taken not to be about allowable transitional award matters.
5	21 Enterprise flexibility provisions not to be included
6 7 8 9	To the extent that a term of a transitional award is an enterprise flexibility provision within the meaning of section 113A as in force immediately before the reform commencement, it is taken not to be about an allowable transitional award matter.
10 11	Subdivision C—Other terms that may be included in transitional awards
12	22 Preserved transitional award terms
13 14	<ol> <li>A transitional award may include preserved transitional award terms.</li> </ol>
15 16	(2) A <i>preserved transitional award term</i> is a term of a transitional award that:
17	(a) is about a matter referred to in subclause (3); and
18	(b) had effect under the transitional award on the reform
19	commencement.
20	(3) For the purposes of subclause (2), the matters are as follows:
21	(a) long service leave;
22	(b) notice of termination;
23	(c) jury service;
24	(d) superannuation.
25	(4) If a term of a transitional award is about both matters referred to in
26	subclause (3) and other matters, it is taken to be a preserved
27	transitional award term only to the extent that it is about the
28	matters referred to in subclause (3).
29	(5) A preserved transitional award term continues to have effect for the
30	purposes of this Schedule.
31	Note: Preserved transitional award terms may not be varied.

1 2		(6)	A preserved transitional award term about superannuation ceases to have effect at the end of 30 June 2008.
3	23	Facilita	ative provisions
4		(1)	A transitional award may include a facilitative provision that
5			allows agreement at the workplace or enterprise level, between
6			transitional employers and transitional employees (including
7			individual transitional employees), on how a term in the award
8 9			about an allowable transitional award matter or a preserved transitional award term is to operate.
10		(2)	A facilitative provision must not require agreement between a
11			majority of transitional employees and a transitional employer, but
12			must permit agreement between an individual transitional
13 14			employee and a transitional employer, on how a term in an award about an allowable transitional award matter or a preserved
14 15			transitional award term is to operate.
16 17		(3)	A facilitative provision may only operate in respect of an allowable transitional award matter or a preserved transitional award term.
18 19		(4)	A facilitative provision is of no effect to the extent that it does not comply with subclause (2) or (3).
20	24	Incide	ntal and machinery terms
21		(1)	A transitional award may include terms that are:
22		. ,	(a) incidental to an allowable transitional award matter about
23			which there is a term in the award; and
24			(b) essential for the purpose of making a particular term operate
25			in a practical way.
26		(2)	For the purposes of this clause, to the extent that a term of a
27			transitional award provides for a matter that is not an allowable
28			transitional award matter because of the operation of clause 18, 19, 20 or 21, the term is not and connect he incidental to a term in the
29 20			20 or 21, the term is not, and cannot be, incidental to a term in the award providing for an allowable transitional award matter, and is
30 31			of no effect to that extent.
32 33 34		(3)	A transitional award may include machinery provisions including, but not limited to, provisions providing for the following: (a) commencement;

1	(b) definitions;
1	
2	(c) titles;
3	(d) arrangement;
4	(e) transitional employers, transitional employees and
5	organisations bound;
6	(f) term of the award.
7	25 Anti-discrimination clauses
8	A transitional award may include a model anti-discrimination
9	clause.
10	26 Boards of reference
11	(1) A transitional award may include, in accordance with
12	subclause (2), a term:
13	(a) appointing, or giving power to appoint, for the purposes of
14 15	the award, a board of reference consisting of a person or 2 or more persons; and
16	(b) assigning to the board of reference functions as described in
17	subclause (3).
18	(2) A term of a transitional award that appoints, or gives power to
19	appoint, a board of reference is taken:
20	(a) to continue in effect after the reform commencement, to the
21	extent that it complies with subclause (3); and
22	(b) to cease to have effect after the reform commencement, to the
23	extent that it does not comply with subclause (3).
24	(3) A term of a transitional award that appoints, or gives power to
25	appoint, a board of reference:
26	(a) may confer upon the board of reference an administrative
27	function in respect of allowing, approving, fixing, or dealing
28	with, in the manner and subject to the conditions specified in
29	the award, a matter or thing that, under the award, may from
30	time to time be required to be allowed, approved, fixed, or
31	dealt with; and
32	(b) must not confer upon the board of reference a function of
33	settling or determining disputes about any matter arising
34	under the award.

1	(4) A function conferred under subclause (3) may relate only to
2	allowable transitional award matters or terms permitted by this
3	Subdivision to be included in the transitional award.
4	(5) A board of reference may consist of or include a Commissioner.
5	(6) Subject to subclauses (3) and (4), the regulations may make
6	provision in relation to:
7	(a) a particular board of reference; or
8	(b) boards of reference in general;
9	including, but not limited to, the functions and powers of the board
10	or boards.
11	Subdivision D—Terms in transitional awards that cease to have
12	effect
12	27 Terms in transitional awards that cease to have effect after the
13	<i>27</i> Terms in transitional awards that cease to have effect after the reform commencement
14	
15	(1) Immediately after the reform commencement, a term of a
16	transitional award ceases to have effect to the extent that it is about
17	matters that are not allowable transitional award matters, except to the output (if only) that the term is normitted by Subdivision C to be
18 19	the extent (if any) that the term is permitted by Subdivision C to be included in the award.
• •	
20 21	<ul><li>(2) This clause does not affect the operation of preserved transitional award terms.</li></ul>
22	<b>Division 2—Variation and revocation of transitional</b>
23	awards
24	28 Variation of transitional awards—general
25	(1) The Commission may make an order varying a transitional award
26	only:
27	(a) as permitted by clause 29; or
28	(b) on a ground set out in clause 30.
29	(2) The Commission must not vary a preserved transitional award
30	term.

1 2	(3) The Commission must not vary a facilitative provision within the meaning of clause 23 except on a ground set out in clause 30.
3	29 Variation of transitional awards—dealing with industrial dispute
4	(1) In preventing or settling an industrial dispute, or maintaining the settlement of an industrial dispute, the Commission's power to
5 6	vary a transitional award is limited to varying the award:
7	(a) to provide minimum safety net entitlements about the matters
8	referred to in subclause (2); and
9	(b) to do anything that the Commission is permitted to do by
10	regulations made under subclause (3); and
11	(c) to include incidental and machinery terms, as permitted by
12	clause 24, relating to the matters that may be varied.
13	(2) For the purposes of subclause (1), the matters are:
14	(a) rates of pay generally (such as hourly rates and annual
15	salaries), rates of pay for juniors and transitional employees
16	to whom training arrangements apply, and rates of pay for
17	transitional employees under the supported wage system;
18	(b) incentive-based payments, piece rates and bonuses;
19	(c) annual leave loadings;
20	(d) monetary allowances described in paragraph 17(1)(j);
21	(e) loadings for working overtime or for casual or shift work;
22	(f) penalty rates;
23	(g) pay for outworkers;
24	<ul> <li>(h) any other allowable transitional award matter prescribed by the regulations.</li> </ul>
25	
26 27	Note: The Commission must have regard to the matters referred to in clauses 8 and 9 in exercising its functions under this clause.
28	(3) If the Commission considers it appropriate to vary a transitional
29	award in respect of rates of pay for part-time transitional
30	employees, junior transitional employees or transitional employees
31	to whom training arrangements apply, the Commission may, if it considers it appropriate, also vary the application of the terms of
32 33	the award to those employees in accordance with the regulations.
34	(4) Regulations under subclause (3) may specify:

1 2 3	(a) the matters in respect of which a transitional award may be varied as mentioned in that subclause, which must be matters referred to in subclause 17(1); and
4 5	(b) the circumstances in which a transitional award may be varied as mentioned in that subclause.
6 7 8 9 10	Example: For example, regulations under subclause (4) could permit the Commission to vary a transitional award, if it considers it appropriate, to ensure that certain conditions to which a part-time transitional employee is entitled are determined in proportion to the hours worked by the part-time employee.
11 <b>30 Variati</b>	on of transitional awards—discrimination, etc.
13 14	If the Commission considers that a term of a transitional award about a matter referred to in subclause 29(2) is ambiguous or uncertain, the Commission may make an order varying the award so as to remove the ambiguity or uncertainty.
17 18	If a transitional award is referred to the Commission under section 46PW of the <i>Human Rights and Equal Opportunity</i> <i>Commission Act 1986</i> , the Commission must convene a hearing to review the award.
21 22 23 24	<ul> <li>In a review under subclause (2):</li> <li>(a) the Commission must take such steps as it considers appropriate to ensure that each transitional employer and organisation bound by the transitional award is made aware of the hearing; and</li> <li>(b) the Say Discrimination Commissionar may intervene in the</li> </ul>
25 26	(b) the Sex Discrimination Commissioner may intervene in the proceeding.
28 29	If the Commission considers that a transitional award reviewed under subclause (2) is a discriminatory award, the Commission must take the necessary action to remove the discrimination, by making an order varying the award.
32 33 34 35	The Commission may, on application by a transitional employer or organisation bound by a transitional award, vary a term of the award referring by name to a transitional employer or organisation bound by the award: (a) to reflect a change in the name of the transitional employer or
36	organisation; or

1	(	b) if:
2		(i) the registration of the organisation has been cancelled;
3		or
4		(ii) the transitional employer or organisation has ceased to
5		exist;
6		to omit the reference to its name.
7	(6) Th	e onus of demonstrating that a transitional award should be
8	vai	ried as set out in an application under subclause (5) rests with the
9	apj	plicant.
10	(7) In	this clause:
11	dis	criminatory award means a transitional award that:
12	(	a) has been referred to the Commission under section 46PW of
13		the Human Rights and Equal Opportunity Commission Act
14		<i>1986</i> ; and
15	()	b) requires a person to do any act that would be unlawful under
16		Part II of the Sex Discrimination Act 1984, except for the fact
17 18		that the act would be done in direct compliance with the award.
19	Fo	r the purposes of this definition, the fact that an act is done in
20		ect compliance with the award does not of itself mean that the
21	act	is reasonable.
22	31 Revocatio	n of transitional awards
23	(1) Th	e Commission may make an order revoking a transitional award
24		ly if:
25	()	a) it is satisfied that the award is obsolete or is no longer
26		operating; and
27	(1	b) it would not be contrary to the public interest to revoke the
28		award.
29	(2) If a	an application for an order under subclause (1) is made, the
30		mmission must take such steps as it considers appropriate to
31		sure that each transitional employer and organisation bound by
32	the	e transitional award is made aware of the application.
33		e Commission must not make an order revoking a transitional
34	aw	ard if one or more transitional employees have an entitlement in

1 2	relation to a matter under a preserved transitional award term included in the transitional award.
3 4	32 Applications for variation, suspension or revocation of transitional awards
5	This Schedule applies in relation to applications, and proceedings
6	in relation to applications, for the variation, suspension or
7	revocation of transitional awards in the same manner, as far as
8	possible, as it applies in relation to industrial disputes and proceedings in relation to industrial disputes and for that purpose
9 10	proceedings in relation to industrial disputes, and for that purpose such an application is to be treated as if it were the notification of
11	an industrial dispute.
12	Division 3—Procedure for dealing with industrial disputes
13	33 Notification of industrial disputes
14	(1) If an entitled organisation or a transitional employer becomes
15	aware of the existence of an alleged industrial dispute affecting the
16	organisation or its members or affecting the employer, as the case
17 18	may be, the organisation or employer may notify the relevant Presidential Member or a Registrar.
19	Note: For the purposes of this Schedule, an industrial dispute may only be
20 21	about allowable transitional award matters—see the definition of <i>industrial dispute</i> in subclause 2(1).
22	(2) A Minister who is aware of the existence of an alleged industrial
22	dispute may notify the relevant Presidential Member or a Registrar.
24	(3) If a Registrar is notified of an alleged industrial dispute, or a
25	member of the Commission who is not the relevant Presidential
26	Member becomes aware of the existence of an alleged industrial
27	dispute, the Registrar or member must inform the relevant
28	Presidential Member.
29	(4) For the purposes of this clause, an organisation is an <i>entitled</i>
30	organisation if:
31	(a) the organisation is bound by a transitional award; and
32	(b) at least one member of the organisation is a transitional
33	employer or a transitional employee that is bound by the
34	transitional award; and

1 2	(c) the organisation is entitled under its eligibility rules to represent the industrial interests of that member.
3	34 Disputes to be dealt with by conciliation where possible
4	(1) If an alleged industrial dispute is notified under clause 33 or the relevant Presidential Member otherwise becomes aware of the
5 6	existence of an alleged industrial dispute, the relevant Presidential
7	Member must, unless satisfied that it would not assist the
8	prevention or settlement of the alleged industrial dispute, refer it
9 10	for conciliation by himself or herself or by another member of the Commission.
11 12	(2) If the Presidential Member does not refer the alleged industrial dispute for conciliation:
13	(a) the Presidential Member must publish reasons for not doing
14	so; and
15	(b) the Commission must deal with the alleged industrial dispute
16	by arbitration.
17	35 Findings as to industrial disputes
18	(1) Subject to subclause (2), if a proceeding in relation to an alleged
19	industrial dispute comes before the Commission, it must, if it
20	considers that the alleged industrial dispute is an industrial dispute:
21	(a) determine the parties to the industrial dispute and the matters
22	in dispute; and
23	(b) record its findings;
24	but the Commission may vary or revoke any of the findings.
25	(2) If the Commission constituted in any manner has made findings in
26	relation to an industrial dispute, the Commission (however
27	constituted) may, for the purpose of exercising powers in
28	subsequent proceedings in relation to the same industrial dispute
29	(other than powers on an appeal in relation to the finding), proceed
30	on the basis of the findings or any of them.
31	(3) A determination or finding of the Commission on a question as to
31 32	(3) A determination or finding of the Commission on a question as to the existence of an industrial dispute is, in all courts and for all

36	Action to be taken where dispute referred for conciliation
	(1) If an industrial dispute is referred for conciliation, a member of the Commission must do everything that appears to the member to be right and proper to assist the parties to agree on terms for the prevention or settlement of the industrial dispute.
	(2) The action that may be taken by a member of the Commission under this clause includes:
	(a) arranging conferences of the parties or their representatives presided over by the member; and
	(b) arranging for the parties or their representatives to confer among themselves at conferences at which the member is not present.
37	Completion of conciliation proceeding
	<ol> <li>A conciliation proceeding before a member of the Commission is to be regarded as completed when:</li> </ol>
	(a) the parties have reached agreement for the settlement of the whole of the industrial dispute; or
	<ul><li>(b) whether or not the parties have reached agreement for the settlement of part of the industrial dispute, the member of the Commission is satisfied that there is no likelihood that, within a reasonable period, conciliation, or further conciliation, will result in agreement, or further agreement, by the parties on terms for the settlement of the industrial dispute or any matter in dispute.</li></ul>
	(2) Nothing in this Schedule prevents the exercise of conciliation powers in relation to an industrial dispute merely because arbitration powers have been exercised in relation to the industrial dispute.
38	Arbitration
	(1) When a conciliation proceeding before a member of the Commission in relation to the industrial dispute is completed but the industrial dispute has not been fully settled, the Commission must, to the extent that the industrial dispute is about matters referred to in subclause 29(2), or the matters remaining in dispute are matters referred to in that clause, proceed to deal with the

1 2		industrial dispute, or the matters remaining in dispute, by arbitration.
3	(2)	The Commission must not proceed to deal with the industrial
4		dispute, or any matters remaining in dispute, by arbitration to the
5		extent that the industrial dispute is not about matters referred to in
6		subclause 29(2), or the matters remaining in dispute are not matters
7		referred to in that clause.
8	(3)	Unless the member of the Commission who conducted the
9		conciliation proceeding is competent, having regard to clause 39,
10		to exercise arbitration powers in relation to the industrial dispute
11		and proposes to do so, the member must make a report under
12		subclause (4).
13	(4)	The member must, for the purpose of enabling arrangements to be
14		made for arbitration in relation to the industrial dispute, report to
15		the relevant Presidential Member or, if the member is a
16		Presidential Member, to the President, as to:
17		(a) the matters in dispute; and
18		(b) the extent to which those matters are matters referred to in
19		subclause 29(2); and
20		(c) the parties to the dispute; and
21		(d) the extent to which the dispute has been settled.
22	(5)	The member must not disclose anything said or done in the
23		conciliation proceeding in relation to matters in dispute that remain
24		unsettled.
25	(6)	In an arbitration proceeding under this Schedule, unless all the
26		parties agree, evidence must not be given, or statements made, that
27		would disclose anything said or done in a conciliation proceeding
28		under this Schedule (whether before a member of the Commission
29		or at a conference arranged by a member of the Commission) in
30		relation to matters in dispute that remain unsettled.
31	39 Exercis	se of arbitration powers by member who has exercised
32		conciliation powers
33	(1)	If a member of the Commission has exercised conciliation powers
34		in relation to an industrial dispute, the member must not exercise,
35		or take part in the exercise of, arbitration powers in relation to the
36		industrial dispute if a party to the arbitration proceeding objects.

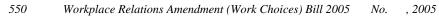
1	(2) The member is not taken to have exercised conciliation powers in
2	relation to the industrial dispute merely because:
3	(a) after having begun to exercise arbitration powers in relation
4	to the industrial dispute, the member exercised conciliation
5	powers; or
6	(b) the member arranged for a conference of the parties or their
7	representatives to be presided over by the member, but the
8	conference did not take place or was not presided over by the
9	member; or
10	(c) the member arranged for the parties or their representatives to
11 12	confer among themselves at a conference at which the member was not present.
13	40 Allowable transitional award matters to be dealt with by Full
14	Bench
15	(1) A Full Bench of the Commission may establish principles about
16	varying transitional awards in relation to each allowable
17	transitional award matter referred to in subclause 29(2).
18	(2) After such principles (if any) have been established, the power of
19	the Commission to vary a transitional award in relation to a matter
20	referred to in subclause 29(2) is exercisable only by a Full Bench
21	unless the variation:
22	(a) gives effect to orders of a Full Bench made after the reform
23	commencement; or
24	(b) is consistent with principles established by a Full Bench after
25	that day.
26	(3) The President or a Full Bench may, in relation to the exercise of
27	powers under this clause, direct a member of the Commission to
28	provide a report in relation to a specified matter.
29	(4) After making such investigation (if any) as is necessary, the
30	member must provide a report to the President or Full Bench, as
31	the case may be.
32	41 Reference of disputes to Full Bench
33	(1) A reference in this clause to a part of an industrial dispute includes
34	a reference to:

1 2	(a) an industrial dispute so far as it relates to a matter in dispute; or
3	(b) a question arising in relation to an industrial dispute.
4	(2) If a proceeding in relation to an industrial dispute or an alleged
5	industrial dispute is before a member of the Commission, a party to
6	the proceeding or the Minister may apply to the member:
7	(a) in the case of a proceeding in relation to an alleged industrial
8	dispute—to have the proceeding dealt with by a Full Bench
9	because the subject matter of the proceeding is of such
10	importance that, in the public interest, the proceeding should
11	be dealt with by a Full Bench; or
12	(b) in the case of a proceeding by way of conciliation or
13	arbitration—to have the industrial dispute or a part of the
14	industrial dispute dealt with by a Full Bench because the
15	industrial dispute or the part of the industrial dispute is of
16	such importance that, in the public interest, it should be dealt
17	with by a Full Bench.
18 19	Note: An industrial dispute must not be dealt with by arbitration unless it is about a matter referred to in subclause 29(2)—see clause 38.
20	(3) An application under paragraph $(2)(a)$ may be accompanied by an
21	application under paragraph (2)(b), to be dealt with if the
22	application under paragraph $(2)(a)$ is granted and there is a finding
23	that there is an industrial dispute.
24	(4) If an application is made under subclause (2) to a member of the
25	Commission other than the President:
26	(a) the member must refer the application to the President to be
27	dealt with; and
28	(b) the President must confer with the member about whether the
29	application should be granted.
30	(5) If the President is of the opinion:
31	(a) in the case of an application under paragraph $(2)(a)$ —that the
32	subject matter of the proceeding is of such importance that, in
33	the public interest, the proceeding should be dealt with by a
34	Full Bench; or

1		(b) in the case of an application under paragraph (2)(b)—that the
2		industrial dispute or the part of the industrial dispute is of
3		such importance that, in the public interest, it should be dealt
4		with by a Full Bench;
5		the President must grant the application.
6	(6)	If the President grants an application under paragraph (2)(a):
7		(a) the Full Bench must, if it considers that there is an industrial
8		dispute, record findings under clause 35; and
9		(b) if the application was accompanied by an application under
10		paragraph (2)(b) that was granted—the Full Bench must,
11		subject to subclause (9), hear and determine the industrial
12		dispute or the part of the industrial dispute.
13	(7)	If the President grants an application under paragraph (2)(b), the
14		Full Bench must, subject to subclause (8), hear and determine the
15		industrial dispute or the part of the industrial dispute and, in the
16		hearing, may have regard to any evidence given, and any
17		arguments adduced, in arbitration proceedings in relation to the
18		industrial dispute, or the part of the industrial dispute, before the
19		Full Bench commenced the hearing.
20	(8)	If the President grants an application under paragraph (2)(b) in
21		relation to an industrial dispute:
22		(a) the Full Bench may refer a part of the industrial dispute to a
23		member of the Commission to hear and determine; and
24		(b) the Full Bench must hear and determine the rest of the
25		industrial dispute.
26	(9)	The President or a Full Bench may, in relation to the exercise of
27		powers under this clause, direct a member of the Commission to
28		provide a report in relation to a specified matter.
29	(10)	The member must, after making such investigation (if any) as is
30		necessary, provide a report to the President or Full Bench, as the
31		case may be.
32	(11)	The President may before a Full Bench has been established for the
33		purpose of hearing and determining, under this clause, an industrial
34		dispute or part of an industrial dispute, authorise a member of the
35		Commission to take evidence for the purposes of the hearing and
36		determination, and:

1 2	(a) the member has the powers of a person authorised to take evidence under subclause 46(3); and
3	(b) the Full Bench must have regard to the evidence.
4	42 President may deal with certain proceedings
5	(1) A reference in this clause to a part of an industrial dispute includes $\frac{1}{2}$
6	a reference to:
7 8	<ul> <li>(a) an industrial dispute so far as it relates to a matter in dispute;</li> <li>or</li> </ul>
9	(b) a question arising in relation to an industrial dispute.
10	(2) The President may, whether or not another member of the
11	Commission has begun to deal with a particular proceeding in
12	relation to an alleged industrial dispute or an industrial dispute,
13	decide to deal with the proceeding.
14	(3) If the President decides to deal with the proceeding, then, unless
15	the President considers that the proceeding does not relate to an
16	industrial dispute:
17	(a) the President must make such findings (if any) in relation to
18	the proceeding as are required to be made by clause 35 and
19	have not already been made by another member of the
20	Commission; and
21	(b) the President must:
22	(i) if the President is of the opinion that it would assist the
23	settlement of the industrial dispute or a part of the
24	industrial dispute—endeavour to settle the industrial
25	dispute or the part of the industrial dispute by
26	conciliation; and
27	(ii) if the President is not of that opinion, or has not been
28	able to settle the industrial dispute or a part of the industrial dispute by consiliation:
29	industrial dispute by conciliation:
30 31	(A) hear and determine the industrial dispute or the part of the industrial dispute; or
32	(B) refer the industrial dispute or the part of the
33	industrial dispute to a Full Bench.
34 35	Note: An industrial dispute must not be dealt with by arbitration unless it is about a matter referred to in subclause 29(2)—see clause 38.

1	(4)	If the President refers the industrial dispute or the part of the
2 3		industrial dispute to a Full Bench, the Full Bench must hear and determine the industrial dispute or the part of the industrial dispute.
4	(5)	In the hearing of an industrial dispute or a part of an industrial
5		dispute by the President under subclause (3) or by a Full Bench
6		under subclause (4), the President or Full Bench may have regard
7		to any evidence given, and any arguments adduced, in arbitration
8		proceedings in relation to the industrial dispute, or the part of the
9 10		industrial dispute, before the President or Full Bench commenced to deal with the proceeding concerned.
10		to dear with the proceeding concerned.
11 12	(6)	If the President has under subclause (3) referred an industrial dispute to a Full Bench:
13		(a) the Full Bench may refer a part of the industrial dispute to a
14		member of the Commission to hear and determine; and
15		(b) the Full Bench must hear and determine the rest of the
16		industrial dispute.
17	(7)	If, before an industrial dispute is dealt with by the President under
18		this clause or while an industrial dispute is being dealt with by the
19		President under this clause, the parties to the industrial dispute, or
20		any of them, reach agreement on terms for the settlement of all or
21 22		any of the matters in dispute, the President must cease dealing with the industrial dispute.
23	(8)	The President or a Full Bench may, in relation to the exercise of
24		powers under this clause, direct a member of the Commission to
25		provide a report in relation to a specified matter.
26	(9)	The member must, after making such investigation (if any) as is
27		necessary, provide a report to the President or Full Bench, as the
28		case may be.
29	43 Review	on application by Minister
30	(1)	The Minister may apply to the President for a review by a Full
31	(-)	Bench of an order made for the purposes of this Schedule, or a
32		decision relating to the making of such an order, made by a
33		member of the Commission under this Schedule if it appears to the
34		Minister that the order or decision is contrary to the public interest.



