



Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023

No. 43, 2023

**An Act to amend the *Fair Work Act 2009* and the
law relating to long service leave in the coal mining
industry, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedules.....	3
Schedule 1—Protection for migrant workers		4
	<i>Fair Work Act 2009</i>	4
Schedule 2—Unpaid parental leave		5
	<i>Fair Work Act 2009</i>	5
Schedule 3—Superannuation		17
	Part 1—National Employment Standards—superannuation contributions	17
	<i>Fair Work Act 2009</i>	17
	Part 2—Other amendments	20
	<i>Fair Work Act 2009</i>	20
Schedule 4—Workplace determinations		21
	<i>Fair Work Act 2009</i>	21
Schedule 5—Employee authorised deductions		22
	<i>Fair Work Act 2009</i>	22
Schedule 6—Coal mining long service leave scheme		23
	<i>Coal Mining Industry (Long Service Leave) Administration Act 1992</i>	23
	<i>Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992</i>	27
Schedule 7—Technical corrections		29
	<i>Fair Work Act 2009</i>	29
Schedule 8—Application and transitional provisions		30
	<i>Fair Work Act 2009</i>	30



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industry, and for related purposes**

[Assented to 30 June 2023]

The Parliament of Australia enacts:

*No. 43, 2023 Fair Work Legislation Amendment (Protecting Worker Entitlements)
Act 2023* *1*

1 Short title

This Act is the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023*.

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
Provisions	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.	30 June 2023
2. Schedule 1	The day after this Act receives the Royal Assent.	1 July 2023
3. Schedule 2	The later of: (a) 1 July 2023; and (b) the day after this Act receives the Royal Assent.	1 July 2023
4. Schedule 3, Part 1	The first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	1 January 2024
5. Schedule 3, Part 2	The day after this Act receives the Royal Assent.	1 July 2023
6. Schedule 4	The day after this Act receives the Royal Assent.	1 July 2023
7. Schedule 5	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	30 December 2023
8. Schedule 6	The earlier of:	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	(a) a single day to be fixed by Proclamation; and (b) the first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
9. Schedules 7 and 8	The day after this Act receives the Royal Assent.	1 July 2023

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 Schedules

Legislation 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—Protection for migrant workers

Fair Work Act 2009

1 At the end of Division 4 of Part 1-3

Add:

40B Effect of the *Migration Act 1958*

For the purposes of this Act, any effect of the *Migration Act 1958*, or an instrument made under that Act, on the validity of a contract of employment, or the validity of a contract for services, is to be disregarded.

Schedule 2—Unpaid parental leave

Fair Work Act 2009

1 Section 12 (definition of *concurrent leave*)

Repeal the definition.

2 Section 12 (definition of *flexible unpaid parental leave*)

Omit “subsection 72A(1)”, substitute “subsections 72A(1) and (2A)”.

3 Section 12 (definition of *unpaid special maternity leave*)

Repeal the definition.

4 Section 12

Insert:

unpaid special parental leave means unpaid special parental leave to which a national system employee is entitled under section 80.

5 Subparagraph 67(2)(b)(ii)

Omit “child; or”, substitute “child;”.

6 Subparagraph 67(2)(b)(iii)

Repeal the subparagraph.

7 Subsection 67(3)

Repeal the subsection, substitute:

Date at which employee must have completed 12 months of service

(3) For the purposes of subsections (1) and (2), the date that applies is:

(a) if the leave is:

(i) birth-related leave starting before the birth of the child;
or

(ii) unpaid special parental leave;
the expected date of birth of the child; or

(b) in any other case—the date on which the employee’s period of leave is to start.

8 Paragraph 67(4)(b)

Omit “maternity leave”, substitute “parental leave”.

9 Paragraph 69(1)(b)

Omit “his or her”, substitute “the employee’s”.

10 Section 71 (heading)

Omit “—other than for members of an employee couple who each intend to take leave”.

11 Subsection 71(1)

Repeal the subsection, substitute:

Application of this section

(1) This section applies to an employee who intends to take unpaid parental leave.

12 Subsection 71(2) (note 1)

Omit “he or she”, substitute “the employee”.

