Workplace Relations and Other Legislation Amendment Act (No. 2) 1996

No. 77, 1996

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

Contents

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[*Assented to 19 December 1996*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*.

2 Commencement

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Subject to subsection (3), the items of the Schedules to this Act (other than item 1 of Schedule 1 and the items of Schedule 3) commence on a day or days to be fixed by Proclamation.

(3) If an item of a Schedule to this Act does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it is repealed on the first day after the end of that period.

(4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Workplace Relations Act 1996: reference of Victorian matters

1 Before Schedule 1

Insert:

Part XV—Matters referred by Victoria

Division 1—Preliminary

488 Object

The object of this Part is to extend existing provisions of this Act, and 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 Interpretation

In this Part:

declared industry sector means an industry sector declared in a declaration in force under section 20 of the **Employee Relations Act 1992** of Victoria immediately before the commencement of subsection 4(7) of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria.

eligible court means:

(a) the Industrial Division of the Magistrates' Court of Victoria; or

(b) any other court prescribed by the regulations.

employee has the same meaning as in section 3 of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria, but does not include a person who is undertaking a vocational placement.

employer has the same meaning as in section 3 of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria.

employment agreement means an agreement in force, or entered into but not yet in force, under Part 2 of the **Employee Relations Act 1992** of Victoria:

(a) if that Part is in force at the commencement of Division 3 of this Part—at the commencement of that Division; or

(b) if Part 2 of that Act is not so in force—immediately before that Part ceased to be in force.

modify includes add to, omit from and substitute for.

penalty provision means:

(a) subsection 505(1); or

(b) subsection 509(6); or

(c) section 510; or

(d) each of the following subclauses of Schedule 1A:

7(1), 13(2), 14(3), 15(2), 15(3), 25(2), 26(3), 27(2), 27(3), 38(2), 39(3), 40(2), 40(3) and 53(3).

recognised association has the same meaning as that expression had in section 4 of the **Employee Relations Act 1992** of Victoria:

(a) if the definition of that expression is in force at the commencement of Division 4 of this Part—at the commencement of that Division; or

(b) if the definition is not so in force—immediately before the definition ceased to be in force.

transitional registration application means an application for registration under Part IX made within 2 years after the commencement of Division 4 of this Part.

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.

work classification means a work classification that, immediately before the commencement of subsection 4(7) of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria:

(a) was a declared work classification under the **Employee Relations Act 1992** of Victoria; or

(b) had been declared by the Commission (within the meaning of the **Employee Relations Act 1992** of Victoria) to be an interim work classification.

Division 2—Extension of existing Commonwealth provisions

490 Division only has effect if supported by reference

A section of this Division has effect only for so long, and in so far, as the **Commonwealth Powers (Industrial Relations) Act 1996** 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 section so to have effect.

491 Exclusion of Commonwealth employment

This Division does not apply to employment of an employee by the Commonwealth.

2 At the end of Division 2 of Part XV

Add:

492 Additional effect of Act—termination of employment

Without affecting its operation apart from this section, Division 3 of Part VIA also has effect in relation to the termination of employment, at the initiative of the employer, of any employee in Victoria.

3 At the end of Division 2 of Part XV

Add:

493 Additional effect of Act—industrial disputes

(1) Without affecting its operation apart from this section, this Act also has effect, subject to this section, as if the definition of ***industrial dispute*** in subsection 4(1) were replaced by the following:

industrial dispute means (except in Part XA):

(a) an industrial dispute (including a threatened, impending or probable industrial dispute):

(i) within the limits of Victoria; and

(ii) that is about matters pertaining to the relationship between employers and employees; or

(b) a situation that is likely to give rise to an industrial dispute of the kind referred to in paragraph (a);

and includes a demarcation dispute.

(2) A law of Victoria prescribed for the purposes of this section prevails to the extent of any inconsistency over an award or order made under this Act, in its operation in accordance with subsection (1), in relation to an industrial dispute about matters pertaining to the relationship between:

(a) employers; and

(b) employees in the Victorian public sector.

494 Additional effect of Act—certified agreements

(1) In addition to the effect that Division 2 of Part VIB and related provisions of this Act have in relation to agreements about matters pertaining to the relationship between:

(a) an employer (within the meaning of that Division) who is a constitutional corporation or the Commonwealth; and

(b) employees (within the meaning of that Division) employed in a single business or part of a single business of the employer;

that Division and those provisions also have effect as mentioned in subsection (2).

(2) Division 2 of Part VIB and related provisions of this Act have effect in the same way as mentioned in subsection (1) in relation to an agreement about matters pertaining to the relationship between:

(a) an employer (within the meaning of this Part) in Victoria who is carrying on a single business or a part of a single business; and

(b) employees (within the meaning of this Part) in Victoria employed in the single business or part.

495 Additional effect of Act—AWAs

(1) In addition to the effect that Part VID and related provisions of this Act have in relation to agreements about matters pertaining to the relationship between:

(a) an employer (within the meaning of that Part); and

(b) an employee (within the meaning of that Part);

that Part and those provisions also have effect as mentioned in subsection (2).

(2) Part VID and related provisions of this Act have effect in the same way as mentioned in subsection (1) in relation to an agreement about matters pertaining to the relationship between:

(a) an employer (within the meaning of this Part) in Victoria; and

(b) an employee (within the meaning of this Part) in Victoria.

496 Additional effect of Act—freedom of association

Despite section 298C, Part XA also has effect in relation to conduct in Victoria.

4 At the end of Part XV

Add:

Division 3—New Commonwealth provisions

Subdivision A—General

497 Division only has effect if supported by reference

A section of this Division has effect only for so long, and in so far, as the **Commonwealth Powers (Industrial Relations) Act 1996** 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 section so to have effect.

498 Exclusion of Commonwealth employment

This Division does not apply to employment of an employee by the Commonwealth.

499 Inconsistency with other Commonwealth laws

(1) Subject to section 531, this Division does not have effect to the extent of any inconsistency with any other Commonwealth law.

(2) In subsection (1):

other Commonwealth law means a law of the Commonwealth other than this Act.

Subdivision B—Minimum terms and conditions of Victorian employees

500 Minimum terms and conditions of employment

(1) Subject to sections 507 and 508, minimum terms and conditions of employment for employees in Victoria are contained in Schedule 1A.

