



Fair Work Amendment Act 2013

No. 73, 2013

An Act to amend the law relating to workplace relations, and for related purposes

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

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No. 73, 2013

An Act to amend the law relating to workplace relations, and for related purposes

[Assented to 28 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Fair Work Amendment Act 2013*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 28 June 2013 |
| 2. Schedule 1, Parts 1 to 3 | A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | 1 July 2013 |
| 3. Schedule 1, Part 4 | 1 January 2014. | 1 January 2014 |
| 4. Schedule 1, Part 5 | At the same time as the provision(s) covered by table item 2. | 1 July 2013 |
| 5. Schedule 2 | 1 January 2014. | 1 January 2014 |
| 6. Schedule 3 | 1 January 2014. | 1 January 2014 |
| 6A. Schedule 3A | At the same time as the provision(s) covered by table item 2. | 1 July 2013 |
| 7. Schedule 4 | 1 January 2014. | 1 January 2014 |
| 7A. Schedule 4A | 1 January 2014. | 1 January 2014 |
| 8. Schedule 5, item 1 | Immediately after the commencement of the <i>Fair Work Amendment (Transfer of Business) Act 2012</i> . | 5 December 2012 |
| 9. Schedule 5, item 2 | Immediately after the commencement of Schedule 1 to the <i>Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012</i> . | 1 July 2012 |
| 10. Schedule 5, items 3 and 4 | At the same time as the provision(s) covered by table item 2. | 1 July 2013 |
| 11. Schedule 6, item 1 | Immediately after the commencement of Schedule 1 to the <i>Fair Work Amendment Act 2012</i> . | 1 January 2014 |

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 12. Schedule 6, items 2 to 4 | The day this Act receives the Royal Assent. | 28 June 2013 |
| 13. Schedule 6, item 5 | Immediately after the commencement of Schedule 2 to the <i>Fair Work Amendment Act 2012</i> . | 1 July 2013 |
| 14. Schedule 6, items 6 to 8 | The day this Act receives the Royal Assent. | 28 June 2013 |
| 15. Schedule 6, items 9 and 10 | Immediately after the commencement of Schedule 8 to the <i>Fair Work Amendment Act 2012</i> . | 1 January 2013 |
| 16. Schedule 6, items 11 to 13 | Immediately after the commencement of Part 1 of Schedule 9 to the <i>Fair Work Amendment Act 2012</i> . | 1 January 2013 |
| 17. Schedule 6, item 14 | Immediately after the commencement of item 1364 of Schedule 9 to the <i>Fair Work Amendment Act 2012</i> . | 1 January 2013 |
| 17A. Schedule 6A | Immediately before the commencement of Part 2 of Schedule 1 to the <i>Fair Work (Registered Organisations) Amendment Act 2012</i> . | 29 June 2013 |
| 18. Schedule 7 | The day this Act receives the Royal Assent. | 28 June 2013 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

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

Schedule 1—Family-friendly measures

Part 1—Special maternity leave

Fair Work Act 2009

1 Section 70 (note 1)

Omit “Note 1”, substitute “Note”.

2 Section 70 (note 2)

Repeal the note.

3 Paragraph 75(2)(c)

Omit “;”, substitute “.”.

4 Paragraph 75(2)(d)

Repeal the paragraph.

5 Paragraph 76(6)(a)

Omit “and unpaid special maternity leave”.

6 Paragraph 76(6)(b)

Omit “or unpaid special maternity leave”.

7 Subsection 80(1) (note)

Omit “Note”, substitute “Note 1”.

8 At the end of subsection 80(1)

Add:

Note 2: If a female employee has an entitlement to paid personal/carer’s leave (see section 96), she may take that leave instead of taking unpaid special maternity leave under this section.

9 Subsection 80(7)

Repeal the subsection (not including the note).

10 Section 97 (note)

Omit “Note”, substitute “Note 1”.

11 At the end of section 97

Add:

- Note 2: If a female employee has an entitlement to paid personal/carer's leave, she may take that leave instead of taking unpaid special maternity leave under section 80.

Part 2—Parental leave

Fair Work Act 2009

12 Section 12

Insert:

concurrent leave: see subsection 72(5).

13 Paragraphs 72(5)(a), (b) and (c)

Repeal the paragraphs, substitute:

- (a) the concurrent leave must not be longer than 8 weeks in total;
- (b) the concurrent leave may be taken in separate periods, but, unless the employer agrees, each period must not be shorter than 2 weeks;
- (c) unless the employer agrees, the concurrent leave must not start before:
 - (i) if the leave is birth-related leave—the date of birth of the child; or
 - (ii) if the leave is adoption-related leave—the day of placement of the child.

14 Subsection 74(2)

Repeal the subsection, substitute:

- (2) The employee must give the notice to the employer:
 - (a) at least:
 - (i) 10 weeks before starting the leave, unless subparagraph (ii) applies; or
 - (ii) if the leave is to be taken in separate periods of concurrent leave (see paragraph 72(5)(b)) and the leave is not the first of those periods of concurrent leave—4 weeks before starting the period of concurrent leave; or
 - (b) if that is not practicable—as soon as practicable (which may be a time after the leave has started).

15 After subsection 74(4)

Insert:

(4A) Subsection (4) does not apply to a notice for a period of concurrent leave referred to in subparagraph (2)(a)(ii).

Part 3—Right to request flexible working arrangements

Fair Work Act 2009

16 Section 12 (definition of *school age*)

Omit “start attending”, substitute “attend”.

17 Subsection 65(1)

Repeal the subsection, substitute:

Employee may request change in working arrangements

(1) If:

- (a) any of the circumstances referred to in subsection (1A) apply to an employee; and
- (b) the employee would like to change his or her working arrangements because of those circumstances;

then the employee may request the employer for a change in working arrangements relating to those circumstances.

Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

(1A) The following are the circumstances:

- (a) the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;
- (b) the employee is a carer (within the meaning of the *Carer Recognition Act 2010*);
- (c) the employee has a disability;
- (d) the employee is 55 or older;
- (e) the employee is experiencing violence from a member of the employee’s family;
- (f) the employee provides care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires care or support because the member is experiencing violence from the member’s family.

- (1B) To avoid doubt, and without limiting subsection (1), an employee who:
- (a) is a parent, or has responsibility for the care, of a child; and
 - (b) is returning to work after taking leave in relation to the birth or adoption of the child;
- may request to work part-time to assist the employee to care for the child.

18 After subsection 65(5)

Insert:

- (5A) Without limiting what are reasonable business grounds for the purposes of subsection (5), reasonable business grounds include the following:
- (a) that the new working arrangements requested by the employee would be too costly for the employer;
 - (b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
 - (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;
 - (d) that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
 - (e) that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

Part 4—Consultation about changes to rosters or working hours

Fair Work Act 2009

19 After section 145

Insert:

145A Consultation about changes to rosters or hours of work

- (1) Without limiting paragraph 139(1)(j), a modern award must include a term that:
 - (a) requires the employer to consult employees about a change to their regular roster or ordinary hours of work; and
 - (b) allows for the representation of those employees for the purposes of that consultation.
- (2) The term must require the employer:
 - (a) to provide information to the employees about the change; and
 - (b) to invite the employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
 - (c) to consider any views about the impact of the change that are given by the employees.