13 Before subsection 71(3)

Insert:

When birth-related leave must start and end

14 Subsection 71(3)

Omit “for a female employee”, substitute “for an employee”.

15 At the end of paragraph 71(3)(b)

Add “or”.

16 After paragraph 71(3)(b)

Insert:

(c) during the 24-month period starting on the date of birth of the child;

17 Subsection 71(3)

Omit “must not start later than the date of birth of the child”, substitute “must end during the 24-month period starting on the date of birth of the child”.

18 Subsection 71(3) (note 1)

Omit “she”, substitute “the employee”.

19 Subsection 71(3) (paragraph (b) of note 1)

Omit “maternity leave”, substitute “parental leave”.

20 Subsection 71(3) (note 2)

Omit “her”, substitute “the employee’s”.

21 Subsection 71(3) (note 2)

Omit “she”, substitute “the employee”.

22 Subsection 71(4)

Omit “must start on the date of birth of the child”, substitute “must start and end during the 24-month period starting on the date of birth of the child”.

23 Subsection 71(5) (at the end of the heading)

Add “*and end*”.

24 Subsection 71(5)

Omit “must start on the day of placement of the child”, substitute “must start and end during the 24-month period starting on the day of placement of the child”.

25 Subsection 71(6)

Repeal the subsection, substitute:

Limit on amount of leave

- (6) The employee may take unpaid parental leave under this section only if the period of leave is no longer than 12 months, less the employee's notional flexible period.

Note: An employee is entitled under section 76 to request an extension of the period of leave beyond the employee's available parental leave period. However, the period of leave may not be extended beyond 24 months after the date of birth or day of placement of the child (see subsection 76(7)).

26 Section 72

Repeal the section.

27 Subsection 72A(1) (heading)

Omit "up to 30 days".

28 Subsection 72A(1)

Omit "30 days", substitute "100 days (or, if a higher number of days is prescribed by the regulations, that higher number of days)".

29 Subsection 72A(2)

After "leave", insert "under subsection (1)".

30 After subsection 72A(2)

Insert:

Taking leave that starts up to 6 weeks before the expected date of birth of the child

- (2A) A pregnant employee may take unpaid parental leave (***flexible unpaid parental leave***) during the period that starts 6 weeks before the expected date of birth of the child if the requirements of this section are satisfied in relation to the leave.

Note 1: The flexible unpaid parental leave is unpaid parental leave and so comes out of the employee's entitlement to 12 months of unpaid parental leave under section 70.

Note 2: The number of days of flexible unpaid parental leave that the employee takes must not be more than the number of flexible days

notified to the employer under subsection 74(3C) (subject to any agreement under subsection 74(3D)).

(2B) Flexible unpaid parental leave under subsection (2A) is available in full to pregnant part-time employees and pregnant casual employees.

(2C) The amount of flexible unpaid parental leave to which an employee is entitled under subsection (1) in relation to the child is reduced by the number of days of flexible unpaid parental leave taken by the employee under subsection (2A) in relation to the child.

31 At the end of subsection 72A(6)

Add “For this purpose, the employee’s flexible days are the flexible days notified to the employer under subsection 74(3C) (subject to any agreement under subsection 74(3D)).”.

32 Subsections 72A(8) and (9)

Repeal the subsections.

33 Subsection 72A(11) (heading)

Omit “*sections 71 and 72*”, substitute “*section 71*”.

34 Subsection 72A(11)

Omit “sections 71 and 72”, substitute “section 71”.

35 At the end of section 72A

Add:

(12) Despite anything in subsection (11), flexible unpaid parental leave cannot be used to break up a period of unpaid parental leave taken under section 71.

36 Subsection 73(1)

Omit “she”, substitute “the employee”.

37 Paragraph 73(1)(b)

Omit “her”, substitute “the employee’s”.

38 Subsection 73(2)

After “take a period of unpaid parental leave”, insert “other than flexible unpaid parental leave”.

39 Subparagraph 73(2)(c)(i)

Omit “her”, substitute “the employee’s”.

40 Subsection 73(3) (note)

Repeal the note.

