



Road Safety Remuneration Act 2012

No. 46, 2012

An Act to make provision in relation to remuneration-related matters to improve safety in the road transport industry, and for related purposes

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

Contents

Part 1—Preliminary	2
Division 1—General	2
1 Short title.....	2
2 Commencement.....	2
3 Object.....	2
Division 2—Definitions	3
4 Definitions.....	3
5 Meaning of <i>road transport driver</i> —general.....	7
6 Meaning of <i>road transport driver</i> —individual.....	7
7 Meaning of <i>road transport driver</i> —corporation.....	8
8 Meaning of <i>hirer</i> of road transport driver and <i>road transport contract</i>	9
9 Meaning of <i>participant in the supply chain</i>	10
Division 3—Application of this Act	13
Subdivision A—Interaction with other laws	13
10 Concurrent operation generally intended.....	13
11 Interaction of enforceable instruments with State and Territory laws.....	13
12 Interaction of enforceable instruments with other Commonwealth instruments (employees).....	14
13 Interaction of enforceable instruments with road transport contracts (independent contractors).....	14
14 Interaction with the <i>Independent Contractors Act 2006</i>	14
Subdivision B—Miscellaneous	15
15 Act binds Crown.....	15
16 Act not to apply so as to exceed Commonwealth power.....	15
17 Acquisition of property.....	16
Part 2—Road safety remuneration orders	17
Division 1—Preparation of annual work program	17
18 Tribunal must prepare and publish a work program each year.....	17
Division 2—Power to make a road safety remuneration order	18
19 Power to make a road safety remuneration order.....	18
20 Matters the Tribunal must have regard to.....	19
21 Publication of research.....	20

Division 3—Preparing and consulting on draft road safety remuneration order	21
22 Tribunal to prepare and consult on draft order	21
23 Publication of draft order.....	21
24 Affected persons and bodies to have a reasonable opportunity to make and comment on submissions for draft order	21
25 Hearings in relation to draft order.....	22
26 Finalising draft order	22
Division 4—Making road safety remuneration order	23
27 Making road safety remuneration order.....	23
28 Persons on whom requirements are imposed must not contravene order	24
29 Expiry of order	24
30 Road safety remuneration orders to be made by Full Bench	24
Division 5—Variation and review of road safety remuneration order	25
31 Review of road safety remuneration order.....	25
32 Variation of road safety remuneration order.....	26
Part 3—Approval of certain collective agreements involving contractor drivers	27
32A Power to approve road transport collective agreements	27
33 Road transport collective agreements	27
34 Matters about which the Tribunal must be satisfied	28
35 Approval of road transport collective agreements	29
36 Effect of approval	30
37 Relationship with road safety remuneration orders	30
37A Authorisation of conduct for the purposes of the <i>Competition and Consumer Act 2010</i>	30
38 Expiry of approval	32
39 Approvals to be given by dual FWA member or Full Bench.....	32
Part 4—Disputes about remuneration and related conditions	33
40 Tribunal may deal with disputes about remuneration and related conditions.....	33
40A Time limit for certain applications.....	33
41 Disputes involving employee road transport drivers	34
42 Disputes involving contractor drivers	35
43 Disputes involving participants in the supply chain	35
44 How Tribunal may deal with disputes	36

45	Disputes about safe remuneration to be dealt with by dual FWA member	37
Part 5—Compliance		38
Division 1—Civil remedy provisions and orders		38
Subdivision A—Applications for orders		38
46	Civil remedy provisions.....	38
47	Limitations on who may apply for orders etc.	39
48	Time limit on applications	40
Subdivision B—Orders		41
49	Orders that can be made	41
50	Pecuniary penalty orders	42
51	Interest up to judgement	43
Subdivision C—General provisions about civil remedies		43
52	Contravening a civil remedy provision is not an offence.....	43
53	Involvement in contravention treated in same way as actual contravention	43
54	Proceedings may be heard together	44
55	Civil evidence and procedure rules for proceedings relating to civil remedy provisions	44
56	Civil proceedings after criminal proceedings	44
57	Criminal proceedings during civil proceedings	44
58	Criminal proceedings after civil proceedings	44
59	Evidence given in proceedings for penalty not admissible in criminal proceedings	45
60	Civil double jeopardy	45
61	Course of conduct.....	45
Division 2—Jurisdiction and powers of courts		47
Subdivision A—Jurisdiction and powers of the Federal Court		47
62	Conferring jurisdiction on the Federal Court.....	47
63	Exercising jurisdiction in the Fair Work Division of the Federal Court	47
64	No limitation on Federal Court’s powers.....	48
65	Appeals from eligible State or Territory courts	48
Subdivision B—Jurisdiction and powers of the Federal Magistrates Court		49
66	Conferring jurisdiction on the Federal Magistrates Court	49
67	Exercising jurisdiction in the Fair Work Division of the Federal Magistrates Court	49
68	No limitation on Federal Magistrates Court’s powers	49

Subdivision C—Small claims procedure	50
69 Applicants may choose small claims procedure	50
Subdivision D—Miscellaneous	51
70 Costs only if proceedings instituted vexatiously etc.	51
71 No imprisonment for failure to pay pecuniary penalty	51
72 Regulations dealing with matters relating to court proceedings.....	52
Division 3—Fair Work Ombudsman	53
Subdivision A—Role of Fair Work Ombudsman	53
73 Functions of the Fair Work Ombudsman.....	53
74 Exercise of compliance powers	53
75 Referring matters to the Fair Work Ombudsman.....	54
Subdivision B—Compliance notices	54
76 Compliance notices	54
77 Review of compliance notices	56
Division 4—Right of entry	57
78 Right of entry for suspected contravention of this Act or enforceable instrument	57
Part 6—Road Safety Remuneration Tribunal	58
Division 1—Establishment and functions of Tribunal	58
79 Establishment of Tribunal	58
80 Functions of Tribunal	58
81 Tribunal has privileges and immunities of the Crown	59
82 Protection of Tribunal members	59
Division 2—Performance of functions of Tribunal	60
Subdivision A—Role of the President	60
83 Role of President in performance of functions	60
Subdivision B—Applications to Tribunal	60
84 Dismissing applications.....	60
Subdivision C—Performance of functions	60
85 Performance of functions generally	60
86 Powers of Tribunal to perform functions.....	61
87 Conferences	61
88 Hearings	62
89 Offences in relation to attendance before Tribunal.....	62
90 Confidential evidence	63
Subdivision D—Representation by lawyers and paid agents	64

91	Representation by lawyers and paid agents	64
Subdivision E—Appeals		64
92	Appeal of decisions	64
93	Staying decisions that are appealed	65
94	Process for appealing decisions	65
95	Referring questions of law to the Federal Court	66
Subdivision F—Organisation of Tribunal		67
96	Constitution of Full Bench	67
Division 3—Members of Tribunal		68
Subdivision A—Appointment of members of Tribunal		68
97	Appointment	68
98	Basis of appointment of industry members	68
Subdivision B—Terms and conditions of members of Tribunal		68
99	Outside employment of industry members	68
100	Remuneration	68
101	Leave of absence	69
102	Disclosure of interests	69
103	Termination of appointment on grounds of misbehaviour or incapacity	70
104	Suspension on grounds of misbehaviour or incapacity	70
105	Termination of appointment for bankruptcy, etc.	71
106	Termination of appointment for outside employment	71
107	Automatic cessation of appointment for loss of qualification	72
108	Resignation	72
109	Other terms and conditions of members	72
110	Acting appointments	72
Subdivision C—Miscellaneous matters relating to members of Tribunal		73
111	Disclosure of information by Tribunal	73
Division 4—General Manager and consultants		74
112	Role of General Manager of Fair Work Australia	74
Division 5—Miscellaneous matters relating to Tribunal		75
113	Procedural rules	75
114	Regulations dealing with Tribunal matters	75
115	Costs	76
116	Annual report	76
117	President must provide certain information etc. to the Minister and Fair Work Ombudsman	76

Part 7—Miscellaneous	78
118 This Act is a workplace law.....	78
119 Employer and hirer obligations in relation to records.....	78
120 Review of this Act	78
121 Regulations.....	79



Road Safety Remuneration Act 2012

No. 46, 2012

An Act to make provision in relation to remuneration-related matters to improve safety in the road transport industry, and for related purposes

[Assented to 16 April 2012]

The Parliament of Australia enacts:

Part 1—Preliminary

Division 1—General

1 Short title

This Act may be cited as the *Road Safety Remuneration Act 2012*.

2 Commencement

This Act commences on 1 July 2012.

3 Object

The object of this Act is to promote safety and fairness in the road transport industry by doing the following:

- (a) ensuring that road transport drivers do not have remuneration-related incentives to work in an unsafe manner;
- (b) removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices;
- (c) ensuring that road transport drivers are paid for their work, including loading or unloading their vehicles or waiting for someone else to load or unload their vehicles;
- (d) developing and applying reasonable and enforceable standards throughout the road transport industry supply chain to ensure the safety of road transport drivers;
- (e) ensuring that hirers of road transport drivers and participants in the supply chain take responsibility for implementing and maintaining those standards;
- (f) facilitating access to dispute resolution procedures relating to remuneration and related conditions for road transport drivers.

Division 2—Definitions

4 Definitions

In this Act:

applicable services: see subsection 33(1).

approval-pending: see subsection 37A(5).

approved road transport collective agreement means a road transport collective agreement for which an approval under Part 3 is in effect.

arbitration order: see subsection 44(2).

civil remedy provision: see section 46.

Commonwealth authority means:

- (a) a body corporate established for a public purpose by or under a law of the Commonwealth; or
- (b) a body corporate:
 - (i) incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth has a controlling interest.

compellable person means any of the following:

- (a) a road transport driver;
- (b) the employer or hirer of a road transport driver;
- (c) a participant in the supply chain in relation to a road transport driver, if the driver is involved in a matter the Tribunal is dealing with.

compliance notice: see subsection 76(2).

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

constitutional trade or commerce means trade or commerce:

Section 4

- (a) between Australia and a place outside Australia; or
- (b) among the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories; or
- (e) within a Territory.

contractor driver means a road transport driver who is an independent contractor.

controlling interest: see subsection 7(4).

dual FWA member means a member of the Tribunal appointed under paragraph 79(2)(a) or (b).

Note: See subsections 97(2) and (3), which require that members appointed under paragraphs 79(2)(a) or (b) must also be members of Fair Work Australia.

eligible State or Territory court means an eligible State or Territory court within the meaning of the *Fair Work Act 2009*.

enforceable instrument means any of the following:

- (a) a road safety remuneration order;
- (b) an approved road transport collective agreement;
- (c) an arbitration order.

enterprise agreement: see subsection 12(2).