20 Paragraph 205(1)(a)

Repeal the paragraph, substitute:

- (a) requires the employer or employers to which the agreement applies to consult the employees to whom the agreement applies about:
 - (i) a major workplace change that is likely to have a significant effect on the employees; or
 - (ii) a change to their regular roster or ordinary hours of work; and

21 After subsection 205(1)

Insert:

- (1A) For a change to the employees' regular roster or ordinary hours of work, the term must require the employer:
- (a) to provide information to the employees about the change;
and
 - (b) to invite the employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
 - (c) to consider any views given by the employees about the impact of the change.

Part 5—Transfer to a safe job

Fair Work Act 2009

22 Section 12 (definition of *appropriate safe job*)

Omit “subsection 81(4)”, substitute “subsection 81(3)”.

23 Section 12 (definition of *paid no safe job leave*)

Omit “paragraph 81(3)(b)”, substitute “section 81A”.

24 Section 12

Insert:

risk period: see subsections 81(1) and (5).

unpaid no safe job leave means unpaid no safe job leave to which a national system employee is entitled under section 82A.

25 Subsections 67(1) and (2)

After “unpaid pre-adoption leave”, insert “or unpaid no safe job leave”.

26 Subsection 71(3) (note 2)

Repeal the note, substitute:

- Note 2: If it is inadvisable for the employee to continue in her present position, she may be entitled:
- (a) to be transferred to an appropriate safe job under section 81; or
 - (b) to paid no safe job leave under section 81A; or
 - (c) to unpaid no safe job leave under section 82A.

27 Subparagraph 73(2)(c)(ii)

Repeal the subparagraph, substitute:

- (ii) the employee has not complied with the notice and evidence requirements of section 74 for taking unpaid parental leave.

28 Subsection 73(2) (note)

Repeal the note, substitute:

- Note: If the medical certificate contains a statement as referred to in subparagraph (c)(i) and the employee has complied with the notice
-

and evidence requirements of section 74, then the employee is entitled to be transferred to a safe job (see section 81) or to paid no safe job leave (see section 81A).

29 Section 81

Repeal the section, substitute:

81 Transfer to a safe job

- (1) This section applies to a pregnant employee if she gives her employer evidence that would satisfy a reasonable person that she is fit for work, but that it is inadvisable for her to continue in her present position during a stated period (the **risk period**) because of:
- (a) illness, or risks, arising out of her pregnancy; or
 - (b) hazards connected with that position.

Note: Personal information given to an employer under this subsection may be regulated under the *Privacy Act 1988*.

- (2) If there is an appropriate safe job available, then the employer must transfer the employee to that job for the risk period, with no other change to the employee's terms and conditions of employment.

Note: If there is no appropriate safe job available, then the employee may be entitled to paid no safe job leave under section 81A or unpaid no safe job leave under 82A.

- (3) An **appropriate safe job** is a safe job that has:
- (a) the same ordinary hours of work as the employee's present position; or
 - (b) a different number of ordinary hours agreed to by the employee.
- (4) If the employee is transferred to an appropriate safe job for the risk period, the employer must pay the employee for the safe job at the employee's full rate of pay (for the position she was in before the transfer) for the hours that she works in the risk period.
- (5) If the employee's pregnancy ends before the end of the risk period, the **risk period** ends when the pregnancy ends.
- (6) Without limiting subsection (1), an employer may require the evidence to be a medical certificate.

81A Paid no safe job leave

- (1) If:
 - (a) section 81 applies to a pregnant employee but there is no appropriate safe job available; and
 - (b) the employee is entitled to unpaid parental leave; and
 - (c) the employee has complied with the notice and evidence requirements of section 74 for taking unpaid parental leave;then the employee is entitled to paid no safe job leave for the risk period.
- (2) If the employee takes paid no safe job leave for the risk period, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the risk period.

30 After section 82

Insert:

82A Unpaid no safe job leave

- (1) If:
 - (a) section 81 applies to a pregnant employee but there is no appropriate safe job available; and
 - (b) the employee is not entitled to unpaid parental leave; and
 - (c) if required by the employer—the employee has given the employer evidence that would satisfy a reasonable person of the pregnancy;then the employee is entitled to unpaid no safe job leave for the risk period.
- (2) Without limiting subsection (1), an employer may require the evidence referred to in paragraph (1)(c) to be a medical certificate.

Schedule 2—Modern awards objective

Fair Work Act 2009

1 After paragraph 134(1)(d)

Insert:

- (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and

Schedule 3—Anti-bullying measure

Fair Work Act 2009

1 After subsection 9(5A)

Insert:

- (5B) Part 6-4B allows a worker who has been bullied at work to apply to the FWC for an order to stop the bullying.

2 Section 12

Insert:

bullied at work: see subsection 789FD(1).

constitutionally-covered business: see subsection 789FD(3).

worker:

- (a) in Part 6-4B—see subsection 789FC(2); and
(b) otherwise—has its ordinary meaning.

3 Subsection 539(2) (at the end of the table)

Add:

| Part 6-4B—Workers bullied at work | | | | |
|--|-------|---|--|------------------|
| 38 | 789FG | (a) a person affected by the contravention; (b) an industrial association; (c) an inspector | (a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court | 60 penalty units |

4 At the end of subsection 576(1)

Add:

- ; (q) workers bullied at work (Part 6-4B).

5 At the end of subsection 675(2)

Add:

-
- ; (j) an order under Part 6-4B (which deals with workers bullied at work).

6 After Part 6-4A

Insert:

Part 6-4B—Workers bullied at work

Division 1—Introduction

789FA Guide to this Part

| |
|--|
| <p>This Part allows a worker who has been bullied at work to apply to the FWC for an order to stop the bullying.</p> |
|--|

789FB Meanings of *employee* and *employer*

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

Division 2—Stopping workers being bullied at work

789FC Application for an FWC order to stop bullying

- (1) A worker who reasonably believes that he or she has been bullied at work may apply to the FWC for an order under section 789FF.
- (2) For the purposes of this Part, *worker* has the same meaning as in the *Work Health and Safety Act 2011*, but does not include a member of the Defence Force.

Note: Broadly, for the purposes of the *Work Health and Safety Act 2011*, a worker is an individual who performs work in any capacity, including as an employee, a contractor, a subcontractor, an outworker, an apprentice, a trainee, a student gaining work experience or a volunteer.

- (3) The application must be accompanied by any fee prescribed by the regulations.
- (4) The regulations may prescribe:
 - (a) a fee for making an application to the FWC under this section; and
 - (b) a method for indexing the fee; and

- (c) the circumstances in which all or part of the fee may be waived or refunded.

789FD When is a worker *bullied at work*?

- (1) A worker is *bullied at work* if:
 - (a) while the worker is at work in a constitutionally-covered business:
 - (i) an individual; or
 - (ii) a group of individuals;repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and
 - (b) that behaviour creates a risk to health and safety.
- (2) To avoid doubt, subsection (1) does not apply to reasonable management action carried out in a reasonable manner.
- (3) If a person conducts a business or undertaking (within the meaning of the *Work Health and Safety Act 2011*) and either:
 - (a) the person is:
 - (i) a constitutional corporation; or
 - (ii) the Commonwealth; or
 - (iii) a Commonwealth authority; or
 - (iv) a body corporate incorporated in a Territory; or
 - (b) the business or undertaking is conducted principally in a Territory or Commonwealth place;then the business or undertaking is a *constitutionally-covered business*.