(2) Subsection (1) is intended to supplement, and not to override, entitlements under:

(a) Part VIA of this Act; or

(b) any Commonwealth legislation other than this Act; or

(c) any legislation of Victoria or of any other State or Territory.

501 Minimum wages

(1) For the purposes of Schedule 1A, the Commission may from time to time, by order, set or adjust a minimum wage for employees within a work classification, other than employees who are subject to an award, a certified agreement or an AWA.

(2) The Commission may only do so on application by:

(a) an employee, or group of employees, within the work classification; or

(b) an employer of such an employee or group of employees; or

(c) the Minister; or

(d) an organisation that is entitled to represent the industrial interests of one or more of the employees within the work classification; or

(e) an organisation of which an employer of employees within the work classification is a member.

Note: Under Division 4, the regulations may make special provision relating to the registration of recognised associations as organisations.

(3) A minimum wage set or adjusted by the Commission may be different for different categories of employee within the work classification according to whether the employee is a full-time employee, a part-time employee, a temporary employee, a junior employee, an apprentice or a person employed on a casual or piece rate basis.

(4) In setting the level of minimum wages, the Commission must, so far as possible and appropriate in relation to Victorian practice and conditions, take into consideration:

(a) the needs of workers and their families (taking into account the general level of wages in Victoria), the cost of living, social security benefits and the relative living standards of other social groups; and

(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

(5) A minimum wage set or adjusted by the Commission is to be expressed as a rate of pay for each hour worked in a working week of 38 hours or of such other number of hours as the Commission determines to be appropriate in the case of the relevant declared industry sector.

(6) Nothing in this section empowers the Commission to make any determination, order or decision in relation to the standard hours of work in a declared industry sector.

(7) In setting or adjusting a minimum wage under subsection (1), the Commission may, if it considers it relevant to do so, have regard to:

(a) the transcript of any proceedings before the Employee Relations Commission of Victoria; and

(b) any evidence given in any such proceedings;

relating to the setting or adjusting of a minimum wage.

502 Reference of minimum wage proceeding to Full Bench

(1) Where a proceeding in relation to an application under subsection 501(2) is before a member of the Commission:

(a) a party to the proceeding; or

(b) the Minister;

may apply to the member to have the proceeding dealt with by a Full Bench because the subject-matter of the proceeding is of such importance that, in the public interest, the proceeding should be dealt with by a Full Bench.

(2) If an application is made under subsection (1) of this section to a member of the Commission other than the President, the member must refer the application to the President to be dealt with.

(3) The President must confer with the member about whether the application should be granted.

(4) If the President is of the opinion that the subject-matter of the proceeding is of such importance that, in the public interest, the proceeding should be dealt with by a Full Bench, the President must grant the application.

(5) If the President grants the application, the Full Bench must hear and determine the application and, in the hearing, may have regard to any evidence given, and any arguments adduced, in the proceeding mentioned in subsection (1).

(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.

(7) The member must, after making such investigation (if any) as is necessary, provide a report to the President or Full Bench, as the case may be.

(8) The President may, before a Full Bench has been established for the purpose of hearing and determining, under this section, an application, authorise a member of the Commission to take evidence for the purposes of the hearing and determination, and:

(a) the member has the powers of a person authorised to take evidence under subsection 111(3); and

(b) the Full Bench must have regard to the evidence.

503 Modified application of section 143 in relation to minimum wage orders

For the purpose of applying section 143 to a decision or determination consisting of an order of the Commission under section 501:

(a) the order is not an award or an order affecting an award; and

(b) the reference in paragraph 143(3)(b) to a registry is taken to be a reference to a registry in Victoria.

504 Certain provisions of no effect

A provision of an employment agreement or of any other contract of employment with an employee in Victoria is of no effect to the extent that it provides a term or condition of employment less favourable to an employee than the minimum applicable under subsection 500(1).

505 Employer must comply with minimum terms and conditions of employment

(1) Subject to sections 507 and 508, an employer must not enter into a contract of employment with an employee in Victoria that provides a term or condition of employment less favourable to the employee than the minimum applicable under subsection 500(1).

(2) A contract of employment with an employee in Victoria entered into by an employer in contravention of subsection (1) of this section is not, for that reason only, illegal, void or unenforceable.

506 Deemed inclusion of minimum terms and conditions in contracts etc.

(1) Subject to sections 507 and 508, if an employment agreement does not at any time comply with a minimum term or condition of employment applicable under subsection 500(1), then, for the purposes of sections 178 and 179 (in their application in accordance with section 527), it is taken to have effect as if it did comply.

(2) Subject to sections 507 and 508, if a contract of employment, other than an employment agreement, with an employee in Victoria does not at any time comply with a minimum term or condition of

employment applicable under subsection 500(1), then the employee may take proceedings in an eligible court to recover money owed under the contract as if it did comply.

507 Limit on operation of sections 505 and 506 and Schedule 1A

Sections 505 and 506 do not apply in relation to a contract of employment, or an employment agreement, with an employee, and Schedule 1A does not apply in relation to an employee, during any period in which the employee is subject to a certified agreement or an AWA.

508 Relationship between awards and minimum terms and conditions of employment

An award of the Commission prevails to the extent of any inconsistency with Schedule 1A.

509 Exemption from minimum rate of pay

(1) The relevant minimum rate of pay applicable to an employee under paragraph 1(1)(c) of Schedule 1A does not apply to the employee while the employee holds a certificate in force under this section.

(2) The Commission may give a person a certificate under this section if the Commission is satisfied that, because of the person's age, infirmity or slowness, the person is unable to obtain work at the relevant minimum rate applicable under paragraph 1(1)(c) of Schedule 1A.

(3) The Commission must specify a minimum rate of pay in the certificate.

(4) The certificate is in force for 12 months.

(5) The Commission may renew the certificate from time to time for a further 12 months.

(6) An employer must not:

(a) directly or indirectly pay, or offer to pay, a person holding a certificate under this section at a lower rate than the minimum rate specified in the certificate; or

(b) employ, without the written consent of the Commission, more than one person holding a certificate under this section,

unless the number of employees of the employer holding such certificates does not exceed one-fifth of the total number of employees of the employer.

(7) Section 45 has effect as if the following paragraph were added at the end of subsection (1) of that section:

(h) a decision of a member of the Commission refusing to give a person a certificate under section 509 or to renew such a certificate.