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

Fair Work Ombudsman means the Fair Work Ombudsman under the *Fair Work Act 2009*.

Federal Court means the Federal Court of Australia.

Full Bench means a Full Bench of the Tribunal constituted under section 96.

FWA order: see subsection 12(2).

General Manager means the General Manager referred to in section 112.

hirer: see section 8.

immediate family: see subsection 7(4).

independent contractor is not confined to an individual.

industrial association means an industrial association within the meaning of the *Fair Work Act 2009*.

industry member means a member of the Tribunal appointed under paragraph 79(2)(c).

inspector means a Fair Work Inspector under the *Fair Work Act 2009*.

lawyer means a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

member of the Tribunal means a member of the Tribunal appointed under section 79, and includes the President.

modern award means a modern award under the *Fair Work Act 2009*.

organisation means an organisation within the meaning of the *Fair Work Act 2009*.

participant in the supply chain: see section 9.

participating driver: see subsection 33(1).

participating hirer: see subsection 33(1).

pecuniary penalty order means an order made under subsection 50(1).

President means the President of the Tribunal.

procedural rules means the procedural rules of the Tribunal made under section 113.

registered employee association means a registered employee association under the *Fair Work Act 2009*.

Section 4

related conditions include matters of a kind referred to in subsection 27(2).

related individual: see subsection 7(3).

remuneration includes a method for determining remuneration.

road safety remuneration order means a road safety remuneration order made under Part 2.

road transport collective agreement: see subsections 33(1) and (2).

road transport contract: see section 8.

road transport driver: see section 5.

road transport industry means any of the following:

- (a) the road transport and distribution industry within the meaning of the Road Transport and Distribution Award 2010 as in force on 1 July 2012;
- (b) long distance operations in the private transport industry within the meaning of the Road Transport (Long Distance Operations) Award 2010 as in force on 1 July 2012;
- (c) the cash in transit industry within the meaning of the Transport (Cash in Transit) Award 2010 as in force on 1 July 2012;
- (d) the waste management industry within the meaning of the Waste Management Award 2010 as in force on 1 July 2012;
- (e) the meaning prescribed by the regulations by reference to a modern award specified in the regulations.

road transport service means a service provided in the road transport industry.

Territory authority means:

- (a) a body corporate established for a public purpose by or under a law of a Territory; or
- (b) a body corporate:
 - (i) incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which a Territory has a controlling interest.

transitional instrument: see subsection 12(2).

Tribunal means the Road Safety Remuneration Tribunal established by section 79.

5 Meaning of *road transport driver*—general

A person is a *road transport driver* if:

- (a) the person is an individual to whom section 6 applies (but see subsection 7(2)); or
- (b) the person is a corporation to which section 7 applies.

6 Meaning of *road transport driver*—individual

- (1) This section applies to an individual (for the purposes of paragraph 5(a)) if:
 - (a) the individual engages in the road transport industry by driving a vehicle to transport things by road; and
 - (b) the individual does so:
 - (i) as an employee of a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
 - (ii) under a road transport contract the other party to which is a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
 - (iii) under a contract entered into in a Territory; or
 - (iv) under a contract at least one of the parties to which is an individual who is resident in, or a body corporate that has its principal place of business in, a Territory; or
 - (v) for the purposes of a business undertaking of a constitutional corporation; or
 - (vi) for the purposes of the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
 - (vii) in the course of or in relation to constitutional trade or commerce.

Section 7

- (2) Without limiting its effect apart from this subsection, subparagraph (1)(b)(ii) also has the effect it would have if the reference to a constitutional corporation were, by express provision, confined to a corporation that has entered into the contract for the purposes of the business of that corporation.

7 Meaning of *road transport driver*—corporation

Road transport driver—corporation

- (1) This section applies to a corporation (for the purposes of paragraph 5(b)) if:
- (a) the corporation engages in the road transport industry by transporting things by road using one or more vehicles supplied by the corporation or a related individual; and
 - (b) the vehicle or each vehicle is mainly driven by a related individual; and
 - (c) the related individual's principal occupation is driving the vehicle or vehicles; and
 - (d) the corporation is a constitutional corporation.

Corporation, not individual, is road transport driver if both could apply

- (2) If a corporation is a ***road transport driver***, then despite paragraph 5(a), any individual referred to in subsection (1) of this section as a related individual who drives one or more of the corporation's vehicles is taken not to be a ***road transport driver***.

Related individual

- (3) Each of the following individuals is a ***related individual*** of a corporation:
- (a) a director of the corporation;
 - (b) a member of the immediate family of a director of the corporation;
 - (c) an individual who, together with members of the individual's immediate family, has a controlling interest in the corporation;

- (d) a member of the immediate family of an individual who, together with members of the individual's immediate family, has a controlling interest in the corporation.

Controlling interest and immediate family

- (4) In this Act:

controlling interest in a corporation means an interest in the corporation that enables the person holding the interest to:

- (a) control the composition of the board of directors of the corporation; or
- (b) cast or control the casting of more than one-half of the maximum number of votes that might be cast at a general meeting of the corporation; or
- (c) control more than one-half of the issued share capital of the corporation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

immediate family of an individual has the same meaning as ***immediate family*** has for a national system employee under the *Fair Work Act 2009*.

8 Meaning of *hirer* of road transport driver and *road transport contract*

- (1) A ***road transport contract*** is a contract for services under which a contractor driver is to provide road transport services to the other party to the contract (the ***hirer***).
- (2) A reference to a road transport contract includes a reference to a condition or collateral arrangement that relates to the contract.
- (3) A road transport contract may be in writing, oral, or partly in writing and partly oral.

Section 9

9 Meaning of *participant in the supply chain*

Meaning of participant in the supply chain—general

- (1) A person is a ***participant in the supply chain*** in relation to a road transport driver if subsection (2), (4) or (6) applies to the person.

Consignor or consignee

- (2) This subsection applies to a person if:
- (a) the person is the consignor or consignee of a thing in respect of which a road transport driver is providing road transport services; and
 - (b) any of the following apply:
 - (i) the person is a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority;
 - (ii) the person is an individual who is resident in, or a body corporate that has its principal place of business in, a Territory;
 - (iii) the person is the consignor or consignee for the purposes of a business undertaking of a constitutional corporation;
 - (iv) the person is the consignor or consignee for the purposes of the Commonwealth, a Commonwealth authority, a Territory or a Territory authority;
 - (v) the person is the consignor or consignee in the course of or in relation to constitutional trade or commerce.
- (3) Without limiting its effect apart from this subsection, subparagraph (2)(b)(i) also has the effect it would have if the reference to a constitutional corporation were, by express provision, confined to a corporation that was the consignor or consignee of a thing for the purposes of the business of that corporation.

Intermediary

- (4) This subsection applies to a person if:
-

- (a) the person is party to a contract for the carriage of goods, and that contract concerns the transport of a thing in respect of which a road transport driver is providing road transport services; and
 - (b) any of the following apply:
 - (i) the person is a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority;
 - (ii) the contract was entered into in a Territory;
 - (iii) at least one of the parties to the contract is an individual who is resident in, or a body corporate that has its principal place of business in, a Territory;
 - (iv) the contract is for the purposes of a business undertaking of a constitutional corporation;
 - (v) the contract is for the purposes of the Commonwealth, a Commonwealth authority, a Territory or a Territory authority;
 - (vi) the contract was made in the course of or in relation to constitutional trade or commerce.
- (5) Without limiting its effect apart from this subsection, subparagraph (4)(b)(i) also has the effect it would have if the reference to a constitutional corporation were, by express provision, confined to a corporation that has entered into the contract for the purposes of the business of that corporation.

Operator of premises for loading and unloading

- (6) This subsection applies to a person if the person is a constitutional corporation that operates premises:
- (a) that are used by a road transport driver to load or unload a vehicle; and
 - (b) at which an average of at least 5 vehicles are loaded or unloaded on each day (an **active day**) the premises are used to load or unload vehicles.
- (7) In determining whether an average of at least 5 vehicles are loaded or unloaded on each active day for the purposes of paragraph (6)(b):
-

Part 1 Preliminary
Division 2 Definitions

Section 9

- (a) have regard to each active day in the previous 12 months; or
 - (b) if the corporation first used the premises to load or unload vehicles less than 12 months ago—have regard to each active day in the period since the premises were first used to load or unload vehicles.
- (8) In subsection (6), a reference to premises includes a reference to a part of premises.

Division 3—Application of this Act

Subdivision A—Interaction with other laws

10 Concurrent operation generally intended

- (1) This Act is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory that is capable of operating concurrently with this Act.
- (2) In particular, this Act is not intended to exclude or limit the operation of:
 - (a) the *Fair Work Act 2009*; or
 - (b) the *Independent Contractors Act 2006* (but see section 14); or
 - (c) Chapter 6 of the *Industrial Relations Act 1996* of New South Wales (and any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of Chapter 6); or
 - (d) the *Owner Drivers and Forestry Contractors Act 2005* of Victoria; or
 - (e) the *Owner-Drivers (Contracts and Disputes) Act 2007* of Western Australia; or
 - (f) a law of a State or Territory that is specified in regulations made for the purposes of this paragraph, to the extent that the law is so specified.
- (3) However, this section is subject to the other provisions of this Subdivision.

11 Interaction of enforceable instruments with State and Territory laws

An enforceable instrument prevails over a law of a State or Territory, to the extent of any inconsistency.

12 Interaction of enforceable instruments with other Commonwealth instruments (employees)

- (1) A term of a modern award, an enterprise agreement, an FWA order or a transitional instrument has no effect in relation to a road transport driver to whom an enforceable instrument applies to the extent that the award, agreement, order or instrument is less beneficial to the driver than a term of the enforceable instrument.
- (2) In this Act:

enterprise agreement means an enterprise agreement made under the *Fair Work Act 2009*.

FWA order means an order of Fair Work Australia made under the *Fair Work Act 2009*.

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

13 Interaction of enforceable instruments with road transport contracts (independent contractors)

A contractor driver is entitled to be provided, by the required provider under an enforceable instrument that applies to the driver, with at least the remuneration and related conditions in the enforceable instrument, regardless of the terms of any road transport contract to which the driver is party.

14 Interaction with the *Independent Contractors Act 2006*

For the purposes of paragraph 15(1)(d) of the *Independent Contractors Act 2006*, an enforceable instrument that applies to a road transport driver whose services contract is being reviewed under that Act is a matter the Court under that Act might (but is not required to) think relevant.