1 2 3	(2)	If an application is made to the President under subclause (1), the President must establish a Full Bench to hear and determine the application.
4 5 6 7 8	(3)	The Full Bench must, if in its opinion the matter is of such importance that, in the public interest, the order or decision should be reviewed, make such review of the order or decision as appears to it to be desirable having regard to the matters referred to in the application.
9 10 11	(4)	Subsections 45(4) to (8) apply in relation to a review under this clause in the same manner as they apply in relation to an appeal under section 45.
12 13 14 15 16	(5)	<ul> <li>In a review under this clause:</li> <li>(a) the parties to the proceeding in which the order or decision was made are parties to the proceeding on the review and are entitled to notice of the hearing; and</li> <li>(b) the Minister is a party to the proceeding.</li> </ul>
17 18 19	(6)	Each provision of this Schedule relating to the hearing and determination of an industrial dispute extends to a review under this clause.
20 21 22 23	(7)	Nothing in this clause affects any right of appeal or any power of a Full Bench under section 45, and an appeal under that section and a review under this clause may, if the Full Bench considers it appropriate, be dealt with together.
24	44 Proced	ure of Commission
25 26 27 28	(1)	If the Commission is dealing with an industrial dispute, it must, in such manner as it considers appropriate, carefully and quickly inquire into and investigate the industrial dispute and all matters affecting the merits, and right settlement, of the industrial dispute.
29 30 31 32 33	(2)	<ul><li>In the hearing and determination of an industrial dispute or in any other proceeding before the Commission under this Schedule:</li><li>(a) the procedure of the Commission is, subject to this Act and the Rules of the Commission, within the discretion of the Commission; and</li></ul>

1	(b) the Commission is not bound to act in a formal manner and is
2	not bound by any rules of evidence, but may inform itself on
3	any matter in such manner as it considers just; and
4	(c) the Commission must act according to equity, good
5	conscience and the substantial merits of the case, without
6	regard to technicalities and legal forms.
7	(3) The Commission may determine the periods that are reasonably
8	necessary for the fair and adequate presentation of the respective
9	cases of the parties to an industrial dispute or other proceeding and
10	require that the cases be presented within the respective periods.
11	(4) The Commission may require evidence or argument to be
12	presented in writing, and may decide the matters on which it will
13	hear oral evidence or argument.
14	45 Provisions in Part II that do not apply to performance of
15	Commission's functions under this Schedule
10	
16	Sections 44B, 44C, 44D, 44F, 44H, 44I, 44J, 44K and 44L do not
17	apply to the performance of a function by the Commission under
18	this Schedule.
19	<b>Division 4—Powers of Commission for dealing with</b>
20	industrial disputes
21	46 Particular powers of Commission
22	(1) Subject to this Schedule, the Commission may do any of the
23	following things in relation to an industrial dispute arising under
24	this Schedule:
25	(a) inform itself in any manner it considers appropriate;
26	(b) take evidence on oath or affirmation;
27	(c) give directions orally or in writing in the course of, or for the
28	purposes of, procedural matters relating to the hearing or
29	determination of the industrial dispute;
30	(d) within the limits of the Commission's powers under this
31	Schedule, vary or revoke a transitional award, order,
32	direction recommendation on other desision of the
	direction, recommendation or other decision of the
33	Commission made for the purposes of this Schedule;

1 (e 2 3	) dismiss a matter or part of a matter, or refrain from further hearing or from determining the industrial dispute or part of the industrial dispute, if it appears:
4	(i) that the industrial dispute or part is trivial; or
	(i) that the industrial dispute of part is trivial, of (ii) that the industrial dispute or part has been dealt with, is
5	being dealt with or is proper to be dealt with by a State
7	industrial authority; or
8	(iii) that further proceedings are not necessary or desirable in
9	the public interest; or
10	(iv) that a party to the industrial dispute is engaging in
11	conduct that, in the Commission's opinion, is hindering
12	the settlement of the industrial dispute or another
13	industrial dispute; or
14	(v) that a party to the industrial dispute:
15	(A) has breached a transitional award or order of the
16	Commission or a Division 3 pre-reform
17	certified agreement (within the meaning of
18	Schedule 14); or
19	(B) has contravened a direction or recommendation
20	of the Commission to stop industrial action; or
21	(C) has contravened a recommendation of the
22	Commission under clause 47;
23 (f	) hear and determine the industrial dispute in the absence of a
24	party who has been summoned or served with a notice to
25	appear;
-	) sit at any place;
27 (h	) conduct the hearing of the industrial dispute, or any part of
28	the hearing, in private;
29 (i	) adjourn the hearing of the industrial dispute to any time and
30	place;
31 (j	) refer any matter to an expert and accept the expert's report as
32	evidence;
33 (k	) if the industrial dispute is being dealt with by a Full Bench—
34	direct a member of the Commission to consider a particular
35	matter and prepare a report for the Full Bench on that matter;
	) allow the amendment, on such terms as it considers
37	appropriate, of any application or other document relating to
38	the industrial dispute;

1 2	<ul><li>(m) correct, amend or waive any error, defect or irregularity, whether in substance or form;</li></ul>
3	(n) summon before it the parties to the industrial dispute, the
4	witnesses, and any other persons whose presence the
5	Commission considers would help in the hearing or
6	determination of the industrial dispute;
7	(o) compel the production before it of documents and other
8	things for the purpose of reference to such entries or matters
9	only as relate to the industrial dispute.
10	(2) The Commission must not, in relation to an industrial dispute,
11	dismiss or refrain as mentioned in paragraph (1)(e) because of
12	subparagraph (1)(e)(i), (ii) or (iii) unless it has made a
13	determination and findings under clause 35 in relation to the
14	dispute.
15	(3) The Commission may, in writing, authorise a person (including a
16	member of the Commission) to take evidence on its behalf, with
17	such limitations (if any) as the Commission directs, in relation to
18	an industrial dispute, and the person has all the powers of the
19	Commission to secure:
20	(a) the attendance of witnesses; and
21	(b) the production of documents and things; and
22	(c) the taking of evidence on oath or affirmation.
23 <b>4</b> '	7 Recommendations by consent
24	(1) If:
25	(a) the Commission is exercising powers of conciliation in
26	relation to a particular allowable transitional award matter;
27	and
28	(b) all the parties request the Commission to conduct a hearing
29	and make recommendations about particular aspects of the
30	matter on which they are unable to reach agreement (which
31	may be all aspects of the matter); and
32	(c) the Commission is satisfied that all the parties:
33	(i) have made a genuine attempt to agree about those
34	aspects of the matter; and
35	(ii) have agreed to comply with the Commission's
36	recommendations;

	the Commission must conduct a hearing and make recommendations about those aspects of the matter.
	(2) This clause does not prevent the Commission from making recommendations in other circumstances.
Div	vision 5—Other powers of the Commission
48	Power to make further orders in settlement of industrial dispute etc.
	(1) The fact that a transitional award-related order has been made for the settlement of an industrial dispute, or that a transitional award or order made for the settlement of an industrial dispute is in force, does not prevent:
	(a) a further order being made for the settlement of the industrial dispute; or
	<ul><li>(b) an order being made for the settlement of a further industrial dispute between all or any of the parties to the earlier award or order, and whether or not the subject matter of the further industrial dispute is the same (in whole or part) as the subject matter of the earlier industrial dispute.</li></ul>
	(2) The Commission's power to make a further order under this clause is limited to making an order that is permitted under this Schedule.
49	Relief not limited to claim
	Subject to clauses 17, 18 and 29, in making an order to vary a transitional award, the Commission is not restricted to the specific relief claimed by the parties to the industrial dispute concerned, or to the demands made by the parties in the course of the industrial dispute, but may include in the order anything: (a) that the Commission considers necessary or expedient for the
	purpose of preventing or settling the industrial dispute or preventing further industrial disputes; and
	(b) that is within the Commission's powers under this Schedule.
50	Power to provide special rates of wages
	If a transitional award prescribes a minimum rate of wages, the Commission may vary the award to provide:

1 2 3 4 5 6 7		<ul> <li>(a) for the payment of wages at a lower rate to transitional employees who are unable to earn a wage at the minimum rate; and</li> <li>(b) that the lower rate must not be paid to a transitional employee unless a particular person or authority has certified that the transitional employee is unable to earn a wage at the minimum rate.</li> </ul>
8	51 Orders	to stop or prevent industrial action
9 10 11 12 13	(1)	If it appears to the Commission that industrial action is happening, or is threatened, impending or probable, in relation to an industrial dispute about a matter referred to in subclause 29(2), the Commission may, by order, give directions that the industrial action stop or not occur.
14 15 16 17 18 19 20	(2)	<ul> <li>The Commission may make such an order on its own initiative, or on the application of:</li> <li>(a) a party to the industrial dispute (if any); or</li> <li>(b) a person who is directly affected, or who is likely to be directly affected, by the industrial action; or</li> <li>(c) an organisation of which a person referred to in paragraph (b) is a member.</li> </ul>
21 22	(3)	The Commission must hear and determine an application for an order under this clause as quickly as practicable.
23	(4)	The Commission may make an interim order under this clause.
24 25	(5)	An interim order made under subclause (4) ceases to have effect if the application is determined.
26 27 28	(6)	The powers conferred on the Commission by subclauses (1) and (4) are in addition to, and not in derogation of, the powers conferred on the Commission by the rest of this Schedule.
29 30	(7)	A person or organisation to whom an order under subclause (1) or (4) is expressed to apply must comply with the order.
31 32 33 34	(8)	The Court may, on the application of a person or organisation affected by an order under subclause (1) or (4), grant an injunction on such terms as the Court considers appropriate if it is satisfied that another person or organisation:

1 2	(a) has engaged in conduct that constitutes a contravention of subclause (7); or
3	<ul><li>(b) is proposing to engage in conduct that would constitute such a contravention.</li></ul>
5 6 7	(9) If, in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subclause (8).
8 9	Part 4—Ballots ordered by Commission
10	52 Commission may order secret ballot
11	(1) If:
12	(a) an organisation is concerned in an industrial dispute with
13	which the Commission is empowered to deal under this
14	Schedule (whether or not proceedings in relation to the
15	dispute are before the Commission); and
16	(b) the Commission considers that the prevention or settlement
17	of the industrial dispute might be helped by finding out the
18 19	attitudes of the members, or the members of a section or class of the members, of the organisation or a branch of the
20	organisation in relation to a matter;
20	the Commission may order that a vote of the members be taken by
22	secret ballot (with or without provision for absent voting), in
23	accordance with directions given by the Commission, for the
24	purpose of finding out their attitudes to the matter.
25	(2) The powers of the Commission to make an order under
25 26	subclause (1), and to revoke such an order, are exercisable only by
27	a Presidential Member or a Full Bench.
28	53 Scope of directions for secret ballots
29	(1) Directions given by the Commission under subclause $52(1)$ must
30	provide for all matters relating to the ballot concerned, including
31	the following matters:
32	(a) the questions to be put to the vote;
33	(b) the eligibility of persons to vote;
34	(c) the conduct of the ballot generally.

1 2 3 4	(2)	Before giving a direction relating to the conduct of the ballot, the Commission must consult with the Industrial Registrar or, if the ballot is to be conducted by the Australian Electoral Commission, with the Electoral Commissioner.
5	54 Conduc	ct of ballot
6	(1)	If, under this Part, the Commission orders the holding of a secret
7		ballot, the Commission must, by order:
8		(a) direct the organisation concerned to make arrangements for
9 10		the conduct of the ballot by a person approved by the Industrial Registrar; or
11		(b) direct the Industrial Registrar to make arrangements for the
12		conduct of the ballot;
13		and may give any further directions that it considers necessary for
14		ensuring the secrecy of votes and otherwise for the purposes of the
15		conduct of the ballot or the communication of the result to the
16		Commission.
17	(2)	An organisation or person (other than the Industrial Registrar) to
18		whom a direction has been given under subclause (1) must comply
19		with the direction.
20		Penalty: 30 penalty units.
21	(3)	Subclause (2) is an offence of strict liability.
22	(4)	If a direction is given under paragraph (1)(a), the Commonwealth
23		is liable to pay to the organisation the reasonable costs of the
24		conduct of the ballot concerned as assessed by a Registrar.
25	(5)	If a direction is given under paragraph (1)(b), the Industrial
26		Registrar must conduct the ballot concerned, or make arrangements
27		for its conduct, in accordance with the direction.
28	(6)	If the result of a ballot conducted under an order under this Part is
29		communicated to the Commission, the Commission must cause the
30		Industrial Registrar to inform each of the following persons, by
31		written notice, of the result:
32		(a) the persons who were eligible to vote in the ballot;
33		(b) the organisation (if any) to which those persons belonged,
34		and the transitional employers by whom those persons were

1 2	employed, when those persons became eligible to vote in the ballot.
3	55 Commission to have regard to result of ballot
4 5 6 7 8	In any conciliation or arbitration proceeding before the Commission in relation to a matter in relation to which the attitudes of persons have been expressed in a ballot conducted under an order under this Part, the Commission must have regard to the result of the ballot.
9	56 Offences in relation to ballots
10 11 12	For the purposes of this Part, section 317 applies to a ballot ordered under this Part in the same way as it applies to a ballot ordered under Division 4 of Part VC of this Act.
13 14 15	Part 5—Circumstances in which transitional awards cease to be binding
16 17	57 Ceasing to be bound by transitional award—making a State employment agreement
18 19 20 21 22	<ul> <li>(1) If a transitional employer that is bound by a transitional award in respect of the employment of a transitional employee makes a State employment agreement with the transitional employee:</li> <li>(a) the transitional employer ceases to be bound by that award in respect of that employment; and</li> </ul>
23 24	(b) the transitional employer cannot subsequently be bound by the transitional award in respect of that employment.
25 26	Note: A State employment agreement may be made with one or more transitional employees employed by the transitional employer.
27 28 29	(2) To avoid doubt, the transitional award does not prevent the State employment agreement from coming into force and regulating the wages and conditions of employment of the transitional employee.

1 2	58		g to be bound by transitional award—inability to make a State employment agreement
3		(1)	If a transitional employer has made genuine efforts to make a State
4			employment agreement with one or more transitional employees
5			employed by the transitional employer, but has been unable to do
6 7			so, the transitional employer, or any of the transitional employees, may apply to the Commission for an order that the transitional
8			award cease to bind the transitional employer in respect of the
9			employment of the transitional employees.
10			The Commission must make the order sought if it is satisfied that
11			the transitional employer has made genuine efforts to make a State
12			employment agreement with one or more of the transitional
13			employees, but has been unable to do so.
14	59	-	g to be bound by transitional award—inability to resolve
15			industrial dispute under this Schedule
16		(1)	This clause applies if an industrial dispute has not been able to be
17			resolved under this Schedule, despite genuine efforts having been
18			made to do so.
19		(2)	A party to the industrial dispute may apply to the Commission for
20			an order that the transitional award to which the industrial dispute
21			relates cease to bind a transitional employer affected by the
22			industrial dispute in respect of the employment of transitional
23			employees employed by the transitional employer.
24		(3)	The Commission must make the order sought if it is satisfied that
25			genuine efforts were made to resolve the industrial dispute.
	<u>(</u> )	Tratana	tion between themsitized amonds. State lower and State
	ov		tion between transitional awards, State laws and State awards
27			awarus
28			Subject to this clause, if a State law or a State award is inconsistent
29			with, or deals with a matter dealt with in, a transitional award:
30			(a) the transitional award prevails; and
31			(b) the State law or State award, to the extent of the
32			inconsistency or in relation to the matter dealt with, is
33			invalid.

# Part 6—Technical matters relating to transitional awards

1

2 3

4	61 Making and publication of orders
5	(1) An order made by the Commission for the purposes of this
6	Schedule must:
7	(a) be reduced to writing; and
8	(b) be signed by:
9 10	<ul><li>(i) in the case of an order made by a Full Bench—at least one member of the Full Bench; and</li></ul>
11 12	(ii) in any other case—at least one member of the Commission; and
13	(c) show the day on which it is signed.
14	(2) If the Commission makes an order for the purposes of this
15	Schedule, the Commission must promptly give to a Registrar:
16	(a) a copy of the order; and
17	(b) written reasons for the order; and
18 19	<ul><li>(c) a list specifying each party who appeared at the hearing of the proceeding concerned.</li></ul>
20	(3) A Registrar who receives a copy of an order under subclause (2)
21 22	must promptly ensure that a copy of the order and the written reasons received by the Registrar in respect of the making of the
23	order:
24	(a) are made available to each party shown on the list given to
25	the Registrar under paragraph (2)(c); and
26	(b) are available for inspection at each registry; and
27	(c) are published as soon as practicable.
28	62 Requirement for transitional award-related orders
29	(1) The Commission must, when making a transitional award-related
30	order, if it considers it appropriate, ensure that the order:
31	(a) is expressed in plain English and is easy to understand in
32	structure and content; and
33 34	<ul><li>(b) does not contain terms that are obsolete or that need updating; and</li></ul>

	(c) if appropriate, provides for the employment of workers with disabilities in general employment by including terms for the Supported Wage System; and
	Note: The Supported Wage System was endorsed by the Commission in the Full Bench decision dated 10 October 1994 (Print L5723).
	(d) includes wage arrangements for the full range of
	apprenticeships, traineeships and other training arrangements
	that are relevant to the work covered by the transitional
	award to which the order relates, including for part-time and school-based apprenticeships and traineeships.
(2)	A transitional award-related order does not discriminate against a
	transitional employee for the purposes of paragraph 9(1)(e) merely
	because:
	(a) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
	(b) it discriminates, in respect of employment as a member of the
	staff of an institution that is conducted in accordance with the
	teachings or beliefs of a particular religion or creed:
	(i) on the basis of those teachings or beliefs; and
	(ii) in good faith.
63 Registra	ar's powers if member ceases to be member after making
-	an order
	If:
	(a) a member of the Commission ceases to be a member after an
	order has been made for the purposes of this Schedule by the Commission constituted by the member; and
	(b) at that time, the order has not been reduced to writing or has
	been reduced to writing but has not yet been signed by the
	member;
	a Registrar must reduce the order to writing, sign it and seal it with
	a Registrar must reduce the order to writing, sign it and seal it with the seal of the Commission, and the order has effect as if it had
	the seal of the Commission, and the order has effect as if it had been signed by the member of the Commission.

562 Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1	65	Date of orders
2		The date of an order made by the Commission for the purposes of
3		this Schedule is the day when the order was signed under subclause
4		61(1).
5	66	Date of effect of orders
6 7		<ol> <li>An order made by the Commission for the purposes of this Schedule must be expressed to come into force on a specified day.</li> </ol>
8 9 10		(2) Unless the Commission is satisfied that there are exceptional circumstances, the day specified in the order must not be earlier than the date of the order.
11	67	Term of orders
12		(1) An order made by the Commission for the purposes of this
13		Schedule must specify the period for which the order is to continue
14		in force.
15		(2) In determining the period to be specified under subclause (1), the $C$
16		Commission must have regard to:
17 18		<ul><li>(a) the wishes of the parties to the industrial dispute concerned as to the period for which the order should continue in force;</li></ul>
19		and
20		(b) the desirability of stability in workplace relations.
21	68	Continuation of transitional awards
22		(1) Subject to clause 31 and any order of the Commission, a
23		transitional award and an order varying a transitional award
24		continue in force until the end of the transitional period.
25		(2) A term of a transitional award about:
26		(a) long service leave with pay; or
27		(b) sick leave with pay;
28		is not taken to be ineffective merely because the term is so
29 30		expressed as not to be capable of operating, or of operating fully, during the period for which the award is to continue in force.
31 32		Note: A term in a transitional award about long service leave is preserved under clause 22.

1 2 3 4 5 6	(3) If, under subclause (1), a transitional award has continued in force after the end of the period specified in the award as the period for which the award is to continue in force, an order made by the Commission for the settlement of a further industrial dispute between the parties may be expressed to operate from a day not earlier than the day on which the industrial dispute arose.
7	69 Persons bound by orders varying transitional awards
8 9	<ul> <li>(1) Subject to subclause (2) and any order of the Commission, an order that determines an industrial dispute by varying a transitional award is binding on:</li> </ul>
10 11 12	<ul> <li>(a) all parties to the industrial dispute who appeared or were represented before the Commission; and</li> </ul>
13 14 15	<ul> <li>(b) all parties to the industrial dispute who were summoned or notified (either personally or as prescribed) to appear as parties to the industrial dispute (whether or not they</li> </ul>
16 17	appeared); and (c) all parties who, having been notified (either personally or as
18 19 20 21	prescribed) of the industrial dispute and of the fact that they were alleged to be parties to the industrial dispute, did not, within the time prescribed, satisfy the Commission that they were not parties to the industrial dispute; and
22 23 24 25	<ul><li>(d) any successor, assignee or transmittee (whether immediate or not) to or of the business or part of the business of a transitional employer who was a party to the industrial dispute, if the successor, assignee or transmittee is a</li></ul>
26 27	transitional employer at the time of acquiring or taking over the business or part of the business; and
28 29	(e) all transitional employers and transitional employees who, on the reform commencement and on the date of the order
30 31	varying the transitional award, were members of an organisation that is a party to the industrial dispute.
32	(2) An order that determines an industrial dispute by varying a
33 34	transitional award must not bind any transitional employer, transitional employee or organisation that was not bound by the
35	transitional award on the reform commencement.
36 37	Note 1: Clause 4 provides for who is bound by a transitional award on and from the reform commencement.
38	Note 2: The term <i>transitional award</i> includes the award as varied.

1 2	70	Transitional awards and transitional award-related orders of Commission are final
3 4		(1) Subject to this Act, a transitional award or a transitional award-related order (including a transitional award-related order
5		made on appeal):
6		(a) is final and conclusive; and
7 8		<ul><li>(b) may not be challenged, appealed against, reviewed, quashed or called in question in any court; and</li></ul>
9 10		(c) is not subject to prohibition, mandamus or injunction in any court on any account.
11 12		(2) A transitional award or transitional award-related order is not invalid because it was made by the Commission constituted
12		otherwise than as provided by this Act.
14	71	Reprints of transitional awards as varied
15		A document purporting to be a copy of a reprint of a transitional
16 17		award as varied, and purporting to have been printed by the Government Printer, is in all courts evidence of the transitional
17		award as varied.
19	72	Expressions used in transitional awards
20		Unless the contrary intention appears in a transitional award, an
21		expression used in the award has the same meaning as it has in an
22		Act by virtue of the <i>Acts Interpretation Act 1901</i> or as it has in this
23		Act.
24	Pa	art 7—Matters relating to Victoria
25	Di	vision 1—Matters referred by Victoria
26	Su	bdivision A—Introduction
27	73	Definitions

28 In this Division:

1 2	<i>employee</i> has the same meaning as in Division 1 of Part XV of this Act.
3 4	<i>employer</i> has the same meaning as in Division 1 of Part XV of this Act.
5 6	<i>employment</i> has the same meaning as in Division 1 of Part XV of this Act.
7 8	<i>transitional employee</i> means an employee of a transitional employer.
9 10 11	<ul><li><i>transitional employer</i> means an employer that:</li><li>(a) is an excluded employer (within the meaning of clause 2); and</li></ul>
12	(b) is bound by a transitional award.
13 14	<i>transitional Victorian reference award</i> means a transitional award that is a Victorian reference award.
15 16	<i>underlying award</i> , in relation to a common rule, means the award to which the common rule relates.
17 18 19	Victorian public sector has the same meaning as the expression public sector has in section 3 of the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria.
20	74 Division only has effect if supported by reference
21 22 23 24 25 26 27 28 29	<ul> <li>(1) Either of the following: <ul> <li>(a) a clause of this Division;</li> <li>(b) a clause of this Schedule (other than this Division), to the extent to which it relates to a Victorian reference award;</li> <li>has effect only for so long, and in so far, as the <i>Commonwealth Powers (Industrial Relations) Act 1996</i> of Victoria refers to the Parliament of the Commonwealth a matter or matters that result in the Parliament of the Commonwealth having sufficient legislative power for the clause so to have effect.</li> </ul></li></ul>
30 31 32 33	(2) Paragraph (1)(a) does not apply to a clause to the extent to which it relates to so much of the Australian Fair Pay and Conditions Standard as consists of the provisions of Division 6 of Part VA of this Act as they apply to an employee because of section 170KB.

# **Subdivision B—Industrial disputes**

2	75 Industrial disputes
3	(1) Without affecting its operation apart from this clause, this Schedule
4	also has effect, subject to this clause, as if the definition of
5	<i>industrial dispute</i> in clause 2 were replaced by the following:
6	industrial dispute means:
7	(a) an industrial dispute (including a threatened, impending or
8	probable industrial dispute):
9	(i) within the limits of Victoria; and
10	(ii) that is about allowable transitional award matters
11	pertaining to the relationship between transitional
12	employers and transitional employees; or
13	(b) a situation that is likely to give rise to an industrial dispute of the bind reference $d$ to be a situation of the situ
14	the kind referred to in paragraph (a).
15	For the purposes of subparagraph (a)(ii) of this definition, matters
16	pertaining to the relationship between transitional employers and
17	transitional employees do not include matters pertaining to the
18 19	relationship between a transitional employer and a third party (for example, an independent contractor).
20	(2) A law of Victoria prescribed for the purposes of this clause
21	prevails to the extent of any inconsistency over a transitional
22	Victorian reference award that regulates matters pertaining to the
23	relationship between:
24	(a) employers; and
25	(b) employees in the Victorian public sector.
26	Subdivision C—Allowable transitional award matters
27	76 Allowable transitional award matters
28	Subclause 17(1) has effect, in relation to a transitional Victorian
29	reference award, as if:
30	(a) "annual leave and" were omitted from paragraph 17(1)(e);
31	and
32	(b) paragraphs 17(1)(f) and (h) had not been enacted.

## 1 Subdivision D—Preserved transitional award terms

2	77	Preserved transitional award terms
3 4 5		<ol> <li>Clause 22 has effect, in relation to a transitional Victorian reference award, as if the following paragraphs were added at the end of subclause 22(3):</li> </ol>
6		(e) annual leave;
7		(f) personal/carer's leave;
8		(g) parental leave, including maternity and adoption leave.
9		(2) In this clause:
10 11		<i>personal/carer's leave</i> includes war service sick leave, infectious diseases sick leave and other like forms of sick leave.
12	78	When preserved transitional award entitlements have effect
13		(1) This clause applies to an employee if:
14		(a) the employee's employment is regulated by a transitional
15		Victorian reference award that includes a preserved
16		transitional award term about a matter; and
17		(b) the employee has an entitlement (the <i>preserved transitional</i>
18 19		<i>award entitlement</i> ) in relation to that matter under the preserved transitional award term.
20		(2) If:
21		(a) the preserved transitional award term is about a matter
22		referred to in paragraph 22(3)(e), (f) or (g); and
23		(b) the employee's preserved transitional award entitlement in
24		relation to the matter is more generous than the employee's
25		entitlement in relation to the corresponding matter under the
26		Australian Fair Pay and Conditions Standard;
27		the employee's entitlement under the Australian Fair Pay and
28		Conditions Standard is excluded, and the employee's preserved
29		transitional award entitlement has effect in accordance with the
30		preserved transitional award term. Otherwise, the employee's
31		entitlement under the Australian Fair Pay and Conditions Standard has effect.
32		
33		Note: See clause 79 for the meaning of <i>more generous</i> .

## 568

1		(3) If:
2		(a) the preserved transitional award term is about a matter $22(2)(x)$ (b) and
3		referred to in paragraph 22(3)(e), (f) or (g); and
4		(b) the employee has no entitlement in relation to the
5 6		corresponding matter under the Australian Fair Pay and Conditions Standard;
7		the employee's preserved transitional award entitlement has effect
8		in accordance with the preserved transitional award term.
9	79	Meaning of more generous
10		(1) For the purposes of this Subdivision, whether an employee's
11		entitlement under a preserved transitional award term in relation to
12		a matter is <i>more generous</i> than the employee's entitlement in
13 14		relation to the corresponding matter under the Australian Fair Pay and Conditions Standard:
15		(a) is as specified in, or as worked out in accordance with a
16		method specified in, regulations made under this paragraph;
17		or
18		(b) to the extent that regulations made under paragraph (a) do not
19		so specify—is to be ascertained in accordance with the
20		ordinary meaning of the term more generous.
21		(2) If a matter to which an entitlement under a preserved transitional
22		award term relates does not correspond directly to a matter to
23		which the Australian Fair Pay and Conditions Standard relates,
24		regulations made under paragraph (1)(a) may nevertheless specify
25		that the matters correspond for the purposes of this Subdivision.
26	80	Modifications that may be prescribed—personal/carer's leave
27		(1) This clause applies to a transitional Victorian reference award.
28		(2) The regulations may provide that a preserved transitional award
29		term about personal/carer's leave is to be treated, for the purposes
30		of the application of this Schedule to the award, as a separate
31		preserved transitional award term about separate matters, to the
32		extent that the preserved transitional award term is about any of the
33		following:
34		(a) war service sick leave;
35		(b) infectious diseases sick leave;

1	(c) any other like form of sick leave.
2 3 4	(3) If the regulations so provide, clauses 22, 78 and 79 have effect, for the purposes of the application of this Schedule to the award, in relation to each separate matter.
5 6 7 8	Note: There is no entitlement in relation to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the Australian Fair Pay and Conditions Standard, so there is no corresponding matter for the purposes of subclause 78(3).
9	81 Modifications that may be prescribed—parental leave
10	(1) This clause applies to a transitional Victorian reference award.
11 12 13 14	(2) The regulations may provide that a preserved transitional award term about parental leave is to be treated, for the purposes of the application of this Schedule to the award, as being about separate matters to the extent that it is about paid and unpaid parental leave.
15 16 17 18 19 20 21	<ul> <li>(3) If the regulations provide that a preserved transitional award term about parental leave is to be treated, for the purposes of the application of this Schedule to the award, as being about separate matters to the extent that it is about paid and unpaid parental leave:</li> <li>(a) clauses 22, 78 and 79 have effect, for the purposes of the application of this Schedule to the award, in relation to each separate matter; and</li> </ul>
22 23 24 25 26	<ul> <li>(b) in accordance with section 94D, the entitlement that an employee would have to unpaid parental leave under the Australian Fair Pay and Conditions Standard is reduced by any amount of paid parental leave to which the employee is entitled under the preserved transitional award term.</li> </ul>
27 28 29	Note 1: There is no entitlement in relation to paid parental leave under the Australian Fair Pay and Conditions Standard, so there is no corresponding matter for the purposes of subclause 78(3).
30 31 32 33	Note 2: Paragraph (b) does not have the effect of reducing entitlements. It simply ensures that the operation of section 94D is not affected by treating paid and unpaid parental leave separately under the regulations.

## **Subdivision E—Common rules**

2	82 Common rules continue to have effect during the transitional
3	period
4	(1) Despite the repeal of sections 141, 142 and 493A by the Workplace
5	Relations Amendment (Work Choices) Act 2005, if, immediately
6	before the reform commencement, a common rule had effect
7	because of repealed section 493A, the common rule continues to
8 9	have effect, to the extent to which it regulates employers in respect of the employment of their employees, until:
10	(a) the revocation of the underlying award; or
11	(b) the revocation of the relevant declaration that was made
12	under repealed subsection 141(1) (as that subsection had
13	effect because of repealed section 493A); or
14	(c) the end of the transitional period;
15	whichever comes first, as if those repeals had not happened.
16	(2) For this purpose:
17	(a) the underlying award is taken to be the relevant transitional
18	award, and
19	(b) the relevant declaration under repealed subsection $141(1)$ (as
20	that subsection had effect because of repealed section 493A)
21	is to be construed accordingly.
22	(3) Subclause (1) has effect subject to:
23	(a) clause 85; and
24	(b) subsection 45(7) (including that subsection as applied by
25	subsection 109(4)).
26	(4) Paragraph 46(1)(d) applies to a declaration under repealed
27	subsection $141(1)$ (as that subsection had effect because of
28	repealed section 493A), to the extent to which the declaration
29	relates to a common rule that continues to have effect because of
30	this Subdivision, as if the declaration were a decision of the
31	Commission made under this Schedule.