(8) A certificate of exemption in force under section 15 of the **Employee Relations Act 1992** of Victoria:

(a) if that section is in force at the commencement of this Division—at the commencement of this Division; or

(b) if that section is not so in force—immediately before that section ceased to be in force;

continues in force for the purposes of this Act as if it had been made under this section, at the time it was actually made or last renewed, as the case requires.

Subdivision C—Intervals for meals

510 Intervals for meals

(1) Subject to sections 512 and 513, an employer must not require an employee in Victoria to work for more than 5 hours continuously without an interval for a meal, unless the employee is subject to an employment agreement that allows the employer to do this.

(2) The interval for the meal must be for the period required by the employment agreement. If no period is set by the employment agreement, the interval must be for at least half an hour.

511 Relationship between section 510 and other laws etc.

Section 510 is intended to supplement, and not to override, entitlements under:

(a) any Commonwealth legislation other than this Act; or

(b) any legislation of Victoria or of any other State or Territory.

512 Limit on operation of section 510

Section 510 does not apply in relation to an employee during any period in which the employee is subject to a certified agreement or an AWA.

513 Relationship between awards and section 510

An award of the Commission prevails to the extent of any inconsistency with section 510.

Subdivision D—Pay slips

514 Pay slips

The regulations may require employers of persons who are employees in Victoria to issue pay slips to the persons at such times, and containing such particulars, as are prescribed.

Subdivision E—Employment agreements

Note: In addition to the provisions in this Subdivision, sections 504, 506 and 510 also deal with employment agreements.

515 Continued operation of employment agreements

(1) Subject to subsection (2), for the purposes of this Act, even if Part 2 of the **Employee Relations Act 1992** of Victoria has been or is repealed, an employment agreement continues in force, or comes into force, as if that Part had not been, or were not, repealed.

(2) For the purposes of this Act, an employment agreement ceases to be in force, or does not come into force, in relation to an employee if the employment of the employee is subject to a certified agreement or an AWA.

516 Individual employment agreements on cessation of collective employment agreements

(1) When a collective employment agreement ceases to be in force other than because of subsection 515(2):

(a) each employee who continues to be employed by the employer; and

(b) the employer;

are taken, for the purposes of this Division, to be bound by an employment agreement, that is an individual employment agreement, with the same terms and conditions as the collective employment agreement.

(2) Subject to subsection 515(2), the individual employment agreement is in force at all times after the collective employment agreement ceases to be in force.

517 Lodging collective employment agreements within 14 days of coming into force etc.

(1) If a copy of a collective employment agreement that came into force before the commencement of this Division was not lodged, under the **Employee Relations Act 1992** of Victoria as then in force, with the Chief Commission Administration Officer of Victoria before this Division commenced, an employer bound by the agreement must, within 14 days after the commencement of this Division, lodge a copy of the agreement with a Registrar.

(2) If a collective employment agreement comes into force after the commencement of this Division, an employer bound by the agreement must, within 14 days after the agreement comes into force, lodge a copy of the agreement with a Registrar.

(3) If an employer does not comply with subsection (1) or (2), the employment agreement ceases to be in force for the purposes of this Act at the end of the 14 days mentioned in that subsection.

518 Variation of collective employment agreements

(1) The parties to a collective employment agreement may not vary any term of the agreement unless the variation is necessary:

(a) to remove an ambiguity or uncertainty; or

(b) to make the agreement comply with section 519 or 520; or

(c) to make the agreement comply with a minimum term or condition of employment applicable under subsection 500(1).

(2) If the parties to a collective employment agreement vary a term of the agreement in accordance with subsection (1) of this section, a party to the agreement must, within 14 days after the variation

comes into force, lodge a copy of the agreement, as varied, with a Registrar.

(3) If a party does not comply with subsection (2), the variation of the agreement ceases to be in force for the purposes of this Act at the end of the 14 days mentioned in that subsection.

519 Stand down provisions

(1) If an employment agreement does not contain provision for the standing-down of employees who cannot be usefully employed because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible, the agreement is taken to include the provision mentioned in subsection (2).

(2) The provision is that:

(a) the employer may deduct payment for any part of a day during which an employee cannot usefully be employed because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible; and

(b) this does not break the continuity of employment of the employee for the purpose of any entitlements.

520 Dispute resolution provisions

(1) If an employment agreement does not contain provisions that set out procedures to be followed to prevent or settle claims, disputes or grievances that arise during the currency of the agreement, the agreement is taken to include the provision mentioned in subsection (2).

(2) The provision is that any dispute or grievance that arises must be dealt with in the following manner:

(a) the matter must first be discussed by the aggrieved employee with his or her immediate supervisor;

(b) if not settled, the employee may request a representative to be present and the matter must be discussed with the immediate supervisor and his or her superior or another representative of the employer appointed for the purpose of this procedure;

(c) if the matter is not resolved, it must be submitted to the Commission or an agreed mediator for the purposes of conciliation or mediation;

(d) the parties may agree to submit the dispute to arbitration and, if so agreed, the decision must be accepted by the parties subject to any appeal available;

(e) until the matter is determined, work must continue at the direction of the employer. No party is to be prejudiced as to the final settlement by the continuance of work in accordance with this procedure;

(f) the parties must co-operate to ensure that these procedures are carried out expeditiously.

(3) If an employment agreement does contain provisions of the kind mentioned in subsection (1) and those provisions refer to conciliation or mediation by the Employee Relations Commission of Victoria, the reference is taken for the purposes of this Act to be a reference to conciliation by the Australian Industrial Relations Commission.

521 Limit on damages for breach of employment agreement

If:

(a) after the commencement of this Division, an employee does an act, or fails to do an act; and

(b) the act or failure constitutes a contravention or contraventions of an employment agreement;

the amount of damages that may be recovered in any proceeding against the employee in respect of the contravention or contraventions must not exceed $5,000.

522 Employer to give copy of employment agreement

Every employer bound by an employment agreement must, on being requested to do so by an employee also bound by the agreement, give a copy of the agreement to the employee as soon as possible.

523 Registrar not to divulge information in employment agreements

If a Registrar has a copy of an employment agreement, the Registrar must not allow the information in the copy to become available to any person other than:

(a) a party to the agreement; or

(b) a person with authority to enforce the provisions of the agreement on behalf of a party to the agreement.