Subdivision B—Miscellaneous

15 Act binds Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) However, this Act does not make the Crown liable to be prosecuted for an offence.
- (3) To avoid doubt, subsection (2) does not prevent the Crown from being liable to pay a pecuniary penalty under section 50.

16 Act not to apply so as to exceed Commonwealth power

- (1) Unless the contrary intention appears, if a provision of this Act:
 - (a) would, apart from this section, have an application (an *invalid application*) in relation to:
 - (i) one or more particular persons, things, matters, places, circumstances or cases; or
 - (ii) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases; because of which the provision exceeds the Commonwealth's legislative power; and
 - (b) also has at least one application (a *valid application*) in relation to:
 - (i) one or more particular persons, things, matters, places, circumstances or cases; or
 - (ii) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases; that, if it were the provision's only application, would be within the Commonwealth's legislative power;it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.
- (2) Despite subsection (1), the provision is not to have a particular valid application if:
 - (a) apart from this section, it is clear, taking into account the provision's context and the purpose or object underlying this Act, that the provision was intended to have that valid

Part 1 Preliminary

Division 3 Application of this Act

Section 17

application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth's legislative power; or

- (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth's legislative power.
- (3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).
- (4) This section applies to a provision of this Act, whether enacted before, at or after the commencement of this section.

17 Acquisition of property

This Act, or any instrument made under this Act, does not apply to the extent that the operation of this Act or the instrument would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

Part 2—Road safety remuneration orders

Division 1—Preparation of annual work program

18 Tribunal must prepare and publish a work program each year

- (1) Before the end of each year of its operation, the Tribunal must prepare a work program for the next year.
- (2) The work program must identify the matters the Tribunal proposes to inquire into in the next year of its operation, with a view to making a road safety remuneration order in relation to any or all of those matters. The matters identified may be any or all of the following:
 - (a) a sector or sectors of the road transport industry;
 - (b) issues for the road transport industry or a sector of the industry;
 - (c) practices affecting the road transport industry or a sector of the industry.
- (3) In preparing its work program for a year, the Tribunal must consult with industry.
- (4) The Tribunal must publish its work program on the Tribunal's website and by any other means the Tribunal considers appropriate.
- (5) A work program prepared under subsection (1) is not a legislative instrument.

Division 2—Power to make a road safety remuneration order

19 Power to make a road safety remuneration order

- (1) The Tribunal may make a road safety remuneration order under this Part consistent with the object of this Act.

Note: See section 27 for what the order may deal with.

Tribunal may make order on its own initiative

- (2) The Tribunal may make the order on its own initiative if the order is in relation to a matter identified in its work program.

Tribunal may make order on application

- (3) The Tribunal may make the order on application by any of the following whether or not the order is in relation to a matter identified in its work program:

- (a) a road transport driver;
- (b) an employer or hirer of a road transport driver;
- (c) a participant in the supply chain in relation to a road transport driver;
- (d) an organisation that is entitled to represent the interests of a road transport driver or employer to whom the order will apply;
- (e) an industrial association (other than an organisation) that is entitled to represent the interests of a road transport driver, employer or hirer of a road transport driver or participant in the supply chain in relation to a road transport driver, if:
 - (i) the person or each person whose interests the industrial association claims to be representing by making the application has consented to the making of the application; and
 - (ii) the Tribunal has permitted the application to be made.

- (4) An application that relates to a matter not identified in the Tribunal's work program must relate to a matter that is capable of being included in the Tribunal's work program under subsection 18(2).

Tribunal may refuse to consider application

- (5) The Tribunal may refuse to consider an application under subsection (3):
- (a) if the application relates to a matter not identified in the Tribunal's work program—because the Tribunal considers that it is not appropriate to deal with the matter at the time; or
 - (b) for any other reason.
- (6) The Tribunal must notify the applicant of any refusal by the Tribunal to consider an application.

20 Matters the Tribunal must have regard to

- (1) In deciding whether to make a road safety remuneration order, the Tribunal must have regard to the following matters:
- (a) the need to apply fair, reasonable and enforceable standards in the road transport industry to ensure the safety and fair treatment of road transport drivers;
 - (b) the likely impact of any order on the viability of businesses in the road transport industry;
 - (c) the special circumstances of areas that are particularly reliant on the road transport industry, such as rural, regional and other isolated areas;
 - (d) the likely impact of any order on the national economy and on the movement of freight across the nation;
 - (e) orders and determinations made by the Minimum Wage Panel of Fair Work Australia in annual wage reviews and the reasons for those orders and determinations;
 - (f) any modern awards relevant to the road transport industry (see subsection (2)) and the reasons for those awards;
 - (g) the need to avoid unnecessary overlap with the *Fair Work Act 2009* and any other laws prescribed for the purposes of this paragraph;

Part 2 Road safety remuneration orders

Division 2 Power to make a road safety remuneration order

Section 21

- (h) the need to reduce complexity and for any order to be simple and easy to understand;
 - (i) the need to minimise the compliance burden on the road transport industry;
 - (j) any other matter prescribed by the regulations for the purposes of this paragraph.
- (2) For the purposes of paragraph (1)(f), each of the awards referred to in the definition of *road transport industry* (including an award referred to in regulations made for the purposes of paragraph (e) of the definition) is taken to be relevant to the road transport industry.

21 Publication of research

- (1) The Tribunal must publish any research undertaken or commissioned by the Tribunal for the purposes of determining whether to make a road safety remuneration order or the terms in which any order should be made, so that submissions can be made under section 24 addressing issues covered by the research.
- (2) The publication must be on the Tribunal's website and by any other means the Tribunal considers appropriate.

Division 3—Preparing and consulting on draft road safety remuneration order

22 Tribunal to prepare and consult on draft order

Before making a road safety remuneration order, the Tribunal must prepare and consult on a draft of the order in accordance with this Division.

23 Publication of draft order

The Tribunal must publish the draft of the order on the Tribunal's website and by any other means the Tribunal considers appropriate.

24 Affected persons and bodies to have a reasonable opportunity to make and comment on submissions for draft order

- (1) The Tribunal must ensure that the following persons have a reasonable opportunity to make written submissions to the Tribunal for its consideration in relation to the draft of the order:
 - (a) all persons and bodies likely to be affected if a road safety remuneration order based on the draft were to be made;
 - (b) any person or body prescribed by the regulations for the purposes of this paragraph.
- (2) The Tribunal must publish all submissions made to the Tribunal.
- (3) However, if a submission made by a person or body includes information that is claimed by the person or body to be confidential or commercially sensitive, and the Tribunal is satisfied that the information is confidential or commercially sensitive, the Tribunal:
 - (a) may decide not to publish the information; and
 - (b) may instead publish:
 - (i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing

Part 2 Road safety remuneration orders

Division 3 Preparing and consulting on draft road safety remuneration order

Section 25

anything that is confidential or commercially sensitive);
or

- (ii) if the Tribunal considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.
- (4) The Tribunal must ensure that all persons and bodies likely to be affected if a road safety remuneration order based on the draft were to be made have a reasonable opportunity to make comments to the Tribunal on the material published under subsections (2) and (3), for its consideration.
- (5) The publishing of material under subsections (2) and (3) must be on the Tribunal's website and by any other means the Tribunal considers appropriate.
- (6) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).

25 Hearings in relation to draft order

The Tribunal may, but is not required to, hold a hearing in relation to the draft of the order.

Note: See section 88.

26 Finalising draft order

- (1) The Tribunal may make any changes it thinks appropriate to the draft of the order, before making a road safety remuneration order based on the draft.
- (2) The Tribunal may decide that no road safety remuneration order is to be made based on the draft. If the Tribunal does so, the Tribunal must publish notice of the decision on its website and by any other means the Tribunal considers appropriate.

Division 4—Making road safety remuneration order

27 Making road safety remuneration order

What the order may deal with

- (1) If the Tribunal decides to make a road safety remuneration order, the Tribunal may make any provision in the order that the Tribunal considers appropriate in relation to remuneration and related conditions for road transport drivers to whom the order applies.
- (2) Without limiting subsection (1), the Tribunal may make provision in the order in relation to any of the following:
 - (a) conditions about minimum remuneration and other entitlements for road transport drivers who are employees, additional to those set out in any modern award relevant to the road transport industry (see subsection 20(2));
 - (b) conditions about minimum rates of remuneration and conditions of engagement for contractor drivers;
 - (c) conditions for loading and unloading vehicles, waiting times, working hours, load limits, payment methods and payment periods;
 - (d) ways of reducing or removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices.
- (3) The order may impose requirements, in relation to a matter for which provision is made, on any or all of the following:
 - (a) an employer or hirer of a road transport driver to whom the order applies;
 - (b) a participant in the supply chain in relation to a road transport driver to whom the order applies.

Content of the order

- (4) The order must specify:
 - (a) the road transport drivers to whom the order applies; and

Part 2 Road safety remuneration orders

Division 4 Making road safety remuneration order

Section 28

- (b) the persons on whom any requirements in the order are imposed; and
 - (c) a commencement date for the order or a series of commencement dates (see subsection (5)); and
 - (d) an expiry date for the order (which must not be later than 4 years after the commencement date, or if there is a series of commencement dates, after the earliest of those dates).
- (5) The order may take effect in stages (as provided in the order) if the Tribunal considers that it is not feasible for the order to take effect on a single date.

Publication of order

- (6) The Tribunal must publish the order on the Tribunal's website and by any other means the Tribunal considers appropriate.

28 Persons on whom requirements are imposed must not contravene order

A person on whom a road safety remuneration order imposes a requirement must not contravene the requirement.

Note: This section is a civil remedy provision (see Division 1 of Part 5).

29 Expiry of order

A road safety remuneration order ceases to have effect at the end of the expiry date specified in the order.

30 Road safety remuneration orders to be made by Full Bench

The function of making road safety remuneration orders under this Part is to be performed by a Full Bench of the Tribunal.

Division 5—Variation and review of road safety remuneration order

31 Review of road safety remuneration order

- (1) The Tribunal must review a road safety remuneration order at some time in the period of 12 months ending on the expiry date specified in the order.
- (2) After reviewing the order and before the expiry date, the Tribunal must do one of the following:
 - (a) replace it with a road safety remuneration order in the same terms except for a new expiry date (which must be no more than 4 years after the date the replacement order is made);
 - (b) replace it with a road safety remuneration order in different terms;
 - (c) decide not to replace it.
- (3) The Tribunal must ensure that the following persons have a reasonable opportunity to make written submissions to the Tribunal for its consideration in relation to action the Tribunal proposes to take under subsection (2):
 - (a) all persons and bodies likely to be affected by the proposed action;
 - (b) any person or body prescribed by the regulations for the purposes of this paragraph.
- (4) Section 21 applies in relation to research undertaken or commissioned for the purposes of deciding on a proposed action under subsection (2).
- (5) Subsections 24(2) to (6) apply in relation to submissions made in relation to the proposed action, as if they were submissions made under subsection 24(1).