1 2	83	Certain declarations continue to have effect during the transitional period
2		•
3		(1) Despite the repeal of sections 142 and 493A by the <i>Workplace</i>
4		Relations Amendment (Work Choices) Act 2005, if, immediately
5		before the reform commencement, a declaration had effect under remealed subscript $142(5)$ (so explicitly remealed section $402A$ )
6 7		repealed subsection 142(5) (as applied by repealed section 493A), the declaration continues to have effect, to the extent to which it
8		relates to a common rule that continues to have effect because of
9		this Subdivision, until:
10		(a) the revocation of the declaration; or
11		(b) the end of the transitional period;
12		whichever comes first, as if those repeals had not happened.
12		whenever comes mst, as it mose repears had not happened.
13		(2) Subclause (1) has effect subject to subsection 45(7) (including that
14		subsection as applied by subsection 109(4)).
15		(3) Paragraph $46(1)(d)$ applies to a declaration under repealed
16		subsection $142(5)$ (as that subsection had effect because of
17		repealed section 493A), to the extent to which the declaration
18		relates to a common rule that continues to have effect because of
19		this Subdivision, as if the declaration were a decision of the
20		Commission made under this Schedule.
21	84	Variation of common rules before the reform commencement
22		(1) Despite the repeat of sections $142$ and $4024$ by the Warkplace
22 23		(1) Despite the repeal of sections 142 and 493A by the <i>Workplace</i> <i>Relations Amendment (Work Choices) Act 2005</i> , if:
23 24		(a) before the reform commencement, the Commission varied a
24 25		term of an award that was a common rule in Victoria for an
26		industry; and
27		(b) before the reform commencement, a Registrar published a
28		notice under repealed subsection 142(4) (as applied by
29		repealed section 493A) inviting any organisation or person
30		interested and wanting to be heard to lodge notice of
31		objection to the variation binding the organisation or person;
32		and
33		(c) either:
34		(i) the prescribed time (as defined by repealed subsection
35		142(8)) had not expired before the reform
36		commencement; or

<ul> <li>(ii) a notice of objection was lodged before the reform commencement, but the hearing of the objection had not been finally disposed of before the reform commencement;</li> <li>then, to the extent to which the variation relates to a common rule that continues to have effect because of this Subdivision, repealed subsections 142(4) to (8) and repealed section 493A continue to apply, in relation to the variation, as if those repeals had not happened.</li> </ul>
Despite the repeal of sections 142 and 493A by the <i>Workplace</i> <i>Relations Amendment (Work Choices) Act 2005</i> , if, after the reform commencement, the Commission makes a declaration under repealed subsection 142(5) (as it continues to apply because of subclause (1) of this clause), the declaration continues to have effect, until: (a) the revocation of the declaration; or
<ul><li>(a) the revocation of the declaration, of</li><li>(b) the end of the transitional period;</li><li>whichever comes first, as if those repeals had not happened.</li></ul>
Paragraph 46(1)(d) applies to a declaration under repealed subsection 142(5) (as it continues to apply because of subclause (1) of this clause) as if the declaration were a decision of the Commission made under this Schedule.
ion of common rules during the transitional period
<ul> <li>Subject to this clause, if, during the transitional period, the Commission varies a term of a transitional award that is the underlying award for a common rule in Victoria for an industry, the variation is, by force of this subclause, a common rule in Victoria for the industry, to the extent to which the variation regulates employers in respect of the employment of their employees, during the period: <ul> <li>(a) beginning on the date of effect of the variation; and</li> <li>(b) ending: <ul> <li>(i) on the revocation of the underlying award; or</li> <li>(ii) on the revocation of the variation; or</li> <li>(iii) at the end of the transitional period; whichever comes first.</li> </ul> </li> </ul></li></ul>

1	(2)	Before the Commission varies a term of a kind referred to in
2 3		subclause (1), a Registrar must, as prescribed, give notice of the place where, and the time when, it is proposed to hear the matter
4		involving the term.
_	(2)	If the Commission varies a term of a kind referred to in
5 6	(3)	If the Commission varies a term of a kind referred to in subclause (1), a Registrar must immediately publish, as prescribed,
7		a notice inviting any organisation or person interested and wanting
8		to be heard to lodge notice of objection to the variation binding the
9		organisation or person.
10	(4)	If a notice of objection in relation to a variation is lodged within
11		the prescribed time by an organisation or person under
12		subclause (3), the Commission:
13		(a) must hear the objection; and
14		(b) may declare that the variation is not binding on the
15		organisation or person.
16	(5)	If the Commission makes a declaration under subclause (4), a
17		Registrar must give notice of the declaration as prescribed.
18	(6)	A variation that is a common rule under this clause:
19		(a) is not enforceable before the end of 28 days after the date of
20		effect of the variation; and
21		(b) if a notice of objection in relation to the variation is lodged
22 23		within the prescribed time by an organisation or person under subclause (3)—is not enforceable against the organisation or
23 24		person before the hearing of the objection is finally disposed
25		of.
26	(7)	In this clause:
27		the prescribed time means the period, after the publication of the
28		notice under subclause (3), prescribed by Rules of the Commission
29		made under section 48.
30	86 Interve	ention by Minister of Victoria
31		The Commission must, on application, grant to a Minister of
32		Victoria, on behalf of the Government of Victoria, leave to
33		intervene in proceedings in which it is proposed to make a
34		declaration under:
35		(a) subclause 85(4); or

1 2		<ul><li>(b) repealed subsection 142(5) (as it continues to apply because of clause 84).</li></ul>
3	87	Concurrent operation of laws of Victoria
4 5 6		(1) Despite any other provision of this Act, this Subdivision is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this Subdivision.
7 8 9 0		(2) In particular, a common rule as it has effect, or continues to have effect, because of this Subdivision is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with the common rule.
1	88	Pre-commencement applications for review
2 3 4 5		<ul> <li>(1) This clause applies if, before the reform commencement, an application (the <i>review application</i>) had been made under subsection 109(1) (as applied by repealed section 142B) for review of:</li> </ul>
.6 .7 .8		<ul> <li>(a) a declaration under repealed Division 5 of Part VI (as that provision had effect because of repealed subsection 493A(2)); or</li> </ul>
9		(b) a decision not to make such a declaration.
0 1 2		<ul> <li>(2) Despite the repeal of sections 142B and 493A by the <i>Workplace</i> <i>Relations Amendment (Work Choices) Act 2005</i>, this Act continues to apply, in relation to:</li> </ul>
23 24 25		<ul><li>(a) the review application; and</li><li>(b) any review made as a result of the review application; as if those repeals had not happened.</li></ul>
6	89	Common rule taken to be award
27 28 29 60		<ul> <li>(1) A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be an award for the purposes of:</li> <li>(a) sections 100B, 496 and 526; and</li> <li>(b) clauses 5, 15 and 19 of Schedule 14.</li> </ul>
31 32 33		(2) A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be a transitional award for the purposes of clause 60.

1	90	Meaning of industrial action
2 3 4		A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be a transitional award for the purposes of clause 3.
5	91	Right of entry
6 7 8		A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be a transitional award for the purposes of:
9		(a) subclause 105(1); and
10 11		<ul> <li>(b) the definitions of <i>transitional employee</i> and <i>transitional employer</i> in subclause 2(1), so far as those definitions apply</li> </ul>
12		to subclause 105(1).
13	92	Application of provisions of Act relating to workplace inspectors
14		A common rule that has effect, or continues to have effect, because
15		of this Subdivision is taken to be a transitional award for the
16		purposes of clause 106.
17	93	Application of provisions of Act relating to compliance
18 19 20		A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be a transitional award for the purposes of paragraph 107(a).
21	Su	bdivision F—Transmission of business
22	94	Transmission of business
23		(1) Paragraph 4(2)(b) has effect, in relation to a transitional Victorian
23 24		reference award, as if the reference in that paragraph to a
25		transitional employer (within the meaning of this Schedule) were
26		read as a reference to a transitional employer (within the meaning
27		of this Division) in Victoria.
28		(2) Paragraph $69(1)(d)$ has effect, in relation to an order varying a
20 29		transitional Victorian reference award, as if the second-occurring
30		reference in that paragraph to a transitional employer (within the

1 2	meaning of this Schedule) were read as a reference to a transitional employer (within the meaning of this Division) in Victoria.
3	Subdivision G—Modification of certain provisions of this Act
4	95 Modification of certain provisions of this Act
5 6	A transitional Victorian reference award is taken to be an award for the purposes of:
7	(a) sections 100B, 496 and 526; and
8	(b) clauses 5, 15 and 19 of Schedule 14.
9	Division 2—Other matters
10	Subdivision A—Allowable transitional award matters
11	96 Allowable transitional award matters
12	(1) This clause applies to a transitional award (other than a Victorian
13	reference award) to the extent that the award regulates excluded
14	employers in respect of the employment of employees in Victoria.
15	(2) Subclause 17(1) has effect, in relation to the award, as if:
16	(a) "annual leave and" were omitted from paragraph 17(1)(e);
17	and
18	(b) paragraphs $17(1)(f)$ and (h) had not been enacted.
19	Subdivision B—Preserved transitional award terms
20	97 Preserved transitional award terms
21	(1) This clause applies to a transitional award (other than a Victorian
22	reference award) to the extent that the award regulates excluded
23	employers in respect of the employment of employees in Victoria.
24	(2) Clause 22 has effect, in relation to the award, as if the following
25	paragraphs were inserted before paragraph 22(3)(a):
26	(aa) annual leave;
27	(ab) personal/carer's leave;
28	(ac) parental leave, including maternity and adoption leave.

1	98 When preserved transitional award entitlements have effect	
2	(1) This clause applies to an employee if:	
3	(a) the employee's employment is regulated by a transitional	
4	award (other than a Victorian reference award) that include	S
5	a preserved transitional award term dealing with a matter;	
6	and	
7	(b) the employee has an entitlement (the <i>preserved transitional</i>	l
8	award entitlement) in relation to that matter under the	
9	preserved transitional award term.	
10	(2) If:	
11	(a) the preserved transitional award term is about a matter	
12	referred to in paragraph 22(3)(aa), (ab) or (ac); and	
13	(b) the employee's preserved transitional award entitlement in	
14	relation to the matter is more generous than the employee's	
15	entitlement in relation to the corresponding matter under the	е
16	Australian Fair Pay and Conditions Standard;	
17	the employee's entitlement under the Australian Fair Pay and	
18	Conditions Standard is excluded, and the employee's preserved transitional award entitlement has effect in accordance with the	
19 20	preserved transitional award term. Otherwise, the employee's	
20	entitlement under the Australian Fair Pay and Conditions Standar	ď
22	has effect.	
23	Note: See clause 99 for the meaning of <i>more generous</i> .	
24	(3) If:	
25	(a) the preserved transitional award term is about a matter	
26	referred to in paragraph 22(3)(aa), (ab) or (ac); and	
27	(b) the employee has no entitlement in relation to the	
28	corresponding matter under the Australian Fair Pay and	
29	Conditions Standard;	
30	the employee's preserved transitional award entitlement has effect	rt
31	in accordance with the preserved transitional award term.	
32	99 Meaning of more generous	
33	(1) For the purposes of this Subdivision, whether an employee's	
34	entitlement under a preserved transitional award term in relation	to
35	a matter is <i>more generous</i> than the employee's entitlement in	

1 2	relation to the corresponding matter under the Australian Fair Pay and Conditions Standard:
_	
3	(a) is as specified in, or as worked out in accordance with a
4	method specified in, regulations made under this paragraph;
5	Or
6	(b) to the extent that regulations made under paragraph (a) do not
7 8	so specify—is to be ascertained in accordance with the ordinary meaning of the term <i>more generous</i> .
9	(2) If a matter to which an entitlement under a preserved transitional
10	award term relates does not correspond directly to a matter to
11 12	which the Australian Fair Pay and Conditions Standard relates, regulations made under paragraph (1)(a) may nevertheless specify
12	that the matters correspond for the purposes of this Subdivision.
14	100 Modifications that may be prescribed—personal/carer's leave
15	(1) This clause applies to a transitional award (other than a Victorian
16	reference award) to the extent that the award regulates excluded
17	employers in respect of the employment of employees in Victoria.
18	(2) The regulations may provide that a preserved transitional award
19	term about personal/carer's leave is to be treated, for the purposes
20	of the application of this Schedule to the award, as a separate
21	preserved transitional award term about separate matters, to the
22	extent that the preserved transitional award term is about any of the
23	following:
24	(a) war service sick leave;
25	(b) infectious diseases sick leave;
26	(c) any other like form of sick leave.
27	(3) If the regulations so provide, clauses 22, 98 and 99 have effect, for
28	the purposes of the application of this Schedule to the award, in
29	relation to each separate matter.
30	Note: There is no entitlement in relation to war service sick leave, infectious
31	diseases sick leave or any other like form of sick leave under the
32	Australian Fair Pay and Conditions Standard, so there is no
33	corresponding matter for the purposes of subclause 98(3).

1	101 Modifications that may be prescribed—parental leave
2 3 4	(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.
5 6 7 8	(2) The regulations may provide that a preserved transitional award term about parental leave is to be treated, for the purposes of the application of this Schedule to the award, as being about separate matters to the extent that it is about paid and unpaid parental leave.
9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>(3) If the regulations provide that a preserved transitional award term about parental leave is to be treated, for the purposes of the application of this Schedule to the award, as being about separate matters to the extent that it is about paid and unpaid parental leave:</li> <li>(a) clauses 22, 74 and 99 have effect for the purposes of the application of this Schedule to the award, in relation to each separate matter; and</li> <li>(b) in accordance with section 94D, the entitlement that an employee would have to unpaid parental leave under the Australian Fair Pay and Conditions Standard is reduced by any amount of paid parental leave to which the employee is entitled under the preserved transitional award term.</li> </ul>
21 22 23 24	<ul><li>Note 1: There is no entitlement in relation to paid parental leave under the Australian Fair Pay and Conditions Standard, so there is no corresponding matter for the purposes of subclause 98(3).</li><li>Note 2: Paragraph (b) does not have the effect of reducing entitlements.</li></ul>
25 26 27	It simply ensures that the operation of section 94D is not affected by treating paid and unpaid parental leave separately under the regulations.
28	Subdivision C—Modification of certain provisions of this Act
29	102 Modification of certain provisions of this Act
<ol> <li>30</li> <li>31</li> <li>32</li> <li>33</li> <li>34</li> <li>35</li> </ol>	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, is taken to be an award for the purposes of: (a) sections 100B, 496 and 526; and (b) clauses 5, 15 and 19 of Schedule 14.

# ¹ Part 8—Miscellaneous

3 <b>103</b>	Revocation	and suspension of transitional awards
4 5 6		he purposes of this Schedule, section 44Q applies as if: a reference to an award were a reference to a transitional award; and
7 8	(b)	a reference to an order were a reference to an order made for the purposes of this Schedule.
9 104	Appeals to	Full Bench
10 11		he purposes of this Schedule, section 45 applies, to the extent ble, as if:
12 13 14 15	(a)	paragraph (1)(a) of that section as in force immediately before the reform commencement had not been repealed by the <i>Workplace Relations Amendment (Work Choices) Act</i> 2005; and
16 17	(b)	the reference in paragraph (1)(b) to an award or order were a reference to an order for the purposes of this Schedule; and
18 19	(c)	the reference in paragraph (1)(c) to an award or order were a reference to an order for the purposes of this Schedule; and
20 21	(d)	the reference in paragraph (1)(d) to paragraph 44I(1)(e) were a reference to paragraph 46(1)(e) of this Schedule; and
22 23	(e)	the reference in paragraph (1)(ed) to an award were a reference to a transitional award; and
24 25 26	(f)	the reference in paragraph (3)(a) to the award or order were a reference to the order made for the purposes of this Schedule; and
27 28	(g)	the reference in paragraph (3)(bb) to the award were a reference to the transitional award; and
29	(h)	"award," were omitted from paragraph (7)(b); and
30	(i)	"award or" were omitted from paragraph (7)(d); and
31 32	(j)	the reference in paragraph $(7)(d)$ to paragraph $44I(1)(e)$ were a reference to paragraph $46(1)(e)$ of this Schedule; and
33	(k)	subsection (9) of that section as in force immediately before
34 35		the reform commencement had not been repealed by the Workplace Relations Amendment (Work Choices) Act 2005.

100	Application of provisions of Act relating to right of entry
	For the purposes of this Schedule, Part IX (Right of entry) applies to the extent possible, as if:
	(a) a reference to an award were a reference to a transitional award; and
	<ul> <li>(b) a reference to an employee were a reference to a transitional employee; and</li> </ul>
	(c) a reference to an employer were a reference to a transitional employer; and
	(d) a reference to an affected employee were a reference to an affected transitional employee; and
	(e) a reference to an affected employer were a reference to an affected transitional employer; and
	(f) Division 4A of that Part were omitted and any references to provision in that Division were omitted.
106	Application of provisions of Act relating to workplace inspector
	For the purposes of this Schedule, Part V (Workplace inspectors)
	applies, to the extent possible, as if a reference to an award were a reference to a transitional award.
107	Application of provisions of Act relating to compliance
	For the purposes of this Schedule, Part VIII (Compliance) applies
	to the extent possible, as if:
	<ul><li>to the extent possible, as if:</li><li>(a) a reference to an award were a reference to a transitional award; and</li></ul>
	<ul> <li>to the extent possible, as if:</li> <li>(a) a reference to an award were a reference to a transitional award; and</li> <li>(b) a reference to an employee were a reference to a transitional employee; and</li> </ul>
	<ul> <li>to the extent possible, as if:</li> <li>(a) a reference to an award were a reference to a transitional award; and</li> <li>(b) a reference to an employee were a reference to a transitional employee; and</li> <li>(c) a reference to an employer were a reference to a transitional employer; and</li> </ul>
108	<ul> <li>to the extent possible, as if:</li> <li>(a) a reference to an award were a reference to a transitional award; and</li> <li>(b) a reference to an employee were a reference to a transitional employee; and</li> <li>(c) a reference to an employer were a reference to a transitional employer; and</li> <li>(d) a reference to employment were a reference to employment</li> </ul>

- (2) Without limiting the generality of subclause (1), regulations for the purposes of that subclause may provide that this Act applies with specified modifications.
- (3) In this clause:

modifications includes additions, omissions and substitutions.

#### 6 **360 Schedule 14**

1

2

3

4

5

7 Repeal the Schedule, substitute:

# Schedule 14—Transitional arrangements for existing pre-reform Federal agreements etc.

11 Note: See section 4A.

# Part 1—Preliminary

#### 14 **1 Definitions**

15	In this Schedule:
16	Division 3 pre-reform certified agreement means a pre-reform
17	certified agreement that was made under Division 3 of Part VIB of
18	this Act before the reform commencement.
19	exceptional matters order has the same meaning as in the
20	pre-reform Act.
21	excluded employer has the same meaning as in Schedule 13.
22	old IR agreement means an agreement certified or approved under
23	any of the following provisions of this Act:
24	(a) section 115, as in force immediately before the
25	commencement of the Schedule to the Industrial Relations
26	Legislation Amendment Act 1992;
27	(b) Division 3A of Part VI, as in force immediately before the
28	commencement of Schedule 2 to the Industrial Relations
29	Reform Act 1993;

1	(c) Division 2 of Part VIB, as in force immediately before the
2	commencement of item 19 of Schedule 8 to the Workplace
3	Relations and Other Legislation Amendment Act 1996;
4	(d) Division 3 of Part VIB, as in force immediately before the
5	commencement of item 1 of Schedule 9 to the Workplace
6	Relations and Other Legislation Amendment Act 1996.
7	pre-reform Act means this Act as in force just before the reform
8	commencement.
9	pre-reform AWA means an AWA (within the meaning of the
10	pre-reform Act) that:
11	(a) was made before the reform commencement; and
12	(b) was approved under Part VID of this Act (whether before the
13	reform commencement, or after the reform commencement
14	because of Part 8 of this Schedule).
15	pre-reform certified agreement means an agreement that:
16	(a) was made under Division 2 or 3 of Part VIB of this Act
17	before the reform commencement; and
18	(b) was certified under Division 4 of Part VIB of this Act
19	(whether before the reform commencement, or after the
20	reform commencement because of Part 8 of this Schedule).
21	section 170MX award means an award under subsection
22	170MX(3) of the pre-reform Act.
23	transitional period means the period of 5 years beginning on the
24	reform commencement.
25	Part 2—Pre-reform certified agreements
-	

### 26 Division 1—General

# 27 2 Continuing operation of pre-reform certified agreements—under 28 old provisions

29	(1) Subject to this Schedule, the following provisions of the pre-reform
30	Act continue to apply in relation to a pre-reform certified
31	agreement, despite the repeals and amendments made by the
32	Workplace Relations Amendment (Work Choices) Act 2005:
33	(a) sections 170LA and 170LB;

1	(b)	subsections 170LC(1) and (5);
2	(c)	sections 170LD and 170LE;
3	(d)	subsection 170LV(2);
4	(e)	section 170LW;
5	(f)	subsections 170LX(1) and (4);
6	(g)	sections 170LY and 170LZ;
7	(h)	section 170M;
8	(i)	paragraph 170MD(6)(a);
9	(j)	paragraphs 170MD(7)(a), (b) and (e);
10	(k)	sections 170MDA, 170MG, 170MH and 170MHA;
11	(1)	paragraph 170ND(a);
12	(m)	section 170NE;
13	(n)	subsections 170NF(1), (2) and (3);
14	(0)	section 170NG;
15	(p)	Division 10A of Part VIB;
16	(q)	sections 298Y and 298Z;
17	(r)	any other provision relating to the operation of the provisions
18		mentioned in the preceding paragraphs.
19	(2) Regu	lations made under the pre-reform Act, to the extent that they
20		to the provisions mentioned in subclause (1), continue to
21		in relation to a pre-reform certified agreement.
22	3 Rules replaci	ng subsections 170LX(2) and (3)
23	(1) A pre	e-reform certified agreement ceases to be in operation in
24	relati	on to an employee if a collective agreement or workplace
25	deter	mination comes into operation in relation to that employee.
26	(2) A pre	e-reform certified agreement has no effect in relation to an
27	· / 1	by by the an AWA operates in relation to the employee.
	-	
28	· · · ·	e-reform certified agreement:
29	(a)	ceases to be in operation if it is terminated under
30 31		section 170LV, 170MG, 170MH or 170MHA of the pre-reform Act; and
31 32	(h)	does not operate if subsection 170LY(2) of the pre-reform
32 33	(0)	Act applies.
20		

1 2	<ul><li>(4) If a pre-reform certified agreement has ceased operating under paragraph (3)(a), it can never operate again.</li></ul>
3 4	(5) If a pre-reform certified agreement has ceased operating in relation to an employee because of subclause (1), the agreement can never
5	operate again in relation to that employee.
6 7	<ul><li>(6) A pre-reform certified agreement may be set aside under subsection 113(2A) of the pre-reform Act.</li></ul>
8 9	4 Rules replacing section 170NC—coercion of persons to terminate certified agreements etc.
10	(1) A person must not:
10 11 12	<ul><li>(a) take or threaten to take any industrial action or other action;</li><li>or</li></ul>
13	(b) refrain or threaten to refrain from taking any action;
14	with intent to coerce another person to agree, or not to agree, to
15	terminate or approve the termination of a pre-reform certified
16	agreement.
17 18	<ul><li>(2) Subclause (1) does not apply to protected action (within the meaning of this Act as in force after the reform commencement).</li></ul>
19	(3) The following provisions in Division 10 of Part VIB of the
20 21	pre-reform Act apply in relation to a contravention of subclause (1):
22	(a) paragraph 170ND(e);
23	(b) section 170NE;
24	(c) subsection 170NF(7);
25	(d) section 170NG.
26	5 Interaction of agreement with other instruments
27	(1) The following have no effect in relation to an employee while a
28	pre-reform certified agreement operates in relation to the
29	employee:
30	(a) a preserved State agreement;
31	(b) a notional agreement preserving State awards.
32 33	(2) While a pre-reform certified agreement is in operation, it prevails over an award to the extent of any inconsistency (subject to
33	over an award to the extent of any inconsistency (subject to

1 2	section 170LY of the pre-reform Act, as it applies because of clause 2).
3 4	6 Continuing operation of pre-reform certified agreements—under new provisions
5	Subject to this Schedule, the following provisions of this Act apply
6	in relation to a pre-reform certified agreement as if it were a
7	collective agreement:
8	(a) Part V;
9	(b) section 110;
10	(c) subsection 109B(2);
11	(d) Part VIII;
12	(e) Part IX.
13	7 Effect of pre-reform certified agreement if AWA is terminated
14	(1) A pre-reform certified agreement has no effect in relation to an
15	employee if:
16	(a) an AWA operated in relation to the employee; and
17	(b) the AWA was terminated.
18 19	Note 1: See Part VA for the operation of the Australian Fair Pay and Conditions Standard in these circumstances.
20 21	Note 2: See subsections 103M(2), (3) and (4) for the operation of undertakings (if any) in these circumstances.
22	(2) Subclause (1) operates in relation to the period:
23	(a) starting when the AWA was terminated; and
24	(b) ending when another workplace agreement comes into
25	operation in relation to the employee.
26	8 Anti-AWA terms taken to be prohibited content
27	(1) Sections 101F, 101G, 101H, 101I, 101J, 101K and 101L of this
28	Act apply in relation to an anti-AWA term in a pre-reform certified
29	agreement as if:
30	(a) the term was prohibited content; and
31	(b) the agreement was a workplace agreement.
32	(2) In this clause:

	<i>anti-AWA term</i> means a term of a pre-reform certified agreement that prevents the employer bound by the agreement from making a pre-reform AWA or an AWA with an employee bound by the agreement.
9 Ca	lling up contents of pre-reform certified agreement in workplace agreement
	A workplace agreement may incorporate by reference terms from a pre-reform certified agreement under section 101C of this Act as if the pre-reform certified agreement were a workplace agreement.
10 A	pplication of Division to certain Division 3 pre-reform certified agreements
	<ol> <li>(1) This Division applies to a Division 3 pre-reform certified agreement as if the agreement had been made under section 170LJ of the pre-reform Act, if the employer in relation to the agreement:         <ul> <li>(a) is an employer (within the meaning of subsection 4AB(1)) at the reform commencement; or</li> <li>(b) becomes such an employer during the transitional period.</li> </ul> </li> </ol>
	(2) This Division does not apply in relation to a Division 3 pre-reform certified agreement while Division 2 of this Part applies to the agreement.
Divi	sion 2—Special rules for Division 3 pre-reform certified agreements with excluded employers
11 A	pplication of Division
	(1) This Division applies to a Division 3 pre-reform certified agreement if the employer in relation to the agreement is an excluded employer at the reform commencement.
	(2) This Division applies to the agreement while the employer remains an excluded employer during the transitional period.
12 C	essation of Division 3 pre-reform certified agreements
	<ul><li>(1) The agreement ceases to be in operation:</li><li>(a) at the end of the transitional period; or</li></ul>
588	Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1 2 3 4	<ul> <li>(b) when both of these conditions are satisfied (before the end of the transitional period):</li> <li>(i) the agreement has passed its nominal expiry date;</li> <li>(ii) it has been replaced by a State employment agreement.</li> </ul>
5 (2) 6	To avoid doubt, this clause does not affect any rights accrued or liabilities incurred under the agreement before it ceases to be in operation.
9 10	To avoid doubt, if the employer in relation to the agreement becomes an employer (within the meaning of subsection 4AB(1)) at a time before the end of the transitional period, subclause (1) does not apply after that time.
12 13	Note: On and after that time, Division 1 of this Part applies to the agreement.
	Once the agreement has ceased operating, it can never operate again.
	ning operation of pre-reform certified agreements—under old provisions
(1)	
19 20	Subject to this Schedule, the following provisions of the pre-reform Act continue to apply in relation to the agreement, despite the repeals and amendments made by the <i>Workplace Relations</i> <i>Amendment (Work Choices) Act 2005</i> :
19 20 21 22	Act continue to apply in relation to the agreement, despite the repeals and amendments made by the <i>Workplace Relations</i> <i>Amendment (Work Choices) Act 2005</i> : (a) sections 170LA and 170LB;
19 20 21	Act continue to apply in relation to the agreement, despite the repeals and amendments made by the <i>Workplace Relations Amendment (Work Choices) Act 2005</i> :
19 20 21 22 23 24	<ul> <li>Act continue to apply in relation to the agreement, despite the repeals and amendments made by the <i>Workplace Relations</i></li> <li><i>Amendment (Work Choices) Act 2005</i>: <ul> <li>(a) sections 170LA and 170LB;</li> <li>(b) subsections 170LC(1) and (5);</li> <li>(c) sections 170LD and 170LE;</li> </ul> </li> </ul>
19 20 21 22 23 24 25 26	<ul> <li>Act continue to apply in relation to the agreement, despite the repeals and amendments made by the <i>Workplace Relations</i></li> <li><i>Amendment (Work Choices) Act 2005</i>: <ul> <li>(a) sections 170LA and 170LB;</li> <li>(b) subsections 170LC(1) and (5);</li> <li>(c) sections 170LD and 170LE;</li> <li>(d) subsection 170LV(2);</li> <li>(e) section 170LW;</li> </ul> </li> </ul>
19 20 21 22 23 24 25 26 27 28	<ul> <li>Act continue to apply in relation to the agreement, despite the repeals and amendments made by the <i>Workplace Relations</i></li> <li><i>Amendment (Work Choices) Act 2005</i>: <ul> <li>(a) sections 170LA and 170LB;</li> <li>(b) subsections 170LC(1) and (5);</li> <li>(c) sections 170LD and 170LE;</li> <li>(d) subsection 170LV(2);</li> <li>(e) section 170LV(2);</li> <li>(f) subsections 170LX(1) and (4);</li> <li>(g) paragraph 170LY(1)(b);</li> </ul> </li> </ul>
19         20         21         22         23         24         25         26         27         28         29         30	<ul> <li>Act continue to apply in relation to the agreement, despite the repeals and amendments made by the <i>Workplace Relations Amendment (Work Choices) Act 2005</i>:</li> <li>(a) sections 170LA and 170LB;</li> <li>(b) subsections 170LC(1) and (5);</li> <li>(c) sections 170LD and 170LE;</li> <li>(d) subsection 170LV(2);</li> <li>(e) section 170LV(2);</li> <li>(f) subsections 170LX(1) and (4);</li> <li>(g) paragraph 170LY(1)(b);</li> <li>(h) subsections 170LY(2) and (3);</li> <li>(i) section 170LZ;</li> </ul>

	(o) paragraph 170ND(a);
	(p) section 170NE;
	(q) subsections 170NF(1), (2) and (3);
	(r) section 170NG;
	(s) Division 10A of Part VIB;
	(t) sections 298Y and 298Z;
	(u) any other provision relating to the operation of the provisions
	mentioned in the preceding paragraphs.
	(2) Regulations made under the pre-reform Act, to the extent that they
	relate to the provisions mentioned in subclause (1), continue to apply in relation to the agreement.
14	Rules replacing subsections 170LX(2) and (3)
	(1) The agreement:
	(a) ceases to be in operation if it is terminated under
	section 170LV, 170MG, 170MH or 170MHA of the
	pre-reform Act; and
	(b) does not operate if subsection 170LY(2) of the pre-reform Act applies.
	<ul><li>(2) If the agreement has ceased operating under paragraph (1)(a), it can never operate again.</li></ul>
	(3) The agreement may also be set aside under subsection 113(2A) of the pre-reform Act.
15	Interaction of agreement with awards
	While the agreement is in operation, it prevails over an award to
	the extent of any inconsistency (subject to section 170LY of the
	pre-reform Act, as it applies because of clause 13).
16	Continuing operation of pre-reform certified agreements—under
	new provisions
	Subject to this Schedule, the following provisions of this Act apply
	in relation to the agreement as if it were a collective agreement:
	(a) Part V;

- (c) subsection 109B(2);
  - (d) Part VIII;
- (e) Part IX.