524 Restriction on protected action and AWA industrial action: employees

Subject to section 529, if an employee who is bound by an employment agreement organises or engages in industrial action (including within the meaning of Division 8 of Part VID):

(a) in the case of a collective employment agreement—at any time when the agreement is in force; or

(b) in the case of an individual employment agreement—at any time during the period of 3 years after the commencement of this Division;

then:

(c) the action is not protected action for the purposes of Division 8 of Part VIB; and

(d) the action is not AWA industrial action for the purposes of Division 8 of Part VID.

525 Restriction on protected action and AWA industrial action: employers

Subject to section 529, if an employer who is bound by an employment agreement locks out (including within the meaning of Division 8 of Part VID) an employee:

(a) in the case of a collective employment agreement—at any time when the agreement is in force; or

(b) in the case of an individual employment agreement—at any time during the period of 3 years after the commencement of this Division;

then:

(c) the lockout is not protected action for the purposes of Division 8 of Part VIB; and

(d) the lockout is not AWA industrial action for the purposes of Division 8 of Part VID.

526 Restriction on protected action: organisations

Subject to section 529, if:

(a) either:

(i) an organisation of employees; or

(ii) an officer or employee of such an organisation acting in that capacity;

organises or engages in industrial action; and

(b) the purpose of so doing is to support or advance claims in respect of the employment of any employee bound by an employment agreement:

(i) in the case of a collective employment agreement—at any time; or

(ii) in the case of an individual employment agreement—at any time during the period of 3 years after the commencement of this Division;

then the action is not protected action for the purposes of Division 8 of Part VIB.

527 Application of Act as if employment agreement were a certified agreement

(1) Subject to this section, this Act (other than Part VIB and sections 143, 353A and 358A) applies in relation to an employment agreement in the same way as it applies in relation to a certified agreement.

(2) Subsection (1) does not have the effect that any other Act applies in relation to an employment agreement in the same way as it applies in relation to a certified agreement.

528 Application of section 111AAA as if employment agreement were a State employment agreement

(1) Subject to this section and to section 529, section 111AAA applies in relation to an employment agreement in the same way as it applies in relation to a State employment agreement.

(2) Subsection (1) does not apply to an employment agreement that was not genuinely entered into. An example of such an agreement is one entered into as a result of coercion.

529 Exclusion of certain agreements from sections 524, 525, 526 and 528

Sections 524, 525, 526 and 528 do not apply to an employment agreement:

(a) that is taken to exist by section 516; or

(b) that was taken to exist at any time before the commencement of this Division by subsection 11(3) of the **Employee Relations Act 1992** of Victoria as then in force; or

(c) that was taken to exist by subsection 24(3) of the **Employee Relations Act 1992** of Victoria at any time while that subsection was in force; or

Note: Subsection 24(3) of the **Employee Relations Act 1992** of Victoria was repealed by section 5 of the **Employee Relations (Amendment) Act 1994** of Victoria.

(d) that was taken to exist at any time before the commencement of this Division by:

(i) clause 22 of Schedule 6 to the **Public Sector Management Act 1992** of Victoria; or

(ii) section 19 of the **Vocational Education and Training (College Employment) Act 1993** of Victoria;

as then in force.

530 Relationship between employment agreements and awards

An award prevails to the extent of any inconsistency with an employment agreement.

531 Relationship between employment agreements and enterprise flexibility agreements

An enterprise flexibility agreement, as continued in effect by item 2 of Schedule 9 to the *Workplace Relations and Other Legislation Amendment Act 1996*, prevails to the extent of any inconsistency with an employment agreement.

532 Record keeping

Section 353A has effect as if "an employment agreement (within the meaning of Part XV)," were inserted in that section before "an award" (wherever occurring).

Subdivision F—Contravention of penalty provisions

533 Penalties for contravening penalty provisions

(1) A contravention of a penalty provision is not an offence. However, an eligible court may make an order imposing a penalty on a person who contravenes a penalty provision.

(2) The penalty cannot be more than $10,000 for a body corporate or $2,000 in other cases.

(3) An application for an order under subsection (1) may be made by:
  (a) any employee concerned; or
  (b) any employer concerned; or
  (c) any other person prescribed.

534 Injunctions

An eligible court may grant an injunction requiring a person not to contravene, or to cease contravening, a penalty provision.

Division 4—Recognised associations

535 Regulations relating to transitional registration applications

(1) The regulations may modify the effect of Part IX and related provisions of this Act in relation to any one or more of the following:
  (a) the making of transitional registration applications by recognised associations;
  (b) the grant of transitional registration applications made by recognised associations;
  (c) the registering of recognised associations as a result of making transitional registration applications.

(2) If the matters referred to the Parliament of the Commonwealth by the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria cease to be so referred:

(a) the modifications made by the regulations cease to have effect; but

(b) the validity of any registration of a recognised association under Part IX of this Act that took place in accordance with the modifications is not affected by the modifications ceasing to have effect as mentioned in paragraph (a).

536 Regulations relating to certain recognised associations that have become registered

The regulations may modify the effect of:

(a) Part IX and related provisions of this Act; or

(b) provisions of this Act that refer or otherwise relate to the entitlement of organisations to represent the industrial interests of members;

in relation to either or both of the following:

(c) recognised associations that are registered under Part IX as a result of making transitional registration applications;

(d) organisations of which recognised associations are part.

5 Before Schedule 1

Insert:

Schedule 1A—Minimum terms and conditions of employment

Note 1: See section 500.

Note 2: This Schedule is based on Schedule 1 to the **Employee Relations Act 1992** of Victoria.

Note 3: The terms and conditions set out in this Schedule in respect of parental leave and termination of employment supplement those applicable under Part VIA—see subsection 500(2).