32 Variation of road safety remuneration order

- (1) At any time before the expiry date specified in a road safety remuneration order, the Tribunal may vary the order:
 - (a) on its own initiative; or
 - (b) on application by a person referred to in subsection (2).
- (2) The Tribunal may vary the order on application by any of the following:
 - (a) an employer or hirer of a road transport driver to whom the order applies;
 - (b) a participant in the supply chain in relation to a driver to whom the order applies;
 - (c) an organisation that is entitled to represent the interests of a road transport driver or employer to whom the order applies;
 - (d) an industrial association (other than an organisation) that is entitled to represent the interests of a road transport driver, employer or hirer of a road transport driver or participant in the supply chain in relation to a road transport driver, if:
 - (i) the person or each person whose interests the industrial association claims to be representing by making the application has consented to the making of the application; and
 - (ii) the Tribunal has permitted the application to be made.
- (3) In deciding whether to vary the order, the Tribunal must have regard to the matters in section 20.
- (4) Before varying the order, the Tribunal must prepare and consult on a draft of the variation in accordance with Division 3, as if references in that Division to making an order were references to varying an order.
- (5) Subsection (4) does not apply if the Tribunal considers that the variation is minor or technical.

Part 3—Approval of certain collective agreements involving contractor drivers

32A Power to approve road transport collective agreements

- (1) The Tribunal may approve a road transport collective agreement under this Part.
- (2) In deciding whether to approve a road transport collective agreement, the Tribunal may have regard to whether the benefit of approving the agreement would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the Tribunal approved the agreement.

33 Road transport collective agreements

- (1) A *road transport collective agreement* is an agreement:
 - (a) between:
 - (i) contractor drivers (the *participating drivers*) with whom a hirer or potential hirer proposes to contract for the provision of specified road transport services (the *applicable services*); and
 - (ii) the hirer or potential hirer of the drivers (the *participating hirer*); and
 - (b) that specifies:
 - (i) who the participating hirer is; and
 - (ii) who the participating drivers are; and
 - (iii) the basis on which the participating drivers became part of that group of drivers; and
 - (c) that specifies remuneration or related conditions (or both) for participating drivers who provide applicable services to the participating hirer.

Note: If the Tribunal approves the agreement, its effect is not limited to participating drivers: see section 36.

Section 34

- (2) However, an agreement made under any of the following laws is not a **road transport collective agreement**:
- (a) Chapter 6 of the *Industrial Relations Act 1996* of New South Wales (and any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of Chapter 6);
 - (b) the *Owner Drivers and Forestry Contractors Act 2005* of Victoria;
 - (c) the *Owner-Drivers (Contracts and Disputes) Act 2007* of Western Australia;
 - (d) a law of a State or Territory that is specified in regulations made for the purposes of this paragraph, to the extent that the law is so specified.
- (3) The regulations may prescribe a code of conduct in relation to collective bargaining for road transport collective agreements.
- (4) Before the Governor-General makes a regulation under subsection (3), the Minister must consult with industry and the Tribunal.
- (5) A code of conduct prescribed under subsection (3) must have as its object the facilitation of effective and efficient collective bargaining for road transport collective agreements.
- (6) Despite any other law of the Commonwealth, a State or a Territory, a road transport collective agreement has no effect unless it is an approved road transport collective agreement.

Note: Subsection (6) does not affect agreements made under any of the laws mentioned in subsection (2), as they are not road transport collective agreements.

34 Matters about which the Tribunal must be satisfied

The Tribunal must not approve a road transport collective agreement unless the Tribunal is satisfied that:

- (a) a road safety remuneration order that applies to the participating drivers is in effect; and

- (b) a majority of the participating drivers would be better off overall when providing applicable services if the agreement applied than if the order applied; and
- (c) a majority of the participating drivers have approved the agreement; and
- (ca) the participating hirer and the participating drivers have conducted themselves in accordance with any code of conduct prescribed under subsection 33(3); and
- (d) if the agreement is to last for more than one year—the agreement contains an appropriate method for adjusting remuneration during the period of the agreement.

35 Approval of road transport collective agreements

- (1) If the Tribunal approves a road transport collective agreement, the Tribunal must state in writing that the Tribunal is satisfied that the remuneration and any related conditions in the agreement are adequate to ensure that contractor drivers do not have remuneration-related incentives to work in an unsafe manner.
- (2) The statement under subsection (1) must also:
 - (a) specify the participating hirer; and
 - (b) specify the remuneration (including any method for adjusting remuneration during the period of the agreement) and any related conditions in the agreement; and
 - (c) specify the applicable services; and
 - (d) state that the participating hirer is required to provide at least the specified remuneration and related conditions to any contractor driver providing applicable services to the hirer; and
 - (e) specify an expiry date for the approval (which must not be more than 4 years from the date of the statement).
- (3) The Tribunal must:
 - (a) give a copy of the statement to the participating hirer and each of the participating drivers; and
 - (b) publish the statement on the Tribunal's website and by any other means the Tribunal considers appropriate.

Section 36

36 Effect of approval

- (1) The participating hirer in relation to an approved road transport collective agreement must not provide remuneration or related conditions, to a contractor driver who is providing applicable services to the participating hirer, that are less beneficial than the remuneration or related conditions specified in the agreement.

Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

- (2) Subsection (1) applies in relation to a contractor driver regardless of whether the driver was a participating driver in relation to the agreement.

37 Relationship with road safety remuneration orders

- (1) A road safety remuneration order that is in effect at the time the Tribunal approves a road transport collective agreement has no effect in relation to a contractor driver who provides applicable services to the participating hirer.
- (2) If a road safety remuneration order takes effect after the Tribunal approves a road transport collective agreement, the agreement ceases to have effect in relation to a contractor driver to the extent that the remuneration or related conditions specified in the agreement are less beneficial to the driver than a term of the order that applies to the driver.

37A Authorisation of conduct for the purposes of the *Competition and Consumer Act 2010*

Conduct in accordance with approved road transport collective agreement

- (1) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, anything done in accordance with an approved road transport collective agreement by:
 - (a) the participating hirer; or
 - (b) a contractor driver who is providing applicable services to the participating hirer; or

(c) a person representing a person or persons referred to in paragraph (a) or (b);
is specified in and specifically authorised by this Act.

Entry into approval-pending road transport collective agreement

- (2) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, entry into an approval-pending road transport collective agreement by:
- (a) a hirer or potential hirer of contractor drivers; and
 - (b) contractor drivers;
- is specified in and specifically authorised by this Act.

Conduct in preparation for or incidental to entry into or obtaining approval of approval-pending road transport collective agreement

- (3) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, anything:
- (a) done by:
 - (i) a hirer or potential hirer of contractor drivers; or
 - (ii) a contractor driver; or
 - (iii) a person representing a person or persons referred to in subparagraph (i) or (ii); and
 - (b) done in preparation for, or incidental to, entry into, or seeking approval of, an approval-pending road transport collective agreement;
- is specified in and specifically authorised by this Act.

Certain conduct not protected

- (4) Despite subsections (1), (2) and (3), conduct referred to in those subsections is not specified in or specifically authorised by this Act if the conduct is:
- (a) making a contract or arrangement, or arriving at an understanding, that is or contains an exclusionary provision within the meaning of section 4D of the *Competition and Consumer Act 2010*; or

Section 38

- (b) conduct that is boycott conduct within the meaning of subsection 87AA(2) of the *Competition and Consumer Act 2010*.

Meaning of approval-pending

- (5) A road transport collective agreement is ***approval-pending*** if:
 - (a) approval of the agreement under this Part is intended to be or has been sought; and
 - (b) the Tribunal has neither approved nor refused to approve the agreement.

38 Expiry of approval

The approval of a road transport collective agreement ceases to have effect at the end of the expiry date specified for the approval.

39 Approvals to be given by dual FWA member or Full Bench

The function of approving road transport collective agreements under this Part is to be performed by, at the President's discretion:

- (a) a dual FWA member; or
- (b) a Full Bench of the Tribunal.

Part 4—Disputes about remuneration and related conditions

40 Tribunal may deal with disputes about remuneration and related conditions

- (1) The Tribunal may deal with a dispute if:
 - (a) section 41, 42 or 43 applies to the dispute; and
 - (b) an application is made by:
 - (i) a party to the dispute; or
 - (ii) an industrial association that is entitled to represent the interests of a party to the dispute, if the party has consented to the making of an application by the association; and
 - (c) if subsection 41(2) or 42(2) applies to the dispute—the application is made before the end of the relevant period under section 40A.
- (2) The Tribunal may choose to deal with 2 or more disputes together (regardless of which of sections 41, 42 and 43 applies to each dispute).

40A Time limit for certain applications

- (1) For the purposes of paragraph 40(1)(c), an application must be made before the end of:
 - (a) the period of:
 - (i) if subsection 41(2) applies—14 days after the dismissal took effect; or
 - (ii) if subsection 42(2) applies—28 days after the termination took effect; or
 - (b) if the Tribunal allows a further period under subsection (2)—the further period allowed by the Tribunal.

Section 41

- (2) The Tribunal may allow a further period for the application to be made if the Tribunal is satisfied that there are exceptional circumstances, taking into account:
- (a) the reason for the delay; and
 - (b) whether the road transport driver first became aware of the dismissal or termination after it had taken effect; and
 - (c) any action taken by the driver to dispute the dismissal or termination; and
 - (d) prejudice to the employer or hirer of the driver (including prejudice caused by the delay); and
 - (e) the merits of the application; and
 - (f) fairness as between the driver and other drivers in a similar position.

41 Disputes involving employee road transport drivers

Dispute between employee and employer

- (1) The Tribunal may deal with a dispute between a road transport driver who is an employee and the employer of the driver if the dispute is about remuneration or related conditions provided by the employer that could affect whether the driver works in an unsafe manner. The parties to the dispute are the driver and the employer.

Note: Disputes involving drivers who are employees may also be dealt with under the *Fair Work Act 2009* (see section 595 of that Act).

Dispute between employee and former employer

- (2) The Tribunal may deal with a dispute between a road transport driver and a former employer of the driver if:
- (a) the dispute is about the former employer dismissing the driver; and
 - (b) the driver contends that the dismissal was mainly because the driver refused to work in an unsafe manner.
- The parties to the dispute are the driver and the former employer.