789FE FWC to deal with applications promptly

- (1) The FWC must start to deal with an application under section 789FC within 14 days after the application is made.
 - Note: For example, the FWC may start to inform itself of the matter under section 590, it may decide to conduct a conference under section 592, or it may decide to hold a hearing under section 593.
- (2) However, the FWC may dismiss an application under section 789FC if the FWC considers that the application might involve matters that relate to:
 - (a) Australia's defence; or

-
- (b) Australia's national security; or
 - (c) an existing or future covert operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police; or
 - (d) an existing or future international operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police.

Note: For another power of the FWC to dismiss applications under section 789FC, see section 587.

789FF FWC may make orders to stop bullying

- (1) If:
 - (a) a worker has made an application under section 789FC; and
 - (b) the FWC is satisfied that:
 - (i) the worker has been bullied at work by an individual or a group of individuals; and
 - (ii) there is a risk that the worker will continue to be bullied at work by the individual or group;then the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the worker from being bullied at work by the individual or group.
- (2) In considering the terms of an order, the FWC must take into account:
 - (a) if the FWC is aware of any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another person or body—those outcomes; and
 - (b) if the FWC is aware of any procedure available to the worker to resolve grievances or disputes—that procedure; and
 - (c) if the FWC is aware of any final or interim outcomes arising out of any procedure available to the worker to resolve grievances or disputes—those outcomes; and
 - (d) any matters that the FWC considers relevant.

789FG Contravening an order to stop bullying

A person to whom an order under section 789FF applies must not contravene a term of the order.

Note: This section is a civil remedy provision (see Part 4-1).

789FH Actions under work health and safety laws permitted

Section 115 of the *Work Health and Safety Act 2011* and corresponding provisions of corresponding WHS laws (within the meaning of that Act) do not apply in relation to an application under section 789FC.

Note: Ordinarily, if a worker makes an application under section 789FC for an FWC order to stop the worker from being bullied at work, then section 115 of the *Work Health and Safety Act 2011* and corresponding provisions of corresponding WHS laws would prohibit a proceeding from being commenced, or an application from being made or continued, under those laws in relation to the bullying. This section removes that prohibition.

789FI This Part is not to prejudice Australia's defence, national security etc.

Nothing in this Part requires or permits a person to take, or to refrain from taking, any action if the taking of the action, or the refraining from taking the action, would be, or could reasonably be expected to be, prejudicial to:

- (a) Australia's defence; or
- (b) Australia's national security; or
- (c) an existing or future covert operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police; or
- (d) an existing or future international operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police.

789FJ Declarations by the Chief of the Defence Force

- (1) Without limiting section 789FI, the Chief of the Defence Force may, by legislative instrument, declare that all or specified provisions of this Part do not apply in relation to a specified activity.
- (2) A declaration under subsection (1) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

789FK Declarations by the Director-General of Security

- (1) Without limiting section 789FI, the Director-General of Security may, by legislative instrument, declare that all or specified provisions of this Part do not apply in relation to a person carrying out work for the Director-General.
- (2) A declaration under subsection (1) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

789FL Declarations by the Director-General of ASIS

- (1) Without limiting section 789FI, the Director-General of the Australian Secret Intelligence Service may, by legislative instrument, declare that all or specified provisions of this Part do not apply in relation to a person carrying out work for the Director-General.
- (2) A declaration under subsection (1) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

Schedule 3A—Conferences

Fair Work Act 2009

1 At the end of section 592

Add:

- (4) At a conference, the FWC may:
 - (a) mediate or conciliate; or
 - (b) make a recommendation or express an opinion.
- (5) Subsection (4) does not limit what the FWC may do at a conference.

2 Subsection 595(5)

Omit “any of the powers referred to in subsection (2) or (3)”, substitute “the power referred to in subsection (3)”.

Schedule 4—Right of entry

Fair Work Act 2009

1 Section 12

Insert:

accommodation arrangement: see subsections 521A(1) and (2).

transport arrangement: see subsections 521B(1) and (2).

2 At the end of section 478

Add:

| |
|---|
| Division 7 deals with accommodation and transport arrangements in remote areas. |
|---|

3 At the end of subsection 481(1)

Add:

Note 3: A permit holder, or the organisation to which the permit holder belongs, may be subject to an order by the FWC under section 508 if rights under this Subdivision are misused.

Note 4: A person must not refuse or unduly delay entry by a permit holder, or intentionally hinder or obstruct a permit holder, exercising rights under this Subdivision (see sections 501 and 502).

4 Subsection 483A(1) (note)

Omit “Note”, substitute “Note 1”.

5 At the end of subsection 483A(1)

Add:

Note 2: A permit holder, or the organisation to which the permit holder belongs, may be subject to an order by the FWC under section 508 if rights under this Subdivision are misused.

Note 3: A person must not refuse or unduly delay entry by a permit holder, or intentionally hinder or obstruct a permit holder, exercising rights under this Subdivision (see sections 501 and 502).

6 At the end of section 484

Add:

- Note 1: A permit holder, or the organisation to which the permit holder belongs, may be subject to an order by the FWC under section 508 if rights under this Subdivision are misused.
- Note 2: A person must not refuse or unduly delay entry by a permit holder, or intentionally hinder or obstruct a permit holder, exercising rights under this Subdivision (see sections 501 and 502).
- Note 3: Under paragraph 487(1)(b), the permit holder must give the occupier of the premises notice for the entry. Having given that notice, the permit holder may hold discussions with any person on the premises described in this section.

7 Section 492

Repeal the section, substitute:

492 Location of interviews and discussions

- (1) The permit holder must conduct interviews or hold discussions in the rooms or areas of the premises agreed with the occupier of the premises.
- (2) Subsection (3) applies if the permit holder and the occupier cannot agree on the room or area of the premises in which the permit holder is to conduct an interview or hold discussions.
- (3) The permit holder may conduct the interview or hold the discussions in any room or area:
 - (a) in which one or more of the persons who may be interviewed or participate in the discussions ordinarily take meal or other breaks; and
 - (b) that is provided by the occupier for the purpose of taking meal or other breaks.

Note 1: The permit holder may be subject to an order by the FWC under section 508 if rights under this section are misused.

Note 2: A person must not intentionally hinder or obstruct a permit holder exercising rights under this section (see section 502).

492A Route to location of interview and discussions

- (1) The permit holder must comply with any reasonable request by the occupier of the premises to take a particular route to reach a room or area of the premises determined under section 492.

Note: The FWC may deal with a dispute about whether the request is reasonable (see subsection 505(1)).

- (2) A request under subsection (1) is not unreasonable only because the route is not that which the permit holder would have chosen.
- (3) The regulations may prescribe circumstances in which a request under subsection (1) is or is not reasonable.

8 Section 500 (note)

Omit “Note”, substitute “Note 1”.

9 At the end of section 500

Add:

- Note 2: A permit holder, or the organisation to which the permit holder belongs, may also be subject to an order by the FWC under section 508 if rights under this Part are misused.
- Note 3: A person must not intentionally hinder or obstruct a permit holder, exercising rights under this Part (see section 502).