41 Subsection 73(4)

Omit “sections 71 and 72”, substitute “section 71”.

42 Subsection 74(1)

Omit “his or her”, substitute “the employee’s”.

43 Subsection 74(1)

Omit “or 72”.

44 Subsection 74(1)

Before “by the employee”, insert “or both,”.

45 Subsection 74(2)

Repeal the subsection, substitute:

Notice requirements

- (2) The employee must give the notice to the employer:
- (a) at least 10 weeks before starting any of the leave covered by the notice; or
 - (b) if that is not practicable, and:
 - (i) the first or only period of leave covered by the notice is leave to be taken under section 71; or
 - (ii) any of the leave covered by the notice starts before the child’s date of birth or expected date of birth; as soon as practicable (which may be a time after any of the leave covered by the notice has started).

(2A) However, if the first or only period of leave covered by the notice is leave to be taken under section 72A, the notice may be given at any later time if the employer agrees.

46 Subsection 74(3)

Omit “The notice”, substitute “If any of the leave covered by the notice is to be taken under section 71, the notice”.

47 Subsection 74(3)

After “leave”, insert “to be taken under section 71”.

48 Subsections 74(3A) and (3B)

Repeal the subsections.

49 Subsection 74(3C)

Omit “The notice”, substitute “If any of the leave covered by the notice is to be taken under section 72A, the notice”.

50 Paragraph 74(3D)(b)

Omit “30”, substitute “100 (or, if a higher number of days is prescribed by regulations made for the purposes of subsection 72A(1), that higher number)”.

51 Subsection 74(4) (heading)

Omit “or 72”.

52 Subsection 74(4)

Omit “the leave is”, substitute “any of the leave covered by the notice is”.

53 Subsection 74(4)

Omit “or 72”.

54 Paragraphs 74(4)(a) and (b)

After “leave”, insert “to be taken under section 71”.

55 Subsection 74(4A)

Repeal the subsection.

56 At the end of subsection 74(4B)

Add:

Note: Whether or not it is practicable for the employee to give notice at least 4 weeks before that day will depend on the employee's personal and family circumstances. For example, it may not be practicable for the employee to give notice at least 4 weeks before that day where the employee experiences a health issue, a pregnancy complication or an unexpected change in the employee's child care arrangements.

57 Subsection 74(5)

Omit "his or her", substitute "the employee's".

58 Subsection 74(7)

Omit "or 72".

59 Paragraph 75(1)(a)

Omit "or 72".

60 Paragraphs 75(2)(a) and (c)

Repeal the paragraphs.

61 Paragraph 75(2)(d)

Omit "74(3A) or (3B)", substitute "74(2) or (2A)".

62 Subsection 75(3)

After "unpaid parental leave", insert "taken under section 71".

63 Subsection 75(3)

Omit "his or her", substitute "the employee's".

64 Subsection 76(1)

Omit "or 72".

65 Subsection 76(1)

Omit "his or her" (wherever occurring), substitute "the employee's".

66 At the end of subsection 76(2)

Add:

Note: The request must be made when the employee is taking unpaid parental leave under section 71.

67 Subsection 76(6)

Repeal the subsection.

68 Section 77

Omit “he or she”, substitute “the employee”.

69 Subsection 77A(4)

Omit “his or her” (wherever occurring), substitute “the employee’s”.

70 Subsection 78(3)(b)

Omit “a female employee”, substitute “an employee”.

71 Subsection 78A(1)

Omit “his or her”, substitute “the employee’s”.

72 Subsection 78A(2) (note)

Omit “sections 71 and 72”, substitute “section 71”.

73 Subsection 79(1)

Omit “while he or she”, substitute “while the employee”.

74 Subsection 79(1) (note)

Omit “he or she”, substitute “the employee”.

75 Subsection 79A(1)

Omit “his or her”, substitute “the employee’s”.

76 Subsection 79A(1)

Omit “he or she”, substitute “the employee”.

77 Paragraph 79A(2)(a)

Omit “his or her”, substitute “the employee’s”.

78 Subparagraph 79A(2)(c)(i)

Omit “he or she”, substitute “the employee”.