2

3

4 5

6

7

## Part 3—Pre-reform AWAs

# 17 Continuing operation of pre-reform AWAs—under old provisions

8	(1) Subject to this Schedule, the following provisions of the pre-reform
9	Act continue to apply in relation to a pre-reform AWA, despite the
10	repeals and amendments made by the Workplace Relations
11	Amendment (Work Choices) Act 2005:
12	(a) section 170VG;
13	(b) subsections $170VH(1)$ and (2);
14	(c) section 170VM;
15	(d) subsections 170VN(1) and (2);
16	(e) subsections 170VO(5) and (6);
17	(f) subsections 170VPA(4) and (5);
18	(g) sections 170VPD, 170VPK, 170VQ, 170VR, 170VV and
19	170VZ;
20	(h) Division 8A of Part VID;
21	(i) Division 9 of Part VID (except sections 170WHC and
22	170WHD);
23 24	<ul><li>(j) any other provision relating to the operation of the provisions mentioned in the preceding paragraphs.</li></ul>
25	(2) Regulations made under the pre-reform Act, to the extent that they
26	relate to the provisions mentioned in subclause (1), continue to
27	apply in relation to a pre-reform AWA.
28	18 Rules replacing section 170VJ—period of operation of AWA
29	(1) A pre-reform AWA ceases to be in operation in relation to an
30	employee if an AWA comes into operation in relation to the
31	employee.
32 33	(2) A pre-reform AWA ceases to be in operation when a termination under section 170VM of the pre-reform Act takes effect.

1 2	(3) If a pre-reform AWA has ceased operating under subclause (2), it can never operate again.
3 4 5	(4) If a pre-reform AWA has ceased operating in relation to an employee because of subclause (1), the agreement can never operate again in relation to that employee.
6	19 Interaction of pre-reform AWAs with other instruments
7	The following have no effect in relation to an employee while a
8	pre-reform AWA operates in relation to the employee:
9	(a) a collective agreement;
10	(b) a workplace determination;
11	(c) a preserved State agreement;
12	(d) a notional agreement preserving State awards;
13	(e) an award.
14	20 Continuing operation of pre-reform AWAs—under new
14 15	20 Continuing operation of pre-reform AWAs—under new provisions
	provisions
15	
15 16	<b>provisions</b> Subject to this Schedule, the following provisions of this Act apply
15 16 17	<b>provisions</b> Subject to this Schedule, the following provisions of this Act apply in relation to a pre-reform AWA as if it were an AWA:
15 16 17 18	<ul> <li>provisions</li> <li>Subject to this Schedule, the following provisions of this Act apply in relation to a pre-reform AWA as if it were an AWA:</li> <li>(a) Part V;</li> </ul>
15 16 17 18 19	<ul> <li>provisions</li> <li>Subject to this Schedule, the following provisions of this Act apply in relation to a pre-reform AWA as if it were an AWA:</li> <li>(a) Part V;</li> <li>(b) section 110;</li> </ul>
15 16 17 18 19 20	<ul> <li>provisions</li> <li>Subject to this Schedule, the following provisions of this Act apply in relation to a pre-reform AWA as if it were an AWA:</li> <li>(a) Part V;</li> <li>(b) section 110;</li> <li>(c) subsection 109B(2);</li> </ul>
15 16 17 18 19 20 21	<ul> <li>provisions</li> <li>Subject to this Schedule, the following provisions of this Act apply in relation to a pre-reform AWA as if it were an AWA:</li> <li>(a) Part V;</li> <li>(b) section 110;</li> <li>(c) subsection 109B(2);</li> <li>(d) Part VIII;</li> </ul>
<ol> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> </ol>	<ul> <li>provisions</li> <li>Subject to this Schedule, the following provisions of this Act apply in relation to a pre-reform AWA as if it were an AWA: <ul> <li>(a) Part V;</li> <li>(b) section 110;</li> <li>(c) subsection 109B(2);</li> <li>(d) Part VIII;</li> <li>(e) Part IX.</li> </ul> </li> </ul>

²⁶ pre-reform AWA were a workplace agreement.

592	Workplace Relations Amendment (Work Choices) Bill 2005	No.	, 2005
-----	--------------------------------------------------------	-----	--------

	Part 4—Awards under subsection 170MX(3) of the pre-reform Act
2	2 Application of Part
	This Part applies in relation to a section 170MX award in force just before the reform commencement.
2	<b>23</b> Continuing operation of section 170MX awards—under old provisions
	(1) Subject to this Schedule, provisions of the pre-reform Act
	(including regulations made under that Act) relating to
	section 170MX of the pre-reform Act continue to apply in relation to the award, despite the repeals and amendments made by the
	Workplace Relations Amendment (Work Choices) Act 2005.
	(2) Subclause (1) does not apply in relation to the following provisions
	of the pre-reform Act:
	(a) section 170MN;
	(b) subsections $170MZ(4)$ and (5);
	(c) paragraph $170MZ(6)(b)$ ;
	(d) subsections $170MZ(7)$ and (8).
2	4 Continuing operation of section 170MX awards—under new
	provisions
	Subject to this Schedule, the following provisions of this Act apply
	in relation to the award as if it were a workplace determination:
	(a) Part V;
	(b) section 110;
	(c) subsection 109B(2);
	(d) Part VIII;
	(e) Part IX.

29 **25** Interaction of section 170MX awards with other instruments

30

31

 A section 170MX award has no effect in relation to an employee while an AWA operates in relation to that employee.

1	(2) A section 170MX award ceases to be in operation in relation to an
2	employee when one of the following comes into operation in
3	relation to the employee:
4	(a) a collective agreement;
5	(b) a workplace determination.
6	(3) The following have no effect in relation to an employee to the
7	extent to which they are inconsistent with a section 170MX award
8	that operates in relation to the employee:
9	(a) an award;
10	(b) a preserved State agreement;
11	(c) a notional agreement preserving State awards.
12	26 Effect of section 170MX award if AWA is terminated
13	(1) A section 170MX award has no effect in relation to an employee if:
14	(a) an AWA operated in relation to the employee; and
15	(b) the AWA was terminated.
16 17	Note 1: See Part VA for the operation of the Australian Fair Pay and Conditions Standard in these circumstances.
18 19	Note 2: See subsections 103M(2), (3) and (4) for the operation of undertakings (if any) in these circumstances.
20	(2) Subclause (1) operates in relation to the period:
21	(a) starting when the AWA was terminated; and
22	(b) ending when another workplace agreement comes into
23	operation in relation to the employee.
24 25	Part 5—Exceptional matters orders
26	27 Exceptional matters orders
27	An exceptional matters order ceases to be in force in relation to an
28	employee at the earlier of the following times:
29	(a) 2 years after it was made;
30	(b) when a workplace agreement or workplace determination
31	comes into operation in relation to that employee.

# Part 6—Old IR agreements

1 2

28 Operat	ion of old IR agreement
(1)	An old IR agreement ceases to be in operation no later than 3 years after the reform commencement.
(2)	An old IR agreement has no effect in relation to an employee if a workplace agreement or workplace determination comes into operation in relation to the employee.
(3)	If an old IR agreement has ceased operating because of subclause (1), the agreement can never operate again.
(4)	If an old IR agreement has ceased operating in relation to an employee because of subclause (2), the agreement can never operate again in relation to that employee.
29 Old IR	agreement cannot be varied after the reform commencement
	An old IR agreement cannot be varied after the reform commencement.
	-Relationships between pre-reform agreements etc. and Australian Fair Pay and Conditions Standard nships between pre-reform agreements etc. and
JU Kelatio	isings between pre-reform agreements etc. and
	Australian Fair Pay and Conditions Standard

## Part 8—Applications for certification etc. before reform commencement

#### 31 Certifications under pre-reform Act after the reform commencement

- (1) This clause applies if an application for certification was made under section 170LM or 170LS of the pre-reform Act before the reform commencement.
- (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 application and certification.

#### 32 Approvals of pre-reform AWAs under pre-reform Act after the reform commencement

- (1) This clause applies if an AWA was filed under section 170VN of the pre-reform Act before the reform commencement.
- (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 filing and approval of the AWA.

#### Part 9—Matters relating to Victoria 20

#### 21

1

2 3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

22	33 Definitions
23	In this Part:
24	employee has the same meaning as in Division 1 of Part XV of this
25	Act.
26	employer has the same meaning as in Division 1 of Part XV of this
27	Act.
28	employment has the same meaning as in Division 1 of Part XV of
29	this Act.
30	this Schedule does not include this Part.

1 2 3	<i>Victorian reference AWA</i> means an AWA (within the meaning of the pre-reform Act) made under this Act in its operation in accordance with repealed section 495.
4 5 6 7	<i>Victorian reference certified agreement</i> means an agreement that was made under Division 2 or 3 of Part VIB of this Act, in that Division's operation in accordance with repealed Division 2 of Part XV, before the reform commencement.
8 9 10 11 12	<i>Victorian reference Division 3 pre-reform certified agreement</i> means a pre-reform certified agreement that was made under Division 3 of Part VIB of this Act, in its operation in accordance with repealed Division 2 of Part XV, before the reform commencement.
13 14 15	<i>Victorian reference section 170MX award</i> means a section 170MX award made under this Act in its operation in accordance with repealed Division 2 of Part XV.
16	34 Part only has effect if supported by reference etc.
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> </ol>	<ul> <li>Any of the following: <ul> <li>(a) a clause of this Part;</li> <li>(b) a clause of this Schedule, to the extent to which it relates to a Victorian reference certified agreement;</li> <li>(c) a clause of this Schedule, to the extent to which it relates to a Victorian reference AWA;</li> <li>(d) a clause of this Schedule, to the extent to which it relates to a Victorian reference section 170MX award;</li> <li>has effect only for so long, and in so far, as the <i>Commonwealth Powers (Industrial Relations) Act 1996</i> of Victoria refers to the Parliament of the Commonwealth a matter or matters that result in the Parliament of the Commonwealth having sufficient legislative power for the clause so to have effect.</li> </ul> </li> </ul>
30 31	35 Continuing operation of pre-reform certified agreements—under old provisions
32 33 34	Clause 2 has effect, in relation to a Victorian reference certified agreement, as if each reference in a paragraph of subclause $2(1)$ to a provision of the pre-reform Act were read as a reference to the

1 2	provision as it had effect because of repealed Division 2 of Part XV.
3 <b>36</b>	Victorian reference Division 3 pre-reform certified agreements
4 5	<ol> <li>Clause 10 and Division 2 of Part 2 of this Schedule do not apply to a Victorian reference Division 3 pre-reform certified agreement.</li> </ol>
6 7 8 9 10	(2) Division 1 of Part 2 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.
11 <b>37</b>	Continuing operation of pre-reform AWAs—under old provisions
13 14 15 16	Clause 17 has effect, in relation to a Victorian reference AWA, as if each reference in a paragraph of subclause 17(1) to a provision of the pre-reform Act were read as a reference to the provision as it had effect because of repealed section 495.
17 <b>38</b> 18	Continuing operation of section 170MX awards—under old provisions
19 20 21 22 23	Clause 23 has effect, in relation to a Victorian reference section 170MX award, as if the reference in subclause 23(1) to section 170MX of the pre-reform Act were read as a reference to that section as it had effect because of repealed Division 2 of Part XV.
24 <b>39</b> 25	Relationship between Victorian employment agreements and designated old IR agreements
26 27	(1) A designated old IR agreement prevails to the extent of any inconsistency with an employment agreement.
28	(2) In this clause:
29 30	<i>designated old IR agreement</i> means an old IR agreement covered by paragraph (d) of the definition of <i>old IR agreement</i> in clause 1.

, 2005

1 2	<i>employment agreement</i> has the same meaning as in Division 10 of Part XV of this Act.
3	Schedule 15—Transitional treatment of State
4	employment agreements and State
5	awards
6	Note: See section 4A.
7 8	Part 1—Preliminary
9	1 Definitions
10	(1) In this Schedule:
11	discriminatory:
12	<ul> <li>(a) in relation to a preserved State agreement—has the meaning given by subclause 18(4); and</li> </ul>
13 14	(b) in relation to a notional agreement preserving State awards—
15	has the meaning given by subclause $41(4)$ .
16	notional agreement preserving State awards is an agreement that
17	is taken to come into operation under clause 31.
18 19	<i>preserved notional entitlement</i> has the meaning given by subclause 46(1).
20	preserved notional term has the meaning given by subclause 45(1).
21	preserved State agreement means an agreement that is taken to
22	come into operation under clause 3.
23	2 Objects
24	The objects of this Schedule are:
25	(a) to preserve for a time the terms and conditions of
26 27	employment, as they were immediately before the reform commencement, for those employees:
- '	commencement, for those employees.

1	(i) who, but for the reforms commenced at that time, would
2	be bound by a State employment agreement, a State
3	award or a State or Territory industrial law; or
4	(ii) whose employment, but for the reforms commenced at
5	that time, would be subject to a State employment agreement, a State award or a State or Territory
6 7	industrial law; and
8	(b) to encourage employees and employers for whom those
9	terms and conditions have been preserved to enter into
0	workplace agreements during that time.
-	
1 Pa	art 2—Preserved State agreements
р.	
Di	vision 1—Preserved State agreements
3	What is a preserved State agreement?
	• 0
ļ	If a term or condition of employment of a person or persons by an employer was regulated under a State employment agreement (the
5 6	<i>original agreement</i> ) immediately before the reform
7	commencement, a <i>preserved State agreement</i> is taken to come into
8	operation on the reform commencement.
9	Note: <i>Employer</i> is defined in subsection 4AB(1).
<b>4</b>	Who is bound by or subject to a preserved State agreement?
1	(1) Any person who:
2	(a) but for this Act, would be bound by, or a party to, the original
3	agreement, under the terms of that agreement or a State or
4	Territory industrial law as in force immediately before the
5	reform commencement; and
6	(b) is one of the following:
.7	(i) an employer;
28	(ii) an employee;
29	(iii) an organisation;
0	is bound by the preserved State agreement.
1	(2) To avoid doubt, if:
1 2	<ul><li>(2) To avoid doubt, if:</li><li>(a) a person is employed after the reform commencement by an employer that is bound by the preserved State agreement; and</li></ul>

1 2 3 4 5	<ul><li>(b) under the terms of the original agreement or a State or Territory industrial law, as in force immediately before the reform commencement, the person would be bound by, or a party to, the agreement if it were still in force in those terms;</li><li>the person is bound by the preserved State agreement.</li></ul>
7 8 9 10 11	<ul> <li>If, but for this Act, the employment of any person employed by an employer would be subject to the original agreement, under:</li> <li>(a) the terms of the original agreement, as in force immediately before the reform commencement; or</li> <li>(b) a State or Territory industrial law, as in force immediately before the reform commencement;</li> </ul>
12 13 (4) 14 15 16 17 18 19 20	<ul> <li>that employment is subject to the preserved State agreement.</li> <li>To avoid doubt, if: <ul> <li>(a) a person is employed after the reform commencement by an employer that is bound by the preserved State agreement; and</li> <li>(b) under the terms of the original agreement or a State or Territory industrial law, as in force immediately before the reform commencement, that employment would be subject to the agreement if it were still in force in those terms;</li> </ul> </li> <li>that employment is subject to the preserved State agreement.</li> </ul>
21 <b>5 When p</b>	reserved State agreements cease to operate
22 (1) 23	A preserved State agreement ceases to be in operation if it is terminated under clause 21.
24 (2) 25 26 27 28 29 30	<ul><li>A preserved State agreement ceases to be in operation, in relation to an employee, when one of the following comes into operation in relation to the employee:</li><li>(a) a workplace agreement;</li><li>(b) a workplace determination;</li><li>even if the nominal expiry date of the preserved State agreement has not passed.</li></ul>
31 (3) 32 33	If a preserved State agreement has ceased operating in relation to an employee because of subclause (2), the agreement can never operate again in relation to that employee.

1	6 Effect of a preserved State agreement
2 3 4	<ol> <li>Except as provided in or under this Part, or otherwise in or under this Act, a preserved State agreement has effect according to its terms.</li> </ol>
5 6	(2) This Part has effect despite the terms of the preserved State agreement itself, or any State award or law of a State.
7 8	(3) None of the terms and conditions of employment included in the preserved State agreement are enforceable under the law of a State.
9	7 Effect of awards while a preserved State agreement in operation
10 11	An award has no effect in relation to an employee while the terms of a preserved State agreement operate in relation to the employee.
12 13	8 Relationships between a preserved State agreement and the Australian Fair Pay and Conditions Standard
14 15 16 17	The Australian Fair Pay and Conditions Standard does not apply to an employee if the employee is bound by a preserved State agreement, or the employee's employment is subject to a preserved State agreement.
18	9 What is a preserved collective State agreement?
19 20 21	A <i>preserved collective State agreement</i> is a preserved State agreement that binds more than one employee, or to which the employment of more than one employee is subject.
22	10 What is a preserved individual State agreement?
23 24 25	A <i>preserved individual State agreement</i> is a preserved State agreement that binds only one employee, or to which the employment of only one employee is subject.

## **Division 2—Terms of preserved State agreements**

2	11 Terms of a preserved State agreement
3 4	(1) The terms of a preserved State agreement are taken to include the terms of the original agreement, as in force immediately before the
5	reform commencement.
6	(2) If, but for this Act:
7	(a) a person who is bound by a preserved State agreement would
8	be regulated to any extent in relation to matters pertaining to
9 10	an affected employment relationship by a term of a State award (despite the original agreement); or
11	(b) a person whose employment is subject to a preserved State
12	agreement would be regulated to any extent in relation to
13	matters pertaining to an affected employment relationship by
14	a term of a State award (despite the original agreement);
15	then to that extent, the term of the State award, as in force
16	immediately before the reform commencement, is taken to be a
17	term of the preserved State agreement.
18	(3) If, but for this Act:
19	(a) a person who is bound by a preserved State agreement would
20	be regulated to any extent in relation to matters pertaining to
21	an affected employment relationship by a provision of a State
22	or Territory industrial law (despite the original agreement);
23	or
24	(b) a person whose employment is subject to a preserved State
25	agreement would be regulated to any extent in relation to matters pertaining to an affected employment relationship by
26 27	a provision of a State or Territory industrial law (despite the
28	original agreement);
29	then to that extent, each term regulating matters pertaining to that
30	relationship under that provision, as in force immediately before
31	the reform commencement, is taken to be a term of the preserved
32	State agreement.
33	(4) In this clause:
34	affected employment relationship means an employment
35	relationship in relation to which the preserved State agreement
36	applies.

1	12 Noi	ninal expiry	v date of a preserved State agreement		
2		The <i>nom</i>	inal expiry date of a preserved State agreement is:		
3			day on which the original agreement would nominally		
4			we expired under the relevant State or Territory industrial		
5			v; or		
6 7		on	hat day falls after the end of a period of 3 years beginning the commencement of the original agreement—the last		
8		day	y of that 3 year period.		
9	13 Pov	vers of State	e industrial authorities		
10		(1) If a prese	erved State agreement confers a function or power on a		
11		State industrial authority, that function must not be performed			
12			er must not be exercised by the State industrial authority		
13		on or afte	er the reform commencement.		
14		(2) However	r, the employer and the persons bound by the preserved		
15		-	eement may, by agreement, confer such a function or		
16		<b>^</b>	power on the Commission, provided it does not relate to the		
17		resolutio	n of a dispute about the application of the agreement.		
18	14 Dis	pute resolut	ion processes		
19		(1) A preser	ved State agreement is taken to include a term requiring		
20		disputes	about the application of the agreement to be resolved in		
21		accordan	ce with the model dispute resolution process.		
22		(2) Any term	n of the preserved State agreement that would otherwise		
23			the resolution of those disputes is void to that extent.		
24	15 Pro	hibited con	tent		
25		A term o	f a preserved State agreement is void to the extent that it		
26			prohibited content of a prescribed kind.		
27		Note:	The Employment Advocate can alter the document recording the		
28 29			terms of a preserved State agreement to remove prohibited content of a prescribed kind (see clause 19).		
47			a preservou kinu (see clause 17).		

## Division 3—Varying a preserved State agreement

2 <b>16</b>	Varying a preserved State agreement
3 4	A preserved State agreement may only be varied on or after the reform commencement in accordance with this Division.
5 <b>17</b>	Variation to remove ambiguity or uncertainty
6 7 8 9	The Commission may, on application by any person bound by a preserved State agreement or whose employment is subject to the agreement, by order, vary the agreement for the purpose of removing ambiguity or uncertainty.
10 <b>18</b>	Variation to remove discrimination
11 12 13 14	<ol> <li>If a preserved State agreement is referred to the Commission under section 46PW of the <i>Human Rights and Equal Opportunity</i> <i>Commission Act 1986</i>, the Commission must convene a hearing to review the agreement.</li> </ol>
15 16 17 18 19 20	<ul> <li>(2) In a review under subclause (1):</li> <li>(a) the Commission must take such steps as it thinks appropriate to ensure that each person bound by the agreement is made aware of the hearing; and</li> <li>(b) the Sex Discrimination Commissioner is entitled to intervene in the proceeding.</li> </ul>
21 22 23 24	(3) If the Commission considers that a preserved State agreement reviewed under subclause (1) is discriminatory, the Commission must take the necessary action to remove the discrimination by making an order varying the agreement.
25 26 27 28 29 30 31	<ul> <li>(4) A preserved State agreement is <i>discriminatory</i> if:</li> <li>(a) the agreement has been referred to the Commission under section 46PW of the <i>Human Rights and Equal Opportunity Commission Act 1986</i>; and</li> <li>(b) the agreement requires a person to do any act that would be unlawful under Part II of the <i>Sex Discrimination Act 1984</i>, except for the fact that the act would be done in direct</li> </ul>
32	compliance with the agreement.

1 2 3	For the purposes of this definition, the fact that an act is done in direct compliance with the preserved State agreement does not of itself mean that the act is reasonable.
4	<b>19</b> Variation to remove prohibited content
5	Initiating consideration of removal of prohibited content
6 7 8	<ol> <li>The Employment Advocate may exercise his or her power under subclause (9) to vary a preserved State agreement to remove prohibited content of a prescribed kind:</li> </ol>
9 10	<ul><li>(a) on his or her own initiative; or</li><li>(b) on application by any person.</li></ul>
11 12 13 14	(2) This subclause and subclauses (3) to (6) and (9) to (12) are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Employment Advocate's decision whether to make a variation under subclause (9).
15	Employment Advocate must give notice that considering variation
16 17 18 19	<ul><li>(3) If the Employment Advocate is considering making a variation to a preserved State agreement under subclause (9), the Employment Advocate must give the persons mentioned in subclause (4) a written notice meeting the requirements in subclause (5).</li></ul>
20 21 22 23 24 25 26	<ul> <li>(4) The persons are:</li> <li>(a) an employer that is bound by the preserved State agreement; and</li> <li>(b) if the agreement is a preserved individual State agreement—the employee; and</li> <li>(c) if an organisation is bound by the agreement—the organisation.</li> </ul>
27	Matters to be contained in notice
28 29 30 31	<ul> <li>(5) The requirements mentioned in subclause (3) are that the notice must:</li> <li>(a) be dated; and</li> <li>(b) state that the Employment Advocate is considering making the variation; and</li> </ul>
32	the variation; and

Workplace Relations Amendment (Work Choices) Bill 2005 No. , 2005

1	(c) state the reasons why the Employment Advocate is
2	considering making the variation; and
3	(d) set out the terms of the variation; and
4	(e) invite each person mentioned in subclause (6) to make a
5	written submission to the Employment Advocate about
6	whether the Employment Advocate should make the
7	variation; and
8 9	<ul><li>(f) state that any submission must be made within the period (the <i>objection period</i>) of 28 days after the date of the notice.</li></ul>
10	(6) The persons are:
11	(a) an employer that is bound by the preserved State agreement;
12	and
13	(b) each person whose employment is subject to the agreement
14	as at the date of the notice; and
15	(c) if an organisation is bound by the agreement—the
16	organisation.
17	Employer must ensure employees have ready access to notice
18	(7) An employer that has received a notice under subclause (3) in
19	relation to the preserved State agreement must take reasonable
20	steps to ensure that all persons whose employment is subject to the
21	preserved State agreement at a time during the objection period are
22	given a copy of the notice within the period:
23	(a) starting on the day the employer received the notice; and
24	(b) ending at the end of the objection period.
25	(8) Subclause (7) is a civil remedy provision and may be enforced
26	under Division 11 of Part VB as if the preserved State agreement
27	were a workplace agreement.
28	Employment Advocate must remove prohibited content from
29	agreement
30	(9) If the Employment Advocate is satisfied that a term of the
31	preserved State agreement contains prohibited content of the
32	prescribed kind, the Employment Advocate must vary the
33	agreement so as to remove that content.
34	(10) In making a decision under subclause (9), the Employment
	Advocate must consider all written submissions (if any) received

1		within the objection period from a person mentioned in
2		subclause (6).
3 4	(11)	The Employment Advocate must not make the variation before the end of the objection period.
-	(12)	If the Employment Advocate decides to make the variation have
5 6	(12)	If the Employment Advocate decides to make the variation, he or she must:
7 8		(a) give the persons mentioned in subclause (4) written notice of the decision, including the terms of the variation; and
8 9		(b) if the agreement is a preserved collective State agreement—
9 10		publish a notice in the <i>Gazette</i> stating that the variation has
11		been made and setting out particulars of the variation.
12		Employer must give employees notice of removal of prohibited
13		content
14	(13)	An employer that has received a notice under subclause (12) in
15		relation to a preserved collective State agreement must take
16		reasonable steps to ensure that all persons whose employment is
17 18		subject to the agreement when the employer receives the notice are given a copy of the notice within 21 days.
19	(14)	Subclause (13) is a civil remedy provision and may be enforced
20		under Division 11 of Part VB as if the preserved collective State
21		agreement were a collective agreement.
22	Division	4—Enforcing preserved State agreements
23	20 Enforc	ing a preserved State agreement
24	(1)	A preserved collective State agreement may be enforced as if it
25	(1)	were a collective agreement.
26	(2)	A workplace inspector has the same functions and powers in
27		relation to a preserved collective State agreement as he or she has
28		in relation to a collective agreement.
29	(3)	A preserved individual State agreement may be enforced as if it
30		were an AWA.

1	(4) A workplace inspector has the same functions and powers in
2	relation to a preserved individual State agreement as he or she has
3	in relation to an AWA.
4	Division 5—Terminating a preserved State agreement
5	21 Terminating a preserved State agreement
6	<ol> <li>This clause applies to the termination of a preserved State</li></ol>
7	agreement on or after the reform commencement day.
8	(2) If the agreement is a preserved collective State agreement, it may
9	only be terminated in the way in which a certified agreement could
10	have been terminated immediately before the reform
11	commencement, and the Commission has the same powers in
12	relation to that termination as it would have had at that time in
13	relation to the termination of a certified agreement.
14	(3) If the agreement is a preserved individual State agreement, it may
15	only be terminated in the way in which an AWA could have been
16	terminated immediately before the reform commencement, and the
17	Commission has the same powers in relation to that termination as
18	it would have had at that time in relation to the termination of an
19	AWA.
20	22 Coercion of persons to terminate a preserved State agreement
21 22 23 24 25 26 27	<ul> <li>(1) A person must not:</li> <li>(a) take or threaten to take any industrial action or other action; or</li> <li>(b) refrain or threaten to refrain from taking any action; with intent to coerce another person to agree, or not to agree, to terminate or approve the termination of a preserved State agreement.</li> </ul>
28 29	<ul><li>(2) Subclause (1) does not apply to protected action (within the meaning of this Act as in force after the reform commencement).</li></ul>
30	(3) The following provisions in Division 10 of Part VIB of this Act as
31	in force immediately before the reform commencement apply in
32	relation to a contravention of subclause (1) as if it were a
33	contravention of subsection 170CN(1) as in force at that time:

1	(a) paragraph 170ND(e);
2	(b) section 170NE;
3	(c) subsections 170NF(1), (2) and (7);
4	(d) section 170NG.
5	Division 6—Industrial action
6 7	23 Industrial action must not be taken until after nominal expiry date—preserved collective State agreements
8 9 10 11 12 13	<ul> <li>(1) An employee, organisation or officer covered by subclause (2) must not organise or engage in industrial action affecting an employer that is bound by a preserved collective State agreement (whether or not that action relates to a matter dealt with in the agreement) during the period beginning on the reform commencement and ending on the nominal expiry date.</li> </ul>
14	Note 1: This subclause is a civil remedy provision: see subclause (4).
15 16	Note 2: Action that contravenes this subclause is not protected action (see clause 25).
17 18	(2) For the purposes of subclause (1), the following are covered by this subclause:
19	(a) an employee who is bound by the agreement;
20	(b) an organisation of employees that is bound by the agreement;
21	(c) an officer or employee of such an organisation acting in that
22	capacity.
23 24 25	(3) An employer that is bound by a preserved collective State agreement must not engage in industrial action against an employee whose employment is subject to the agreement (whether
26	or not that industrial action relates to a matter dealt with in the agreement) during the period beginning on the reform
27 28	commencement and ending on the agreement's nominal expiry
29	date.
30	Note 1: This subclause is a civil remedy provision: see subclause (4).
31 32	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).
33	(4) Subclauses (1) and (3) are civil remedy provisions.