10 Subsection 505(1)

Repeal the subsection, substitute:

- (1) The FWC may deal with a dispute about the operation of this Part, including a dispute about:
 - (a) whether a request under section 491, 492A or 499 is reasonable; or
 - (b) when a right of the kind referred to in section 490 may be exercised by a permit holder on premises of a kind mentioned in subsection 521C(1) or 521D(1), despite that section; or
 - (c) whether accommodation is reasonably available as mentioned in subsection 521C(1) or premises reasonably accessible as mentioned in subsection 521D(1); or
 - (d) whether providing accommodation or transport, or causing accommodation or transport to be provided, would cause the occupier of premises undue inconvenience as mentioned in paragraph 521C(2)(a) or 521D(2)(a); or
 - (e) whether a request to provide accommodation or transport is made within a reasonable period as mentioned in paragraph 521C(2)(c) or 521D(2)(c).

Note 1: Sections 491 and 499 deal with requests for permit holders to comply with occupational health and safety requirements.

- Note 2: Section 492A deals with requests for a permit holder to take a particular route to a room or area in which an interview is to be conducted or discussions held.
- Note 3: Section 490 deals with when rights under Subdivision A, AA or B of Division 2 of this Part may be exercised.
- Note 4: Sections 521C and 521D deal with accommodation in and transport to remote areas for the purpose of exercising rights under this Part.

11 Subsection 505(5)

Repeal the subsection, substitute:

- (5) In dealing with the dispute, the FWC must not confer rights on a permit holder that are additional to, or inconsistent with, rights exercisable in accordance with Division 2, 3 or 7 of this Part, unless the dispute is about:
- (a) whether a request under section 491, 492A or 499 is reasonable; or
 - (b) when a right of the kind referred to in section 490 may be exercised by the permit holder on premises of a kind mentioned in subsection 521C(1) or 521D(1), despite that section; or
 - (c) whether accommodation is reasonably available as mentioned in subsection 521C(1) or premises reasonably accessible as mentioned in subsection 521D(1); or
 - (d) whether providing accommodation or transport, or causing accommodation or transport to be provided, would cause the occupier of premises undue inconvenience as mentioned in paragraph 521C(2)(a) or 521D(2)(a); or
 - (e) whether a request to provide accommodation or transport is made within a reasonable period as mentioned in paragraph 521C(2)(c) or 521D(2)(c).

12 After section 505

Insert:

505A FWC may deal with a dispute about frequency of entry to hold discussions

- (1) This section applies if:
- (a) a permit holder or permit holders of an organisation enter premises under section 484 for the purposes of holding

discussions with one or more employees or TCF award workers; and

- (b) an employer of the employees or the TCF award workers, or occupier of the premises, disputes the frequency with which the permit holder or permit holders of the organisation enter the premises.
- (2) The FWC may deal with a dispute about the frequency with which a permit holder or permit holders of an organisation enter premises under section 484.
 - (3) The FWC may deal with the dispute by arbitration, including by making one or more of the following orders:
 - (a) an order imposing conditions on an entry permit;
 - (b) an order suspending an entry permit;
 - (c) an order revoking an entry permit;
 - (d) an order about the future issue of entry permits to one or more persons;
 - (e) any other order it considers appropriate.
- Note: The FWC may also deal with a dispute by mediation or conciliation, or by making a recommendation or expressing an opinion (see subsection 595(2)).
- (4) However, the FWC may only make an order under subsection (3) if the FWC is satisfied that the frequency of entry by the permit holder or permit holders of the organisation would require an unreasonable diversion of the occupier's critical resources.
 - (5) The FWC may deal with the dispute:
 - (a) on its own initiative; or
 - (b) on application by any of the following to whom the dispute relates:
 - (i) a permit holder;
 - (ii) a permit holder's organisation;
 - (iii) an employer;
 - (iv) an occupier of premises.
 - (6) In dealing with the dispute, the FWC must take into account fairness between the parties concerned.

13 At the end of section 506

Add “or subsection 505A(3)”.

14 At the end of Part 3-4

Add:

**Division 7—Accommodation and transport arrangements
in remote areas**

521A Meaning of *accommodation arrangement*

- (1) If:
- (a) an occupier of premises enters into an arrangement with an organisation; and
 - (b) under the terms of the arrangement, a permit holder is provided with accommodation for the purpose of assisting him or her to exercise rights under this Part;
- the arrangement is an *accommodation arrangement*.
- (2) If:
- (a) an occupier of premises enters into an arrangement with a permit holder; and
 - (b) under the terms of the arrangement, the permit holder is provided with accommodation for the purpose of assisting him or her to exercise rights under this Part;
- the arrangement is an *accommodation arrangement*.

521B Meaning of *transport arrangement*

- (1) If:
- (a) an occupier of premises enters into an arrangement with an organisation; and
 - (b) under the terms of the arrangement, a permit holder is provided with transport for the purpose of assisting him or her to exercise rights under this Part;
- the arrangement is a *transport arrangement*.
- (2) If:
- (a) an occupier of premises enters into an arrangement with a permit holder; and

-
- (b) under the terms of the arrangement, the permit holder is provided with transport for the purpose of assisting him or her to exercise rights under this Part;
the arrangement is a *transport arrangement*.

521C Accommodation arrangements for remote areas

This section applies only in remote areas

- (1) This section applies if rights under this Part are to be exercised by a permit holder on premises that are located in a place where accommodation is not reasonably available to the permit holder unless the occupier of the premises on which the rights are to be exercised provides the accommodation, or causes it to be provided.

Where parties cannot agree on an accommodation arrangement

- (2) If all of the following are satisfied:
- (a) to provide accommodation, or cause accommodation to be provided, to the permit holder would not cause the occupier undue inconvenience;
 - (b) the permit holder, or the organisation of which the permit holder is an official, requests the occupier to provide, or cause to be provided, accommodation for the purpose of assisting the permit holder to exercise rights under this Part on the premises;
 - (c) the request is made within a reasonable period before accommodation is required;
 - (d) the permit holder, and the organisation of which the permit holder is an official, have been unable to enter into an accommodation arrangement with the occupier by consent;
- the occupier must enter into an accommodation arrangement for the purpose of assisting the permit holder to exercise rights under this Part.

Note: The FWC may deal with disputes about whether accommodation is reasonably available, whether providing accommodation or causing it to be provided would cause the occupier undue inconvenience and whether a request to provide accommodation is made within a reasonable period (see subsection 505(1)).

Costs

- (3) If an accommodation arrangement is entered into under subsection (2), the occupier must not charge an organisation or a permit holder a fee for accommodation under the arrangement that is more than is necessary to cover the cost to the occupier of providing the accommodation, or causing it to be provided.

Note: This subsection is a civil remedy provision (see Part 4-1).

FWC's powers if rights misused whilst in accommodation

- (4) For the purposes of this Part, the FWC may treat the conduct of the permit holder whilst in accommodation under an accommodation arrangement to which the occupier is a party, whether entered into under subsection (2) or by consent, as conduct engaged in as part of the exercise of rights by the permit holder under this Part.