Part 1—General

1 Minimum terms and conditions of employment

(1) The minimum terms and conditions of employment are:

(a) paid annual leave for each year worked of the number of ordinary hours required to be worked in any 4 week period during that year. This leave accrues on a pro-rata basis and is cumulative;

(b) paid sick leave for each year worked of the number of ordinary hours required to be worked in any 1 week period during that year. This leave accrues on a pro-rata basis and is cumulative;

(c) the greater of:

(i) any minimum wage for the work classification of the employee applicable under section 501; and

(ii) the rate of pay that applied to the employee under paragraph 1(c) of Schedule 1 to the **Employee Relations Act 1992** of Victoria at the test time (see subclause (2)) or, if the employee was not employed in Victoria at that time, that would have so applied if the employee had commenced to be employed in Victoria at that time;

(d) subject to and in accordance with this Schedule, maternity, paternity or adoption leave and an entitlement to work part-time in connection with the birth or adoption of a child;

(e) subject to and in accordance with this Schedule, an entitlement to be given notice of termination or compensation instead of notice.

(2) In paragraph (1)(c):

test time means:

(a) if paragraph 1(c) of Schedule 1 to the **Employee Relations Act 1992** of Victoria was in force at the commencement of this Schedule—the time at which this Schedule commenced; or

(b) if that paragraph was not so in force—immediately before that paragraph ceased to be in force.

Part 2—Maternity leave

2 Nature of leave

Maternity leave is unpaid leave.

3 Definitions

In this Part:

child means a child of the employee under the age of one year.

confinement, in relation to a female employee, means confinement caused by the birth of a child or other termination of a pregnancy.

continuous service means service under an unbroken contract of employment and includes:

(a) any period of leave taken in accordance with this Part; and

(b) any period of leave or absence authorised by the employer or by an employment agreement; and

(c) any period of part-time employment in accordance with Part 5 (including part-time employment as a replacement employee).

employee includes a part-time employee but does not include an employee engaged in casual or seasonal work.

expected date of confinement, in relation to a female employee, means a date certified by a registered medical practitioner to be the date on which the registered medical practitioner expects the employee to be confined in respect of her pregnancy.

paternity leave means leave of the type provided for by Part 3, whether prescribed by an employment agreement or otherwise.

spouse includes a de facto spouse and a former spouse.

4 Eligibility for maternity leave

(1) An employee who becomes pregnant is, on production to her employer of the certificate required by clause 5, entitled to a period of up to 52 weeks of maternity leave.

(2) However, any such maternity leave may not extend beyond the child's first birthday.

(3) The entitlement to maternity leave under this clause is to be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child. Apart from paternity leave of up to one week at the time of confinement, maternity leave is not to be taken concurrently with paternity leave.

(4) Subject to clauses 7 and 10, the period of maternity leave is to be unbroken and must, immediately following confinement, include a period of 6 weeks of compulsory leave.

(5) An employee must have had at least 12 months of continuous service with her employer immediately preceding the date on which she commences maternity leave.

5 Certification

When applying for maternity leave, an employee must, at the times specified in clause 6, produce to her employer:

(a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(b) a statutory declaration:

(i) stating particulars of any period of paternity leave sought or taken by her spouse; and

(ii) stating her agreement that for the period of her maternity leave she will not engage in any conduct inconsistent with her contract of employment.

6 Notice requirements

(1) An employee must, not less than 10 weeks before the expected date of confinement, produce to her employer the certificate referred to in paragraph 5(a).

(2) An employee must, not less than 4 weeks before she proposes to commence maternity leave, produce to her employer the statutory declaration referred to in paragraph 5(b).

(3) An employer, by not less than 14 days' notice in writing to the employee, may require her to commence maternity leave at any time within the 6 weeks immediately before her expected date of confinement.

(4) An employee is not in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2) if the failure is caused by the confinement occurring earlier than the expected date.

7 Transfer to a safe job

(1) If, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employer must, if the employer deems it practicable, transfer the employee to a safe job at the rate and on the conditions attaching to her present work until the commencement of maternity leave.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

(2) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave on full pay for such period as is certified necessary by a registered medical practitioner. Such leave is not to be treated as maternity leave for the purposes of this Part.

8 Variation of period of maternity leave

(1) So long as the maximum period of maternity leave does not exceed the period to which the employee is entitled under clause 4:

(a) the period of maternity leave may be lengthened once only by the employee giving to her employer not less than 14 days' notice in writing stating the period by which the leave is to be lengthened; and

(b) the period may be further lengthened by agreement between the employer and the employee.

(2) The period of maternity leave may, with the consent of her employer, be shortened by the employee giving to her employer not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

9 Cancellation of maternity leave

(1) Maternity leave, applied for but not commenced, is cancelled should the pregnancy of an employee terminate otherwise than by the birth of a living child.

(2) If the pregnancy of an employee then on maternity leave terminates otherwise than by the birth of a living child, it is the right of the employee to resume work at a time nominated by the employer which must be no later than 4 weeks after the date of notice in writing by the employee to the employer that she desires to resume work.

10 Special maternity leave and sick leave

(1) If the pregnancy of an employee not then on maternity leave terminates within 28 weeks before her expected date of confinement otherwise than by the birth of a living child, then:

(a) she is entitled to such period of unpaid leave (***special maternity leave***) as a registered medical practitioner certifies to be necessary before her return to work; or

(b) for illness other than the normal consequences of confinement she is entitled, either instead of or in addition to special maternity leave, to such paid sick leave as she is then entitled to and as a registered medical practitioner certifies to be necessary before her return to work.

(2) If an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as she is then entitled to and such further unpaid leave (***special maternity leave***) as a registered medical practitioner certifies to be necessary before her return to work.

(3) For the purposes of this Part, maternity leave includes special maternity leave.

(4) An employee returning to work after the completion of a period of leave taken under this clause is entitled to the position which she held immediately before commencing that leave or, in the case of an employee who was transferred to a safe job under clause 7, to the position which she held immediately before that transfer.

(5) If that position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employer must make available to the employee a position as nearly as possible comparable in status and pay to that of her former position.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

11 Maternity leave and other leave entitlements

(1) So long as the aggregate of any leave, including leave taken under this Part, does not exceed the period to which the employee is entitled under clause 4, an employee may, instead of or in conjunction with maternity leave, take any annual leave or long service leave or any part of it to which she is entitled.

(2) Paid sick leave or other paid absences authorised by an employment agreement (excluding annual leave or long service leave) are not available to an employee during her absence on maternity leave.

12 Effect of maternity leave on employment

Subject to this Part, despite any employment agreement or other provision to the contrary, absence on maternity leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant employment agreement.

13 Termination of employment

(1) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with any relevant employment agreement.

(2) An employer must not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

14 Return to work after maternity leave

(1) An employee must confirm her intention of returning to work by notice in writing to the employer given not less than 4 weeks before the end of her period of maternity leave.