1 2	(5) The Court may make one or more of the following orders in relation to a person who has contravened subclause (1) or (3):
3	(a) an order imposing a pecuniary penalty on the person;
4	(b) injunctions, and any other orders, that the Court considers
5	necessary to stop the contravention or remedy its effects.
6	(6) The pecuniary penalty under paragraph $(5)(a)$ cannot be more than
7	300 penalty units for a body corporate or 60 penalty units in any
8	other case.
9 10	(7) An application for an order under subclause (5), in relation to a contravention of subclause (1), may be made by:
11	(a) the employer concerned; or
12	(b) a workplace inspector; or
13	(c) any other person prescribed by the regulations.
14	(8) An application for an order under subclause (5), in relation to a
15	contravention of subclause (3), may be made by:
16	(a) the employee concerned; or
17	(b) an organisation of employees if:
18	(i) a member of the organisation is employed by the
19	employer concerned; and
20	(ii) the contravention relates to, or affects, the member of
21	the organisation, or work carried on by the member for
22	that employer; or
23	(c) a workplace inspector; or
24	(d) any other person prescribed by the regulations.
25 26	Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII.
27	(9) In this section:
28	Court means the Federal Court of Australia or the Federal
29	Magistrates Court.
30	24 Industrial action must not be taken until after nominal expiry
31	date—preserved individual State agreements
32	(1) An employee who is bound by a preserved individual State
33	agreement must not engage in industrial action in relation to the
34	employment to which the agreement relates, during the period

1 2		beginning on the reform commencement and ending on the agreement's nominal expiry date.
3		Note 1: This subclause is a civil remedy provision: see subclause (3).
4 5		Note 2: Action that contravenes this subclause is not protected action (see clause 25).
6 7 8 9 10		An employer that is bound by a preserved individual State agreement must not engage in industrial action in relation to the employment to which the agreement relates, during the period beginning on the reform commencement and ending on the agreement's nominal expiry date.
11		Note 1: This subclause is a civil remedy provision: see subclause (3).
12 13		Note 2: Action that contravenes this subclause is not protected action (see clause 25).
14		Civil remedy provisions
15	(3)	Subclauses (1) and (2) are civil remedy provisions.
16		The Court may make one or more of the following orders in
17		elation to a person who has contravened subclause (1) or (2):
18		(a) an order imposing a pecuniary penalty on the person;
19 20		(b) injunctions, and any other orders, that the Court considers necessary to stop the contravention or remedy its effects.
21	(5)	The pecuniary penalty under paragraph (4)(a) cannot be more than
22		300 penalty units for a body corporate or 60 penalty units in any
23		other case.
24	(6)	An application for an order under subclause (4), in relation to a
25		contravention of subclause (1), may be made by:
26		(a) the employer concerned; or
27		(b) a workplace inspector; or
28		(c) any other person prescribed by the regulations.
29	(7)	An application for an order under subclause (4), in relation to a
30		contravention of subclause (2), may be made by:
31		(a) the employee concerned; or
32		(b) an organisation of employees that represents that employee
33		if:
34		(i) that employee has requested the organisation to apply
35		on that employee's behalf; and

1	(ii) a member of the organisation is employed by that
2	employee's employer; and
3	(iii) the organisation is entitled, under its eligibility rules, to
4 5	represent the industrial interests of that employee in relation to work carried on by that employee for the
6	employer; or
7	(c) a workplace inspector; or
8	(d) any other person prescribed by the regulations.
9 10	Note: For other provisions about civil remedy provisions, see Division 4 of Part VIII.
11	(8) In this section:
12	<i>Court</i> means the Federal Court of Australia or the Federal
13	Magistrates Court.
14	25 Industrial action taken before nominal expiry date not protected
15	action
16 17	Engaging in industrial action in contravention of clause 23 or 24 is not protected action for the purposes of this Act.
.,	
18	Division 7—Miscellaneous
19	26 Calling up contents of a preserved State agreement in a
20	workplace agreement
21	(1) A workplace agreement may incorporate by reference under
22	section 101C terms from a preserved State agreement as if the
23	preserved State agreement were a workplace agreement.
24	(2) Despite subsection $101C(6)$ , a term of a workplace agreement is
25	not void to the extent that it incorporates by reference such terms.
26	27 Application of section 109B in relation to a preserved State
27	agreement
28	Section 109B (which deals with applications for orders for
29	protected action ballots) applies at a particular time in relation to a
30	preserved collective State agreement that is in operation at that
31	time as if the agreement were an existing collective agreement.

28	Application of Part IX in relation to a preserved State agreement
	Part IX of this Act (which deals with right of entry) applies:
	(a) in relation to a preserved collective State agreement in the
	same way as it applies in relation to a collective agreement;
	and
	(b) in relation to a preserved individual State agreement in the same way as it applies in relation to an AWA.
29	Application of Part XA in relation to a preserved State agreement
	ugreentent
	Part XA of this Act (which deals with freedom of association)
	applies in relation to a preserved collective State agreement as if it were a collective agreement.
Di	ivision 8—Regulations
30	Regulations may apply, modify or adapt Act
	(1) The Governor-General may make regulations for the purposes of:
	(a) applying provisions of this Act or the Registration and
	Accountability of Organisations Schedule to preserved State
	agreements; and
	(b) modifying or adapting provisions of this Act or that Schedule that apply to those agreements.
	(2) Despite subsection 12(2) of the <i>Legislative Instruments Act 2003</i> ,
	regulations made under subclause (1) may be expressed to take
	effect from a date before the regulations are registered under that
	Act.
Pa	art 3—Notional agreements preserving State
	awards
Di	ivision 1—Notional agreements preserving State awards
31	What is a notional agreement preserving State awards?
	If:

1 2 3 4 5 6 7 8 9 10 11	<ul> <li>(a) 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 was regulated under a State award (the <i>original State award</i>) or a State or Territory industrial law (the <i>original State law</i>) immediately before the reform commencement; and</li> <li>(b) no term or condition of employment of the person or persons by the employer in the business or that part of the business was regulated by a State employment agreement at that time; a <i>notional agreement preserving State awards</i> is taken to come into operation on the reform commencement in respect of the business or that part of the business.</li> </ul>
12	Note: <i>Employer</i> is defined in subsection 4AB(1).
13	32 Who is bound by or subject to the notional agreement?
14	(1) Any person who:
15	(a) but for this Act, would be bound by the original State award,
16	under the terms of that award or a provision of a State or
17	Territory industrial law, as in force immediately before the
18	reform commencement; and
19	(b) is one of the following:
20	(i) an employer in the business, or that part of the business;
21 22	<ul><li>(ii) an employee who is employed in the business, or that part of the business;</li></ul>
23	(iii) an organisation that has at least one member who is
24	such an employee, and that is entitled to represent the
25	industrial interests of at least one such employee;
26	is bound by the notional agreement.
27	(2) To avoid doubt, if:
28	(a) a person is employed in the business, or that part of the
29	business, after the reform commencement; and
30	(b) under the terms of the original State award or a provision of a
31	State or Territory industrial law, as in force immediately
32	before the reform commencement, the person would be
33	bound by the award in relation to that employment if it were still in force in those terms;
34	the person is bound by the notional agreement.
35	the person is bound by the notional agreement.
36	(3) Any person who:

1	(a) but for this Act, would be regulated in relation to matters
2	pertaining to an employment relationship in the business, or
3	that part of the business, under the provisions of the original
4	State law as in force immediately before the reform
5	commencement; and
6	(b) is one of the following:
7	(i) an employer in the business, or that part of the business;
8	(ii) an employee who is employed in the business, or that
9	part of the business;
10	(iii) an organisation that has at least one member who is
11	such an employee, and that is entitled to represent the
12	industrial interests of at least one such employee;
13	is bound by the notional agreement.
14	(4) To avoid doubt, if:
15	(a) a person is employed in the business, or that part of the
16	business, after the reform commencement; and
17	(b) under the provisions of the original State law, as in force
18	immediately before the reform commencement, a term or
19	condition of that employment would be regulated by the law
20	if it were still in force in those terms;
21	the person is bound by the notional agreement.
22	(5) If the employment in the business, or that part of the business, of
23	any person would be subject to the original State award, under the
24	terms of that award or a provision of a State or Territory industrial
25	law, as in force immediately before the reform commencement,
26	that employment is subject to the notional agreement.
27	(6) To avoid doubt, if:
28	(a) any person is employed in the business, or that part of the
29	business, after the reform commencement; and
30	(b) under the terms of the original State award or a provision of a
31	State or Territory industrial law, as in force immediately
32	before the reform commencement, that employment would
33	be subject to the award, if the award or the law were still in
34	force in those terms;
35	that employment is subject to the notional agreement.
36	(7) If a term or condition of the employment in the business, or that
37	part of the business, of any person would be regulated by the

1 2 3		original State law under the provisions of that law, as in force immediately before the reform commencement, that employment is subject to the notional agreement.
4	(8)	To avoid doubt, if:
5		(a) any person is employed in the business, or that part of the
6		business, after the reform commencement; and
7		(b) under the provisions of the original State law, as in force
8		immediately before the reform commencement, a term or
9		condition of that employment would be regulated by that law
10		if it were still in force in those terms;
11		that employment is subject to the notional agreement.
12	(9)	Despite any other provisions of this clause:
13		(a) a person who is bound by a preserved State agreement in
14		relation to matters pertaining to an employment relationship
15		in the business, or that part of the business, is not bound by
16		the notional agreement; and
17		(b) the employment of a person in the business, or that part of the business, that is subject to a preserved State agreement is not
18		business, that is subject to a preserved state agreement is not
19		subject to the notional agreement.
19 20	33 Operat	· · ·
	-	subject to the notional agreement.
20	-	subject to the notional agreement.
20 21	-	subject to the notional agreement. tion of notional agreement A notional agreement preserving State awards ceases to be in
20 21 22	(1)	subject to the notional agreement. <b>tion of notional agreement</b> A notional agreement preserving State awards ceases to be in operation at the end of a period of 3 years beginning on the reform
20 21 22 23	(1)	subject to the notional agreement. <b>tion of notional agreement</b> 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.
20 21 22 23 24	(1)	subject to the notional agreement. <b>tion of notional agreement</b> 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. A notional agreement preserving State awards ceases to be in
20 21 22 23 24 25	(1)	subject to the notional agreement. <b>tion of notional agreement</b> 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. 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 to a workplace agreement includes a reference to a
<ol> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	(1)	subject to the notional agreement. <b>tion of notional agreement</b> 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. 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.
<ol> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>	(1)	subject to the notional agreement. <b>tion of notional agreement</b> 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. 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 to a workplace agreement includes a reference to a workplace determination (see section 113F). A notional agreement preserving State awards ceases to be in
<ol> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>30</li> </ol>	(1)	subject to the notional agreement. <b>tion of notional agreement</b> 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. 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 to a workplace agreement includes a reference to a workplace determination (see section 113F). A notional agreement preserving State awards ceases to be in operation in relation to an employee if the employee becomes
20 21 22 23 24 25 26 27 28 29	(1)	subject to the notional agreement. <b>tion of notional agreement</b> 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. 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 to a workplace agreement includes a reference to a workplace determination (see section 113F). A notional agreement preserving State awards ceases to be in
<ol> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>30</li> </ol>	(1) (2) (3)	subject to the notional agreement. <b>tion of notional agreement</b> 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. 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 to a workplace agreement includes a reference to a workplace determination (see section 113F). A notional agreement preserving State awards ceases to be in operation in relation to an employee if the employee becomes
20 21 22 23 24 25 26 27 28 29 30 31	(1) (2) (3)	<ul> <li>subject to the notional agreement.</li> <li>tion of notional agreement</li> <li>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.</li> <li>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.</li> <li>Note: The reference to a workplace agreement includes a reference to a workplace determination (see section 113F).</li> <li>A notional agreement preserving State awards ceases to be in operation in relation to an employee if the employee becomes bound by an award.</li> </ul>

1	34 Effect of not	tional agreement
2 3 4	this A	pt as provided in or under this Part, or otherwise in or under Act, a notional agreement preserving State awards has effect rding to its terms.
5 6		Part has effect despite the terms of the original State award, riginal State law or any other law of a State.
7 8		e of the terms and conditions of employment included in the onal agreement are enforceable under the law of a State.
9	Division 2—7	<b>Ferms of notional agreement</b>
10	35 Terms of no	otional agreement
11	(1) If, bu	it for this Act:
12	(a)	a person who is bound by a notional agreement preserving
13		State awards would be regulated to any extent in relation to
14		matters pertaining to an affected employment relationship by
15		a term of the original State award; or
16	(b)	a person whose employment is subject to a notional
17 18		agreement preserving State awards would be regulated to any extent in relation to matters pertaining to an affected
18 19		employment relationship by a term of the original State
20		award;
21	then	to that extent the term, as in force immediately before the
22		m commencement, is taken to be a term of the notional
23	agree	ement.
24	(2) If, bu	It for this Act:
25	(a)	a person who is bound by a notional agreement preserving
26		State awards would be regulated to any extent in relation to
27		matters pertaining to an affected employment relationship by
28		a provision of a State or Territory industrial law (despite the original State award); or
29	(b)	
30 31	(0)	a person whose employment is subject to a notional agreement preserving State awards would be regulated to any
32		extent in relation to matters pertaining to an affected
33		employment relationship by a provision of a State or
34		Territory industrial law (despite the original State award);

## 34 Effect of notional agreement

618

1			then to that extent, each term regulating matters pertaining to that
2			relationship under that provision, as in force immediately before
3			the reform commencement, is taken to be a term of the notional
4			agreement.
5		(3)	In this clause:
6 7			<i>affected employment relationship</i> means an employment relationship in relation to which the notional agreement applies.
8	36	Powers	of State industrial authorities
9			If a notional agreement preserving State awards confers a function
10			or power on a State industrial authority, that function must not be
11			performed and that power must not be exercised by the State
12			industrial authority on or after the reform commencement.
13		(2)	However, the employer and the persons bound by the notional
14			agreement may, by agreement, confer such a function or power on
15			the Commission, provided it does not relate to the resolution of a
16			dispute about the application of the agreement.
17	37	Dispute	e resolution processes
18		(1)	A notional agreement preserving State awards is taken to include a
19			term requiring disputes about the application of the agreement to
20			be resolved in accordance with the model dispute resolution
21			process.
22		(2)	Any term of the notional agreement that would otherwise deal with
23			the resolution of those disputes is void to that extent.
24	38	Prohibi	ited content
25			A term of a notional agreement preserving State awards is void to
26			the extent that it contains prohibited content of a prescribed kind.

# Division 3—Varying a notional agreement preserving State awards

3	39	Varying a notional agreement preserving State awards
4		A notional agreement preserving State awards may only be varied
5 6		on or after the reform commencement in accordance with this Division.
7	40	Variation to remove ambiguity or uncertainty
8		The Commission may, on application by any person bound by a
9		notional agreement preserving State awards or whose employment
10 11		is subject to such an agreement, by order, vary the notional agreement for the purpose of removing ambiguity or uncertainty.
12	41	Variation to remove discrimination
13		(1) If a notional agreement preserving State awards is referred to the
14		Commission under section 46PW of the Human Rights and Equal
15 16		<i>Opportunity Commission Act 1986</i> , the Commission must convene a hearing to review the agreement.
17		(2) In a review under subclause (1):
18		(a) the Commission must take such steps as it thinks appropriate
19		to ensure that each person bound by the agreement is made
20		aware of the hearing; and
21		(b) the Sex Discrimination Commissioner is entitled to intervene
22		in the proceeding.
23		(3) If the Commission considers that a notional agreement preserving
24		State awards reviewed under subclause (1) is discriminatory, the
25		Commission must take the necessary action to remove the
26		discrimination by making an order varying the agreement.
27		(4) A notional agreement preserving State awards is <i>discriminatory</i> if:
28		(a) the agreement has been referred to the Commission under
29		section 46PW of the Human Rights and Equal Opportunity
30		Commission Act 1986; and
31		(b) the agreement requires a person to do any act that would be
32		unlawful under Part II of the Sex Discrimination Act 1984,

#### 620

1 2	except for the fact that the act would be done in direct compliance with the agreement.
3	For the purposes of this definition, the fact that an act is done in direct compliance with the notional agreement does not of itself
4	direct compliance with the notional agreement does not of itself mean that the act is reasonable.
5	mean that the act is reasonable.
6	42 Variation to remove prohibited content
7	Initiating consideration of removal of prohibited content
8	(1) The Employment Advocate may exercise his or her power under
9	subclause (9) to vary a notional agreement preserving State awards
10	to remove prohibited content of a prescribed kind:
11	(a) on his or her own initiative; or
12	(b) on application by any person.
13	(2) This subclause and subclauses (3) to (6) and (9) to (12) are taken to
13	be an exhaustive statement of the requirements of the natural
15	justice hearing rule in relation to the Employment Advocate's
16	decision whether to make a variation under subclause (9).
17	Employment Advocate must give notice that considering variation
18	(3) If the Employment Advocate is considering making a variation to a
19	notional agreement preserving State awards under subclause (9),
20	the Employment Advocate must give the persons mentioned in
21	subclause (4) a written notice meeting the requirements in
22	subclause (5).
23	(4) The persons are:
24	(a) an employer that is bound by the notional agreement; and
25	(b) if an organisation is bound by the agreement—the
26	organisation.
27	Matters to be contained in notice
28	(5) The requirements mentioned in subclause (3) are that the notice
29	must:
30	(a) be dated; and
31	(b) state that the Employment Advocate is considering making
32	the variation; and

1	(c) state the reasons why the Employment Advocate is
2	considering making the variation; and
3	(d) set out the terms of the variation; and
4	(e) invite each person mentioned in subclause (6) to make a
5	written submission to the Employment Advocate about
6	whether the Employment Advocate should make the
7	variation; and
8 9	<ul><li>(f) state that any submission must be made within the period (the <i>objection period</i>) of 28 days after the date of the notice.</li></ul>
10	(6) The persons are:
11	(a) an employer that is bound by the notional agreement; and
12 13	(b) each person whose employment is subject to the notional agreement as at the date of the notice; and
14	(c) if an organisation is a party to the notional agreement—the
14	organisation.
	8
16	Employer must ensure employees have ready access to notice
17	(7) An employer that has received a notice under subclause (3) in
18	relation to the notional agreement must take reasonable steps to
19	ensure that all persons whose employment is subject to the notional
20	agreement at a time during the objection period are given a copy of
21	the notice within the period:
22	(a) starting on the day the employer received the notice; and
23	(b) ending at the end of the objection period.
24	(8) Subclause (7) is a civil remedy provision and may be enforced
25	under Division 11 of Part VB as if the notional agreement were a
26	workplace agreement.
27	Employment Advocate must remove prohibited content from
28	agreement
29	(9) If the Employment Advocate is satisfied that a term of the notional
30	agreement contains prohibited content of the prescribed kind, the
31	Employment Advocate must vary the agreement so as to remove
32	that content.
33	(10) In making a decision under subclause (9), the Employment
34	Advocate must consider all written submissions (if any) received

1		within the objection period from a person mentioned in
2		subclause (6).
3 4	(11)	The Employment Advocate must not make the variation before the end of the objection period.
5 6	(12)	If the Employment Advocate decides to make the variation, he or she must:
7 8		<ul><li>(a) give the persons mentioned in subclause (4) written notice of the decision, including the terms of the variation; and</li></ul>
9 10		<ul><li>(b) publish a notice in the <i>Gazette</i> stating that the variation has been made and setting out particulars of the variation.</li></ul>
11 12		Employer must give employees notice of removal of prohibited content
13 14	(13)	An employer that has received a notice under subclause (12) must take reasonable steps to ensure that all persons whose employment
15 16		is subject to the agreement when the employer receives the notice are given a copy of the notice within 21 days.
17 18 19	(14)	Subclause (13) is a civil remedy provision and may be enforced under Division 11 of Part VB as if the notional agreement were a collective agreement.
20	Division 4	4—Enforcing the notional agreement
21	43 Enforci	ing the notional agreement
22 23	(1)	A notional agreement preserving State awards may be enforced as if it were a collective agreement.
24 25 26	(2)	A workplace inspector has the same functions and powers in relation to a notional agreement preserving State awards as he or she has in relation to a collective agreement.
27 28	44 Matter	s provided for by the Australian Fair Pay and Conditions Standard
29 30 31 32		Subject to Division 5 of this Schedule, if the Australian Fair Pay and Conditions Standard makes provision for a matter, then a term (other than a preserved notional term) of the notional agreement that also deals with that matter is unenforceable.

1 2		Note 1:	See section 90ZD (deeming there to be a preserved APCS if rate provisions are contained in a pre-reform wage instrument).
3 4 5		Note 2:	See also section 90ZC (deeming APCS rates to at least equal FMW rates after the first exercise of powers under Division 2 of Part VA by the AFPC).
6	Division		eserved notional terms and preserved
7		notion	al entitlements
8	45 Preserv	ved noti	onal terms of notional agreement
9	(1)	A prese	rved notional term is a term of a notional agreement
10		-	ng State awards that is about any or all of the following
11		matters:	
12		. ,	nual leave;
13			rsonal/carer's leave;
14			rental leave, including maternity and adoption leave;
15		• •	ng service leave;
16		. ,	tice of termination;
17			ry service;
18		(g) su	perannuation.
19	(2)	If a term	of a notional agreement preserving State awards is about
20			tters referred to in paragraphs (1)(a) to (g) and other
21			it is taken to be a preserved notional term only to the
22		extent th	hat it is about the matters referred to in those paragraphs.
23	(3)	A preser	rved notional term about the matter referred to in
24			bh (1)(g) (superannuation) ceases to have effect at the end
25		of 30 Ju	ne 2008.
26	(4)	In this c	lause:
27		persona	<i>l/carer's leave</i> includes war service sick leave, infectious
28		diseases	sick leave and other like forms of sick leave.
29	(5)	The regu	alations may provide that for the purposes of subclause (1):
30	. ,	-	rental leave does not include special maternity leave
31			ithin the meaning of section 94C); and
32		· · •	rsonal/carer's leave does not include one or both of the
33		fol	llowing:

#### 624

1	(i) compassionate leave (within the meaning of
2	section 93Q);
3 4	<ul><li>(ii) unpaid carer's leave (within the meaning of section 93D).</li></ul>
5 6 7	Note: The effect of excluding these forms of leave is that the entitlement under the Australian Fair Pay and Conditions Standard in respect of these forms of leave will automatically apply.
8	(6) Regulations under subclause (5) may be expressed to apply
9 10	generally or in respect of employees engaged in specified types of employment, such as full-time employment, part-time
11 12	employment, casual employment, regular part-time employment or shift work.
13	46 When preserved notional entitlements have effect
14	(1) This clause applies to an employee if:
15	(a) the employee is bound by, or the employee's employment is
16	subject to, a notional agreement preserving State awards that
17	includes a preserved notional term about a matter; and
18	(b) the employee has an entitlement (the <i>preserved notional</i>
19 20	<i>entitlement</i> ) in relation to that matter under the preserved notional term.
21	(2) If:
22 23	<ul><li>(a) the preserved notional term is about a matter referred to in paragraph 45(1)(a), (b) or (c); and</li></ul>
24	(b) the employee's preserved notional entitlement in relation to
25	the matter is more generous than the employee's entitlement
26	in relation to the corresponding matter under the Australian
27	Fair Pay and Conditions Standard;
28	the employee's entitlement under the Australian Fair Pay and
29	Conditions Standard is excluded, and the employee's preserved
30	notional entitlement has effect in accordance with the preserved
31	notional term. Otherwise, the employee's entitlement under the Australian Fair Pay and Conditions Standard has effect.
32	-
33	Note: See clause 47 for the meaning of <i>more generous</i> .
34	(3) If:
35	(a) the preserved notional term is about a matter referred to in
36	paragraph $45(1)(a)$ , (b) or (c) and the employee has no

1			entitlement in relation to the corresponding matter under the
2			Australian Fair Pay and Conditions Standard; or
3			(b) the preserved notional term is about a matter referred to in paragraph $45(1)(d)$ (a) (f) or (g):
4			paragraph $45(1)(d)$ , (e), (f) or (g);
5 6			the employee's preserved notional entitlement has effect in accordance with the preserved notional term.
7 8 9			Note: Preserved notional terms about matters referred to in paragraph $45(1)(g)$ cease to have effect at the end of 30 June 2008—see subclause $45(3)$ .
10	47	Meanii	ng of more generous
11		(1)	Whether an employee's entitlement under a preserved notional
12			term in relation to a matter is <i>more generous</i> than the employee's
13 14			entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard:
			(a) is as specified in, or as worked out in accordance with a
15			method specified in, regulations made under this paragraph;
16 17			or
18			(b) to the extent that regulations made under paragraph (a) do not
19			so specify—is to be ascertained in accordance with the
20			ordinary meaning of the term <i>more generous</i> .
21		(2)	If a matter to which an entitlement under a preserved notional term
22			relates does not correspond directly to a matter to which the
23			Australian Fair Pay and Conditions Standard relates, regulations
24			made under paragraph (1)(a) may nevertheless specify that the
25			matters correspond for the purposes of this Division.
26	48	Modifi	cations that may be prescribed—personal/carer's leave
27		(1)	The regulations may provide that a preserved notional term about
28			personal/carer's leave is to be treated as a separate preserved
29			notional term about separate matters, to the extent that the
30			preserved notional term is about any of the following:
31			(a) war service sick leave;
32			(b) infectious diseases sick leave;
33			(c) any other like form of sick leave.
34		(2)	If the regulations so provide, clauses 45, 46, 47 and 50 have effect
35			in relation to each separate matter.
			-

1	49 Modifications that may be prescribed—parental leave
2	(1) The regulations may provide that a preserved notional term about
3	parental leave is to be treated as being about separate matters to the
4	extent that it is about paid and unpaid parental leave.
5	(2) If the regulations provide that a preserved notional term about
6 7	parental leave is to be treated as being about separate matters to the extent that it is about paid and unpaid parental leave:
8 9	(a) clauses 45, 46 and 50 have effect in relation to each separate matter; and
10	(b) in accordance with section 94D, the entitlement that an
11	employee would have to unpaid parental leave under the
12	Australian Fair Pay and Conditions Standard is reduced by
13 14	any amount of paid parental leave to which the employee is entitled under the preserved notional term.
15	Note 1: There is no entitlement in relation to paid parental leave under
16	the Australian Fair Pay and Conditions Standard, so there is no
17	corresponding matter for the purposes of subclause 46(3).
18	Note 2: Paragraph (b) does not have the effect of reducing entitlements.
19 20	It simply ensures that the operation of section 94D is not affected by treating paid and unpaid parental leave separately under the
21	regulations.
22	50 Preserved notional terms taken to be included in awards
23	(1) This clause applies to an award if:
24	(a) an award is made under section 118E or is varied under
25	section 118J, 120A or 120B; and
26	(b) the award is binding on:
27	(i) an employer that was bound by a notional agreement
28	preserving State awards immediately before the making
29	or variation of the award; or
30	(ii) an employee who was bound by, or whose employment
31	was subject to, a notional agreement preserving State
32	awards immediately before the making or variation of
33	the award; and
34	(c) the notional agreement contained a preserved notional term.
35	(2) The preserved notional term is taken to be included in the award.
36	(3) The preserved notional term is taken to have the effect that:

1		(a) employees belonging to the class of employees that had
2		entitlements under the preserved notional term of the notional
3		agreement have corresponding entitlements under the award;
4		and
5		(b) employees belonging to any class of employees that did not
6		have entitlements under the preserved notional term of the
7		notional agreement do not gain entitlements under the award.
8	(4)	The preserved notional term is taken to have the effect that:
9		(a) only an employer bound by the preserved notional term of
10		the notional agreement is bound by the corresponding
11		preserved notional term of the award; and
12		(b) other employers are not so bound.
13		Note: The operation of this subclause is affected by Part VIAA, which deals
14		with transmission of business.
15	(5)	For the purposes of subclause (3), whether an employee belongs to
16		a class of employees that had entitlements under a preserved
17		notional term of a notional agreement preserving State awards is to
18		be determined without reference to whether the employee was
19		employed before or after the making of the award.
20	(6)	The Commission must not vary a preserved notional term that has
21		been included in an award under this clause.
22	(7)	Section 118P applies in relation to a preserved notional term
23		included in an award under this clause in the same way as it applies
24		in relation to a preserved award term included in an award made
25		under section 118E or varied under section 118J.
26	51 Applic	ation of hours of work provision of Australian Fair Pay
27	••	and Conditions Standard to notional agreements
28		preserving State awards
29		Division 3 of Part VA (hours of work) does not apply to the
30		employment of an employee while the employee is bound by, or
31		that employment is subject to, a notional agreement preserving
32		State awards that is in operation.