521D Transport arrangements for remote areas

This section applies only in remote areas

- (1) This section applies if rights under this Part are to be exercised by a permit holder on premises that are located in a place that is not reasonably accessible to the permit holder unless the occupier of the premises on which the rights are to be exercised provides transport, or causes it to be provided.

Where parties cannot agree on transport arrangement

- (2) If all of the following are satisfied:
- (a) to provide transport to the premises for the permit holder, or cause that transport to be provided, would not cause the occupier undue inconvenience;
 - (b) the permit holder, or the organisation of which the permit holder is an official, requests the occupier to provide, or cause to be provided, transport to the premises for the purpose of assisting the permit holder to exercise rights under this Part;
 - (c) the request is made within a reasonable period before transport is required;

(d) the permit holder, and the organisation of which the permit holder is an official, have been unable to enter into a transport arrangement with the occupier by consent; the occupier must enter into a transport arrangement for the purpose of assisting the permit holder to exercise rights under this Part.

Note: The FWC may deal with disputes about whether premises are reasonably accessible, whether providing transport or causing it to be provided would cause the occupier undue inconvenience and whether a request to provide transport is made within a reasonable period (see subsection 505(1)).

Costs

(3) If a transport arrangement is entered into under subsection (2), the occupier must not charge an organisation or a permit holder a fee for transport under the arrangement that is more than is necessary to cover the cost to the occupier of providing the transport, or causing it to be provided.

Note: This subsection is a civil remedy provision (see Part 4-1).

FWC's powers if rights misused whilst in transport

(4) For the purposes of this Part, the FWC may treat the conduct of the permit holder whilst in transport under a transport arrangement to which the occupier is a party, whether entered into under subsection (2) or by consent, as conduct engaged in as part of the exercise of rights by the permit holder under this Part.

15 Subsection 539(2) (at the end of the cell at table item 25, column headed "Civil remedy provision")

Add:

521C(3)

521D(3)

Schedule 4A—Consent arbitration for general protections and unlawful termination

Part 1—General protections

Fair Work Act 2009

1 Section 12 (definition of *general protections court application*)

Omit “370(2)”, substitute “368(4)”.

2 Subsection 361(1)

Omit “, in proceedings arising from the application,”.

3 Section 365 (heading)

After “with a”, insert “dismissal”.

4 Sections 368, 369, 370 and 371

Repeal the sections, substitute:

368 Dealing with a dismissal dispute (other than by arbitration)

- (1) If an application is made under section 365, the FWC must deal with the dispute (other than by arbitration).

Note: The FWC may deal with a dispute by mediation or conciliation, or by making a recommendation or expressing an opinion (see subsection 595(2)). One of the recommendations that the FWC might make is that an application be made under Part 3-2 (which deals with unfair dismissal) in relation to the dispute.

- (2) Any conference conducted for the purposes of dealing with the dispute (other than by arbitration) must be conducted in private, despite subsection 592(3).

Note: For conferences, see section 592.

- (3) If the FWC is satisfied that all reasonable attempts to resolve the dispute (other than by arbitration) have been, or are likely to be, unsuccessful, then:

- (a) the FWC must issue a certificate to that effect; and

- (b) if the FWC considers, taking into account all the materials before it, that arbitration under section 369, or a general protections court application, in relation to the dispute would not have a reasonable prospect of success, the FWC must advise the parties accordingly.
- (4) A **general protections court application** is an application to a court under Division 2 of Part 4-1 for orders in relation to a contravention of this Part.

369 Dealing with a dismissal dispute by arbitration

- (1) This section applies if:
 - (a) the FWC issues a certificate under paragraph 368(3)(a) in relation to the dispute; and
 - (b) the parties notify the FWC that they agree to the FWC arbitrating the dispute; and
 - (c) the notification:
 - (i) is given to the FWC within 14 days after the day the certificate is issued, or within such period as the FWC allows on an application made during or after those 14 days; and
 - (ii) complies with any requirements prescribed by the procedural rules; and
 - (d) sections 726, 728, 729, 730, 731 and 732 do not apply.

Note: Sections 726, 728, 729, 730, 731 and 732 prevent multiple applications or complaints of a kind referred to in those sections from being made in relation to the same dispute. A notification can only be made under this section where there is no such other application or complaint in relation to the dispute at the time the notification is made. Generally, once a notification is made no such application or complaint can be made in relation to the dispute (see section 727).

- (2) The FWC may deal with the dispute by arbitration, including by making one or more of the following orders:
 - (a) an order for reinstatement of the person;
 - (b) an order for the payment of compensation to the person;
 - (c) an order for payment of an amount to the person for remuneration lost;
 - (d) an order to maintain the continuity of the person's employment;

- (e) an order to maintain the period of the person's continuous service with the employer.
- (3) A person to whom an order under subsection (2) applies must not contravene a term of the order.

Note: This subsection is a civil remedy provision (see Part 4-1).

370 Taking a dismissal dispute to court

A person who is entitled to apply under section 365 for the FWC to deal with a dispute must not make a general protections court application in relation to the dispute unless:

- (a) both of the following apply:
 - (i) the FWC has issued a certificate under paragraph 368(3)(a) in relation to the dispute;
 - (ii) the general protections court application is made within 14 days after the day the certificate is issued, or within such period as the court allows on an application made during or after those 14 days; or
- (b) the general protections court application includes an application for an interim injunction.

Note 1: Generally, if the parties notify the FWC that they agree to the FWC arbitrating the dispute (see subsection 369(1)), a general protections court application cannot be made in relation to the dispute (see sections 727 and 728).

Note 2: For the purposes of subparagraph (a)(ii), in *Brodie-Hanns v MTV Publishing Ltd* (1995) 67 IR 298, the Industrial Relations Court of Australia set down principles relating to the exercise of its discretion under a similarly worded provision of the *Industrial Relations Act 1988*.

5 Section 372 (heading)

After “with a”, insert “non-dismissal”.

6 Subdivision C of Division 8 of Part 3-1

Repeal the Subdivision, substitute:

Subdivision C—Appeals and costs orders

375A Appeal rights

- (1) Despite subsection 604(2), the FWC must not grant permission to appeal from a decision made by the FWC under subsection 369(2) (which is about arbitration of a dismissal dispute) unless the FWC considers that it is in the public interest to do so.
- (2) Despite subsection 604(1), an appeal from a decision made by the FWC in relation to a matter arising under subsection 369(2) can only, to the extent that it is an appeal on a question of fact, be made on the ground that the decision involved a significant error of fact.

375B Costs orders against parties

- (1) The FWC may make an order for costs against a party (the *first party*) to a dispute for costs incurred by the other party to the dispute if:
 - (a) an application for the FWC to deal with the dispute has been made under section 365; and
 - (b) the FWC is satisfied that the first party caused those costs to be incurred because of an unreasonable act or omission of the first party in connection with the conduct or continuation of the dispute.
- (2) The FWC may make an order under subsection (1) only if the other party to the dispute has applied for it in accordance with section 377.
- (3) This section does not limit the FWC's power to order costs under section 611.