(2) An employee, on returning to work after maternity leave or the expiration of the notice required by subclause (1), is entitled:

(a) to the position which she held immediately before commencing maternity leave; or

(b) in the case of an employee who was transferred to a safe job under clause 7, to the position which she held immediately before that transfer; or

(c) in the case of an employee who has worked part-time during the pregnancy, to the position which she held immediately before commencing the part-time employment.

(3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employer must make available to the employee a position as nearly as possible comparable in status and pay to that of her former position.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

15 Replacement employees

(1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

(3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this Part, the employer must inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

(4) Nothing in this Part is to be construed as requiring an employer to engage a replacement employee.

Part 3—Paternity leave

16 Nature of leave

Paternity leave is unpaid leave.

17 Definitions

In this Part:

child means a child of the employee or the employee's spouse under the age of one year.

confinement, in relation to an employee's spouse, means the spouse's confinement caused by the birth of a child or other termination of a pregnancy.

continuous service means service under an unbroken contract of employment and includes:

(a) any period of leave taken in accordance with this Part; and

(b) any period of leave or absence authorised by the employer or by an employment agreement; and

(c) any period of part-time employment in accordance with Part 5 (including part-time employment as a replacement employee).

employee includes a part-time employee, but does not include an employee engaged in casual or seasonal work.

expected date of confinement, in relation to an employee's spouse, means a date certified by a registered medical practitioner to be the date on which the registered medical practitioner expects the spouse to be confined in respect of her pregnancy.

maternity leave means leave of the type provided for by Part 2 (and includes special maternity leave), whether prescribed by an employment agreement or otherwise.

primary care-giver means a person who assumes the principal role of providing care and attention to a child.

spouse includes a de facto spouse and a former spouse.

18 Eligibility for paternity leave

(1) A male employee is, on production to his employer of the certificate required by paragraph 19(a), entitled to one or two periods of paternity leave, the total of which must not exceed 52 weeks, in the following circumstances:

(a) an unbroken period of up to one week at the time of confinement of his spouse (***short paternity leave***);

(b) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child if the leave does not extend beyond the child's first birthday (***extended paternity leave***). This entitlement is to be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and is not to be taken concurrently with that maternity leave.

(2) An employee must have had at least 12 months of continuous service with his employer immediately preceding the date on which he commences either period of leave.

19 Certification

When applying for paternity leave, an employee must, at the times specified in clause 20, produce to his employer:

(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;

(b) in relation to any period of extended paternity leave to be taken, a statutory declaration:

(i) stating that he is seeking that period of paternity leave to become the primary care-giver of a child; and

(ii) stating particulars of any period of maternity leave sought or taken by his spouse; and

(iii) stating his agreement that for the period of his paternity leave he will not engage in any conduct inconsistent with his contract of employment.

20 Notice requirements

(1) An employee must, not less than 10 weeks before each proposed period of leave, give his employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required by clause 19.

(2) An employee is not in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1) if the failure is caused by:

(a) the birth occurring earlier than the expected date; or

(b) the death of the mother of the child; or

(c) other compelling circumstances.

(3) The employee must immediately notify his employer of any change in the information provided under clause 19.

21 Variation of period of paternity leave

(1) So long as the maximum period of paternity leave does not exceed the period to which the employee is entitled under clause 18:

(a) the period of extended paternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened; and

(b) the period may be further lengthened by agreement between the employer and the employee.

(2) The period of extended paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

22 Cancellation of paternity leave

Extended paternity leave, applied for but not commenced, is cancelled when the pregnancy of the employee's spouse terminates otherwise than by the birth of a living child.

23 Paternity leave and other leave entitlements

(1) So long as the aggregate of any leave, including leave taken under this Part, does not exceed the period to which the employee is entitled under clause 18, an employee may, instead of or in conjunction with paternity leave, take any annual leave or long service leave or any part of it to which he is entitled.

(2) Paid sick leave or other paid absence authorised by an employment agreement (excluding annual leave or long service leave) is not available to an employee during his absence on paternity leave.

24 Effect of paternity leave on employment

Subject to this Part, despite any employment agreement or other provision to the contrary, absence on paternity leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant employment agreement.

25 Termination of employment

(1) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with any relevant employment agreement.

(2) An employer must not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

26 Return to work after paternity leave

(1) An employee must confirm his intention of returning to work by notice in writing to the employer given not less than 4 weeks before the end of the period of extended paternity leave.

(2) An employee, on returning to work after paternity leave or the expiration of the notice required by subclause (1) is entitled:

(a) to the position which he held immediately before commencing paternity leave; or

(b) in the case of an employee who has worked part-time in connection with the birth of the child, to the position which he held immediately before commencing the part-time employment.

(3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employer must make available to the employee a position as nearly as possible comparable in status and pay to that of his former position.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

27 Replacement employees

(1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

(3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this Part, the employer must inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

(4) Nothing in this Part is to be construed as requiring an employer to engage a replacement employee.

Part 4—Adoption leave

28 Nature of leave

Adoption leave is unpaid leave.

29 Definitions

In this Part:

child, in relation to an employee, means a person under the age of 5 years who is placed with the employee for the purposes of adoption and who has not previously lived continuously with the employee for a period of 6 months or more or is not a child or step-child of the employee or of the spouse of the employee.

continuous service means service under an unbroken contract of employment and includes:

(a) any period of leave taken in accordance with this Part; and

(b) any period of leave or absence authorised by the employer or by any relevant employment agreement; and

(c) any period of part-time employment in accordance with Part 5 (including part-time employment as a replacement employee).

employee includes a part-time employee, but does not include an employee engaged in casual or seasonal work.

primary care-giver means a person who assumes the principal role of providing care and attention to a child.

relative adoption occurs where a child is adopted by a parent, a spouse of a parent or another relative, being a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

spouse includes a de facto spouse and a former spouse.

30 Eligibility for adoption leave

(1) An employee is, on production to the employer of the documentation required by clause 31, entitled to one or two periods of adoption leave, the total of which must not exceed 52 weeks, in the following circumstances:

(a) an unbroken period of up to 3 weeks at a time of the placement of the child (***short adoption leave***);

(b) an unbroken period of up to 52 weeks from the time of the placement of the child in order to be the primary care-giver of the child (***extended adoption leave***). This entitlement is to be reduced by:

(i) any period of short adoption leave taken; and

(ii) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse in relation to the same child;

but extended adoption leave is not to extend beyond one year after the placement of the child and is not to be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child.