Interaction with Fair Work procedures

- (3) A road transport driver who has applied to the Tribunal under section 40 in relation to a matter must not make an application or complaint under the *Fair Work Act 2009* in relation to the same matter, unless the application to the Tribunal has been withdrawn or has failed for want of jurisdiction.
- (4) A road transport driver who has made an application or complaint in relation to a matter under the *Fair Work Act 2009* must not apply to the Tribunal under section 40 in relation to the same matter, unless the application or complaint under the *Fair Work Act 2009* has been withdrawn or has failed for want of jurisdiction.

42 Disputes involving contractor drivers*Dispute between contractor driver and hirer*

- (1) The Tribunal may deal with a dispute between a contractor driver and the hirer of the driver if the dispute is about remuneration or related conditions in a road transport contract between the driver and hirer that could affect whether the driver works in an unsafe manner. The parties to the dispute are the driver and the hirer.

Dispute between contractor driver and former hirer

- (2) The Tribunal may deal with a dispute between a contractor driver and a former hirer of the driver if:
 - (a) the dispute is about the former hirer terminating the road transport contract; and
 - (b) the driver contends that the termination was mainly because the driver refused to work in an unsafe manner.The parties to the dispute are the driver and the former hirer.

43 Disputes involving participants in the supply chain

The Tribunal may deal with a dispute that is about practices of one or more participants in the supply chain in relation to a road transport driver if:

Section 44

- (a) the employer or hirer of the driver contends that the practices affect the employer's or hirer's ability to provide remuneration or related conditions to the driver that do not provide incentives to work in an unsafe manner; and
- (b) the driver and employer or hirer have applied to the Tribunal under section 40.

The parties to the dispute are the driver, the employer or hirer and the participant or participants in the supply chain whose practices the dispute relates to.

44 How Tribunal may deal with disputes

- (1) If the Tribunal decides to deal with the dispute, it may deal with it as the Tribunal considers appropriate, including in the following ways:
 - (a) by mediation or conciliation;
 - (b) by making a recommendation or expressing an opinion;
 - (c) if the parties to the dispute agree—by arbitrating (however described) the dispute.
- (2) If the Tribunal arbitrates the dispute, the Tribunal may make any order (an *arbitration order*) that the Tribunal considers appropriate to ensure that the driver does not have remuneration-related incentives to work in an unsafe manner.
- (3) An arbitration order may impose the requirements specified in the order on any or all of the following:
 - (a) a party to the dispute;
 - (b) if there is a participant in the supply chain in relation to the road transport driver who is not a party to the dispute but who has agreed to be bound by the outcome of the arbitration—that participant.
- (4) A person on whom an arbitration order imposes a requirement must not contravene the requirement.

Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

45 Disputes about safe remuneration to be dealt with by dual FWA member

The function of dealing with disputes under this Part is to be performed by a dual FWA member.

Part 5 Compliance

Division 1 Civil remedy provisions and orders

Section 46

Part 5—Compliance

Division 1—Civil remedy provisions and orders

Subdivision A—Applications for orders

46 Civil remedy provisions

- (1) A provision referred to in column 1 of an item in the table in subsection (2) is a *civil remedy provision*.
- (2) For each civil remedy provision, the persons referred to in column 2 of the item may, subject to sections 47 and 48 and Subdivision B of this Division, apply to:
 - (a) the Federal Court; or
 - (b) the Federal Magistrates Court; or
 - (c) an eligible State or Territory court;for orders in relation to a contravention or proposed contravention of the provision, including the maximum penalty referred to in column 3 of the item.

Note: See also subsection 47(4).

Civil remedy provisions			
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Maximum penalty
1	Section 28	(a) a driver to whom the order applies; (b) a person on whom the order imposes a requirement, if the person is affected by the contravention or will be affected by the proposed contravention; (c) an organisation; (d) an industrial association; (e) an inspector	60 penalty units

Civil remedy provisions			
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Maximum penalty
2	Subsection 36(1)	(a) a road transport driver who is providing applicable services to the participating hirer; (b) the participating hirer; (c) an organisation; (d) an industrial association; (e) an inspector	60 penalty units
3	Subsection 44(4)	(a) a party to the dispute to which the arbitration order relates, if the person is affected by the contravention or will be affected by the proposed contravention; (b) an organisation; (c) an industrial association; (d) an inspector	60 penalty units
4	Subsection 76(6)	an inspector	30 penalty units
5	Subsection 115(3)	(a) the person to whom the costs are payable; (b) an organisation; (c) an industrial association	60 penalty units
6	Subsection 119(1)	(a) a road transport driver; (b) an inspector	30 penalty units
7	Subsection 119(2)	(a) a road transport driver; (b) an inspector	30 penalty units

47 Limitations on who may apply for orders etc.

- (1) The following persons may apply for an order under this Division, in relation to a contravention or a proposed contravention of a civil remedy provision, only if the person is affected by the contravention, or will be affected by the proposed contravention:

Part 5 Compliance

Division 1 Civil remedy provisions and orders

Section 48

- (a) a road transport driver;
 - (b) an employer of a road transport driver;
 - (c) a hirer of a road transport driver;
 - (d) a participant in the supply chain in relation to a road transport driver.
- (2) An organisation may apply for an order under this Division, in relation to a contravention or a proposed contravention of a civil remedy provision, only if:
- (a) the contravention affects a person or the proposed contravention will affect a person; and
 - (b) the organisation is entitled to represent the interests of the person.
- (3) An industrial association (other than an organisation) may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if:
- (a) the contravention affects a person or the proposed contravention will affect a person; and
 - (b) the association is entitled to represent the interests of the person; and
 - (c) the person has consented to the association making the application.
- (4) The regulations may prescribe a person for the purposes of an item in column 2 of the table in subsection 46(2). The regulations may provide that the person is prescribed only in relation to circumstances specified in the regulations.

48 Time limit on applications

A person may apply for an order under this Division in relation to a contravention of a civil remedy provision only if the application is made within 6 years after the day on which the contravention occurred.

Note: For time limits on orders relating to underpayments, see subsection 49(4).

Subdivision B—Orders

49 Orders that can be made

Federal Court and Federal Magistrates Court

- (1) The Federal Court or the Federal Magistrates Court may make any of the following orders if the court is satisfied that a person has contravened, or proposes to contravene, a civil remedy provision:
 - (a) an order granting an injunction, or interim injunction, to prevent, stop or remedy the effects of a contravention;
 - (b) an order awarding compensation for loss that a person has suffered because of the contravention;
 - (c) any other order the court considers appropriate.

Note: For the court's power to make pecuniary penalty orders, see section 50.

Eligible State or Territory courts

- (2) An eligible State or Territory court may order a person to pay an amount to or on behalf of another person if the court is satisfied that:
 - (a) the person was required to pay the amount to or on behalf of the other person under this Act or an enforceable instrument; and
 - (b) the person has contravened a civil remedy provision by failing to pay the amount.

Note: For the court's power to make pecuniary penalty orders, see section 50.

When orders may be made

- (3) A court may make an order under this section:
 - (a) on its own initiative during proceedings before the court; or
 - (b) on application.

Section 50

Time limit for orders in relation to underpayments

- (4) A court must not make an order under this section in relation to an underpayment that relates to a period that is more than 6 years before the proceedings concerned commenced.

50 Pecuniary penalty orders

- (1) The Federal Court, the Federal Magistrates Court or an eligible State or Territory court may, on application, order a person to pay to the Commonwealth a pecuniary penalty that the court considers is appropriate if the court is satisfied that the person has contravened a civil remedy provision.

Note: Column 3 of the table in subsection 46(2) sets out the maximum penalty that the court may order the person to pay.

Determining amount of pecuniary penalty

- (2) The pecuniary penalty must not be more than:
- (a) if the person is an individual—the maximum number of penalty units referred to in the relevant item in column 3 of the table in subsection 46(2); or
 - (b) if the person is a body corporate—5 times the maximum number of penalty units referred to in the relevant item in column 3 of the table in subsection 46(2).

Recovery of penalty

- (3) The pecuniary penalty is a civil debt payable to the Commonwealth.
- (4) The Commonwealth may enforce a pecuniary penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

No limitation on orders

- (5) To avoid doubt, a court may make a pecuniary penalty order in addition to one or more orders under section 49.

51 Interest up to judgement

- (1) This section applies to an order (other than a pecuniary penalty order) under this Division in relation to an amount that a person was required to pay to or on behalf of another person under this Act or an enforceable instrument.
- (2) In making the order the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.
- (3) Without limiting subsection (2), in determining the amount of interest, the court must take into account the period between the day the relevant cause of action arose and the day the order is made.

Subdivision C—General provisions about civil remedies

52 Contravening a civil remedy provision is not an offence

A contravention of a civil remedy provision is not an offence.

53 Involvement in contravention treated in same way as actual contravention

- (1) A person who is involved in a contravention of a civil remedy provision is taken to have contravened that provision.
- (2) A person is *involved in* a contravention of a civil remedy provision if, and only if, the person:
 - (a) has aided, abetted, counselled or procured the contravention;
or
 - (b) has induced the contravention, whether by threats or promises or otherwise; or
 - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
 - (d) has conspired with others to effect the contravention.

54 Proceedings may be heard together

A court may direct that 2 or more proceedings for civil remedy orders are to be heard together.

55 Civil evidence and procedure rules for proceedings relating to civil remedy provisions

A court must apply the rules of evidence and procedure for civil matters when hearing proceedings relating to a contravention, or proposed contravention, of a civil remedy provision.

56 Civil proceedings after criminal proceedings

None of the Federal Court, the Federal Magistrates Court or an eligible State or Territory court may make a pecuniary penalty order against a person for a contravention of a civil remedy provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

57 Criminal proceedings during civil proceedings

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil remedy provision are stayed if:
 - (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
 - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the civil proceedings) may be resumed if the person is not convicted of the offence. Otherwise:
 - (a) the civil proceedings are dismissed; and
 - (b) costs must not be awarded in relation to the civil proceedings.

58 Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct constituting a

contravention of a civil remedy provision regardless of whether a pecuniary penalty order has been made against the person.

59 Evidence given in proceedings for penalty not admissible in criminal proceedings

- (1) Evidence of information given or evidence of production of documents by a natural person is not admissible in criminal proceedings against the person if:
 - (a) the person previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the person for a contravention of a civil remedy provision (whether or not the order was made); and
 - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the person in the proceedings for the pecuniary penalty order.

60 Civil double jeopardy

If a person is ordered to pay a pecuniary penalty under a civil remedy provision in relation to particular conduct, the person is not liable to be ordered to pay a pecuniary penalty under some other provision of a law of the Commonwealth in relation to that conduct.