79 Paragraph 79B(b)

Omit “his or her”, substitute “the employee’s”.

80 Section 80 (heading)

Omit “maternity leave”, substitute “parental leave”.

81 Subsection 80(1) (heading)

Omit “maternity leave”, substitute “parental leave”.

82 Subsection 80(1)

Omit “maternity leave” (first occurring), substitute “parental leave”.

83 Subsection 80(1)

Omit “A female employee”, substitute “An employee”.

84 Subsection 80(1)

Omit “she” (first occurring), substitute “the employee”.

85 Paragraph 80(1)(a)

Omit “she”, substitute “the employee is pregnant and”.

86 Subparagraph 80(1)(b)(i)

Omit “she”, substitute “the employee”.

87 Subsection 80(1) (note 1A)

Omit “female”.

88 Subsection 80(1) (note 2)

Omit “a female employee”, substitute “an employee”.

89 Subsection 80(1) (note 2)

Omit “she”, substitute “the employee”.

90 Subsection 80(1) (note 2)

Omit “maternity leave”, substitute “parental leave”.

91 Subsection 80(2)

Omit “her”, substitute “the employee’s”.

92 Subsection 80(2)

Omit “maternity leave”, substitute “parental leave”.

93 Subsection 80(4)

Omit “her”, substitute “the employee’s”.

94 Subsection 80(4)

Omit “maternity leave”, substitute “parental leave”.

95 Subsection 80(6)

Omit “maternity leave”, substitute “parental leave”.

96 At the end of section 80 (before the note)

Add:

(7) Subdivision B does not apply to unpaid special parental leave.

97 Subsection 81(1)

Omit “she gives her”, substitute “the employee gives the employee’s”.

98 Subsection 81(1)

Omit “that she”, substitute “that the employee”.

99 Subsection 81(1)

Omit “her” (second occurring), substitute “the employee”.

100 Subsection 81(1)

Omit “her” (third and fourth occurring), substitute “the employee’s”.

101 Subsection 81(4)

Omit “she” (wherever occurring), substitute “the employee”.

102 Subsections 85(4) and (6)

Omit “his or her”, substitute “the employee’s”.

103 Section 97 (note 2)

Omit “a female”, substitute “an”.

104 Section 97 (note 2)

Omit “she”, substitute “the employee”.

105 Section 97 (note 2)

Omit “maternity leave”, substitute “parental leave”.

106 Subsection 745(1) (note 1)

Omit “1” (first occurring).

107 Subsection 745(1) (note 2)

Repeal the note.

108 Subsections 772(1) and (3)

Omit “maternity leave or other” (wherever occurring).

Schedule 3—Superannuation

Part 1—National Employment Standards— superannuation contributions

Fair Work Act 2009

1 After paragraph 61(2)(h)

Insert:

(ha) superannuation contributions (Division 10A);

2 After Division 10 of Part 2-2

Insert:

Division 10A—Superannuation contributions

116A Division does not apply to certain employees or employers in referring States

This Division does not apply in relation to:

- (a) an employee who is a national system employee only because of section 30C or 30M (which extend the meaning of *national system employee*); or
- (b) an employer that is a national system employer only because of section 30D or 30N (which extend the meaning of *national system employer*).

116B Employer's obligation to make superannuation contributions

An employer must make contributions to a superannuation fund for the benefit of an employee so as to avoid liability to pay superannuation guarantee charge under the *Superannuation Guarantee Charge Act 1992* in relation to the employee.

116C Reduction of employer’s liability to the extent of superannuation charge payments

The obligation to make contributions for an employee under section 116B does not apply to an employer to the extent that:

- (a) the employer has made a charge payment (within the meaning of section 63A of the *Superannuation Guarantee (Administration) Act 1992*) in respect of the employee under Part 8 of that Act; and
- (b) the employee is a benefiting employee (within the meaning of that Part); and
- (c) the Commissioner of Taxation is required to pay, or otherwise deal with, a shortfall component (within the meaning of that Part) for the benefit of the employee under that Part.