(2) The employee must have had at least 12 months of continuous service with his or her employer immediately preceding the date on which he or she commences either period of leave.

31 Certification

(1) Before taking adoption leave, the employee must produce to the employer:

(a) a statement from an adoption agency or another appropriate body of the expected date of placement of the child with the employee for adoption purposes; or

(b) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

(2) In relation to any period of extended adoption leave to be taken, the employee must also produce a statutory declaration:

(a) stating that the employee is seeking that period of adoption leave to become the primary care-giver of the child; and

(b) stating particulars of any period of adoption leave sought or taken by the employee's spouse; and

(c) stating the employee's agreement that for the period of his or her adoption leave he or she will not engage in any conduct inconsistent with his or her contract of employment.

32 Notice requirements

(1) On receiving notice of approval for adoption purposes, an employee must notify his or her employer of the approval and, within 2 months after receiving notice of the approval, must further notify the employer of the period or periods of adoption leave which the employee proposes to take. In the case of a relative adoption, the employee must so notify the employer on deciding to take a child into custody pending an application for an adoption order.

(2) An employee who commences employment with an employer after the date of approval for adoption purposes must notify the employer of that date on commencing employment and of the period of adoption leave which the employee proposes to take. Such an employee is not entitled to adoption leave unless he or she has not less than 12 months of continuous service with that employer immediately preceding the date on which he or she commences the leave.

(3) An employee must, as soon as he or she is aware of the expected date of placement of a child for adoption purposes but no later than 14 days before the expected date of placement, give notice in writing to his or her employer of that date, and of the date of commencement of any period of short adoption leave to be taken.

(4) An employee must, at least 10 weeks before the proposed date of commencing any period of extended adoption leave to be taken, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(5) An employee is not in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (3) or (4) if the failure is caused by:

(a) the requirement of an adoption agency for the employee to accept earlier or later placement of a child; or

(b) the death of his or her spouse; or

(c) other compelling circumstances.

33 Variation of period of adoption leave

(1) So long as the maximum period of adoption leave does not exceed the period to which the employee is entitled under clause 30:

(a) the period of extended adoption leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened; and

(b) the period may be further lengthened by agreement between the employer and the employee.

(2) The period of extended adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

34 Cancellation of adoption leave

(1) Adoption leave, applied for but not commenced, is cancelled should the placement of the child not proceed.

(2) If the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee must notify the employer forthwith and the employer must nominate a time not exceeding 4 weeks from receipt of the notification for the resumption of work by the employee.

35 Special leave

(1) The employer must grant to any employee who is seeking to adopt a child any unpaid leave not exceeding 2 days that is required by the employee to attend any compulsory interviews or examinations that are necessary as part of the adoption procedure.

(2) If paid leave is available to the employee, the employer may require the employee to take such leave instead of special leave.

36 Adoption leave and other entitlements

(1) So long as the aggregate of any leave, including leave taken under this Part, does not exceed the period to which the employee is entitled under clause 30, an employee may, instead of or in

conjunction with adoption leave, take any annual leave or long service leave or any part of it to which he or she is entitled.

(2) Paid sick leave or other paid absence authorised by an employment agreement (excluding annual leave or long service leave) is not available to an employee during the employee's absence on adoption leave.

37 Effect of adoption leave on employment

Subject to this Part, despite any employment agreement or other provision to the contrary, absence on adoption leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant employment agreement.

38 Termination of employment

(1) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with any relevant employment agreement.

(2) An employer must not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

39 Return to work after adoption leave

(1) An employee must confirm his or her intention of returning to work by notice in writing to the employer given not less than 4 weeks before the end of the period of extended adoption leave.

(2) An employee, on returning to work after adoption leave, is entitled:

(a) to the position which he or she held immediately before commencing adoption leave; or

(b) in the case of an employee who has worked part-time in connection with the adoption of the child, to the position which he or she held immediately before commencing the part-time employment.

(3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employer must make available to the employee a position as nearly as possible comparable in status and pay to that of the employee's former position.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

40 Replacement employees

(1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

(3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his or her rights under this Part, the employer must inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

(4) Nothing in this Part is to be construed as requiring an employer to engage a replacement employee.

Part 5—Part-time employment

41 Definitions

In this Part:

continuous service means service under an unbroken contract of employment and includes:

(a) any period of part-time employment in accordance with this Part (including part-time employment as a replacement employee); and

(b) any period of leave or absence authorised by the employer or by any relevant employment agreement.

female employee means an employed female who is pregnant or is caring for a child whom she has borne or a child who has been placed with her for adoption purposes.

former position means the position held by an employee immediately before commencing part-time employment under this Part or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly as possible comparable in status and pay to that of the position held by the employee immediately before commencing part-time employment.

male employee means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.

part-time employment means work of a lesser number of hours than constitutes full-time work under the relevant employment agreement, but does not include casual or temporary work.

spouse includes a de facto spouse and a former spouse.

42 Entitlement

With the agreement of the employer:

(a) a female employee may work part-time in one or more periods while she is pregnant if part-time employment is, because of the pregnancy, necessary or desirable;

(b) a female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until the child's second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement;

(c) a male employee may work part-time in one or more periods at any time from the date of birth of the child until the child's second birthday or, in relation to adoption, from the date of

placement of the child until the second anniversary of the placement.

43 Return to former position

(1) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the end of the period of part-time employment or the first period, if there is more than one, the right to return to his or her former position.

(2) Nothing in subclause (1) prevents the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

44 Effect of part-time employment on continuous service

Despite any employment agreement or other provision to the contrary, commencement on part-time employment under this Part, and return from part-time employment to full-time employment under this Part, does not break the continuity of service of an employee.

45 Pro rata entitlements

Subject to this Part and the matters agreed in the part-time employment agreement under clause 48, part-time employment is to be, pro rata, in accordance with the provisions of any employment agreement applicable to the work concerned.

46 Transitional arrangements—annual leave

(1) An employee working part-time under this Part is to be paid for and take any annual leave accrued in respect of a period of full-time employment, in such periods and manner as is specified in the annual leave provisions of the employment agreement applicable of the work concerned, as if the employee were working full-time in the class or work the employee was performing as a full-time employee immediately before commencing part-time employment under this Part.