376 Costs orders against lawyers and paid agents

- (1) This section applies if:
 - (a) an application for the FWC to deal with a dispute has been made under section 365 or 372; and
 - (b) a person who is a party to the dispute has engaged a lawyer or paid agent (the *representative*) to represent the person in the dispute; and

- (c) under section 596, the person is required to seek the FWC's permission to be represented by the representative.
- (2) The FWC may make an order for costs against the representative for costs incurred by the other party to the dispute if the FWC is satisfied that the representative caused those costs to be incurred because:
 - (a) the representative encouraged the person to start, continue or respond to the dispute and it should have been reasonably apparent that the person had no reasonable prospect of success in the dispute; or
 - (b) of an unreasonable act or omission of the representative in connection with the conduct or continuation of the dispute.
- (3) The FWC may make an order under this section only if the other party to the dispute has applied for it in accordance with section 377.
- (4) This section does not limit the FWC's power to order costs under section 611.

377 Applications for costs orders

An application for an order for costs in relation to an application under section 365 or 372 must be made within 14 days after the FWC finishes dealing with the dispute.

377A Schedule of costs

- (1) A schedule of costs may be prescribed in relation to items of expenditure likely to be incurred in relation to matters that can be covered by an order under section 611, 375B or 376 in relation to an application under section 365, including expenses arising from the representation of a party by a person or organisation other than on a legal professional basis.
- (2) If a schedule of costs is prescribed for the purposes of subsection (1), then, in awarding costs under section 611, 375B or 376 in relation to an application under section 365, the FWC:
 - (a) is not limited to the items of expenditure appearing in the schedule; but

- (b) if an item does appear in the schedule—must not award costs in relation to that item at a rate or of an amount that exceeds the rate or amount appearing in the schedule.

378 Contravening costs orders

A person to whom an order for costs made under section 375B or 376 applies must not contravene a term of the order.

Note: This section is a civil remedy provision (see Part 4-1).

7 Subsection 539(2) (at the end of the cell at table item 11, column 1)

Add:

369(3)

8 Section 544 (note 1)

Omit “subsections 371(2)”, substitute “subparagraphs 370(a)(ii)”.

9 Paragraph 601(5)(a)

Omit “section 369”, substitute “paragraph 368(3)(a)”.

10 After paragraph 609(2)(e)

Insert:

(ea) the requirements for making a notification to the FWC;

11 Subparagraph 727(1)(b)(iii)

Omit all the words after “under”, substitute “paragraph 368(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful)”.

12 After subsection 727(1)

Insert:

(1A) This section also applies if:

- (a) a general protections FWC application has been made by, or on behalf of, the person in relation to the dismissal; and
- (b) the application has not:

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Part 1 General protections

- (i) been withdrawn by the person who made the application; or
- (ii) failed for want of jurisdiction; and
- (c) a certificate in relation to the dispute has been issued by the FWC under paragraph 368(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful); and
- (d) a notification of the parties' agreement to the FWC arbitrating the dispute has been made as referred to in paragraphs 369(1)(b) and (c).

Part 2—Unlawful termination

Fair Work Act 2009

13 Section 12 (definition of *unlawful termination court application*)

Omit “778(2)”, substitute “776(4)”.

14 Subsection 539(2) (at the end of the cell at table item 35, column 1)

Add:

777(3)

15 Section 544 (note 1)

Omit “779(2)”, substitute “778(a)(ii)”.

16 Subparagraph 730(1)(b)(iii)

Omit all the words after “under”, substitute “paragraph 776(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful)”.

17 After subsection 730(1)

Insert:

- (1A) This section also applies if:
- (a) an unlawful termination FWC application has been made by, or on behalf of, the person in relation to the dismissal; and
 - (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction; and
 - (c) a certificate in relation to the dispute has been issued by the FWC under paragraph 776(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful); and

- (d) a notification of the parties' agreement to the FWC arbitrating the dispute has been made as referred to in paragraphs 777(1)(b) and (c).

18 Paragraph 774(1)(a)

Omit "60", substitute "21".

19 Sections 776, 777, 778, 779, 780 and 781

Repeal the sections, substitute:

776 Dealing with a dispute (other than by arbitration)

- (1) If an application is made under section 773, the FWC must deal with the dispute (other than by arbitration).

Note: The FWC may deal with a dispute by mediation or conciliation, or by making a recommendation or expressing an opinion (see subsection 595(2)).

- (2) Any conference conducted for the purposes of dealing with the dispute (other than by arbitration) must be conducted in private, despite subsection 592(3).

Note: For conferences, see section 592.

- (3) If the FWC is satisfied that all reasonable attempts to resolve the dispute (other than by arbitration) have been, or are likely to be, unsuccessful, then:

- (a) the FWC must issue a certificate to that effect; and
- (b) if the FWC considers, taking into account all the materials before it, that arbitration under section 777, or an unlawful termination court application, in relation to the dispute would not have a reasonable prospect of success, the FWC must advise the parties accordingly.

- (4) An *unlawful termination court application* is an application to a court under Division 2 of Part 4-1 for orders in relation to a contravention of subsection 772(1).

777 Dealing with a dispute by arbitration

- (1) This section applies if:

- (a) the FWC issues a certificate under paragraph 776(3)(a) in relation to the dispute; and

- (b) the parties notify the FWC that they agree to the FWC arbitrating the dispute; and
- (c) the notification:
 - (i) is given to the FWC within 14 days after the day the certificate is issued, or within such period as the FWC allows on an application made during or after those 14 days; and
 - (ii) complies with any requirements prescribed by the procedural rules; and
- (d) sections 726, 727, 728, 729, 731 and 732 do not apply.

Note: Sections 726, 727, 728, 729, 731 and 732 prevent multiple applications or complaints of a kind referred to in those sections from being made in relation to the same dispute. A notification can only be made under this section where there is no such other application or complaint in relation to the dispute at the time the notification is made. Generally, once a notification is made no such application or complaint can be made in relation to the dispute (see section 730).

- (2) The FWC may deal with the dispute by arbitration, including by making one or more of the following orders:
 - (a) an order for reinstatement of the employee;
 - (b) an order for the payment of compensation to the employee;
 - (c) an order for payment of an amount to the employee for remuneration lost;
 - (d) an order to maintain the continuity of the employee's employment;
 - (e) an order to maintain the period of the employee's continuous service with the employer.
- (3) A person to whom an order under subsection (2) applies must not contravene a term of the order.

Note: This subsection is a civil remedy provision (see Part 4-1).

778 Taking a dispute to court

A person who is entitled to apply under section 773 for the FWC to deal with a dispute must not make an unlawful termination court application in relation to the dispute unless:

- (a) both of the following apply:
 - (i) the FWC has issued a certificate under paragraph 776(3)(a) in relation to the dispute;

- (ii) the unlawful termination court application is made within 14 days after the day the certificate is issued, or within such period as the court allows on an application made during or after those 14 days; or
- (b) the unlawful termination court application includes an application for an interim injunction.

Note 1: Generally, if the parties notify the FWC that they agree to the FWC arbitrating the dispute (see subsection 777(1)), an unlawful termination court application cannot be made in relation to the dispute (see sections 730 and 731).

Note 2: For the purposes of subparagraph (a)(ii), in *Brodie-Hanns v MTV Publishing Ltd* (1995) 67 IR 298, the Industrial Relations Court of Australia set down principles relating to the exercise of its discretion under a similarly worded provision of the *Industrial Relations Act 1988*.