116D Preventing multiple actions

Scope

- (1) This section applies if:
 - (a) an employer has contravened, or allegedly contravened, a civil remedy provision that relates to a contravention of this Division; and
 - (b) the contravention, or alleged contravention, relates wholly or partly to an employee; and
 - (c) the employee or another person referred to in an item in column 2 of the table in subsection 539(2) would be entitled to apply for an order under Division 2 of Part 4-1 in relation to the contravention, or alleged contravention.

No application for orders in certain circumstances

- (2) An application for such an order may not be made if:
 - (a) the Commissioner of Taxation has commenced proceedings against the employer to recover an amount of superannuation guarantee charge; and
 - (b) either:
 - (i) the Commissioner has obtained an order for recovery of the charge; or
-

- (ii) if the proceedings have not been finally disposed of—
the Commissioner has not discontinued the proceedings;
and
 - (c) the employer’s superannuation guarantee shortfall in respect
of which the charge is imposed includes an individual
superannuation guarantee shortfall for the employee.
- (3) Terms (apart from employee and employer) used in this section
that are defined in the *Superannuation Guarantee (Administration)
Act 1992* have the same meaning in this section as they have in that
Act.

116E Orders for compensation

- (1) This section applies if a court makes an order under section 545
awarding compensation to an employee for a contravention of a
civil remedy provision that relates to a contravention of this
Division.
- (2) The court must have regard to the principle that any component of
the compensation payable on account of unpaid superannuation
contributions should usually be paid to a superannuation fund for
the benefit of the employee.

Part 2—Other amendments

Fair Work Act 2009

3 Section 149B

Before “A modern award”, insert “(1)”.

4 At the end of section 149B

Add:

Reduction of employer’s liability to the extent of superannuation charge payments

- (2) The obligation of an employer to make contributions for the benefit of an employee under a term mentioned in subsection (1) does not apply to the extent that:
- (a) the employer has made a charge payment (within the meaning of section 63A of the *Superannuation Guarantee (Administration) Act 1992*) in respect of the employee under Part 8 of that Act; and
 - (b) the employee is a benefiting employee (within the meaning of that Part); and
 - (c) the Commissioner of Taxation is required to pay, or otherwise deal with, a shortfall component (within the meaning of that Part) for the benefit of the employee under that Part.

Schedule 4—Workplace determinations

Fair Work Act 2009

1 Paragraph 54(2)(b)

After “section 58”, insert “or subsection 278(1A)”.

2 Subsection 54(2) (note)

Omit “Section 58 deals with”, substitute “Section 58 and subsection 278(1A) deal with”.

3 Paragraph 276(2)(b)

Omit “section 278”, substitute “subsection 278(1) or (2)”.

4 Paragraph 276(2)(b)

Omit “agreement”, substitute “determination”.

5 Subsection 276(2) (note)

Omit “Section 278 deals with”, substitute “Subsections 278(1) and (2) deal with”.

6 Before subsection 278(1)

Insert:

Interaction with an earlier enterprise agreement

(1A) If:

- (a) an enterprise agreement applies to an employee in relation to particular employment; and
 - (b) a workplace determination that covers the employee in relation to the same employment comes into operation;
- the enterprise agreement ceases to apply to the employee in relation to that employment, and can never so apply again.

7 Subsection 278(1) (heading)

Omit “*an enterprise agreement*”, substitute “*a later enterprise agreement*”.

Schedule 5—Employee authorised deductions

Fair Work Act 2009

1 After subsection 324(1)

Insert:

- (1A) However, an employer must not deduct an amount under paragraph (1)(a) if the deduction is:
- (a) directly or indirectly for the benefit of the employer or a party related to the employer; and
 - (b) for an amount that may be varied from time to time; unless the deduction, if it were a deduction referred to in subsection 326(1), would be a deduction made in circumstances prescribed under subsection 326(2) to be reasonable.

2 Paragraph 324(2)(a)

Repeal the paragraph, substitute:

- (a) must specify:
 - (i) for a single deduction—the amount of the deduction; or
 - (ii) for multiple or ongoing deductions—whether the deductions are for a specified amount or amounts, or for amounts as varied from time to time; and
- (aa) must include any information prescribed by the regulations; and

3 Subsection 324(3)

Omit “the amount of the deduction”, substitute “a specified amount of a deduction”.