Note: A court may make other orders, such as an order for compensation, in relation to particular conduct even if the court has made a pecuniary penalty order in relation to that conduct (see subsection 50(5)).

61 Course of conduct

- (1) For the purposes of this Part, 2 or more contraventions of a civil remedy provision referred to in subsection (2) are, subject to subsection (3), taken to constitute a single contravention if:
 - (a) the contraventions are committed by the same person; and
 - (b) the contraventions arose out of a course of conduct by the person.

Part 5 Compliance

Division 1 Civil remedy provisions and orders

Section 61

- (2) The civil remedy provisions are the following:
 - (a) section 28 (which deals with contraventions of road safety remuneration orders);
 - (b) subsection 36(1) (which deals with contraventions of approved road transport collective agreements);
 - (c) subsection 44(4) (which deals with contraventions of arbitration orders).
- (3) Subsection (1) does not apply to a contravention of a civil remedy provision that is committed by a person after a court has imposed a pecuniary penalty on the person for an earlier contravention of the provision.

Division 2—Jurisdiction and powers of courts

Subdivision A—Jurisdiction and powers of the Federal Court

62 Conferring jurisdiction on the Federal Court

Jurisdiction is conferred on the Federal Court in relation to any civil matter arising under this Act.

63 Exercising jurisdiction in the Fair Work Division of the Federal Court

The jurisdiction conferred on the Federal Court under section 62 is to be exercised in the Fair Work Division of the Federal Court if:

- (a) an application is made to the Federal Court under this Act; or
- (b) a writ of mandamus or prohibition or an injunction is sought in the Federal Court against a person holding office under this Act; or
- (c) a declaration is sought under section 21 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or
- (d) an injunction is sought under section 23 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or
- (e) an appeal is instituted in the Federal Court from a judgement of the Federal Magistrates Court or a court of a State or Territory in a matter arising under this Act; or
- (f) proceedings in relation to a matter arising under this Act are transferred to the Federal Court from the Federal Magistrates Court; or
- (g) the Federal Magistrates Court or a court of a State or Territory states a case or reserves a question for the consideration of the Federal Court in a matter arising under this Act; or
- (h) the President refers, under section 95 of this Act, a question of law to the Federal Court; or

Section 64

- (i) the High Court remits a matter arising under this Act to the Federal Court.

64 No limitation on Federal Court's powers

To avoid doubt, nothing in this Act limits the Federal Court's powers under section 21, 22 or 23 of the *Federal Court of Australia Act 1976*.

65 Appeals from eligible State or Territory courts

Appeals from original decisions of eligible State or Territory courts

- (1) An appeal lies to the Federal Court from a decision of an eligible State or Territory court exercising jurisdiction under this Act.
- (2) No appeal lies from a decision of an eligible State or Territory court exercising jurisdiction under this Act, except:
 - (a) if the court was exercising summary jurisdiction—an appeal, to that court or another eligible State or Territory court of the same State or Territory, as provided for by a law of that State or Territory; or
 - (b) in any case—an appeal as provided for by subsection (1).

Appeals from appellate decisions of eligible State or Territory courts

- (3) An appeal lies to the Federal Court from a decision of an eligible State or Territory court made on appeal from a decision that:
 - (a) was a decision of that court or another eligible State or Territory court of the same State or Territory; and
 - (b) was made in the exercise of jurisdiction under this Act.
- (4) No appeal lies from a decision to which subsection (3) applies, except an appeal as provided for by that subsection.

Leave to appeal not required

- (5) It is not necessary to obtain the leave of the Federal Court, or the court appealed from, in relation to an appeal under subsection (1) or (3).

Subdivision B—Jurisdiction and powers of the Federal Magistrates Court

66 Conferring jurisdiction on the Federal Magistrates Court

Jurisdiction is conferred on the Federal Magistrates Court in relation to any civil matter arising under this Act.

67 Exercising jurisdiction in the Fair Work Division of the Federal Magistrates Court

Jurisdiction conferred on the Federal Magistrates Court under section 66 is to be exercised in the Fair Work Division of the Federal Magistrates Court if:

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

68 No limitation on Federal Magistrates Court's powers

To avoid doubt, nothing in this Act limits the Federal Magistrates Court's powers under section 14, 15 or 16 of the *Federal Magistrates Act 1999*.

Subdivision C—Small claims procedure

69 Applicants may choose small claims procedure

- (1) Proceedings are to be dealt with as small claims proceedings under this section if:
 - (a) a person applies for an order (other than a pecuniary penalty order) under Division 1 from a magistrates court or the Federal Magistrates Court; and
 - (b) the order relates to an amount that another person is required to pay under this Act or an enforceable instrument; and
 - (c) the person indicates, in the manner prescribed by the regulations or by the rules of the court, that he or she wants the small claims procedure to apply to the proceedings.

Limits on award

- (2) In small claims proceedings, the court may not award more than \$20,000.

Procedure

- (3) In small claims proceedings, the court is not bound by any rules of evidence and procedure and may act:
 - (a) in an informal manner; and
 - (b) without regard to legal forms and technicalities.
- (4) At any stage of the small claims proceedings, the court may amend the papers commencing the proceedings if sufficient notice is given to any party adversely affected by the amendment.

Legal representation

- (5) A party to small claims proceedings may be represented in the proceedings by a lawyer only with the leave of the court.
- (6) If the court grants leave for a party to the proceedings to be represented by a lawyer, the court may, if it considers appropriate, do so subject to conditions designed to ensure that no other party is unfairly disadvantaged.

- (7) For the purposes of this section, a person is taken not to be represented by a lawyer if the lawyer is an employee or officer of the person.

Representation by an industrial association

- (8) The regulations may provide for a party to small claims proceedings to be represented in the proceedings, in specified circumstances, by an official of an industrial association.
- (9) However, if small claims proceedings are heard in a court of a State, the regulations may so provide only if the law of the State allows a party to be represented in that court in those circumstances by officials of bodies representing interests related to the matters in dispute.

Subdivision D—Miscellaneous

70 Costs only if proceedings instituted vexatiously etc.

- (1) A party to proceedings (including an appeal) in a court (including a court of a State or Territory) exercising jurisdiction under this Act may be ordered by the court to pay costs incurred by another party to the proceedings only in accordance with subsection (2).
- (2) The party may be ordered to pay the costs only if:
- (a) the court is satisfied that the party instituted the proceedings vexatiously or without reasonable cause; or
 - (b) the court is satisfied that the party's unreasonable act or omission caused the other party to incur the costs; or
 - (c) the court is satisfied of both of the following:
 - (i) the party unreasonably refused to participate in a matter before the Tribunal;
 - (ii) the matter arose from the same facts as the proceedings.

71 No imprisonment for failure to pay pecuniary penalty

- (1) A court (including a court of a State or Territory) may not order a person to serve a sentence of imprisonment if the person fails to pay a pecuniary penalty imposed under this Act.

Part 5 Compliance

Division 2 Jurisdiction and powers of courts

Section 72

- (2) This section applies despite any other law of the Commonwealth, a State or a Territory.

72 Regulations dealing with matters relating to court proceedings

The regulations may provide for the fees to be charged in relation to proceedings in a court (including a court of a State or Territory) under this Act.

Division 3—Fair Work Ombudsman

Subdivision A—Role of Fair Work Ombudsman

73 Functions of the Fair Work Ombudsman

The Fair Work Ombudsman has the following functions:

- (a) to monitor compliance with this Act and enforceable instruments, including by providing education, assistance and advice to road transport drivers, their employers or hirers and participants in the supply chain in relation to road transport drivers;
- (b) to inquire into, and investigate, any act or practice that may be contrary to this Act or an enforceable instrument;
- (c) to commence proceedings in a court to enforce this Act and any enforceable instrument;
- (d) to refer matters to relevant authorities;
- (e) to represent road transport drivers who are, or may become, a party to proceedings in a court under this Act, if the Fair Work Ombudsman considers that representing the drivers will promote compliance with this Act or an enforceable instrument.

74 Exercise of compliance powers

- (1) An inspector may exercise compliance powers within the meaning of the *Fair Work Act 2009* (other than a power under section 715 or 716 of that Act) for the purpose of determining whether this Act or an enforceable instrument is being or has been complied with.
- (2) For the purposes of the *Fair Work Act 2009*:
 - (a) a purpose referred to in subsection (1) is taken to be a compliance purpose; and
 - (b) a civil remedy provision under section 28 or subsection 36(1), 44(4), 76(6) or 119(1) or (2) is taken to be a civil remedy provision.

Section 75

75 Referring matters to the Fair Work Ombudsman

- (1) The General Manager may refer a matter to the Fair Work Ombudsman for investigation if:
 - (a) the General Manager has reason to believe that a person has not complied with an enforceable instrument in relation to another person; and
 - (b) the General Manager does not believe that the persons are able to resolve the matter themselves.
- (2) The General Manager must inform the persons, in writing, if the General Manager refers the matter to the Fair Work Ombudsman.
- (3) The General Manager must inform the Fair Work Ombudsman about any action taken or information obtained by the General Manager in relation to the matter.

Subdivision B—Compliance notices

76 Compliance notices

Application of this section

- (1) This section applies if an inspector reasonably believes that a person has contravened a term of an enforceable instrument.

Giving a compliance notice

- (2) The inspector may give the person a notice (a **compliance notice**) requiring the person to do the following within such reasonable time as is specified in the notice:
 - (a) take specified action to remedy the direct effects of the contravention referred to in subsection (1);
 - (b) produce reasonable evidence of the person's compliance with the notice.

Content of compliance notice

- (3) A compliance notice must also:
 - (a) set out the name of the person to whom the notice is given; and

- (b) set out the name of the inspector who gave the notice; and
- (c) set out brief details of the contravention; and
- (d) explain that a failure to comply with the notice may contravene a civil remedy provision; and
- (e) explain that the person may apply to the Federal Court, the Federal Magistrates Court or an eligible State or Territory Court for review of the notice on either or both of the following grounds:
 - (i) the person has not committed a contravention set out in the notice;
 - (ii) the notice does not comply with subsection (2) or this subsection; and
- (f) set out any other matters prescribed by the regulations.

Relationship with civil remedy provisions

- (4) An inspector must not apply for an order under Division 1 of this Part in relation to a contravention of a civil remedy provision by a person if:
 - (a) the inspector has given the person a compliance notice in relation to the contravention; and
 - (b) either of the following subparagraphs apply:
 - (i) the notice has not been withdrawn, and the person has complied with the notice;
 - (ii) the person has made an application under section 77 in relation to the notice that has not been completely dealt with.

Note: A person other than an inspector who is otherwise entitled to apply for an order in relation to the contravention may do so.