779 Appeal rights

- (1) Despite subsection 604(2), the FWC must not grant permission to appeal from a decision made by the FWC under subsection 777(2) (which is about arbitration of a dispute) unless the FWC considers that it is in the public interest to do so.
- (2) Despite subsection 604(1), an appeal from a decision made by the FWC in relation to a matter arising under subsection 777(2) can only, to the extent that it is an appeal on a question of fact, be made on the ground that the decision involved a significant error of fact.

779A Costs orders against parties

- (1) The FWC may make an order for costs against a party (the ***first party***) to a dispute for costs incurred by the other party to the dispute if:
 - (a) an application for the FWC to deal with the dispute has been made under section 773; and
 - (b) the FWC is satisfied that the first party caused those costs to be incurred because of an unreasonable act or omission of the first party in connection with the conduct or continuation of the dispute.
- (2) The FWC may make an order under subsection (1) only if the other party to the dispute has applied for it in accordance with section 781.

- (3) This section does not limit the FWC's power to order costs under section 611.

780 Costs orders against lawyers and paid agents

- (1) This section applies if:
- (a) an application for the FWC to deal with a dispute has been made under section 773; and
 - (b) a person who is a party to the dispute has engaged a lawyer or paid agent (the *representative*) to represent the person in the dispute; and
 - (c) under section 596, the person is required to seek the FWC's permission to be represented by the representative.
- (2) The FWC may make an order for costs against the representative for costs incurred by the other party to the dispute if the FWC is satisfied that the representative caused those costs to be incurred because:
- (a) the representative encouraged the person to start, continue or respond to the dispute and it should have been reasonably apparent that the person had no reasonable prospect of success in the dispute; or
 - (b) of an unreasonable act or omission of the representative in connection with the conduct or continuation of the dispute.
- (3) The FWC may make an order under this section only if the other party to the dispute has applied for it in accordance with section 781.
- (4) This section does not limit the FWC's power to order costs under section 611.

781 Applications for costs orders

An application for an order for costs in relation to an application under section 773 must be made within 14 days after the FWC finishes dealing with the dispute.

781A Schedule of costs

- (1) A schedule of costs may be prescribed in relation to items of expenditure likely to be incurred in relation to matters that can be

covered by an order under section 611, 779A or 780 in relation to an application under section 773, including expenses arising from the representation of a party by a person or organisation other than on a legal professional basis.

- (2) If a schedule of costs is prescribed for the purposes of subsection (1), then, in awarding costs under section 611, 779A or 780 in relation to an application under section 773, the FWC:
- (a) is not limited to the items of expenditure appearing in the schedule; but
 - (b) if an item does appear in the schedule—must not award costs in relation to that item at a rate or of an amount that exceeds the rate or amount appearing in the schedule.

20 Section 782

Omit “section 780”, substitute “section 779A or 780”.

21 Subsection 783(1)

Omit “, in proceedings arising from the application,”.

Schedule 5—The FWC

Fair Work Act 2009

1 After paragraph 576(1)(n)

Insert:

- (na) transfer of business from a State public sector employer (Part 6-3A);

2 At the end of subsection 576(1)

Add:

- ; (p) special provisions about TCF outworkers (Part 6-4A).

3 Before paragraph 576(2)(a)

Insert:

- (aa) promoting cooperative and productive workplace relations and preventing disputes;

4 Paragraph 632(b)

Omit “that provides for the office to be held by an FWC Member”.

Schedule 6—Technical amendments

Fair Work Act 2009

1 Section 12 (definition of *default fund employee*)

Omit “149A(2)”, substitute “149C(2)”.

Note: This item fixes an incorrect cross-reference.

2 Subsection 176(4)

Omit “subsection (3),”, substitute “subsection (3),”.

Note: This item fixes incorrect punctuation.

3 Subsection 400(1)

Omit “FWA” (wherever occurring), substitute “the FWC”.

Note: This item fixes an incorrect reference.

4 Subsection 515(5)

Omit “an the FWC order”, substitute “an FWC order”.

Note: This item fixes a grammatical error.

5 Paragraph 584(1)(a)

Omit “the Minimum Wage Panel”, substitute “an Expert Panel”.

Note: This item fixes an incorrect reference.

6 Subsection 603(1)

Omit “of The FWC”, substitute “of the FWC”.

Note: This item fixes a grammatical error.

7 Subsection 603(1) (note)

Omit “The FWC” (wherever occurring), substitute “the FWC”.

Note: This item fixes a grammatical error.

8 Paragraph 670(2)(a)

Omit “FWA”, substitute “the FWC”.

Note: This item fixes an incorrect reference.

Fair Work Amendment Act 2012

9 Item 40 of Schedule 8 (heading)

Repeal the heading, substitute:

40 Subsection 644(1) (heading)

Note: This item fixes a misdescribed amendment.

10 Item 41 of Schedule 8

Omit “Deputy President,”, substitute “Deputy President”.

Note: This item fixes a misdescribed amendment.

11 Item 414 of Schedule 9 (heading)

Repeal the heading, substitute:

414 Subsection 400(2)

Note: This item fixes a misdescribed amendment.

12 Item 1144 of Schedule 9

Omit “FWC’s” (first occurring), substitute “FWA’s”.

Note: This item fixes a misdescribed amendment.

13 Item 1252 of Schedule 9

Repeal the item, substitute:

1252 Subitem 2(1) of Schedule 20

Omit “FWA” (wherever occurring), substitute “the FWC”.

Note: This item fixes a misdescribed amendment.

14 Item 1364 of Schedule 9

Repeal the item.

Note: This item repeals an item made redundant by other amendments.

Schedule 6A—Registered organisations

Fair Work (Registered Organisations) Amendment Act 2012

1 Section 2 (table item 3)

Repeal the item, substitute:

| | | |
|---------------------------|-----------------|----------------|
| 3. Schedule 1, Part 1A | 1 July 2013. | 1 July 2013 |
| 4. Schedule 1, Part 2 | 1 January 2014. | 1 January 2014 |

2 After Part 1 of Schedule 1

Insert:

Part 1A—Amendments commencing on 1 July 2013

Fair Work (Registered Organisations) Act 2009

39A At the end of Division 1 of Part 2 of Chapter 5

Add:

142A Model rules for policies relating to expenditure

(1) The Minister may, by notice published in the *Gazette*, issue guidelines containing one or more sets of model rules dealing with the matters referred to in paragraph 141(1)(ca). An organisation or a branch of an organisation may adopt model rules in whole or in part, and with or without modification.

(2) A notice under subsection (1) is not a legislative instrument.

39B After Division 3 of Part 2 of Chapter 5

Insert:

Division 3A—Rules relating to disclosure**148F Model rules relating to disclosure**

- (1) The Minister may, by notice published in the *Gazette*, issue guidelines containing one or more sets of model rules dealing with the matters referred to in sections 148A, 148B and 148C. An organisation or a branch of an organisation may adopt model rules in whole or in part, and with or without modification.
- (2) A notice under subsection (1) is not a legislative instrument.

39C Transitional—model rules

- (1) Sections 142A and 148F of the *Fair Work (Registered Organisations) Act 2009*, as inserted by this Schedule, apply, during the transition period, as if Part 2 of this Schedule had commenced at the same time as this item.
- (2) In this item:
transition period means the period:
 - (a) beginning on 1 July 2013; and
 - (b) ending on 31 December 2013.