5	2 Protected conditions in notional agreements preserving State
U	awards
	(1) This clause applies if:
	(a) a person's employment is subject to a workplace agreemen and
	<ul><li>(b) protected notional conditions would have effect (but for the agreement) in relation to the employment of the person.</li></ul>
	(2) Those protected notional conditions:
	(a) are taken to be included in the workplace agreement; and
	(b) have effect in relation to the employment of that person; an
	(c) have that effect subject to any terms of the workplace
	agreement that expressly exclude or modify all or part of
	them.
	(3) 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.
	kind of work at an employer's business of 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;

1	(e)	monetary allowances for:
2		(i) expenses incurred in the course of employment; or
3		(ii) responsibilities or skills that are not taken into account
4		in rates of pay for employees; or
5		(iii) disabilities associated with the performance of particular
6	(2)	tasks or work in particular conditions or locations;
7		loadings for working overtime or for shift work;
8		penalty rates;
9		outworker conditions;
10	(1)	any other matter specified in the regulations.
11 12	Note:	These matters are the same as certain allowable award matters mentioned in section 116.
13	prote	cted notional conditions means the terms of a notional
14	agree	ement preserving State awards, to the extent that those terms:
15	(a)	are about protected allowable award matters; and
16	(b)	are not about:
17		(i) matters mentioned in section 116B; or
18		(ii) any other matters specified in the regulations.
19	Division 7—N	Aiscellaneous
20		a notional agreement preserving State awards in a
21	worl	kplace agreement
22	(1) A wo	orkplace agreement may incorporate by reference under
23		on 101C terms from a notional agreement preserving State
24	awar	ds as if the notional agreement were a workplace agreement.
25	(2) Desp	ite subsection 101C(6), a term of a workplace agreement is
26		oid to the extent that it incorporates by reference such terms.
27		of Part IX in relation to a notional agreement
28	pres	erving State awards
29	Part 1	X of this Act (which deals with right of entry) applies in
30		on to a notional agreement preserving State awards in the
31	same	way as it applies in relation to a collective agreement.

# 54 Application of Part XA in relation to a notional agreement preserving State awards

# Part XA of this Act (which deals with freedom of association) applies in relation to a notional agreement preserving State awards as if it were a collective agreement.

## 6 Division 8—Regulations

7

8

9

10

11

12

13

### 55 Regulations may apply, modify or adapt Act

- (1) The Governor-General may make regulations for the purposes of:
  - (a) applying provisions of this Act or the Registration and Accountability of Organisations Schedule to notional agreements preserving State awards; and
  - (b) modifying or adapting provisions of this Act or that Schedule that apply to those agreements.
- 14(2) Despite subsection 12(2) of the Legislative Instruments Act 2003,15regulations made under subclause (1) may be expressed to take16effect from a date before the regulations are registered under that17Act.

# Schedule 16—Transmission of business rules (transitional instruments)

20 Note: See section 4A.

# 21 **Part 1—Introductory**

### 23 **1 Object**

24	The object of this Schedule is to provide for the transfer of
25	employer obligations under certain transitional instruments when
26	the whole, or a part, of a person's business is transmitted to another
27	person.

## 1 2 Simplified outline

2 3 4 5 6	(1)	Part 2 of this Schedule describes the general transmission of business situation this Schedule is designed to deal with. It identifies the <i>old employer</i> , the <i>new employer</i> , the <i>business being transferred</i> , the <i>time of transmission</i> and the <i>transferring employees</i> .
7	(2)	Parts 3 to 5 of this Schedule deal with the transmission of
8		particular transitional instruments as follows:
9 10		<ul><li>(a) Part 3 deals with the transmission of pre-reform AWAs;</li><li>(b) Part 4 deals with the transmission of Division 2 pre-reform</li></ul>
10		certified agreements;
12		(c) Part 5 deals with the transmission of State transitional
13		instruments.
14	(3)	Part 6 of this Schedule deals with notification requirements, the
15		lodgment of notices with the Employment Advocate and the
16		enforcement of employer obligations by pecuniary penalties.
17	(4)	Part 7 of this Schedule deals with special rules for Victoria.
18	(5)	Part 8 of this Schedule deals with the interaction between
19 20		transitional instruments and collective agreements and awards that are transmitted under Part VIAA.
21	(6)	Part 9 of this Schedule allows regulations to be made to deal with
21 22	(0)	other transmission of business issues in relation to transitional
23		industrial instruments.
24	3 Definitio	ons
25		In this Schedule:
26		business being transferred has the meaning given by subclause
27		4(2).
28		<i>Court</i> means the Federal Court of Australia or the Federal
29		Magistrates Court.
30		Division 2 pre-reform certified agreement means a pre-reform
31		certified agreement (within the meaning of Schedule 14) that was
32		made under Division 2 of Part VIB of this Act before the reform
33		commencement.

1 2	<i>exceptional matters order</i> has the same meaning as in Schedule 14.
3	<i>new employer</i> has the meaning given by subclause $4(1)$ .
4 5	<i>notional agreement preserving State awards</i> has the same meaning as in Schedule 15.
6	old employer has the meaning given by subclause $4(1)$ .
7 8	<i>operational reasons</i> has the meaning given by subsection 170CE(5D).
9	pre-reform Act has the same meaning as in Schedule 14.
10	pre-reform AWA has the same meaning as in Schedule 14.
11 12	<i>preserved State agreement</i> has the same meaning as in Schedule 15.
13	section 170MX award has the same meaning as in Schedule 14.
14	State transitional instrument means:
15	(a) a notional agreement preserving State awards; or
16	(b) a preserved State agreement.
17	<i>time of transmission</i> has the meaning given by subclause $4(3)$ .
18	transferring employee has the meaning given by clauses 5 and 6.
19	transitional industrial instrument means:
20	(a) a pre-reform AWA; or
21	(b) a Division 2 pre-reform certified agreement; or
22	(c) a section 170MX award; or
23	(d) an exceptional matters order; or
24	(e) a notional agreement preserving State awards; or
25	(f) a preserved State agreement.
26	<i>transmission period</i> has the meaning given by subclause 4(4).

# Part 2—Application of Schedule

3 <b>4 App</b>	lication of Schedule
4 5 6	<ol> <li>This Schedule applies if a person (the <i>new employer</i>) becomes the successor, transmittee or assignee of the whole, or a part, of a business of another person (the <i>old employer</i>).</li> </ol>
7 8 9	<ul><li>(2) The business, or the part of the business, to which the new employer is successor, transmittee or assignee is the <i>business being transferred</i> for the purposes of this Schedule.</li></ul>
10 11 12	(3) The time at which the new employer becomes the successor, transmittee or assignee of the business being transferred is the <i>time</i> <i>of transmission</i> for the purposes of this Schedule.
13 14	<ul><li>(4) The period of 12 months after the time of transmission is the <i>transmission period</i> for the purposes of this Schedule.</li></ul>
15 <b>5 Tra</b>	nsferring employees
16 17 18	<ul> <li>(1) A person is a <i>transferring employee</i> for the purposes of this Schedule if:</li> <li>(a) the person is employed by the old employer immediately</li> </ul>
19 20	<ul><li>(a) the person is employed by the ord employer immediately before the time of transmission; and</li><li>(b) the person:</li></ul>
20 21	(i) ceases being employed by the old employer; and
22 23	<ul><li>(ii) becomes employed by the new employer in the business being transferred;</li></ul>
24	within 2 months after the time of transmission.
25 26	(2) A person is also a <i>transferring employee</i> for the purposes of this Schedule if:
27 28	<ul><li>(a) the person is employed by the old employer at any time within the period of 1 month before the time of transmission;</li></ul>
29 30	and (b) the person's employment with the old employer is terminated
31 32	by the old employer before the time of transmission for genuine operational reasons or for reasons that include
33	genuine operational reasons; and

#### 634

1 2	(c) the person becomes employed by the new employer, in the business being transferred, within 2 months after the time of
3	transmission.
4	(3) In applying clause 6 and Parts 3 to 5 of this Schedule in relation to
5	a person who is a transferring employee under subclause (2) of this
6	clause, a reference in those provisions to a particular state of affairs
7	existing immediately before the time of transmission is to be read
8	as a reference to that state of affairs existing immediately before
9	the person last ceased to be an employee of the old employer.
10	6 Transferring employees in relation to particular instrument
11 12	(1) A transferring employee is a <i>transferring employee</i> in relation to a particular transitional instrument if:
13	(a) the instrument applied to the transferring employee
14	immediately before the time of transmission; and
15	(b) when the transferring employee becomes employed by the
16	new employer, the transferring employee's employment with
17	the new employer is such that the instrument is capable of
18	applying to that employment.
19	(2) The transferring employee ceases to be a <i>transferring employee</i> in
20	relation to the transitional instrument if:
21 22	<ul><li>(a) the transferring employee ceases to be employed by the new employer after the time of transmission; or</li></ul>
23	(b) the transferring employee's employment with the new
24 25	employer ceases to be such that the instrument is capable of applying to that employment; or
26	(c) the transmission period ends.
27 28	(3) This clause applies to a notional agreement preserving State awards as if it were a transitional instrument.
29 30	Part 3—Transmission of pre-reform AWAs
31	7 Transmission of pre-reform AWA
32	New employer bound by pre-reform AWA
33	(1) If:

33

1	(a) immediately before the time of transmission:
2	(i) the old employer; and
3	(ii) an employee of the old employer;
4	were bound by a pre-reform AWA; and
5	(b) the employee is a transferring employee in relation to the
6	pre-reform AWA;
7	the new employer is bound by the pre-reform AWA by force of
8	this clause.
9	Note 1: The new employer must notify the transferring employee and lodge a
10 11	copy of the notice with the Employment Advocate (see clauses 28 and 29).
12 13	Note 2: See also clause 8 for the interaction between the pre-reform AWA and other industrial instruments.
14	Period for which new employer remains bound
15	(2) The new employer remains bound by the pre-reform AWA, by
16	force of this clause, until whichever of the following first occurs:
17	(a) the pre-reform AWA ceases to be in operation because it is
18	terminated under subsection 170VM(1) of the pre-reform Act
19	(as applied by subclause 18(2) of Schedule 14);
20	(b) the pre-reform AWA ceases to be in operation in relation to
21	the transferring employee's employment with the new
22	employer under subclause 18(1) of Schedule 14 (AWA
23	between the new employer and the transferring employee
24	coming into operation);
25	(c) the transferring employee ceases to be a transferring
26	employee in relation to the pre-reform AWA;
27	(d) the transmission period ends.
28	Old employer's rights and obligations that arose before time of
29	transmission not affected
30	(3) This clause does not affect the rights and obligations of the old
31	employer that arose before the time of transmission.
32	8 Interaction rules
33	(1) From the time of transmission, a transitional industrial instrument
34	(other than a pre-reform AWA) does not apply to the transferring
35	employee's employment with the new employer.

2		use (1) has effect despite section $170VQ$ of the pre-reform applied by subclause $17(1)$ of Schedule 14).
3	9 Termination of	transmitted pre-reform AWA
4	Transm	itted instrument
5 6		nuse applies if subclause 7(1) applies to a pre-reform AWA <i>insmitted pre-reform AWA</i> ).
7 8	Modifie pre-refo	d operation of subsections 170VM(3) to (7) of the orm Act
9 10 11 12	subsect transmi	nsmitted pre-reform AWA cannot be terminated under ion 170VM(3) or (6) of the pre-reform Act during the ssion period (even if the transmitted pre-reform AWA has its nominal expiry date).
13 14		smission of Division 2 pre-reform fied agreements
15	Division 1—Ge	neral
16	10 Transmission	of Division 2 pre-reform certified agreement
16 17		of Division 2 pre-reform certified agreement ployer bound by Division 2 pre-reform certified agreement
17	<i>New em</i> (1) If:	
17 18	<i>New em</i> (1) If: (a) in	pployer bound by Division 2 pre-reform certified agreement
17 18 19	New em (1) If: (a) in	pployer bound by Division 2 pre-reform certified agreement
17 18 19 20	New em (1) If: (a) in	apployer bound by Division 2 pre-reform certified agreement namediately before the time of transmission: (i) the old employer; and
17 18 19 20 21	New em (1) If: (a) in	<ul> <li>apployer bound by Division 2 pre-reform certified agreement</li> <li>apployer bound by Division 2 pre-reform certified agreement</li> <li>(i) the old employer; and</li> <li>(ii) employees of the old employer;</li> <li>appload by a Division 2 pre-reform certified agreement;</li> </ul>
17 18 19 20 21 22	New em (1) If: (a) in ( ( w ar (b) th	<ul> <li>apployer bound by Division 2 pre-reform certified agreement</li> <li>by mediately before the time of transmission:</li> <li>(i) the old employer; and</li> <li>(ii) employees of the old employer;</li> <li>ere bound by a Division 2 pre-reform certified agreement;</li> <li>and</li> <li>ere is at least one transferring employee in relation to the</li> </ul>
17 18 19 20 21 22 23	New em (1) If: (a) in ( ( w ar (b) th D	<ul> <li>apployer bound by Division 2 pre-reform certified agreement</li> <li>by mediately before the time of transmission:</li> <li>(i) the old employer; and</li> <li>(ii) employees of the old employer;</li> <li>ere bound by a Division 2 pre-reform certified agreement;</li> <li>and</li> <li>ere is at least one transferring employee in relation to the</li> <li>ivision 2 pre-reform certified agreement;</li> </ul>
17 18 19 20 21 22 23 24	New em (1) If: (a) in (( w ar (b) th D the new	<ul> <li>apployer bound by Division 2 pre-reform certified agreement</li> <li>by mediately before the time of transmission:</li> <li>(i) the old employer; and</li> <li>(ii) employees of the old employer;</li> <li>ere bound by a Division 2 pre-reform certified agreement;</li> <li>and</li> <li>ere is at least one transferring employee in relation to the</li> <li>ivision 2 pre-reform certified agreement;</li> <li>and employer is bound by the Division 2 pre-reform certified</li> </ul>
17 18 19 20 21 22 23 24 25 26	New em (1) If: (a) in (( w ar (b) th D the new	<ul> <li>apployer bound by Division 2 pre-reform certified agreement</li> <li>by mediately before the time of transmission:</li> <li>(i) the old employer; and</li> <li>(ii) employees of the old employer;</li> <li>ere bound by a Division 2 pre-reform certified agreement;</li> <li>and</li> <li>ere is at least one transferring employee in relation to the</li> <li>ivision 2 pre-reform certified agreement;</li> </ul>

1 2	Note 2: See also clause 11 for the interaction between the Division 2 pre-reform certified agreement and other industrial instruments.
3	Period for which new employer remains bound
4 5 6	(2) The new employer remains bound by the Division 2 pre-reform certified agreement, by force of this clause, until whichever of the following first occurs:
7 8 9 10	<ul> <li>(a) the Division 2 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);</li> </ul>
11 12	(b) there cease to be any transferring employees in relation to the Division 2 pre-reform certified agreement;
13 14 15	<ul> <li>(c) the new employer ceases to be bound by the Division 2 pre-reform certified agreement in relation to all the transferring employees in relation to the agreement;</li> </ul>
16	(d) the transmission period ends.
17	Note: Paragraph (c)—see subclause (3).
18 19	Period for which new employer remains bound in relation to particular transferring employee
20 21 22 23	(3) The new employer remains bound by the Division 2 pre-reform certified agreement in relation to a particular transferring employee, by force of this clause, until whichever of the following first occurs:
24 25 26 27 28	<ul> <li>(a) the Division 2 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));</li> </ul>
29 30 31 32 33 34	<ul> <li>(b) the Division 2 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);</li> </ul>
35 36	(c) the employer ceases to be bound by the Division 2 pre-reform certified agreement under subclause (2).

638

1 2		New employer bound only in relation to employment of transferring employees in business being transferred
3	(4)	The new employer is bound by the Division 2 pre-reform certified
4		agreement, by force of this clause, only in relation to the
5		employment, in the business being transferred, of employees who
6		are transferring employees in relation to the Division 2 pre-reform
7		certified agreement.
8		New employer bound subject to Commission order
9	(5)	Subclauses (1), (2) and (3) have effect subject to any order of the
10		Commission under clause 14.
11		Old employer's rights and obligations that arose before time of
12		transmission not affected
13	(6)	This clause does not affect the rights and obligations of the old
14		employer that arose before the time of transmission.
15	11 Interac	tion rules
16		Transmitted certified agreement
	(1)	
16 17 18	(1)	<i>Transmitted certified agreement</i> This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i> ).
17	(1)	This clause applies if clause 10 applies to a Division 2 pre-reform
17 18	(1)	This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i> ). <i>Existing collective agreements</i>
17 18 19		This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i> ). <i>Existing collective agreements</i> If:
17 18 19 20		This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i> ). <i>Existing collective agreements</i>
17 18 19 20 21		This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i> ). <i>Existing collective agreements</i> If: (a) the new employer is bound by a collective agreement (the <i>existing collective agreement</i> ); and
17 18 19 20 21 22		This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i> ). <i>Existing collective agreements</i> If: (a) the new employer is bound by a collective agreement (the
17 18 19 20 21 22 23		<ul> <li>This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i>).</li> <li><i>Existing collective agreements</i></li> <li>If: <ul> <li>(a) the new employer is bound by a collective agreement (the <i>existing collective agreement</i>); and</li> <li>(b) the existing collective agreement would, but for this</li> </ul> </li> </ul>
17 18 19 20 21 22 23 24		<ul> <li>This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i>).</li> <li><i>Existing collective agreements</i></li> <li>If: <ul> <li>(a) the new employer is bound by a collective agreement (the <i>existing collective agreement</i>); and</li> <li>(b) the existing collective agreement would, but for this subclause, apply, according to its terms, to a transferring</li> </ul> </li> </ul>
17 18 19 20 21 22 23 24 25		<ul> <li>This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i>).</li> <li><i>Existing collective agreements</i></li> <li>If: <ul> <li>(a) the new employer is bound by a collective agreement (the <i>existing collective agreement</i>); and</li> <li>(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</li> </ul> </li> </ul>
17 18 19 20 21 22 23 24 25 26		<ul> <li>This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i>).</li> <li><i>Existing collective agreements</i></li> <li>If: <ul> <li>(a) the new employer is bound by a collective agreement (the <i>existing collective agreement</i>); and</li> <li>(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</li> </ul> </li> </ul>
17 18 19 20 21 22 23 24 25 26 27		<ul> <li>This clause applies if clause 10 applies to a Division 2 pre-reform certified agreement (the <i>transmitted certified agreement</i>).</li> <li><i>Existing collective agreements</i></li> <li>If: <ul> <li>(a) the new employer is bound by a collective agreement (the <i>existing collective agreement</i>); and</li> <li>(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;</li> </ul> </li> </ul>

1		Transitional industrial instruments not to apply
2	(4)	From the time of transmission, a transitional industrial instrument
	(4)	
3		(other than the transmitted certified agreement) does not apply to
4		the transferring employee's employment with the new employer.
5	(5)	Subclause (4) has effect despite section 170LY of the pre-reform
6	(0)	Act (as applied by subclause 2(1) of Schedule 14).
7	12 Termir	nation of transmitted Division 2 pre-reform certified
8		agreement
9		Transmitted agreement
10	(1)	This clause applies if subclause $10(1)$ applies to a Division 2
11	( )	pre-reform certified agreement (the transmitted certified
12		agreement).
12		
13		AWA
14	(2)	Despite subclause 3(2) of Schedule 14, the transmitted certified
15		agreement ceases to be in operation in relation to a transferring
16		employee's employment with the new employer if an AWA
17		between the new employer and the transferring employee comes
18		into operation in relation to that employment after the time of
19		transmission.
20		Note: Subclause 3(2) of Schedule 14 provides that a pre-reform certified
21		agreement is normally only suspended while an AWA operates. The
22		effect of subclause (2) of this clause is to terminate the operation of
23		the transmitted certified agreement in relation to the transferring
24		employee's employment when the AWA is made.
25		Modified operation of sections 170MH and 170MHA of the
26		pre-reform Act
27	(3)	The transmitted certified agreement cannot be terminated under
28		section 170MH or 170MHA of the pre-reform Act during the
29		transmission period (even if the transmitted certified agreement has
30		passed its nominal expiry date).

# **Division 2—Commission's powers**

2	13 Application and terminology
3	(1) This Division applies if:
4	(a) a person is bound by a Division 2 pre-reform certified
5	agreement; and
6	(b) another person:
7	(i) becomes at a later time; or
8	(ii) is likely to become at a later time;
9	the successor, transmittee or assignee of the whole, or a part,
10	of the business of the person referred to in paragraph (a).
11	(2) For the purposes of this Division:
12 13	<ul><li>(a) the <i>outgoing employer</i> is the person referred to in paragraph (1)(a); and</li></ul>
14 15	<ul> <li>(b) the <i>incoming employer</i> is the person first referred to in paragraph (1)(b); and</li> </ul>
16	(c) the <i>business concerned</i> is the business, or the part of the
17	business, to which the incoming employer becomes, or is
18	likely to become, the successor, transmittee or assignee; and
19	(d) the <i>transfer time</i> is the time at which the incoming employer
20	becomes, or is likely to become, the successor, transmittee or
21	assignee of the business concerned.
22	14 Commission may make order
23	(1) The Commission may make an order that the incoming employer:
24	(a) is not, or will not be, bound by the Division 2 pre-reform
25	certified agreement; or
26	(b) is, or will be, bound by the Division 2 pre-reform certified
27	agreement, but only to the extent specified in the order.
28	The order must specify the day from which the order takes effect.
29 30	That day must not be before the day on which the order is made or before the transfer time.
30	before the transfer time.
31	(2) Without limiting paragraph (1)(b), the Commission may make an
32	order under that paragraph that the incoming employer is, or will
33	be, bound by the Division 2 pre-reform certified agreement but
34	only for the period specified in the order.

1 2 3	(3) To avoid doubt, the Commission cannot make an order under subclause (1) that would have the effect of extending the transmission period.
4	15 When application for order can be made
5 6	An application for an order under subclause $14(1)$ may be made before, at or after the transfer time.
7	16 Who may apply for order
8 9	<ol> <li>Before the transfer time, an application for an order under subclause 14(1) may be made only by the outgoing employer.</li> </ol>
10 11	<ul><li>(2) At or after the transfer time, an application for an order under subclause 14(1) may be made only by:</li></ul>
12	(a) the incoming employer; or
13	(b) a transferring employee in relation to the Division 2
14	pre-reform certified agreement; or
15	(c) an organisation of employees that is bound by the Division 2
16	pre-reform certified agreement; or
17	(d) an organisation of employees that:
18 19 20	<ul> <li>(i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee in relation to the Division 2 pre-reform certified agreement; and</li> </ul>
21	(ii) has been requested by the transferring employee to
22 23	apply for the order on the transferring employee's behalf.
24	17 Applicant to give notice of application
25	The applicant for an order under subclause $14(1)$ must take
26	reasonable steps to give written notice of the application to the
27	persons who may make submissions in relation to the application
28	(see clause 18).
29	18 Submissions in relation to application
30	(1) Before deciding whether to make an order under subclause $14(1)$ in
31	relation to the Division 2 pre-reform certified agreement, the
32 33	Commission must give the following an opportunity to make submissions:

1	(a) the applicant;
2	(b) before the transfer time—the persons covered by
3	subclause (2);
4	(c) at and after the transfer time—the persons covered by
5	subclause (3).
6	(2) For the purposes of paragraph $(1)(b)$ , this subclause covers:
7	(a) an employee of the outgoing employer:
8	(i) who is bound by the Division 2 pre-reform certified
9	agreement; and
10	(ii) who is employed in the business concerned; and
11	(b) the incoming employer; and
12	(c) an organisation of employees that is bound by the Division 2
13	pre-reform certified agreement; and
14	(d) an organisation of employees that:
15	(i) is entitled, under its eligibility rules, to represent the
16	industrial interests of an employee referred to in
17	paragraph (a); and
18	(ii) has been requested by the employee to make
19	submissions on the employee's behalf in relation to the
20	application for the order under subclause 14(1).
21	(3) For the purposes of paragraph (1)(c), this subclause covers:
22	(a) the incoming employer; and
23	(b) a transferring employee in relation to the Division 2
24	pre-reform certified agreement; and
25	(c) an organisation of employees that is bound by the Division 2
26	pre-reform certified agreement; and
27	(d) an organisation of employees that:
28	(i) is entitled, under its eligibility rules, to represent the
29	industrial interests of a transferring employee in relation
30	to the Division 2 pre-reform certified agreement; and
31	(ii) has been requested by the transferring employee to
32	make submissions on the transferring employee's behalf
33 34	in relation to the application for the order under subclause 14(1).
94	Subclause 1+(1).

# Part 5—Transmission of State transitional instruments

3	Division 1	l—Gei	neral
4	19 Transm	nission o	of State transitional instrument
5		New em	ployer bound by State transitional instrument
6	(1)	If:	
7		(a) im	mediately before the time of transmission:
8		(1	i) the old employer; and
9		(i	i) employees of the old employer;
10			ere bound by a State transitional instrument; and
11 12			ere is at least one transferring employee in relation to the ate transitional instrument; and
13			t for this clause, the new employer would not be bound by
14			e State transitional instrument in relation to the transferring
15		en	nployees;
16			employer is bound by the State transitional instrument by
17		force of	this clause.
18 19 20		Note 1:	The new employer must notify transferring employees and lodge a copy of the notice with the Employment Advocate (see clauses 28 and 29).
21 22		Note 2:	See also clause 20 for the interaction between the State transitional instrument and other industrial instruments.
23		Period f	or which new employer remains bound
24	(2)	The new	employer remains bound by the State transitional
25			ent, by force of this clause, until whichever of the following
26		first occ	urs:
27			the State transitional instrument is a preserved State
28			reement—the instrument ceases to be in operation under
29			nuses 5 and 21 of Schedule 15;
30			the State transitional instrument is a notional agreement
31 32		-	eserving State awards—the instrument ceases to be in eration at the end of the period of 3 years beginning on the
32 33		-	Form commencement (see subclause 33(1) of Schedule 15);
		101	

#### 644

1	(c) there cease to be any transferring employees in relation to the
2	State transitional instrument;
3	(d) the new employer ceases to be bound by the State transitional
4	instrument in relation to all the transferring employees in
5	relation to the instrument;
6	(e) the transmission period ends.
7	Note: Paragraph (d)—see subclause (3).
8	Period for which new employer remains bound in relation to
9	particular transferring employee
10	(3) The new employer remains bound by the State transitional
11	instrument in relation to a particular transferring employee, by
12	force of this clause, until whichever of the following first occurs:
13	(a) if the State transitional instrument is a preserved State
14	agreement—the instrument ceases to be in operation in
15	relation to the transferring employee's employment with the
16	new employer because a workplace agreement comes into
17	operation in relation to that employment (see subclause $5(2)$
18	of Schedule 15);
19	(b) if the State transitional instrument is a notional agreement
20	preserving State awards—the instrument ceases to be in
21	operation in relation to the transferring employee's
22	employment with the new employer because a workplace
23	agreement comes into operation in relation to that
24	employment (see subclause 33(2) of Schedule 15);
25	(c) if the State transitional instrument is a notional agreement
26	preserving State awards—the instrument ceases to be in
27	operation in relation to the transferring employee's
28	employment with the new employer because the employee
29	becomes bound by an award (see subclause 33(3) of
30	Schedule 15);
31	(d) the employer ceases to be bound by the State transitional
32	instrument under subclause (2).
33	New employer bound only in relation to employment of
34	transferring employees
35	(4) The new employer is bound by the State transitional instrument by
36	force of this clause only in relation to the employment of

1 2		employees who are transferring employees in relation to the State transitional instrument.
3		New employer bound subject to Commission order
4 5	(5)	Subclauses (1), (2) and (3) have effect subject to any order of the Commission under clause 23.
6 7		Old employer's rights and obligations that arose before time of transmission not affected
8 9	(6)	This clause does not affect the rights and obligations of the old employer that arose before the time of transmission.
10	20 Interac	ction rules
11		Transmitted instrument
12 13	(1)	This clause applies if subclause 19(1) applies to a State transitional instrument (the <i>transmitted State instrument</i> ).
14		Collective agreement
15	(2)	If:
16		(a) the new employer is bound by a collective agreement (the
17		pre-transmission agreement); and
18 19		(b) the transmitted State instrument is a preserved State agreement; and
20		(c) the pre-transmission agreement would, but for this subclause,
21		apply, according to its terms, to a transferring employee in
22		relation to the transmitted State instrument when the
23		transferring employee becomes employed by the new
24		employer;
25 26		the pre-transmission agreement does not apply to the transferring employee.
27	(3)	Subclause (2) ceases to apply at the end of the transmission period.
28		Other transitional instruments
29	(4)	From the time of transmission, a transitional industrial instrument
30		(other than the transmitted State instrument) does not apply to the
31		transferring employee's employment with the new employer.