Schedule 6—Coal mining long service leave scheme

Coal Mining Industry (Long Service Leave) Administration Act 1992

1 Subsection 4(1)

Insert:

quarter means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April.

2 After subsection 39A(3)

Insert:

(3A) If:

- (a) subsection (3) applies in relation to a casual employee for a week (the *initial week*); and
- (b) apart from this subsection, subsection (3) does not apply in relation to that employee for the next week (the *relevant week*) after the initial week; and
- (c) the relevant week is not otherwise a period of qualifying service for that employee; and
- (d) subsection (3) applies in relation to that employee for the next week after the relevant week;

then, for the purposes of subsection (2), that employee is taken to have been an eligible employee for the whole of the relevant week in the capacity of a casual employee.

Note: The effect of this subsection is that the relevant week will be a period of qualifying service for that employee.

(3B) If:

- (a) subsection (3) applies in relation to a casual employee for a week beginning in a quarter; and
- (b) apart from this subsection, there are one or more later weeks beginning in that quarter that are not a period of qualifying service for that employee;

then, for the purposes of subsection (2), rules made under subsection (3C) may set out the circumstances in which that employee is taken to have been an eligible employee for the whole of one or more of those later weeks in the capacity of a casual employee.

Note: The effect of this subsection is that, if any rules are made, the one or more of those later weeks will be periods of qualifying service for that employee.

(3C) The Minister may, by legislative instrument, make rules for the purposes of subsection (3B).

3 Subsection 39AA(2) (subparagraph (c)(i) of the definition of working hours)

Repeal the subparagraph, substitute:

- (i) the number of hours for the week worked out under whichever of subsections (3) and (4) is applicable;

4 At the end of section 39AA

Add:

Employee is a casual employee for all weeks beginning in a quarter

- (3) If all weeks beginning in a quarter are applicable weeks for the employee, the number of hours for each of those weeks for the purposes of subparagraph (c)(i) of the definition of **working hours** in subsection (2) is the result of dividing:
 - (a) the total number of hours worked by the employee as a casual employee for all of those weeks; by
 - (b) the number of weeks beginning in the quarter.

Employee is a casual employee for some but not all weeks beginning in a quarter

- (4) If some but not all weeks beginning in a quarter are applicable weeks for the employee, the number of hours for each of those applicable weeks for the purposes of subparagraph (c)(i) of the definition of **working hours** in subsection (2) is the result of dividing:

- (a) the total number of hours worked by the employee as a casual employee for all of those applicable weeks; by
- (b) the number of applicable weeks beginning in the quarter.

What is an applicable week?

- (5) A week beginning in a quarter is an ***applicable week*** for an employee if:
 - (a) the employee is a casual employee at any time during the week; and
 - (b) paragraph (b) of the definition of ***working hours*** in subsection (2) did not apply to the employee for the week.

Note: Subsections 39A(3A) and (3B) deal with the circumstances in which a casual employee is taken to have been an eligible employee for the whole of a week.

5 After paragraph 39AB(5)(a)

Insert:

- (aa) then, if because of the operation of subsections 39AA(3) to (5), there are one or more weeks of qualifying service completed by the employee before the calculation day:
 - (i) that are applicable weeks within the meaning of section 39AA; and
 - (ii) for which the number of hours of long service leave the employee is entitled to under section 39AA cannot be determined yet;add together the number of hours for each of those applicable weeks worked out under subsection (6) of this section;

6 At the end of subsection 39AB(5)

Add (before the notes):

Note 1A: Paragraph (aa) may apply because the hours of work for a casual employee are averaged across the weeks beginning in a quarter and the quarter may not have ended yet.

7 At the end of section 39AB

Add:

- (6) For the purposes of paragraph (5)(aa), the number of hours for an eligible employee for an applicable week is worked out using this formula:

$$\frac{13}{416} \times \text{Working hours}$$

where:

working hours means the lesser of the following number of hours:

- (a) the result of dividing:
- (i) the total number of hours worked by the employee as a casual employee for all of the applicable weeks covered by paragraph (5)(aa); by
 - (ii) the number of applicable weeks covered by paragraph (5)(aa);
- (b) 35 hours.