- (5) A person who complies with a notice in relation to a contravention of a civil remedy provision is not taken:
 - (a) to have admitted to contravening the provision; or
 - (b) to have been found to have contravened the provision.

Person must not fail to comply with notice

- (6) A person must not fail to comply with a compliance notice given under this section.

Section 77

Note: This subsection is a civil remedy provision (see Division 1 of this Part).

- (7) Subsection (6) does not apply if the person has a reasonable excuse.

77 Review of compliance notices

- (1) A person who has been given a compliance notice under section 76 may apply to the Federal Court, the Federal Magistrates Court or an eligible State or Territory court for review of the notice on either or both of the following grounds:
- (a) the person has not committed a contravention set out in the notice;
 - (b) the notice does not comply with subsection 76(2) or (3).
- (2) At any time after the application has been made, the court may stay the operation of the notice on the terms and conditions that the court considers appropriate.
- (3) The court may make any order it considers appropriate in relation to the notice.

Division 4—Right of entry

78 Right of entry for suspected contravention of this Act or enforceable instrument

The reference in subsection 481(1) of the *Fair Work Act 2009* to a suspected contravention of that Act or a term of a fair work instrument is taken to include a reference to a suspected contravention of this Act or an enforceable instrument.

Part 6—Road Safety Remuneration Tribunal

Division 1—Establishment and functions of Tribunal

79 Establishment of Tribunal

- (1) The Road Safety Remuneration Tribunal is established by this section.
- (2) The Tribunal consists of:
 - (a) the President; and
 - (b) at least 2 and no more than 4 persons who are experienced in workplace relations matters; and
 - (c) at least 2 and no more than 4 persons who have knowledge of, or experience in, one or more of the following fields:
 - (i) transport and logistics;
 - (ii) driving in the road transport industry;
 - (iii) business, industry or commerce;
 - (iv) work health and safety in the road transport industry.

80 Functions of Tribunal

The Tribunal has the following functions:

- (a) to make road safety remuneration orders under Part 2;
- (b) to approve road transport collective agreements under Part 3;
- (c) to deal with certain disputes relating to road transport drivers, their employers or hirers and participants in the supply chain under Part 4;
- (d) to conduct research into remuneration-related matters that may affect safety in the road transport industry;
- (e) any other functions prescribed by the regulations;
- (f) any other functions conferred on the Tribunal by another law of the Commonwealth.

81 Tribunal has privileges and immunities of the Crown

The Tribunal has the privileges and immunities of the Crown.

82 Protection of Tribunal members

A member of the Tribunal has, in performing his or her functions or exercising his or her powers as a member of the Tribunal, the same protection and immunity as a Justice of the High Court.

Division 2—Performance of functions of Tribunal

Subdivision A—Role of the President

83 Role of President in performance of functions

The President is responsible for ensuring that the Tribunal performs its functions efficiently and effectively.

Subdivision B—Applications to Tribunal

84 Dismissing applications

- (1) Without limiting when the Tribunal may dismiss an application, the Tribunal may dismiss an application if:
 - (a) the application is not made in accordance with this Act; or
 - (b) the application is frivolous or vexatious; or
 - (c) the application has no reasonable prospects of success.
- (2) The Tribunal may dismiss an application:
 - (a) on its own initiative; or
 - (b) on application.

Subdivision C—Performance of functions

85 Performance of functions generally

- (1) In performing its functions, the Tribunal:
 - (a) may regulate the conduct of its proceedings as it sees fit and is not bound to act in a formal manner; and
 - (b) is not bound by the rules of evidence and procedure in relation to any matter it is dealing with (even if it conducts a hearing in relation to the matter).
- (2) The performance of the functions of the Tribunal is not affected by reason only of there being a vacancy in the membership of the Tribunal, unless the vacancy is in the office of the President.

86 Powers of Tribunal to perform functions

- (1) The Tribunal may, except as provided by this Act, inform itself in relation to matters it is dealing with in any manner it considers appropriate.
- (2) Without limiting subsection (1), the Tribunal may inform itself in the following ways:
 - (a) by requiring a compellable person to attend before the Tribunal;
 - (b) by inviting, subject to any terms and conditions determined by the Tribunal, oral or written submissions (see for example subsection 24(1));
 - (c) by requiring a compellable person to provide copies of documents or records, or to provide any other information to the Tribunal;
 - (d) by taking evidence under oath or affirmation in accordance with the regulations (if any);
 - (e) by conducting inquiries;
 - (f) by undertaking or commissioning research;
 - (g) by conducting a conference (see section 87);
 - (h) by holding a hearing (see section 88).

87 Conferences

- (1) For the purposes of performing a function of the Tribunal, the Tribunal may direct a compellable person to attend a conference at a specified time and place.
- (2) If a Full Bench is performing the function, the President is responsible for conducting the conference. Otherwise, the dual FWA member performing the function is responsible.
- (3) The conference must be conducted in private, unless the person conducting the conference directs that it be conducted in public.
- (4) If the conference is to arbitrate a dispute under Part 4, then despite subsections (1) and (3):
 - (a) the Tribunal must not direct a person to attend the conference unless the person is a party to the dispute; and

Section 88

- (b) the person conducting the conference must not direct that it be conducted in public.

88 Hearings

- (1) The Tribunal is not required to hold a hearing in performing functions under this Act.
- (2) If the Tribunal holds a hearing in relation to a matter, the hearing must be held in public, except as provided by subsection (3).
- (3) The Tribunal may make the following orders in relation to a hearing that the Tribunal holds if the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reason:
 - (a) orders that all or part of the hearing is to be held in private;
 - (b) orders about who may be present at the hearing;
 - (c) orders prohibiting or restricting the publication of the names and addresses of persons appearing at the hearing;
 - (d) orders prohibiting or restricting the publication of, or the disclosure to some or all of the persons present at the hearing of, the following:
 - (i) evidence given in the hearing;
 - (ii) matters contained in documents before the Tribunal in relation to the hearing.
- (4) Subsection (3) does not apply to the publication of a submission made to the Tribunal for consideration in determining whether to make a road safety remuneration order or take a proposed action under subsection 31(2) (see subsections 24(3) and 31(4)).

89 Offences in relation to attendance before Tribunal

Required to attend

- (1) A person commits an offence if:
 - (a) the person has been required to attend before the Tribunal;
and
 - (b) the person fails to attend as required.

Penalty: Imprisonment for 6 months.

Oath or affirmation

- (2) A person commits an offence if:
- (a) the person attends before the Tribunal; and
 - (b) the Tribunal requires the person to take an oath or make an affirmation; and
 - (c) the person refuses or fails to be sworn or to make an affirmation as required.

Penalty: Imprisonment for 6 months.

Questions or documents

- (3) A person commits an offence if:
- (a) the person attends before the Tribunal; and
 - (b) the Tribunal requires the person to answer a question or produce a document; and
 - (c) the person refuses or fails to answer the question or produce the document.

Penalty: Imprisonment for 6 months.

Defence of reasonable excuse

- (4) Subsection (1), (2) or (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

90 Confidential evidence

- (1) The Tribunal may make an order prohibiting or restricting the publication of the following in relation to a matter before the Tribunal (whether or not the Tribunal holds a hearing in relation to the matter) if the Tribunal is satisfied that it is desirable to do so because of the confidential nature of the evidence, or for any other reason:
- (a) evidence given to the Tribunal in relation to the matter;

Section 91

- (b) the names and addresses of persons making submissions to the Tribunal in relation to the matter;
 - (c) matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal in relation to the matter;
 - (d) the whole or any part of its decisions or reasons in relation to the matter.
- (2) Subsection (1) does not apply to the publication of a submission made to the Tribunal for consideration in determining whether to make a road safety remuneration order or take a proposed action under subsection 31(2) (see subsections 24(3) and 31(4)).

Subdivision D—Representation by lawyers and paid agents

91 Representation by lawyers and paid agents

- (1) Except as provided by subsection (2) or the procedural rules, a person may be represented in a matter before the Tribunal (including by making an application or submission to the Tribunal on behalf of the person) by a lawyer or paid agent only with the permission of the Tribunal.
- (2) The Tribunal's permission is not required for a person to be represented by a lawyer or paid agent in making a written submission under section 24 or 31.
- (3) For the purposes of this section, a person is taken not to be represented by a lawyer or paid agent if the lawyer or paid agent:
 - (a) is an employee or officer of the person; or
 - (b) is an employee or officer of an industrial association that is representing the person.

Subdivision E—Appeals

92 Appeal of decisions

- (1) A person who is aggrieved by:
 - (a) a decision of a dual FWA member to approve, or refuse to approve, a road transport collective agreement under Part 3;or

- (b) a decision of a dual FWA member in relation to a dispute being dealt with under Part 4;
may appeal the decision with the permission of the Tribunal.
- (2) The person may appeal the decision by applying to the Tribunal.
- (3) A Full Bench must:
 - (a) decide whether to grant permission to appeal the decision;
and
 - (b) if the Full Bench decides to grant permission—hear the appeal in accordance with section 94.
- (4) Without limiting when permission to appeal may be granted, a Full Bench must grant permission if the Full Bench is satisfied that it is in the public interest to do so.

93 Staying decisions that are appealed

- (1) The Full Bench may order that the operation of the whole or part of the decision be stayed, on any terms and conditions that the Full Bench considers appropriate, until a decision in relation to the appeal is made or the Full Bench makes a further order.
- (2) An order under subsection (1) in relation to the appeal may be made by:
 - (a) the Full Bench; or
 - (b) the President.

94 Process for appealing decisions

- (1) The Full Bench may deal with an appeal in any manner it considers appropriate, including by holding a hearing or conducting a conference.

Note: See sections 87 and 88.

- (2) The Full Bench may:
 - (a) admit further evidence; and
 - (b) take into account any other information or evidence.

Section 95

- (3) The Full Bench may do any of the following in relation to the appeal:
- (a) confirm, quash or vary the decision;
 - (b) make a further decision in relation to the matter that is the subject of the appeal;
 - (c) refer the matter that is the subject of the appeal to a dual FWA member and:
 - (i) require the member to deal with the subject matter of the decision; or
 - (ii) require the member to act in accordance with the directions of the Full Bench.

95 Referring questions of law to the Federal Court

- (1) The President may refer a question of law arising in a matter being appealed to the Full Bench for the opinion of the Federal Court.
- (2) A question of law referred under subsection (1) must be determined by the Full Court of the Federal Court.
- (3) The Full Bench may make a decision in relation to the matter even if the Federal Court is determining the question of law, except if the question is whether the Tribunal may exercise powers in relation to the matter.
- (4) Once the Federal Court has determined the question, the Full Bench may only make a decision in relation to the matter that is not inconsistent with the opinion of the Federal Court (if the Full Bench has not already done so).
- (5) However, if the Full Bench has made a decision in relation to the matter that is inconsistent with the opinion of the Federal Court, the Full Bench must vary the decision in such a way as to make it consistent with the opinion of the Federal Court.