1 2 3	<ul> <li>(5) Subclause (4) has effect despite the following provisions:</li> <li>(a) clause 5 of Schedule 14 (pre-reform certified agreement);</li> <li>(b) subclause 25(3) of Schedule 14 (section 170MX award).</li> </ul>
4	21 Termination of preserved State agreement
5	Transmitted instrument
6 7	<ol> <li>This clause applies if subclause 19(1) applies to a preserved State agreement (the transmitted instrument).</li> </ol>
8 9	<i>Modified operation of subsections 170VM(3) to (7) of the pre-reform Act</i>
10	(2) Subclause (3) applies if:
11	(a) the transmitted instrument is a preserved individual State
12	agreement; and
13	(b) section 170VM of the pre-reform Act is applied to the
14 15	transmitted instrument in accordance with subclause 21(3) of Schedule 15.
16	(3) The transmitted instrument cannot be terminated under subsection
17	170VM(3) or (6) of the pre-reform Act during the transmission
18 19	period (even if the transmitted instrument has passed its nominal expiry date).
20	Modified operation of sections 170MH and 170MHA of the
21	pre-reform Act
22	(4) Subclause (5) applies if:
23	(a) the transmitted instrument is a preserved collective State
24	agreement; and
25	(b) sections 170MH and 170MHA of the pre-reform Act are
26	applied to the transmitted instrument in accordance with
27	subclause 21(2) of Schedule 15.
28	(5) The transmitted instrument cannot be terminated under
29	section 170MH or 170MHA of the pre-reform Act during the
30	transmission period (even if the transmitted instrument has passed
31	its nominal expiry date).

### **Division 2—Commission's powers**

2	22 Application and terminology
3	(1) This Division applies if:
4	(a) a person is bound by a State transitional instrument; and
5	(b) another person:
6	(i) becomes at a later time; or
7	(ii) is likely to become at a later time;
8 9	the successor, transmittee or assignee of the whole, or a part, of the business of the person referred to in paragraph (a).
10	(2) For the purposes of this Division:
11	(a) the <i>outgoing employer</i> is the person referred to in
12	paragraph (1)(a); and
13	(b) the <i>incoming employer</i> is the person first referred to in
14	paragraph (1)(b); and
15	(c) the <i>business concerned</i> is the business, or the part of the
16	business, to which the incoming employer becomes, or is
17	likely to become, the successor, transmittee or assignee; and
18	(d) the <i>transfer time</i> is the time at which the incoming employer becomes, or is likely to become, the successor, transmittee or
19 20	assignee of the business concerned.
20	ussignee of the busiless concerned.
21	23 Commission may make order
22	(1) The Commission may make an order that the incoming employer:
23	(a) is not, or will not be, bound by the State transitional
24	instrument; or
25	(b) is, or will be, bound by the State transitional instrument, but
26	only to the extent specified in the order.
27	The order must specify the day from which the order takes effect.
28	That day must not be before the day on which the order is made or
29	before the transfer time.
30	(2) Without limiting paragraph $(1)(b)$ , the Commission may make an
31	order under that paragraph that the incoming employer is, or will
32	be, bound by the State transitional instrument but only for the
33	period specified in the order.

648

1 2		(3) To avoid doubt, the Commission cannot make an order under subclause (1) that would have the effect of extending the
3		transmission period.
4	24	When application for order can be made
5		An application for an order under subclause 23(1) may be made
6		before, at or after the transfer time.
7	25	Who may apply for order
8 9		<ol> <li>Before the transfer time, an application for an order under subclause 23(1) may be made only by the outgoing employer.</li> </ol>
10 11		<ul><li>(2) At or after the transfer time, an application for an order under subclause 23(1) may be made only by:</li></ul>
12		(a) the incoming employer; or
13		(b) a transferring employee in relation to the State transitional
14		instrument; or
15 16		<ul> <li>(c) an organisation of employees that is bound by the State transitional instrument; or</li> </ul>
17		(d) an organisation of employees that:
18		(i) is entitled, under its eligibility rules, to represent the
19 20		industrial interests of a transferring employee in relation to the State transitional instrument; and
21		(ii) has been requested by the transferring employee to
22		apply for the order on the transferring employee's
23		behalf.
24	26	Applicant to give notice of application
25		The applicant for an order under subclause 23(1) must take
26		reasonable steps to give written notice of the application to the
27		persons who may make submissions in relation to the application
28		(see clause 27).
29	27	Submissions in relation to application
30		(1) Before deciding whether to make an order under subclause $23(1)$ in
31		relation to the State transitional instrument, the Commission must
32		give the following an opportunity to make submissions:

1	(a) the applicant;
2	(b) before the transfer time—the persons covered by
3	subclause (2);
4	(c) at and after the transfer time—the persons covered by
5	subclause (3).
6	(2) For the purposes of paragraph (1)(b), this subclause covers:
7	(a) an employee of the outgoing employer:
8	(i) who is bound by the State transitional instrument; and
9	(ii) who is employed in the business concerned; and
10	(b) the incoming employer; and
11	(c) an organisation of employees that is bound by the State
12	transitional instrument; and
13	(d) an organisation of employees that:
14	(i) is entitled, under its eligibility rules, to represent the
15	industrial interests of an employee referred to in
16	paragraph (a); and
17	(ii) has been requested by the employee to make
18	submissions on the employee's behalf in relation to the
19	application for the order under subclause 23(1).
20	(3) For the purposes of paragraph $(1)(c)$ , this subclause covers:
21	(a) the incoming employer; and
22	(b) a transferring employee in relation to the State transitional
23	instrument; and
24	(c) an organisation of employees that is bound by the State
25	transitional instrument; and
26	(d) an organisation of employees that:
27	(i) is entitled, under its eligibility rules, to represent the
28	industrial interests of a transferring employee in relation
29	to the State transitional instrument; and
30	(ii) has been requested by the transferring employee to
31	make submissions on the transferring employee's behalf
32	in relation to the application for the order under
33	subclause 23(1).

# Part 6—Notice requirements and enforcement

1 2

3 4	28 Informing transferring employees about transmission of transitional instrument
5	(1) This clause applies if:
6	(a) an employer is bound by a transitional instrument (the
7	transmitted instrument) in relation to a transferring
8	employee by force of:
9	(i) clause 7 (pre-reform AWA); or
10	(ii) clause 10 (Division 2 pre-reform certified agreement);
11	or
12	(iii) clause 19 (State transitional instrument); and
13 14	(b) a person is a transferring employee in relation to the transmitted instrument.
15	The provision referred to in paragraph (a) is the <i>transmission</i>
16	provision.
17	(2) Within 28 days after the transferring employee starts being
18	employed by the employer, the employer must take reasonable
19	steps to give the transferring employee a written notice that
20	complies with subclause (3).
21	Note: This is a civil remedy provision, see clause 31.
22	(3) The notice must:
23	(a) identify the transmitted instrument; and
24	(b) state that the employer is bound by the transmitted
25	instrument; and
26	(c) specify the date on which the transmission period for the
27	transmitted instrument ends; and
28	(d) state that the employer will remain bound by the transmitted
29	instrument until the end of the transmission period unless the
30	transmitted instrument is terminated, or otherwise ceases to
31	be in operation, before the end of that period; and
32	(e) specify the kinds of instruments (if any) that can replace, or exclude the operation of, the transmitted instrument; and
33	*
34 25	(f) set out the source for the terms and conditions that the employer intends to apply to the matters that are dealt with
35	employer michus to appry to the matters that are dealt with

1			by the transmitted instrument when the transmitted
2			instrument ceases to bind the employer; and
3		(g)	identify any award or collective agreement that binds:
4			(i) the employer; and
5			(ii) employees of the employer who are not transferring
6			employees in relation to the transmitted instrument;
7		;	and that would bind the transferring employee but for the
8		1	transmission provision.
9	(4) S	ubcla	ause (2) does not apply if:
10		(a)	the transmitted instrument is a pre-reform AWA and the new
11			employer and the transferring employee become bound by an
12			AWA within 14 days after the time of transmission; or
13		(b)	the transmitted instrument is not a pre-reform AWA and the
14			new employer and the transferring employee become bound
15			by an AWA or a collective agreement at the time of
16		1	transmission or within 14 days after the time of transmission.
17	29 Lodging	cop	y of notice with Employment Advocate
18	C	Only o	one transferring employee
19	(1) If	f an e	employer:
20		(a)	gives a notice under subclause 28(2) to a transferring
21			employee in relation to a pre-reform AWA; or
22		(b)	gives a notice under subclause 28(2) to the only person who
23			is a transferring employee in relation to a Division 2
24			pre-reform certified agreement or State transitional
25			instrument;
26			ployer must lodge a copy of the notice with the Employment
27			cate within 14 days after the notice is given to the transferring
28		-	yee. The copy must be lodged in accordance with
29			use (4).
30	Ν	ote 1:	This is a civil remedy provision, see clause 31.
31 32	Ν	ote 2:	Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for providing false or misleading information or documents.
33 34	_	lultip ay	ole transferring employees and notices all given on the one
35	(2) If	:	

1		(a) an	employer gives a number of notices under subclause 28(2)
2			people who are transferring employees in relation to a
3			vision 2 pre-reform certified agreement or State
4		tra	insitional instrument; and
5		(b) all	of those notices are given on the one day;
6		the emp	loyer must lodge a copy of one of those notices with the
7		Employ	ment Advocate within 14 days after that notice is given.
8		The cop	y must be lodged in accordance with subclause (4).
9		Note 1:	This is a civil remedy provision, see clause 31.
10 11		Note 2:	Sections 137.1 and 137.2 of the <i>Criminal Code</i> create offences for providing false or misleading information or documents.
12		Multiple	e transferring employees and notices given on different
13		days	
		-	
14	(3)	If:	
15			employer gives a number of notices under subclause 28(2)
16			people who are transferring employees in relation to a
17			vision 2 pre-reform certified agreement or State
18			ansitional instrument; and
19			e notices are given on different days;
20			loyer must lodge a copy of the notice, or one of the notices
21			given on the earliest of those days, with the Employment
22			te within 14 days after that notice is given. The copy must
23		be lodge	ed in accordance with subclause (4).
24		Note 1:	This is a civil remedy provision, see clause 31.
25		Note 2:	Sections 137.1 and 137.2 of the Criminal Code create offences for
26			providing false or misleading information or documents.
27	(4)	A notice	e is lodged with the Employment Advocate in accordance
28			s subclause only if it is actually received by the
29		Employ	ment Advocate.
30		Note:	This means that section 29 of the Acts Interpretation Act 1901 (to the
31			extent that it deals with the time of service of documents) does not
32			apply to lodgment of a notice.
33	30 Emplo	yment A	Advocate must issue receipt for lodgment
34	(1)	If a notio	ce is lodged under clause 29, the Employment Advocate
35	(-)		ue a receipt for the lodgment.

1 2	(2)	The receipt must state that the notice was lodged under clause 29 on a particular day.
3	(3)	The Employment Advocate must give a copy of the receipt to the
4		person who lodged the notice under clause 29.
5	31 Civil p	enalties
6	(1)	The following are <i>civil remedy provisions</i> for the purposes of this
7		clause:
8		(a) subclause 28(2);
9		(b) subclauses 29(1), (2) and (3).
10		Note: Division 4 of Part VIII contains other provisions relevant to civil
11		remedies.
12	(2)	The Court may order a person who has contravened a civil remedy
13		provision to pay a pecuniary penalty.
14		Note: Division 4 of Part VIII contains other provisions relevant to civil
15		remedies.
16	(3)	The penalty cannot be more than 300 penalty units for a body
17		corporate or 60 penalty units in other cases.
18	(4)	An application for an order under subclause (1) in relation to an
19		instrument listed in the following table may be made by a person
20		specified in the item of the table relating to that kind of instrument:
21		-
		Item Instrument People with standing to apply for

Item	Instrument	People with standing to apply for order
1	pre-reform AWA	(a) the transferring employee; or
		(b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of the transferring employee and has been requested by the transferring employee to apply for the order on the transferring employee's behalf; or
		(c) a workplace inspector

Division 2 pre-reform ertified agreement	<ul> <li>(a) a transferring employee; or</li> <li>(b) an organisation of employees that is bound by the agreement; or</li> <li>(c) an organisation of employees that is entitled, under its eligibility rules, to represent the</li> </ul>
ertified agreement	<ul><li>that is bound by the agreement; or</li><li>(c) an organisation of employees that is entitled, under its</li></ul>
	that is entitled, under its
	industrial interests of a transferring employee and has been requested by the transferring employee to apply for the order on the transferring employee's behalf; or
	(d) a workplace inspector
notional agreement preserving State awards	<ul> <li>(a) a transferring employee; or</li> <li>(b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee; or</li> </ul>
	(c) a workplace inspector
oreserved State Agreement	<ul><li>(a) a transferring employee; or</li><li>(b) an organisation of employees that is bound by the agreement; or</li></ul>
	<ul> <li>(c) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee and has been requested by the transferring employee to apply for the order on the transferring employee's behalf; or</li> </ul>
	reserving State awards

# Part 7—Matters relating to Victoria

### 3 **32 Definitions**

4	In this Part:		
5 6	<i>employee</i> has the same meaning as in Division 1 of Part XV of this Act.		
7 8	<i>employer</i> has the same meaning as in Division 1 of Part XV of this Act.		
9 10	<i>employment</i> has the same meaning as in Division 1 of Part XV of this Act, and <i>employed</i> has a corresponding meaning.		
11	this Schedule does not include this Part.		
12	33 Additional effect of Schedule		
13 14	(1) Without affecting its operation apart from this clause, this Schedule also has the effect it would have if:		
15 16 17	<ul> <li>(a) each reference in this Schedule to an employer (within the meaning of this Schedule) included a reference to an employer (within the meaning of this Part) in Victoria; and</li> </ul>		
18 19 20	<ul><li>(b) each reference in this Schedule to an employee (within the meaning of this Schedule) included a reference to an employee (within the meaning of this Part) in Victoria; and</li></ul>		
21 22 23	<ul><li>(c) each reference in this Schedule to employment (within the meaning of this Schedule) included a reference to the employment of an employee (within the meaning of this Part)</li></ul>		
24 25	in Victoria by an employer (within the meaning of this Part) in Victoria; and		
26 27 28	<ul><li>(d) each reference in this Schedule to employed (within the meaning of this Schedule) included a reference to employed (within the meaning of this Part) in Victoria by an employer</li></ul>		
29 30	<ul><li>(within the meaning of this Part) in Victoria; and</li><li>(e) Part 5 of this Schedule had not been enacted.</li></ul>		
31 32 33 34	<ul><li>(2) To the extent to which this Schedule (as it has effect because of subclause (1)) applies if an employer (within the meaning of this Part) in Victoria becomes the successor, transmittee or assignee of the whole, or a part, of a business of:</li></ul>		

#### 656

1 2	(a) another employer (within the meaning of subsection 4AB(1)); or	
3	(b) another employer (within the meaning of this Part) in Victoria;	
4		
5 6	this Schedule has effect only for so long, and in so far, as the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria	
7	refers to the Parliament of the Commonwealth a matter or matters	
8	that result in the Parliament of the Commonwealth having	
9	sufficient legislative power for this Schedule so to have effect.	
10	(3) To the extent to which Division 2 of Part 4 of this Schedule (as it	
11	has effect because of subclause (1)) applies if an employer (within	
12	the meaning of this Part) in Victoria is likely to become the	
13 14	successor, transmittee or assignee of the whole, or a part, of a business of:	
15	(a) another employer (within the meaning of subsection	
16	4AB(1)); or	
17	(b) another employer (within the meaning of this Part) in	
18	Victoria;	
19	that Division has effect only for so long, and in so far, as the	
20	Commonwealth Powers (Industrial Relations) Act 1996 of Victoria	
21	refers to the Parliament of the Commonwealth a matter or matters	
22	that result in the Parliament of the Commonwealth having	
23	sufficient legislative power for that Division so to have effect.	
24	Part 8—Transitional instruments and transmitted	
25 26	post-reform instruments	
27 28	34 Relationship between transitional instruments and transmitted collective agreement	
20	(1) This clause applies if subsection $125(1)$ applies to a collective	
29 30	<ol> <li>This clause applies if subsection 125(1) applies to a collective agreement (the <i>transmitted collective agreement</i>).</li> </ol>	
30	agreement (the <i>transmitted collective agreement</i> ).	
30 31	<ul><li>agreement (the <i>transmitted collective agreement</i>).</li><li>(2) From the time of transmission, a transitional industrial instrument</li></ul>	
30 31 32	<ul><li>agreement (the <i>transmitted collective agreement</i>).</li><li>(2) From the time of transmission, a transitional industrial instrument does not apply to a transferring employee's employment with the</li></ul>	
<ul><li>30</li><li>31</li><li>32</li><li>33</li></ul>	<ul><li>agreement (the <i>transmitted collective agreement</i>).</li><li>(2) From the time of transmission, a transitional industrial instrument does not apply to a transferring employee's employment with the new employer.</li></ul>	

1		time of transmission has the same meaning as in Part VIAA.
2		transferring employee has the same meaning as in Part VIAA.
3	35 Relatio	onship between transitional instruments and transmitted
4		award
5 6	(1)	This clause applies if subsection 126(1) applies to an award (the <i>transmitted award</i> ).
7	(2)	From the time of transmission, a transitional industrial instrument
8		does not apply to the transferring employee's employment with the
9		new employer.
10	(3)	Subclause (2) has effect despite the following provisions:
11		(a) clause 5 of Schedule 14 (pre-reform certified agreement);
12		(b) subclause 25(3) of Schedule 14 (section 170MX award);
13		(c) clause 7 of Schedule 15 (preserved State agreement).
14	(4)	In subclause (2):
15		new employer has the same meaning as in Part VIAA.
16		time of transmission has the same meaning as in Part VIAA.
17		transferring employee has the same meaning as in Part VIAA.

# Part 9—Miscellaneous

### 20 **36 Regulations**

21	The regulations may make provision in relation to the effects that
22	the succession, transmission or assignment of a business, or a part
23	of a business, have on the obligation of employers and the terms
24	and conditions of employees under transitional industrial
25	instruments.

Sch	edule 2—Transitional arrangements for State organisations
Worl	kplace Relations Act 1996
1 Af	ter section 4A Insert:
4B S	chedule 17 has effect
	Schedule 17 has effect.
	Note: Schedule 17 is about transitionally registered associations.
2 At	the end of the Act Add:
Sch	edule 17—Transitionally registered
Sch	edule 17—Transitionally registered associations
	• 0
Note:	associations
Note:	<b>associations</b> See section 4B.
Note:	associations See section 4B.
Note:	associations See section 4B. finitions (1) In this Schedule: <i>federal system employer</i> has the same meaning as in the
Note:	associations See section 4B. finitions (1) In this Schedule: <i>federal system employer</i> has the same meaning as in the Registration and Accountability of Organisations Schedule. <i>industrial instrument</i> means: (a) an award; or
Note:	associations See section 4B. finitions (1) In this Schedule: <i>federal system employer</i> has the same meaning as in the Registration and Accountability of Organisations Schedule. <i>industrial instrument</i> means: (a) an award; or (b) a collective agreement; or
Note:	associations         See section 4B.         finitions         (1) In this Schedule:         federal system employer has the same meaning as in the Registration and Accountability of Organisations Schedule.         industrial instrument means:         (a) an award; or         (b) a collective agreement; or         (c) a preserved State agreement; or
Note:	associations         See section 4B.         finitions         (1) In this Schedule:         federal system employer has the same meaning as in the Registration and Accountability of Organisations Schedule.         industrial instrument means:         (a) an award; or         (b) a collective agreement; or         (c) a preserved State agreement; or         (d) a notional agreement preserving State awards.
Note:	associations         See section 4B.         finitions         (1) In this Schedule:         federal system employer has the same meaning as in the Registration and Accountability of Organisations Schedule.         industrial instrument means:         (a) an award; or         (b) a collective agreement; or         (c) a preserved State agreement; or

1 2	<i>office</i> , in relation to a State-registered association, has its ordinary meaning.			
3	preserved State agreement means an agreement that, on the reform			
4	commencement, will be taken to come into operation under			
5	clause 3 of Schedule 15 to this Act.			
6	reform commencement means the commencement of Schedule 1			
7	to the Workplace Relations Amendment (Work Choices) Act 2005.			
8	<i>rule</i> , in relation to State-registered association, has its ordinary			
9	meaning.			
10	State demarcation order means a State award, to the extent that it			
11	relates to the rights of a State-registered association to represent the			
12	interests under a State or Territory industrial law of a particular			
13	class or group of employees.			
14	State employment agreement means an agreement:			
15	(a) between an employer and one or more of the following:			
16	(i) an employee of the employer;			
17	(ii) a trade union; and			
18	(b) that regulates wages and conditions of employment of one or			
19	more of the employees; and			
20	(c) that is in force under a State or Territory industrial law; and			
21	(d) that prevails over an inconsistent State award.			
22	State-registered association means a body that is:			
23	(a) an industrial organisation for the purposes of the <i>Industrial</i>			
24	Relations Act 1996 of New South Wales; or			
25	(b) an organisation for the purposes of Chapter 12 of the			
26	Industrial Relations Act 1999 of Queensland; or			
27	(c) an association or organisation for the purposes of the			
28	Industrial Relations Act 1979 of Western Australia; or			
29	(d) a registered association for the purposes of the Fair Work Act			
30	1994 of South Australia; or			
31	(e) an organization for the purposes of the Industrial Relations			
32	Act 1984 of Tasmania.			
33	transitionally registered association means a State-registered			
34	association that is registered under this Schedule.			

1 2 3	(2) Unless the contrary intention appears, the following terms have the meaning they would have for the purposes of this Act on the reform commencement:		
4	(a)	employee;	
5	(b)	employer;	
6	(c)	employment;	
7	(d)	State or Territory industrial law.	
8	2 Application f	or transitional registration	
9 10		ate-registered association may apply to a Registrar for itional registration under this Schedule if:	
11 12 13		immediately before the commencement of this Schedule, it was bound by a State award or a State employment agreement; and	
14 15	(b)	immediately before the commencement of this Schedule, it had at least one member who was:	
16		(i) an employee whose employment was subject to the	
17		State award, the State employment agreement or a State	
18		or Territory industrial law; or	
19		(ii) an employer in relation to such an employee; and	
20	(c)	immediately before the commencement of this Schedule, it	
21		was entitled to represent the industrial interests of the	
22		member in relation to work that was subject to the State	
23		award, the State employment agreement or the State or	
24	(L)	Territory industrial law; and	
25 26	(d)	on the reform commencement, the employee will become bound by, or the employment of the employee will become	
20 27		subject to, a preserved State agreement or a notional	
28		agreement preserving State awards if he or she continues in	
29		that employment; and	
30	(e)	it is not also an organisation, or a branch of an organisation.	
31	(2) The a	application must be accompanied by:	
32	(a)	evidence to establish the fact that the association satisfies	
33		subclause (1); and	
34	(b)	a copy of the current rules of the association; and	
35	(c)	a statement setting out:	
36		(i) the address of the association; and	
37		(ii) each office in the association; and	

1 2	(iii) the name and address of each person holding office in the association.
3 4 5	(3) If a Registrar is satisfied that the association satisfies subclause (1), the Registrar must, by written instrument, grant the application and record the fact that he or she is so satisfied.
6	(4) An instrument under subclause (3) is not a legislative instrument.
7	(5) The Registrar must give a copy of the instrument to the association.
8 9	<ul><li>(6) A State-registered association is taken to be registered under this Schedule when the Registrar grants the application.</li></ul>
10	3 Application of this Act to transitionally registered associations
11 12 13	The provisions of this Act apply, on and after the reform commencement, in relation to a transitionally registered association:
13 14 15	(a) in the same way as they apply in relation to an organisation; and
16	(b) as if a transitionally registered association were a person.
17 18	4 Representation rights of transitionally registered associations of employees
19 20 21 22 23	(1) Regulations made for the purposes of this subclause may make provision for the Commission to make orders in relation to the right of a transitionally registered association to represent the interests under this Act, on or after the reform commencement, of a particular class or group of employees.
24 25 26	(2) Without limiting subclause (1), the regulations may specify the weight that the Commission is to give, in making such an order, to a State demarcation order.
27	5 Cancellation of transitional registration
28	Cancellation by the Federal Court
29 30	(1) A person interested or the Minister may apply, on or after the reform commencement, to the Federal Court for an order

1	cancelling the registration under this Schedule of a transitionally
2	registered association on the ground that:
3	(a) the conduct of:
4	(i) the association (in relation to its continued breach of an
5	order of the Commission or an industrial instrument, or
6	its continued failure to ensure that its members comply
7	with and observe an order of the Commission or an
8	industrial instrument, or in any other respect); or
9	(ii) a substantial number of the members of the association
10	(in relation to their continued breach of an order of the
11	Commission or an industrial instrument, or in any other
12	respect);
13	has, on or after the reform commencement, prevented or
14	hindered the achievement of an object of this Act as in force
15	at that time; or
16	(b) the association, or a substantial number of the members of
17	the association or of a section or class of members of the
18	association, has engaged in industrial action that has, on or
19	after the reform commencement, prevented, hindered or
20	interfered with:
21	(i) the activities of a federal system employer; or
22	(ii) the provision of any public service by the
23	Commonwealth or a State or Territory or an authority of
24	the Commonwealth or a State or Territory; or
25	(c) the association, or a substantial number of the members of
26	the association or of a section or class of members of the
27	association, has or have been, or is or are, engaged, on or
28	after the reform commencement, in industrial action that has
29	had, is having or is likely to have a substantial adverse effect
30	on the safety, health or welfare of the community or a part of
31	the community; or
32	(d) the association, or a substantial number of the members of
33	the association or of a section or class of members of the
34	association, has or have failed to comply with one of the
35	following made on or after the reform commencement:
36	(i) an injunction granted under subsection 111(12) (which
37	deals with orders to stop industrial action); or
38	(ii) an order made under section 114A or 114B (which deal
39	with contraventions of the strike pay provisions); or

1	(iii) an order under section 268 (which deals with
2 3	contraventions of the freedom of association provisions); or
4	(iv) an interim injunction granted under section 354A so far
5	as it relates to conduct or proposed conduct that could
6	be the subject of an injunction under a provision
7	mentioned in subparagraphs (i) to (iii); or
8	(v) an order under section 23 of the Registration and
9	Accountability of Organisations Schedule (which deals
10	with contraventions of the employee associations
11	provisions).
12	(2) The Court must give the association an opportunity to be heard.
13	(3) If the Court:
14	(a) finds that a ground for cancellation set out in the application
15	has been established; and
16	(b) does not consider that it would be unjust to do so having
17	regard to the degree of gravity of the matters constituting the
18	ground and the action (if any) that has been taken by or
19	against the association in relation to the matters;
20	the Court must cancel the registration of the association under this
21	Schedule.
22	(4) A finding of fact in proceedings under section 111, 114A, 114B or
23	268 commenced on or after the reform commencement, or
24	section 23 of the Registration and Accountability of Organisations
25	Schedule, is admissible as prima facie evidence of that fact in an
26	application made on a ground specified in paragraph (1)(d).
27	Cancellation by Commission
28	(5) The Commission may cancel the registration under this Schedule
29	of a transitionally registered association:
30	(a) on application by the association made under the regulations;
31	or
32	(b) on application by a person interested or by the Minister, if the
33	Commission has satisfied itself, as prescribed, that the
34	association:
35	(i) was registered by mistake; or
36	(ii) is no longer a State-registered association.

1	Cancellation by Registrar
2	(6) A Registrar may, by written instrument, cancel the registration
3	under this Schedule of a transitionally registered association if he
4	or she is satisfied that the association no longer exists.
5	(7) An instrument under subclause (6) is not a legislative instrument.
6	6 End of transitional registration
7	The registration under this Schedule of a transitionally registered
8	association ends:
9	(a) when it is cancelled under clause 5; or
10	(b) when the association becomes an organisation; or
11	(c) in any other case—on the third anniversary of the
12	commencement of this Schedule.
13	7 Modification of Registration and Accountability of Organisations
14	Schedule
15	Regulations made for the purposes of this clause may modify how
16	section 19 of the Registration and Accountability of Organisations

Schedule applies in relation to an association that is a transitionally
 registered association.

## Schedule 3—School-based apprentices and trainees

### 5 Workplace Relations Act 1996

- 6 1 After Part XVI
  - Insert:

1

2

3 4

7

1

12 13

14 15 16

19

20

21

22

23

24

25

26

27

28

29

30

### 8 Part XVII—School-based apprentices and trainees

9 **Division 1—Preliminary** 

10	550	Definitions
10	550	Deminuons

<i>additional condition</i> means a condition under a wage instrument other than a rate of pay.
<i>employee</i> means an individual so far as he or she is employed, or usually employed, as described in the definition of <i>employer</i> in this
section, by an employer, except on a vocational placement.