3 Part 2 of Schedule 1 (heading)

Repeal the heading, substitute:

Part 2—Amendments commencing on 1 January 2014**4 Item 56 of Schedule 1**

Repeal the item.

5 Item 57 of Schedule 1 (heading)

Repeal the heading, substitute:

57 Before section 148F**6 Item 57 of Schedule 1 (heading to new Division 3A)**

Omit the heading.

7 Item 57 of Schedule 1 (after new subsection 148C(2))

Insert:

- (2A) Subsections (1) and (2) do not apply to a payment made to a related party if:
- (a) the related party is an officer of the organisation or the branch (as the case may be); and
 - (b) the payment:
 - (i) consists of remuneration paid to the officer by the organisation or the branch (as the case may be); or
 - (ii) is reimbursement for expenses reasonably incurred by the officer in performing the officer's duties as an officer.

Note: Under section 148A the rules of the organisation or branch must require certain disclosures in relation to remuneration.

8 Item 57 of Schedule 1 (new section 148F)

Omit the section.

9 Item 58 of Schedule 1

Repeal the item, substitute:

58 Transitional—disclosures to be made in relation 2013-14 financial year

- (1) This item applies to:
- (a) an organisation that is, as at 1 January 2014, registered as an organisation under the *Fair Work (Registered Organisations) Act 2009*; and
 - (b) a branch of such an organisation.
- (2) Rules made under subsection 148A(1) or (2) of the new Act are taken to require:
- (a) the disclosure of remuneration paid during the period beginning on 1 July 2013 and ending on 31 December 2013; and
 - (b) the disclosure to be made as soon as practicable after 31 December 2013, but not later than 31 January 2014.
- (3) Rules made under subsection 148B(1) or (2) of the new Act are taken to require:

- (a) the disclosure of interests each officer has or acquires during the period beginning on 1 July 2013 and ending on 31 December 2013; and
 - (b) the disclosure to be made as soon as practicable after 31 December 2013, but not later than 31 January 2014.
- (4) Rules made under subsection 148A(4) or (5), 148B(4) or (5) or 148C(1) or (2) of the new Act are taken to require disclosures to be made:
 - (a) in relation to the period beginning on 1 July 2013 and ending on 30 June 2014; and
 - (b) by 31 December 2014.
- (5) Despite anything in the rules, disclosures of a kind referred to in a provision mentioned in subitem (4) are not otherwise required in relation to the period referred to in paragraph (4)(a).
- (6) Disclosures made in accordance with subitems (2) to (4) are to be made in the manner provided for in the rules.
- (7) Subitems (2) to (5) do not otherwise affect the rules.
- (8) In this item:
new Act means the *Fair Work (Registered Organisations) Act 2009* as in force immediately after the commencement of this item.

Schedule 7—Application and transitional provisions

Fair Work Act 2009

1 After Schedule 3

Insert:

Schedule 4—Amendments made by the Fair Work Amendment Act 2013

Note: See section 795A.

Part 1—Preliminary

1 Definition

In this Schedule:

amending Act means the *Fair Work Amendment Act 2013*.

Part 2—Family-friendly measures (Schedule 1)

2 Part 1 of Schedule 1 to the amending Act

The amendments made by Part 1 of Schedule 1 to the amending Act apply in relation to a period of unpaid special maternity leave that starts after the commencement of that Part.

3 Part 2 of Schedule 1 to the amending Act

The amendments made by Part 2 of Schedule 1 to the amending Act apply in relation to the taking of unpaid parental leave by members of an employee couple if the first taking of leave by either member of the employee couple occurs after the commencement of that Part.

4 Part 3 of Schedule 1 to the amending Act

The amendments made by Part 3 of Schedule 1 to the amending Act apply in relation to a request that is made under subsection 65(1) after the commencement of that Part.

5 Part 4 of Schedule 1 to the amending Act

Application of amendments

- (1) The amendment made by item 19 of Schedule 1 to the amending Act applies in relation to a modern award that is in operation on or after 1 January 2014, whether or not the award was made before that day.
- (2) The amendments made by items 20 and 21 of Schedule 1 to the amending Act apply in relation to an enterprise agreement that is made after the commencement of Part 4 of that Schedule.

Transitional provision

- (3) If:
 - (a) a modern award is made before 1 January 2014; and
 - (b) the modern award is in operation on that day; and
 - (c) immediately before that day, the modern award does not include a term (the *relevant term*) of the kind mentioned in section 145A (as inserted by item 19 of Schedule 1 to the amending Act);then the FWC must, by 31 December 2013, make a determination varying the modern award to include the relevant term.
- (4) A determination made under subclause (3) comes into operation on (and takes effect from) 1 January 2014.
- (5) Section 168 applies to a determination made under subclause (3) as if it were a determination made under Part 2-3.

6 Part 5 of Schedule 1 to the amending Act

The amendments made by Part 5 of Schedule 1 to the amending Act apply in relation to evidence that is given under section 81 after the commencement of that Part.

Part 3—Modern awards objective (Schedule 2)

7 Schedule 2 to the amending Act

The amendment made by Schedule 2 to the amending Act applies in relation to a modern award that is made or varied after the commencement of that Schedule.

Part 4—Anti-bullying measure (Schedule 3)

8 Schedule 3 to the amending Act

The amendments made by Schedule 3 to the amending Act apply in relation to an application that is made under section 789FC (as inserted by item 6 of that Schedule) after the commencement of that Schedule.

Part 4A—Conferences (Schedule 3A)

8A Schedule 3A to the amending Act

The amendments made by Schedule 3A to the amending Act apply in relation to a matter that arises before or after the commencement of that Schedule, whether or not a conference starts to be conducted in relation to the matter before or after that commencement.

Part 5—Right of entry (Schedule 4)

9 Schedule 4 to the amending Act

Application of amendment relating to sections 492 and 492A

- (1) The amendment made by item 7 of Schedule 4 to the amending Act applies in relation to interviews conducted and discussions held after the commencement of that item.

Application of amendments relating to section 505A

- (2) The amendments made by items 12 and 13 of Schedule 4 to the amending Act apply in relation to the frequency of entry after the commencement of those items.

Application of amendments relating to accommodation arrangements and transport arrangements

- (3) The amendments made by items 14 and 15 of Schedule 4 to the amending Act do not apply in relation to arrangements entered into before the commencement of those items.

Part 6—Consent arbitration for general protections and unlawful termination (Schedule 4A)

10 Schedule 4A to the amending Act

- (1) The amendments made by Part 1 of Schedule 4A to the amending Act apply in relation to dismissals that take effect after the commencement of that Schedule.
- (2) The amendments made by Part 2 of Schedule 4A to the amending Act apply in relation to employment that is terminated after the commencement of that Schedule.

Part 7—The FWC (Schedule 5)

11 Item 4 of Schedule 5 to the amending Act

The amendment made by item 4 of Schedule 5 to the amending Act applies in relation to an appointment made after the commencement of that Schedule.

*[Minister's second reading speech made in—
House of Representatives on 21 March 2013
Senate on 17 June 2013]*

(87/13)

56 *Fair Work Amendment Act 2013* No. 73, 2013