8 Subsection 39AC(1)

After “an eligible employee”, insert “(other than a casual employee)”.

9 Before subsection 39AC(3)

Insert:

- (2) If a casual employee takes a period of long service leave, the employer must pay the employee for the long service leave no less than an amount that is equal to:
- (a) if an industrial instrument that covers the employee specifies that the employee is to be paid a casual loading and the casual loading can be quantified—the base rate of pay (including incentive-based payments, bonuses and the casual loading) that would have been payable to the employee during the period had the employee not taken the leave; or
 - (b) otherwise—the ordinary rate of pay (including incentive-based payments and bonuses) that would have been payable to the employee during the period had the employee not taken the leave.

Civil penalty: 60 penalty units.

10 After paragraph 39AC(3)(a)

Insert:

- (aa) a reference to the ordinary rate of pay payable to an employee is a reference to the employee's ordinary rate of pay before any amounts are deducted under a salary sacrifice arrangement; and

11 At the end of subsection 50(3)

Add "or subsection 39A(3C)".

***Coal Mining Industry (Long Service Leave) Payroll Levy
Collection Act 1992***

12 Section 3

Insert:

covers has the same meaning as in the Administration Act.

industrial instrument has the same meaning as in the Administration Act.

13 Subsection 3B(3)

Repeal the subsection, substitute:

- (3) If an eligible employee is a casual employee, the employee's *eligible wages* are:
 - (a) if an industrial instrument that covers the employee specifies that the employee is to be paid a casual loading and the casual loading can be quantified—the base rate of pay paid to the employee, including incentive-based payments, bonuses and the casual loading; or
 - (b) otherwise—the ordinary rate of pay paid to the employee, including incentive-based payments and bonuses.

14 After paragraph 3B(4)(a)

Insert:

- (aa) a reference to the ordinary rate of pay paid to an employee is a reference to the employee's ordinary rate of pay before any

amounts are deducted under a salary sacrifice arrangement;
and

15 Paragraph 5(2)(b)

Omit “a form approved by the Board”, substitute “the form approved in an instrument under subsection (2A)”.

16 After subsection 5(2)

Insert:

(2A) The Corporation must, by notifiable instrument, approve a form for the purposes of paragraph (2)(b). The Corporation must consult the Secretary of the Department before approving the form.

17 Application provisions

- (1) The amendments of sections 39A and 39AA of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* made by this Schedule apply in relation to weeks beginning on or after the commencement of this item.
- (2) The amendments of section 39AB of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* made by this Schedule apply in relation to calculation days occurring on or after the commencement of this item.
- (3) The amendments of section 39AC of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* made by this Schedule apply in relation to a period of long service leave that is taken on or after the commencement of this item, where the period begins on or after that commencement.
- (4) The amendments of section 3B of the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* made by this Schedule apply in relation to eligible wages paid on or after the commencement of this item, to the extent that those wages relate to days occurring on or after that commencement.
- (5) The amendments of section 5 of the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992* made by this Schedule apply in relation to months beginning on or after the commencement of this item.

Schedule 7—Technical corrections

Fair Work Act 2009

1 Paragraph 237(2)(c)

Omit “that”.

2 Paragraph 771(d)

Omit “and.”, substitute “and”.

Schedule 8—Application and transitional provisions

Fair Work Act 2009

1 In the appropriate position in Schedule 1

Insert:

Part 14—Amendments made by the Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023

Division 1—Definitions

86 Definitions

In this Part:

amended Act means this Act as amended by the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023*.

amending Act means the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023*.

Division 2—Amendments made by Schedule 2 to the amending Act

87 Amendments about unpaid parental leave

- (1) The amendments made by Schedule 2 to the amending Act apply in relation to an employee in respect of a child if the child's date of birth, or day of placement, is on or after 1 July 2023.
- (2) If:
 - (a) before the commencement of Schedule 2 to the amending Act, an employee gave notice to the employee's employer in

accordance with subsection 74(1) of the taking of a period of unpaid parental leave under section 72 in relation to a child; and

- (b) the period of unpaid parental leave is covered by paragraph 72(3)(a) or (4)(a); and
- (c) the child's date of birth, or day of placement, is on or after 1 July 2023;

the period of unpaid parental leave is to be treated, after the commencement of Schedule 2 to the amending Act, as a continuous period of unpaid parental leave under section 71 of the amended Act.