Subdivision F—Organisation of Tribunal

96 Constitution of Full Bench

- (1) If a function of the Tribunal may or must be performed by a Full Bench of the Tribunal, the Full Bench is to consist of either:
 - (a) 3 members of the Tribunal, being the President, one dual FWA member and one industry member; or
 - (b) 5 members of the Tribunal, being the President, 2 dual FWA members and 2 industry members.
- (2) The President is to determine how many and which members of the Tribunal form part of a Full Bench.
- (3) A decision of a majority of the members on the Full Bench prevails.

Division 3—Members of Tribunal

Subdivision A—Appointment of members of Tribunal

97 Appointment

- (1) The members of the Tribunal are to be appointed by the Governor-General by written instrument for a period not exceeding 5 years.
- (2) The person appointed as the President must also be a Deputy President of Fair Work Australia.
- (3) The persons appointed for the purposes of paragraph 79(2)(b) must also be Deputy Presidents or Commissioners of Fair Work Australia.

98 Basis of appointment of industry members

An industry member of the Tribunal holds office on a part-time basis.

Note: Members of the Tribunal who are dual FWA members are permitted to hold dual appointments under section 632 of the *Fair Work Act 2009*.

Subdivision B—Terms and conditions of members of Tribunal

99 Outside employment of industry members

An industry member must not engage in any paid employment that, in the President's opinion, conflicts or may conflict with the proper performance of his or her duties.

100 Remuneration

- (1) A dual FWA member is not to be paid any remuneration or allowances in relation to the member's office as a member of the Tribunal.

- (2) An industry member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by that Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (3) An industry member is to be paid the allowances prescribed by the regulations.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

101 Leave of absence

A dual FWA member is allowed to be absent from the Tribunal during any period of recreation leave or any other leave of absence to which the member is entitled under section 639 of the *Fair Work Act 2009*.

102 Disclosure of interests

- (1) This section applies if:
 - (a) a member of the Tribunal (other than the President) is dealing with, or will deal with, a matter; and
 - (b) the member has or acquires any interest (the *potential conflict*), pecuniary or otherwise, that conflicts or could conflict with the proper performance of the member's functions in relation to the matter.
- (2) The member must disclose the potential conflict to the President.
- (3) If the member does so, the member may only deal, or continue to deal, with the matter with the President's approval.
- (4) The President must direct a member of the Tribunal not to deal, or to no longer deal, with a matter if:
 - (a) the President becomes aware that the member has a potential conflict in relation to the matter (whether or not because of a disclosure referred to in subsection (2)); and
 - (b) the President considers that the member should not deal, or should no longer deal, with the matter.

Section 103

- (5) To avoid doubt, subsection (4) applies to a member even if the President has previously given approval to the member under subsection (3).

103 Termination of appointment on grounds of misbehaviour or incapacity

The Governor-General may terminate the appointment of a member of the Tribunal if an address praying for the termination, on one of the following grounds, is presented to the Governor-General by each House of the Parliament in the same session:

- (a) proved misbehaviour;
- (b) the member is unable to perform the duties of his or her office because of physical or mental incapacity.

104 Suspension on grounds of misbehaviour or incapacity

Governor-General may suspend member

- (1) The Governor-General may suspend a member of the Tribunal from office:
- (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity.

Statement of grounds

- (2) The Minister must cause to be tabled in each House of Parliament, within 7 sitting days of that House after the suspension, a statement identifying the member and setting out the ground of the suspension.

Resolution by a House of Parliament

- (3) A House of the Parliament may, within 15 sitting days of that House after the day the statement has been tabled in it, declare by resolution that the appointment of the member should be terminated.

Suspension terminates

- (4) If a House does not pass a resolution in that way, the suspension terminates.

Appointment to be terminated

- (5) If each House of the Parliament passes a resolution in that way, the Governor-General must terminate the appointment of the member.

Suspension not to affect entitlements

- (6) The suspension of a member under this section does not affect any entitlement of the member to be paid remuneration and allowances in accordance with this Act.

105 Termination of appointment for bankruptcy, etc.

The Governor-General must terminate the appointment of a member if:

- (a) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) the member fails, without reasonable excuse, to comply with section 102 (disclosure of interests).

106 Termination of appointment for outside employment

The Governor-General must terminate the appointment of an industry member if the member engages in paid employment that, in the President's opinion, conflicts or may conflict with the proper performance of the member's duties (see section 99).

Section 107

107 Automatic cessation of appointment for loss of qualification

- (1) If the President ceases to be a Deputy President of Fair Work Australia, the President's appointment to the Tribunal ceases on the same day.
- (2) If a person appointed for the purposes of paragraph 79(2)(b) ceases to be a Deputy President or Commissioner of Fair Work Australia, the person's appointment to the Tribunal ceases on the same day.

108 Resignation

- (1) A member of the Tribunal may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

109 Other terms and conditions of members

A member of the Tribunal holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

110 Acting appointments

- (1) The Minister may, by written instrument, appoint a person who is qualified for appointment as a particular kind of member of the Tribunal to act as a member of that kind:
 - (a) during a vacancy in the office of a member of that kind (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a member of that kind:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
 - (2) The appointment must be for a specified period of not more than 12 months.
-

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Subdivision C—Miscellaneous matters relating to members of Tribunal

111 Disclosure of information by Tribunal

The Tribunal may disclose information acquired by the Tribunal in the course of performing its functions or exercising its powers if the President reasonably believes:

- (a) that it is necessary or appropriate to do so in the course of performing the Tribunal's functions or exercising the Tribunal's powers; or
- (b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

Division 4—General Manager and consultants

112 Role of General Manager of Fair Work Australia

- (1) The General Manager of Fair Work Australia has the function of assisting the President in ensuring that the Tribunal performs its functions efficiently and effectively.
- (2) The General Manager has power to do all things necessary or convenient to be done for the purpose of performing his or her function.
- (3) In particular, the General Manager is to assist the President in ensuring that the Tribunal performs its function under paragraph 80(d) and may engage persons having suitable qualifications and experience as consultants for this purpose.
- (4) The President may direct the General Manager as to the manner in which the General Manager is to perform his or her functions or exercise his or her powers.
- (5) The direction may be of a general nature or may relate to a particular matter.
- (6) The General Manager must comply with the direction except to the extent that compliance with the direction would be inconsistent with the General Manager's:
 - (a) performance of functions or exercise of powers in relation to Fair Work Australia; or
 - (b) performance of functions or exercise of powers under the *Financial Management and Accountability Act 1997* in relation to Fair Work Australia; or
 - (c) performance of functions or exercise of powers under the *Public Service Act 1999* in relation to Fair Work Australia.
- (7) If a direction is in writing, the direction is not a legislative instrument.

Division 5—Miscellaneous matters relating to Tribunal

113 Procedural rules

- (1) After consulting the other members of the Tribunal, the President may, by legislative instrument, make procedural rules in relation to:
 - (a) the practice and procedure to be followed by the Tribunal; or
 - (b) the conduct of business in relation to matters the Tribunal is authorised to deal with.
- (2) Without limiting subsection (1), the procedural rules may provide for the following:
 - (a) the requirements for making an application to the Tribunal;
 - (b) the circumstances in which a lawyer or paid agent may make an application or submission to the Tribunal on behalf of a person who is entitled to make the application or submission;
 - (c) the form and manner in which, and the time within which, submissions may or must be made to the Tribunal;
 - (d) the procedural requirements for making decisions of the Tribunal;
 - (e) the form and manner in which the Tribunal gives directions and notifies persons of things;
 - (f) who is notified by the Tribunal of things;
 - (g) the manner in which conferences are to be conducted.
- (3) To avoid doubt, subsection (1) includes the power to make procedural rules in relation to any functions conferred on the Tribunal by any other law of the Commonwealth.

114 Regulations dealing with Tribunal matters

The regulations may provide for any matter that the procedural rules may provide for.

Note: Regulations prevail over procedural rules if inconsistent (see subsection 121(2)).

Section 115

115 Costs

- (1) A person must bear the person's own costs in relation to a matter before the Tribunal.
- (2) However, the Tribunal may order a person to bear some or all of the costs of another person in relation to an application to the Tribunal if:
 - (a) the Tribunal is satisfied that the person made or responded to the application vexatiously or without reasonable cause; or
 - (b) the Tribunal is satisfied that it should have been reasonably apparent to the person that the person's application or response had no reasonable prospect of success.
- (3) A person on whom an order imposes a requirement to pay costs must not contravene the requirement.

Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

116 Annual report

- (1) The President must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Tribunal during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.
- (2) To avoid doubt, subsection (1) does not require or authorise the disclosure of information for the purposes of the *Privacy Act 1988*.

117 President must provide certain information etc. to the Minister and Fair Work Ombudsman

- (1) The President must provide the Minister and the Fair Work Ombudsman with:
 - (a) copies of any enforceable instrument made or approved by the Tribunal; and
 - (b) the information and copies of documents prescribed by the regulations;by the time, and in the form, prescribed.

- (2) The regulations may prescribe information and documents relating to or derived from information that:
- (a) is publicly available; and
 - (b) relates to matters the Tribunal is authorised to deal with.

Part 7—Miscellaneous

118 This Act is a workplace law

This Act is a workplace law for the purposes of the *Fair Work Act 2009*.

Note: See section 341 of the *Fair Work Act 2009*.

119 Employer and hirer obligations in relation to records

- (1) A person who is the employer or hirer of a road transport driver must make, and keep for 7 years, records of the kind prescribed by the regulations in relation to each road transport driver the person employs or engages.

Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

- (2) The records must:
 - (a) if a form is prescribed by the regulations—be in that form; and
 - (b) include any information prescribed by the regulations.

Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

- (3) The regulations may provide for the inspection of those records.

120 Review of this Act

- (1) The Minister must cause a review of the operation of this Act to be started by 1 July 2015.
- (2) The review must be completed by 31 December 2015.
- (3) The persons who undertake the review must give the Minister a written report of the review.
- (4) The report must be published on the website of the Department and by any other means the Minister considers appropriate.

121 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations made under this Act prevail over procedural rules made under this Act, to the extent of any inconsistency.

*[Minister's second reading speech made in—
House of Representatives on 23 November 2011
Senate on 20 March 2012]*

(267/11)