(2) A full-time employee is to be paid for and take any annual leave accrued in respect of a period of part-time employment under this

Part, in such periods and manner as is specified in the annual leave provisions of the employment agreement applicable to the work concerned, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

(3) By agreement between the employer and the employee, the period over which leave is taken under subclause (2) may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

47 Transitional arrangements—sick leave

(1) An employee working part-time under this Part is to have sick leave entitlements which have accrued under the employment agreement applicable to the work concerned (including any entitlement accrued in respect of previous full-time employment) converted into hours.

(2) When this entitlement is used, whether as a part-time employee or as a full-time employee, it is to be debited for the ordinary hours that the employee would have worked during the period of absence.

48 Part-time employment agreement

(1) Before commencing a period of part-time employment under this Part the employee and the employer must agree:

(a) that the employee may work part-time; and

(b) on the hours to be worked by the employee, the days on which they will be worked and commencing times for the work; and

(c) on the classification applying to the work to be performed; and

(d) on the period of part-time employment.

(2) The terms of this agreement may be varied by consent.

(3) The terms of this agreement or any variation to it must be put in writing and retained by the employer. A copy of the agreement and any variation to it must be provided to the employee by the employer.

49 Termination of employment

(1) The employment of a part-time employee under this Part may be terminated in accordance with the provisions of this Part but must not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this Part or has enjoyed or proposes to enjoy any benefits arising under this Part.

(2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this Part, or while working full-time after transferring from part-time employment under this Part, are to be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of a full-time employment and all service as a part-time employee as qualifying on a pro rata basis.

50 Extension of hours of work

An employer may request, but not require, an employee working part-time under this Part to work overtime.

51 Nature of part-time employment

The work to be performed part-time need not be the work performed by the employee in his or her former position but must be work otherwise performed under any relevant employment agreement.

52 Inconsistent employment agreement provisions

An employee may work part-time under this Part despite any other provision of any relevant employment agreement which limits or restricts the circumstances in which part-time employment may be worked or the terms on which it may be worked including any provision:

(a) limiting the number of employees who may work part-time; or

(b) establishing quotas as to the ratio of part-time to full-time employees; or

(c) prescribing a minimum or maximum number of hours a part-time employee may work; or

(d) requiring consultation with, the consent of or monitoring by, an association of employees;

and such provisions do not apply to part-time employment under this Part.

53 Replacement employees

(1) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this Part.

(2) A replacement employee may be employed part-time. Subject to this clause, clauses 45 to 49 and 52 apply to the part-time employment of a replacement employee.

(3) Before an employer engages a replacement employee under this Part, the employer must inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of ***penalty provision*** in section 489.

(4) Nothing in this Part is to be construed as requiring an employer to engage a replacement employee.

Part 6—Requirements for lawful termination of employment

54 Employee to be given notice of termination

(1) An employer must not terminate an employee's employment unless:

(a) the employee has been given either the period of notice required by this clause, or compensation instead of notice; or

(b) the employee is guilty of serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.

(2) The required period of notice is first worked out using this table:

Employee's period of continuous service with the employer	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

(3) The period of notice is increased by one week if the employee is over 45 years old and has completed at least 2 years continuous service with the employer.

(4) The regulations may prescribe events or other matters that must be disregarded, or must in prescribed circumstances be disregarded, in ascertaining a period of continuous service for the purposes of subclauses (2) and (3).

(5) The amount of compensation instead of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period.

(6) The total must be worked out on the basis of:

(a) the employee's ordinary hours of work (even if they are not standard hours); and

(b) the amounts payable to the employee in respect of those hours, including (for example) allowances, loadings and penalties; and

(c) any other amounts payable under the employee's employment agreement or other contract of employment.

(7) The following employees are excluded from the operation of this clause:

(a) an employee of a kind referred to in subparagraph 39(1)(a)(ii), (iii), (iv) or (v) of the **Employee Relations Act 1992** of Victoria:

(i) if that subparagraph was in force at the commencement of this Schedule—at the commencement of this Schedule; or

(ii) if that subparagraph was not so in force—immediately before that subparagraph ceased to be in force;

(b) an employee of a kind specified in an Order, made for the purposes of paragraph 54(7)(b) of Schedule 1 to that Act by the Governor of Victoria in Council and published in the Government Gazette of Victoria, where the Order was in force:

(i) if that paragraph was in force at the commencement of this Schedule—at the commencement of this Schedule; or

(ii) if that paragraph was not so in force—immediately before that paragraph ceased to be in force.

55 Employer to be given notice of termination

(1) An employee must not terminate his or her employment unless the employer has been given the period of notice required by this clause.

(2) The required period of notice is:

(a) the period of notice required by the relevant employment agreement or other contract of employment; or

(b) if no period of notice is applicable under paragraph (a), a period of notice equal to the employee's usual pay period.

Schedule 2—Other amendments of the Workplace Relations Act 1996

1 Section 83BR

Repeal the section.

2 After section 170WK

Insert:

170WKA Complementary State laws

(1) A complementary State law may confer functions and powers on the Commission, the Employment Advocate or an authorised officer.

(2) In this section:

AWA provisions means:

(a) Part IVA and this Part; and

(b) the other provisions of this Act so far as they relate to Part IVA or this Part.

complementary State law means a law of a State that applies the AWA provisions as a law of the State, with:

(a) the modifications required by the regulations; and

(b) any other modifications permitted by the regulations.

modifications includes additions, omissions and substitutions.

Schedule 3—Amendment of the Workplace Relations and Other Legislation Amendment Act 1996

1 Subsection 2(2)

Omit "item 90 of Schedule 16 and the items of Schedules 12 and", substitute "items 2 and 3 of Schedule 12, item 90 of Schedule 16 and the items of Schedule".

2 Subsection 2(6)

Repeal the subsection.

3 Item 3 of Schedule 10 (heading)

Omit "**Before Part VII**", substitute "**Before Part VIE**".

4 Item 1 of Schedule 12 (heading)

Omit "**After Part VID**", substitute "**Before Part VII**".

[*Minister's second reading speech made in—*
Senate on 5 December 1996
House of Representatives on 13 December 1996]