*employer* means:(a) a constitution

- (a) a constitutional corporation, so far as it employs, or usually employs, an individual; or
- (b) the Commonwealth, so far as it employs, or usually employs, an individual; or
- (c) a Commonwealth authority, so far as it employs, or usually employs, an individual; or
- (d) a person or entity (which may be an unincorporated club) so far as the person or entity, in connection with constitutional trade or commerce, employs, or usually employs, an individual as:
- (i) a flight crew officer; or
  - (ii) a maritime employee; or
  - (iii) a waterside worker; or

1 2	(e) a body corporate incorporated in a Territory, so far as the body employs, or usually employs, an individual; or
3	(f) a person or entity (which may be an unincorporated club) that
4	carries on an activity (whether of a commercial,
5	governmental or other nature) in a Territory in Australia, so
6	far as the person or entity employs, or usually employs, an
7	individual in connection with the activity carried on in the
8	Territory.
9	full-time apprentice means a person employed on a full-time basis
10	who is recognised, under the wage instrument that covers his or her
11	employment, as an apprentice.
12	<i>full-time trainee</i> means a person employed on a full-time basis
13	under a training arrangement who is not a full-time apprentice.
14	school-based apprentice means an employee:
15	(a) whose employment is part of a school-based training
16	arrangement; and
17	(b) who would, if employed full-time under a training
18	arrangement to do the same kind of work, in the same
19	location and for the same employer, be a full-time apprentice.
20	school-based trainee means an employee, other than a
21	school-based apprentice, whose employment is part of a
22	school-based training arrangement.
23	school-based training arrangement means a training arrangement
24	undertaken as part of a course of secondary education.
25	State or Territory training authority means a body authorised by a
26	law or award of a State or Territory for the purpose of overseeing
27	arrangements for the training of employees.
28	training arrangement means a combination of work and training
29	that is subject to a training agreement or a training contract
30	between the employee and employer that is registered:
31	(a) with the relevant State or Territory training authority; or
32	(b) under a law of a State or Territory relating to the training of
33	employees.
34	wage instrument means:
35	(a) an award (as defined in subsection 4(1)), but not including:

1	(i) an order under section 120A; or
2	(ii) an award under section 170MX; or
3	(b) a law, or a provision of a law, of the Commonwealth, being a
4	law or provision that is specified, or is of a kind specified, in
5	regulations made for the purposes of this paragraph; or
6	(c) an instrument made under a law, or a provision of a law, of
7	the Commonwealth, being an instrument that is specified, or
8	is of a kind specified, in regulations made for the purposes o
9	this paragraph; or
10	(d) a State award (as defined in subsection $4(1)$ ); or
11	(e) a law, or a provision of a law, of a State or Territory, being a
12	law or provision that entitles employees, or a particular class
13	of employees, to payment of a particular rate of pay; or
14	(f) a law, or a provision of a law, of a State or Territory, being a
15	law or provision that is specified, or is of a kind specified, in
16	regulations made for the purposes of this paragraph; or
17	(g) an instrument made under a law, or a provision of a law, of a
18	State or Territory, being an instrument that is specified, or is
19 20	of a kind specified, in regulations made for the purposes of this paragraph.
20	uns paragraph.
21	work on-the-job, in relation to a school-based apprentice or
22	school-based trainee, means work that contributes directly to the
23	productive output of the employer of the school-based apprentice
24	or school-based trainee.
25	Note: So, for example, time spent studying or in other off-the-job training of
26	education would not be <i>work on-the-job</i> for the purposes of this Part.
27	<b>Division 2—Concurrent operation of State and Territory</b>
28	laws
29	551 Concurrent operation of State and Territory laws
30	This Part does not apply to the exclusion of a law of a State or
31	Territory to the extent that the law is capable of operating

32 concurrently with this Part.

## **Division 3—School-based apprentices**

2	552 Pay for school-based apprentices
3	Rate of pay is an hourly rate for work on-the-job
4 5	(1) The rate of pay for a school-based apprentice is an hourly rate paid only for hours worked on-the-job and calculated using the formula:
6	Full-time first-year apprentice hourly rate $\times \frac{125}{100}$
7	where:
8	full-time first-year apprentice hourly rate means:
9	(a) the hourly rate of pay specified, in the applicable wage
10	instrument, for a full-time first-year apprentice doing the
11	same kind of work, in the same location and for the same
12	employer as the school-based apprentice; or
13	(b) if the rate of pay specified in the applicable wage instrument
14	is not an hourly rate—that rate converted into an hourly rate.
15	This section does not limit pay
16	(2) To avoid doubt, this section does not operate to prevent the
17	school-based apprentice from receiving a rate of pay more
18	generous than the rate calculated in accordance with subsection (1).
19	School-based apprentices not covered by this section
20	(3) This section does not apply to a school-based apprentice if:
21	(a) a wage instrument covers the work of the school-based
22	apprentice; and
23	(b) the wage instrument specifies the rate of pay for the
24	school-based apprentice; and
25	(c) the wage instrument does so by making specific provision for
26	school-based apprentices.

1	553 Additi	onal conditions for school-based apprentices
2		Additional conditions adjusted as necessary
3	(1)	A school-based apprentice is entitled, in accordance with
4		subsection (2), to any additional conditions (the <i>full-time</i>
5		<i>conditions</i> ) to which a full-time apprentice doing the same kind of
6 7		work, in the same location and for the same employer would be entitled.
8	(2)	The school-based apprentice is entitled to the full-time conditions
9		adjusted as necessary in proportion to the hours worked on-the-job
10		by the school-based apprentice.
11	(3)	For the purposes of subsection (2), the regulations may determine,
12		or make provision for determining, either or both of the following:
13		(a) whether particular full-time conditions should be adjusted in
14		proportion to the hours worked on-the-job by the
15		school-based apprentice;
16		(b) the method for adjusting particular full-time conditions in
17 18		proportion to the hours worked on-the-job by the school-based apprentice.
19		This section does not limit additional conditions
20	(4)	To avoid doubt, this section does not operate to prevent the
21		school-based apprentice from receiving conditions more generous
22		than those provided by this section.
23		School-based apprentices not covered by this section
24	(5)	This section does not apply to a school-based apprentice if:
25		(a) a wage instrument covers the work of the school-based
26		apprentice; and
27		(b) the wage instrument specifies the rate of pay for the
28		school-based apprentice; and
29		(c) the wage instrument does so by making specific provision for
30		school-based apprentices.

1	554 Pay for apprentices who were school-based apprentices
2 3 4	(1) Subsection (2) applies for the purposes of determining the rate of pay under a wage instrument for a full-time apprentice doing the same kind of work he or she did as a school-based apprentice.
5 6	(2) The person's time as a full-time apprentice is taken to include the period calculated using the formula:
7	Time as a school-based apprentice $\times \frac{1}{2}$
8	where:
9 10	<i>time as a school-based apprentice</i> means the time for which the person was a school-based apprentice.
11	Division 4—School-based trainees
12	555 Pay for school-based trainees
13	Rate of pay is an hourly rate for work on-the-job
14	(1) The rate of pay for a school-based trainee is the rate as follows,
15 16 17 18	<ul> <li>paid only for hours worked on-the-job:</li> <li>(a) for a calendar year in which the school-based trainee is enrolled in a Year up to and including Year 11—\$7.27 per hour;</li> </ul>
19 20	<ul><li>(b) for a calendar year in which the school-based trainee is enrolled in Year 12 or a later Year—\$7.99 per hour.</li></ul>
21	This section does not limit pay
22 23 24	(2) To avoid doubt, this section does not operate to prevent the school-based trainee from receiving a rate of pay more generous than the rate specified by subsection (1).
25	School-based trainees not covered by this section
26	(3) This section does not apply to a school-based trainee if:
27 28	(a) a wage instrument covers the work of the school-based trainee; and

1 2	<ul><li>(b) the wage instrument specifies the rate of pay for the school-based trainee; and</li></ul>
3 4	<ul><li>(c) the wage instrument does so by making specific provision for school-based trainees.</li></ul>
5	556 Additional conditions for school-based trainees
6	Additional conditions adjusted as necessary
7 8 9	<ol> <li>A school-based trainee is entitled, in accordance with subsection (2), to any additional conditions (the <i>full-time</i> <i>conditions</i>) to which a full-time trainee doing the same kind of</li> </ol>
10 11	work, in the same location and for the same employer would be entitled.
12 13 14	(2) The school-based trainee is entitled to the full-time conditions adjusted as necessary in proportion to the hours worked on-the-job by the school-based trainee.
15 16 17 18 19 20	<ul> <li>(3) For the purposes of subsection (2), the regulations may determine, or make provision for determining, either or both of the following:</li> <li>(a) whether particular full-time conditions should be adjusted in proportion to the hours worked on-the-job by the school-based trainee;</li> <li>(b) the method for adjusting particular full-time conditions in</li> </ul>
21 22	proportion to the hours worked on-the-job by the school-based trainee.
23	(4) Subsection (2) has effect subject to section 557.
24	This section does not limit additional conditions
25 26 27	(5) To avoid doubt, this section does not operate to prevent a school-based trainee from receiving conditions more generous than those provided by this section.
28	School-based trainees not covered by this section
29 30 31	<ul><li>(6) This section does not apply to a school-based trainee if:</li><li>(a) a wage instrument covers the work of the school-based trainee; and</li></ul>
32 33	<ul><li>(b) the wage instrument specifies the rate of pay for the school-based trainee; and</li></ul>

1 2	<ul><li>(c) the wage instrument does so by making specific provision for school-based trainees.</li></ul>
3	557 Loading in lieu of certain conditions
4	(1) The employer of a school-based trainee may, with the written
5	agreement of the school-based trainee, pay the school-based trainee
6	a loading in lieu of paid annual leave, paid sick leave, paid
7	personal leave and payment for public holidays.
8 9	(2) The loading is payable for all hours worked on-the-job and is calculated using the formula:
10	Hourly rate $\times \frac{20}{100}$
11	where:
12	<i>hourly rate</i> means the hourly rate paid to the school-based trainee
13	apart from this section.
14	Note: The loading does not compensate for work done on a public holiday.
15	A school-based trainee who works on a public holiday would be paid
16	the applicable hourly rate for such work.
17	Division 5—Enforcement

#### 18 **558 Enforcement**

19	Part VIII has effect, in relation to a school-based apprentice or a
20	school-based trainee who is entitled to be paid, or provided
21	additional conditions, in accordance with subsection 552(1),
22	553(2), $555(1)$ or $556(2)$ , as if the subsection were a term of an
23	award:
24	(a) that bound the employer of the school-based apprentice or
25	school-based trainee; and
26	(b) to which the employment of the school-based apprentice or
27	school-based trainee was subject.

Schedule 4—Transitional and other provisions 2

#### Part 1—Regulations for transitional etc. provisions 3 and consequential amendments 4

#### Regulations may deal with transitional etc. matters 5

- (1)The Governor-General may make regulations dealing with matters of a 6 transitional, saving or application nature relating to amendments made by this Act. 8
- (2) Despite subsection 12(2) of the Legislative Instruments Act 2003, 9 regulations made under this item may be expressed to take effect from a 10 date before the regulations are registered under that Act. 11
- (3) In this item: 12

1

7

13

14

amendments made by this Act includes amendments made by regulations under item 2.

#### 2 Regulations may make consequential amendments of Acts 15

- The Governor-General may make regulations amending Acts (including (1)16 the Workplace Relations Act 1996), being amendments that are 17 consequential on, or that otherwise relate to, amendments made by this 18 Act. 19
- (2) Despite subsection 12(2) of the Legislative Instruments Act 2003, 20 regulations made under this item may be expressed to take effect from a 21 date before the regulations are registered under that Act. 22
- For the purposes of the Amendments Incorporation Act 1905, (3) 23 amendments made by regulations for the purposes of this item are to be 24 treated as if they had been made by an Act. 25
- Note: This subitem ensures that the amendments can be incorporated into a reprint of the Act. 26

<b>.</b>	
Divi	sion 1—Definitions used in this Part
3 D	efinitions
	In this Part:
	<i>amended Act</i> means the <i>Workplace Relations Act 1996</i> as amended by this Act.
	<i>reform commencement</i> has the meaning given by subsection 4(1) of t amended Act.
Divi	sion 2—Awards
4 0	peration of awards in force before commencement
(1)	In this item:
	<i>award</i> means an award within the meaning of subsection 4(1) of the
	<i>Workplace Relations Act 1996</i> as in force immediately before the reform commencement.
	<i>employee</i> has the meaning given by subsection 4AA(1) of the amende Act.
	<i>employer</i> has the meaning given by subsection 4AB(1) of the amende Act.
(2)	This item applies to an award (the <i>original award</i> ) in force immediate
	before the reform commencement, to the extent that the original awar regulates employers in respect of the employment of their employees.
(3)	The original award is taken to be replaced by an instrument (the
	<i>pre-reform award</i> ) in the same terms as the original award that, on an from the reform commencement, has effect under the <i>Workplace</i>
	<i>Relations Act 1996</i> and binds the following in respect of matters relating to the employment of employees:
	<ul> <li>(a) each employer that was bound immediately before the refo commencement by the original award;</li> </ul>
	(b) each organisation that was bound immediately before the reform commencement by the original award;

Part	2 Transitional, application and saving provisions
	<ul><li>(c) each employee of an employer referred to in paragraph (a), in relation to the employee's employment by the employer.</li></ul>
(4)	To avoid doubt, the pre-reform award binds an employer that was bound by the original award immediately before the reform commencement, whether the employer was bound: (a) in its own right or as a member of an organisation; or
	<ul> <li>(b) because of the operation of paragraph 149(1)(d) or (e) of the Workplace Relations Act 1996, as in force immediately before the reform commencement.</li> </ul>
(5)	To avoid doubt, if the original award bound an employer or an organisation as a common rule under paragraph 149(1)(e), the pre-reform award is, to the extent that the pre-reform award binds that employer or organisation, subject to any conditions, exceptions or limitations to which the original award was subject because of the operation of section 141 of the <i>Workplace Relations Act 1996</i> as in force immediately before the reform commencement.
5 Ti	ransitional provision for redundancy pay—repeal of paragraph 89A(2)(m)
	The repeal of paragraph 89A(2)(m) (redundancy pay) of the <i>Workplace</i> <i>Relations Act 1996</i> , as in force immediately before the reform commencement, does not affect any entitlement to a payment that had arisen before that day.
6 Т	erms of awards that cease to have effect
	To avoid doubt, the following provisions do not affect any rights accrued or liabilities incurred under an award before the reform commencement:
	<ul> <li>(a) section 116L of the amended Act;</li> <li>(b) slower 27 of Schedule 12 to the amended Act</li> </ul>
	(b) clause 27 of Schedule 13 to the amended Act.
Divi	ision 3—Termination of employment
7 A	pplication to terminations that occur after the reform commencement
(1)	The amendments made by the items of Schedule 1 referred to in subitem (2) apply in relation to terminations of employment that occur

1	after the reform commencement (whether the employment commenced
2	before or after that commencement).
3	(2) The items of Schedule 1 are as follows:
4	(a) item 81;
5	(b) items 84 to 86;
6	(c) items 88 to 92;
7	(d) items 94 to 98;
8	(e) items 106 to 110;
9	(f) items 112 to 118;
10	(g) item 122;
11	(h) items 124 and 125;
12	(i) item 127;
13	(j) items 129 and 130;
14	(k) items 132 to 134;
15	(l) items 136 to 138;
16	(m) item 140;
17	(n) items 142 to 144;
18	(o) items 150 to 153;
19	(p) item 159;
20	(q) item 163.
21	8 Application of item 111
22	The amendment of the <i>Workplace Relations Act 1996</i> made by item 111
23	of Schedule 1 applies to an application under section 170CE of that Act
24	that relates to employment commenced after the reform
25	commencement.

### **9 Application of items 145 to 149**

- (1) The amendments of the *Workplace Relations Act 1996* made by
   items 145 to 149 of Schedule 1 apply in relation to an application for an
   order under section 170GA of that Act that is made on or after the
   reform commencement.
- (2) Division 2 of Part VI of the *Workplace Relations Act 1996*, as in force
   immediately before the reform commencement, continues to apply, as
   provided by section 170GD of that Act, as in force immediately before
   the reform commencement, to an application for an order under

1 2		section 170GA of that Act that was made, but not determined, before the reform commencement.
3	10 T	ransitional provision for termination of employment
4	(1)	Paragraph (a) of the definition of <i>daily hire employee</i> in subsection
5		170CD(1) of the <i>Workplace Relations Act 1996</i> has effect, on and after
6 7		the reform commencement, as if a reference in that paragraph to an award included a reference to the following:
8		(a) a pre-reform certified agreement;
9		(b) a notional agreement preserving State awards;
10		(c) a preserved State agreement;
11		(d) a transitional award;
12		(e) an old IR agreement;
13		(f) a pre-reform AWA;
14		(g) a common rule continued in effect by clause 82 of
15		Schedule 13.
16	(2)	Subsection 170CD(3) and section 170JG of the Workplace Relations
17		Act 1996 have effect, on and after the reform commencement, as if a
18		reference in those provisions to an award included a reference to the
19		following:
20		(a) a pre-reform certified agreement;
21		(b) a notional agreement preserving State awards;
22		(c) a preserved State agreement;
23		(d) a transitional award;
24		(e) an old IR agreement;
25		(f) a pre-reform AWA;
26		(g) a common rule continued in effect by clause 82 of
27		Schedule 13.
28	(3)	In this item:
29		notional agreement preserving State awards has the meaning given by
30		Schedule 15 to the amended Act.
31		old IR agreement has the meaning given by Schedule 14 to the
32		amended Act.
33		pre-reform AWA means an AWA that:
34		(a) was made at any time before the reform commencement; and

1	(b) was approved under Part VID of the Workplace Relations Act
2	1996 as in force at any time before that commencement; and
3	(c) was in operation immediately before that commencement.
4	pre-reform certified agreement has the meaning given by Schedule 14
5	to the amended Act.
6	preserved State agreement has the meaning given by Schedule 15 to the
7	amended Act.
8	transitional award has the meaning given by Schedule 13 to the
9	amended Act.

#### 10 **Division 4—Miscellaneous**

#### 11 **11 Investigations started by authorised officers**

An investigation started but not completed by an authorised officer before the reform commencement for the compliance purposes referred to in section 83BH of the *Workplace Relations Act 1996* (as in force before the reform commencement) may be completed after the reform commencement by a workplace inspector.

#### 12 Application of section 83BS to pre-reform AWAs

Section 83BS of the *Workplace Relations Act 1996* (as in force after the
 reform commencement) applies to the identification of a person, after
 the reform commencement, as being, or as having been, a party to a
 pre-reform AWA in the same way as it applies to the identification of a
 person.

#### **13** Saving of existing inspectors' appointments

- (1) If an appointment of a person as an inspector under subsection 84(2) of
   the Workplace Relations Act 1996 was in force immediately before the
   reform commencement, the appointment continues in force for its
   unexpired period, despite the repeal and substitution of subsection 84(2)
   of that Act, as if the person had been appointed as a workplace inspector
   under subsection 84(2) of the amended Act.
- 30 (2) Subitem (1) does not prevent the Minister from revoking the
   31 appointment.

#### 32 14 Repeal of Part VA

33 (1) In this item:

17

	<b>BCII</b> Act means the Building and Construction Industry Improvement Act 2005.
(2)	Division 1 of Part 2 of Chapter 7 of the BCII Act has effect as if information given to, a document produced to, or answers to question
	given to, the Secretary or an assistant before the reform commenceme
	under section 88AA of the Workplace Relations Act 1996 had been
	given or produced to the ABC Commissioner under section 52 of the BCII Act.
(3)	The information, document or answers may be used for the purposes proceedings under the BCII Act.
(4)	Despite the repeal of Part VA of the Workplace Relations Act 1996, t
	Commonwealth Ombudsman must conduct a review under section 88
	of that Act of the use of the power given by section 88AA of that Act
(5)	The review must relate to the period starting on 13 January 2006 and
	ending on the reform commencement (rather than to a year to which
	section 88AA applies as defined in subsection 88AI(4)).
(6)	Subsections 88AI(2) and (3) of the Workplace Relations Act 1996 app
	for the purposes of that review.
15	Application of hours of work provisions of Standard to pre-reform awards
	pre-reform awards
(1)	
	employment of an employee while the employee is bound by a
	pre-reform award in relation to the employment at any time during th period of 3 years that starts on the reform commencement.
(2)	In subitem (1):
(2)	
	<i>pre-reform award</i> has the meaning given by subsection 4(1) of the amended Act.
16	Succession, transmission or assignment of business
	Part VIAA of, and Schedule 16 to, the Workplace Relations Act 1996
	apply to a succession, transmission or assignment of a business, or a
	part of a business, that occurs on or after the reform commencement.
17	Application of conciliation and mediation provisions
	relating to equal remuneration for equal work

1 2 3		Sections 170BDA, 170BDB and 170BDC of the <i>Workplace Relations Act 1996</i> apply only to applications for orders under Division 2 of Part VIA of that Act made on or after the reform commencement.
4	18	Application of parental leave
5	(1)	Division 5 of Part VIA of the amended Act does not apply in relation to
6 7		particular employment of an employee if the employment is wholly regulated by one or more of the following:
8		(a) pre-reform certified agreement;
9		(b) a notional agreement preserving State awards;
10		(c) a preserved State agreement;
11		(d) an old IR agreement;
12		(e) a pre-reform AWA;
13		(f) a 170MX award;
14		(g) a transitional award.
15	(2)	Division 5 of Part VIA of the Workplace Relations Act 1996, as in force
16		immediately before the repeal and substitution of that Division by this
17 18		Act, continues to apply in relation to employment of an employee to which subitem (1) applies.
19	(3)	In this item:
20		170MX award means an award:
21		(a) made under subsection 170MX(3) of the <i>Workplace</i>
22 23		<i>Relations Act 1996</i> as in force at any time before the reform commencement; and
24		(b) in operation immediately before that commencement.
25 26		<i>notional agreement preserving State awards</i> has the meaning given by Schedule 15 to the amended Act.
27		old IR agreement has the meaning given by Schedule 14 to the
28		amended Act.
29		pre-reform AWA means an AWA that:
30		(a) was made at any time before the reform commencement; and
31		(b) was approved under Part VID of the <i>Workplace Relations Act</i> 1996 as in force at any time before that commencement; and
32 33		(c) was in operation immediately before that commencement.
34		<i>pre-reform certified agreement</i> has the meaning given by Schedule 14
34 35		to the amended Act.

	<i>preserved State agreement</i> has the meaning given by Schedule 15 to the amended Act.
	<i>transitional award</i> has the meaning given by Schedule 13 to the amended Act.
19	Application of Part VC of amended Act
	Part VC of the amended Act applies, according to its terms, to actions or states of affairs occurring after the commencement of the Part (even if the actions or states of affairs started to occur before that commencement).
20	Application in relation to negotiations for workplace agreements
(1)	This item applies to a matter if:
	<ul> <li>(a) the matter arose before the reform commencement under Division 8 of Part VIB of the <i>Workplace Relations Act 1996</i>, as in force at that time; and</li> </ul>
	(b) the Commission has begun to exercise its conciliation powers under section 170NA, as in force at that time, in relation to the matter.
(2)	Despite the amendments made by items 71 and 168, the <i>Workplace Relations Act 1996</i> continues to apply during the transitional period in relation to the matter as if the amendments had not been made.
(3)	After the end of the transitional period, the <i>Workplace Relations Act</i> 1996, as amended by those items, applies in relation to the matter.
(4)	In this item:
	<i>transitional period</i> means the period of 3 months commencing on the reform commencement.
21	Application of new offences in section 299
(1)	Subsection 299(3) of the amended Act applies to conduct engaged in after the reform commencement, whether the order contravened by the conduct was made before, on or after that commencement.
(2)	Subsection 299(5) of the amended Act applies to the publication of a statement after the reform commencement, whether the statement was made before, on or after that commencement.

22	Transitional provision—entry permits
(1)	If a permit was in force under the repealed Part IX immediately before the reform commencement:
	<ul> <li>(a) the permit continues in force as if it had been issued under the new Part IX; and</li> </ul>
	(b) the permit may be revoked or suspended under the new Part IX.
(2)	In this item:
	new Part IX means Part IX of the amended Act.
	<i>repealed Part IX</i> means Part IX of the <i>Workplace Relations Act 1996</i> as in force immediately before the reform commencement.
23	Application provisions relating to registered organisations
(1)	The amendments made by items 273, 274, 289, 291, 292, 294, 295 and
	296 of Schedule 1 apply in relation to an application for registration
	granted on or after the reform commencement.
(2)	The amendments made by item 297 of Schedule 1 apply in relation to
	conduct that relates to the formation or registration of an association on or after the reform commencement.
(3)	The amendments made by items 298 to 304 of Schedule 1 apply in
	relation to an application for an order cancelling the registration of an organisation made on or after the reform commencement.
(4)	The amendment made by item 309 of Schedule 1 applies in relation to
	an application for a determination made on or after the reform
	commencement.
(5)	The amendments made by items 314 to 319 of Schedule 1 apply in
	relation to an application made on or after the reform commencement.
(6)	The amendment made by item 322 of Schedule 1 applies in relation to
	an agreement that becomes binding on an amalgamated association on or after the reform commencement.
(7)	The amendment made by item 329 of Schedule 1 applies in relation to a rule imposed on or after the reform commencement.
(8)	The amendments made by items 331 and 332 of Schedule 1 apply in relation to a direction given on or after the reform commencement.

1 2	(9)	The amendments made by items 335 and 336 of Schedule 1 apply in relation to an application made on or after the reform commencement.
3 4	(10)	The amendment made by item 347 of Schedule 1 applies in relation to a disclosure made on or after the reform commencement.
5	24 T	ransitional provision relating to registered organisations
6		Despite the amendment made by item 306 of Schedule 1, subparagraph
7		30(1)(c)(v) of Schedule 1B to the amended Act does not apply for the
8		period of 3 years after the reform commencement in relation to an
9		organisation whose application for registration was granted before that
10		commencement.

## Schedule 5—Renumbering the Workplace Relations Act 1996

### 5 Workplace Relations Act 1996

# 1 Renumbering the Workplace Relations Act (other than the Schedules)

8 (1) In this item:

1

2

3 4

- *main Act* means the *Workplace Relations Act 1996*, but does not
   include any of the Schedules to that Act.
- 11 (2) The Parts of the main Act are renumbered so that they bear consecutive 12 Arabic numerals starting with "1".
- (3) The Divisions of each Part of the main Act are renumbered so that they
   bear consecutive Arabic numerals starting with "1".
- (4) The Subdivisions of each Division of each Part of the main Act are
   relettered so that they bear upper-case letters in alphabetical order
   starting with "A".
- (5) The sections of the main Act are renumbered in a single series so that
   they bear consecutive Arabic numerals starting with "1".
- (6) The subsections of each section of the main Act are renumbered so that
   they bear consecutive Arabic numerals enclosed in parentheses starting
   with "(1)".
- (7) The paragraphs of each section or subsection, or of each definition, of
  the main Act are relettered so that they bear lower-case letters in
  alphabetical order enclosed in parentheses starting with "(a)".
- (8) The subparagraphs of each paragraph of each section or subsection, or
   of each paragraph of each definition, of the main Act are renumbered so
   that they bear consecutive lower-case Roman numerals enclosed in
   parentheses starting with "(i)".
- (9) The sub-subparagraphs of each subparagraph of each paragraph of each
   section or subsection, or of each subparagraph of each paragraph of
   each definition, of the main Act are relettered so that they bear

1 2		upper-case letters in alphabetical order in parentheses starting with "(A)".
3 4 5 6	(10)	Subject to subitem (12), each provision of the main Act that refers to a provision that has been renumbered or relettered under this item is amended by omitting the reference and substituting a reference to the last-mentioned provision as renumbered or relettered.
7 8 9 10	(11)	Subject to subitem (12), each provision of the main Act that refers to a Schedule that has been renumbered by item 2 is amended by omitting the reference and substituting a reference to the Schedule as so renumbered.
11 12 13	(12)	Subitems (10) and (11) do not apply to a reference that is expressed as a reference to a provision or Schedule as in force at a time that is before the commencement of this item.
14 15 16 17 18	Note:	Each heading to a section or subsection of the <i>Workplace Relations Act 1996</i> (not including the Schedules) that refers to a provision or Schedule that has been renumbered or relettered under this item or item 2 is (unless the reference is of a kind mentioned in subitem (12)) amended by omitting the reference and substituting a reference to the provision or Schedule as so renumbered or relettered.
19 20	2 Lin	nited renumbering of Schedules to the Workplace Relations Act
	<b>2</b> Lim	•
20		Relations Act
20 21 22		Relations Act In this item: main Act (plus Schedules) means the Workplace Relations Act 1996,
20 21 22 23 24	(1)	Relations ActIn this item:main Act (plus Schedules) means the Workplace Relations Act 1996,including the Schedules to that Act.The Schedules to the main Act (plus Schedules) are renumbered so that

1 2 3	(5)	Subitems (3) and (4) do not apply to a reference that is expressed as a reference to a Schedule or provision as in force at a time that is before the commencement of this item.
4 5 6 7 8	Note:	Each heading to a section or subsection, or to a clause or subclause, of a Schedule to the <i>Workplace Relations Act 1996</i> that refers to a provision or Schedule that has been renumbered under this item or item 1 is (unless the reference is of a kind mentioned in subitem (5)) amended by omitting the reference and substituting a reference to the Schedule as so renumbered.
9 10	3 Ref	erences in other Acts to renumbered provisions and Schedules
11 12 13 14 15 16 17 18	(1)	Subject to subitem (2), after the commencement of this item, a reference in a provision of an Act (other than the <i>Workplace Relations Act 1996</i> ) enacted before the commencement of this item (whether or not that provision has come into operation), or in an instrument or document, to a provision of, or Schedule to, the <i>Workplace Relations Act 1996</i> that has been renumbered or relettered under item 1 or 2 is to be construed as a reference to that provision or Schedule as so renumbered or relettered.
19 20 21	(2)	Subitem (1) does not apply to a reference that is expressed as a reference to a Schedule or provision as in force at a time that is before the commencement of this item.
22 23 24 25 26 27 28	Note:	A reference in a heading to a section, or to a subsection, of an Act (other than the <i>Workplace Relations Act 1996</i> ) enacted before the commencement of this item (whether or not that provision has come into operation), or in an instrument or a document, to a provision of, or Schedule to, the <i>Workplace Relations Act 1996</i> that has been renumbered or relettered under item 1 or 2 is (unless the reference is of a kind mentioned in subitem (2)) to be construed as a reference to that provision or Schedule as so renumbered or relettered.