(3) If:

- (a) before the commencement of Schedule 2 to the amending Act, an employee gave notice to the employee's employer in accordance with subsection 74(1) of the taking of a period of concurrent leave under subsection 72(5) in relation to a child; and
- (b) the child's date of birth, or day of placement, is on or after 1 July 2023;

the period of concurrent leave is to be treated, after the commencement of Schedule 2 to the amending Act, as a period of flexible unpaid parental leave under section 72A of the amended Act.

(4) If:

- (a) before the commencement of Schedule 2 to the amending Act, an employee gave notice to the employee's employer in accordance with subsection 74(1) of the taking of a period of unpaid parental leave under section 71, 72 or 72A in relation to a child; and
- (b) the child's date of birth, or day of placement, is on or after 1 July 2023;

then:

- (c) the employee may give the employer a written notice (an **amendment notice**) that makes amendments to the subsection 74(1) notice that are consistent with the amended Act; and

- (d) if the employee gives an amendment notice to the employer in relation to the child:
 - (i) the amendments made by the amendment notice must not take effect until at least 4 weeks after the amendment notice is given to the employer; and
 - (ii) any requirement imposed by this Act (other than subsection 74(4) or (4B)) in relation to the period within which the employer is to be given written notice of the taking of unpaid parental leave is waived for the taking of the unpaid parental leave covered by the amendment notice; and
- (e) the employee is not entitled to give more than one amendment notice to the employer in relation to the child.

Division 3—Amendments made by Schedule 3 to the amending Act

88 Superannuation—reduction of employer’s liability to the extent of superannuation charge payments

Subsection 149B(2), as inserted by Part 2 of Schedule 3 to the amending Act, applies in relation to an employer’s obligation to make superannuation contributions on behalf of an employee, whether the requirements of that subsection are satisfied before or after the commencement of that Part.

Division 4—Amendments made by Schedule 4 to the amending Act

89 Interaction of a workplace determination with an earlier enterprise agreement

The amendments made by Schedule 4 to the amending Act apply in relation to:

- (a) an enterprise agreement that applies to an employee in relation to particular employment before, on or after the commencement of that Schedule; and
- (b) a workplace determination that:

- (i) covers the employee in relation to the same employment; and
- (ii) comes into operation before, on or after the commencement of that Schedule.

Division 5—Amendments made by Schedule 5 to the amending Act

90 Employee authorised deductions

- (1) An authorisation made for the purposes of paragraph 324(1)(a) that is in force immediately before the commencement of Schedule 5 continues in force, after the commencement, until it is withdrawn.
- (2) An authorisation covered by subclause (3) that is in force immediately before the commencement of Schedule 5:
 - (a) is taken to be, and taken always to have been, made in compliance with section 324 as in force immediately before the commencement; and
 - (b) continues in force, after the commencement, until it is withdrawn.
- (3) An authorisation is covered by this subclause if the authorisation:
 - (a) was purportedly made for the purposes of paragraph 324(1)(a) as in force immediately before the commencement of Schedule 5; and
 - (b) purportedly authorises multiple or ongoing deductions for amounts as varied from time to time; and
 - (c) would, after the commencement, comply with section 324 of the amended Act.
- (4) However, paragraph (2)(a) does not affect rights or liabilities arising between parties to proceedings:
 - (a) in which judgment is reserved by a court before the commencement of Schedule 5; or
 - (b) which have been heard and finally determined by a court before the commencement;to the extent those rights or liabilities arose from, or were affected by, an authorisation covered by subclause (3).

*[Minister's second reading speech made in—
House of Representatives on 29 March 2023
Senate on 13 June 2023]*

(44/23)

34 *Fair Work Legislation Amendment (Protecting Worker Entitlements)* *No. 43, 2023*
Act 2023