



Workplace Relations Regulations 2006

Select Legislative Instrument 2006 No. 52 as amended

made under the

*Workplace Relations Act 1996 and Workplace Relations
Amendment (Work Choices) Act 2005*

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taking into account amendments up to SLI 2009 No. 185

**[Note: Regulation 2.23A in Chapter 7 ceases to have effect at the
end of 5 years after 27 March 2006, see Chapter 7, subregulation
2.23A (4)]**

**Regulation 2.24 in Chapter 7 ceased to have effect at the end of the
period of 12 months starting on the day on which this regulation
commenced, see Chapter 7, subregulation 2.24 (3)]**

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Regulation 1.1

Chapter 1 Preliminary

1.1 Name of Regulations [see Note 1]

These Regulations are the *Workplace Relations Regulations 2006*.

1.2 Commencement [see Note 1]

These Regulations commence on the commencement of Schedule 5 to the *Workplace Relations Amendment (Work Choices) Act 2005*.

Note Schedule 5 renumbers the *Workplace Relations Act 1996* so that the amended Act is sequentially numbered from section 1.

1.3 Definitions

In these Regulations, unless the contrary intention appears:

Act:

- (a) means the *Workplace Relations Act 1996*; but
- (b) does not include Schedule 1 to the *Workplace Relations Act 1996* or regulations made under that Schedule.

approved form means a form approved by the President for the purposes of the provision in which the expression is used.

Form means a form set out in Schedule 1.

pre-reform Act means the Act as in force just before the reform commencement.

pre-reform Regulations means the *Workplace Relations Regulations 1996* as in force just before the reform commencement.

section 717 court means an eligible court mentioned in section 717 of the Act.

Note Section 717 of the *Workplace Relations Act 1996* contains the following definition:

Regulation 1.5

eligible court means:

- (a) the Court; or
- (b) the Federal Magistrates Court; or
- (c) a District, County or Local Court; or
- (d) a magistrate's court; or
- (e) the Industrial Relations Court of South Australia; or
- (f) any other State or Territory court that is prescribed by the regulations.

transitional award has the meaning given by subclause 2 (1) of Schedule 6 to the Act.

transitional employee has the meaning given by subclause 2 (1) of Schedule 6 to the Act.

Work Choices Act means the *Workplace Relations Amendment (Work Choices) Act 2005*.

Workplace Relations Minister means the Minister administering Part 1 of the *Workplace Relations Act 1996*.

Note A number of words and expressions used in these Regulations have the meanings given by section 4 of the Act, including *reform commencement*.

1.4 Definition of *employing authority* in subsection 4 (1) of the Act — prescribed persons and bodies

For the purposes of the definition of *employing authority* in subsection 4 (1) of the Act, each of the persons or bodies specified in column 3 of an item in Schedule 2 is prescribed as the employing authority in relation to the class of employees specified in column 2 of that item.

1.5 Definition of *public sector employment* in subsection 4 (1) of the Act — prescribed laws and persons

- (1) For paragraph (g) of the definition of *public sector employment* in subsection 4 (1) of the Act, each of the following laws is prescribed:
 - (a) *Naval Defence Act 1910*;
 - (b) *Supply and Development Act 1939*;
 - (c) *Australian Federal Police Act 1979*;
 - (d) *Governor-General Act 1974*.

Regulation 1.6

- (2) For paragraph (h) of the definition of ***public sector employment*** in subsection 4(1) of the Act, each of the following classes of persons is prescribed:
- (a) members of the Defence Force;
 - (b) members of the Police Force of the Northern Territory;
 - (c) persons employed by, or in the service of:
 - (i) a Commonwealth authority referred to in Schedule 3; or
 - (ii) a body that is a subsidiary of a Commonwealth authority referred to in Schedule 3 in which body the Commonwealth authority has a controlling interest;
 - (d) persons who hold an office established under a law of the Commonwealth or of a Territory, other than persons who, otherwise than in their capacity as the holder of such an office, are employed or serve in a capacity described in paragraphs (a) to (g) of that definition of ***public sector employment***.

Example

An example of a person who would fall within the exception to paragraph (d) is an APS employee who also holds a part-time statutory office, or who is granted leave without pay from his or her APS employment in order to take up a full-time statutory office.

- (3) For paragraph (i) of the definition of ***public sector employment*** in subsection 4(1) of the Act, the *Prisons (Correctional Services) Act 1980* of the Northern Territory is prescribed.

1.6 Repeal of Workplace Relations Regulations 1996

The *Workplace Relations Regulations 1996* are repealed.

Chapter 2 General regulations for the *Workplace Relations Act 1996*

Part 1 Preliminary

Division 1 Exclusion of persons insufficiently connected with Australia

1.1 Crew members of commercial vessels

- (1) For subsection 12 (1) of the Act, a provision of the Act specified in an item of Table 1.1 does not apply to a person or entity specified in the item.

Table 1.1

Item	These provisions ...	do not apply to ...
1	All provisions of the Act, other than: (a) section 16; and (b) any definition of general application in section 4, or another provision, that relates to section 16	A person who: (a) is a non-citizen; and (b) is a member of the crew performing duties on a permit ship
2	All provisions of the Act, other than: (a) section 16; and (b) any definition of general application in section 4, or another provision, that relates to section 16	A foreign corporation in the capacity as the employer of a person who: (a) is a non-citizen; and (b) is a member of the crew performing duties on a permit ship

Regulation 1.2

(2) In Table 1.1:

non-citizen has the same meaning as in the *Migration Act 1958*.

permit ship means a ship:

- (a) to which a permit has been granted under section 286 of the *Navigation Act 1912* for a single voyage or as a continuing permit; and
- (b) for which the permit is in force.

Division 2 Act excludes some State and Territory laws

1.2 State and Territory laws that are not excluded by the Act — general

- (1) For paragraph 16 (2) (b) of the Act, subsection 16 (1) of the Act does not apply to a law of a State or Territory of a kind that is mentioned in this regulation.

Note Under subsection 16 (1) of the Act, the Act is intended to apply to the exclusion of specified laws of a State or Territory so far as they would otherwise apply in relation to an employee or employer. The subsection lists the kinds of laws that are excluded.

However, subsection 16 (1) does not apply to a law of a State or Territory so far as the law is prescribed by the regulations as a law to which the subsection does not apply.

Rights and obligations — general

- (2) Subsection 16 (1) does not apply to a law of a State or Territory (including a law relating to appeals) to the extent to which it relates to compliance with an obligation:
 - (a) under:
 - (i) that law; or
 - (ii) another law of a State or Territory;
which would otherwise be excluded by subsection 16 (1) of the Act; and
 - (b) in respect of an act or omission which occurred prior to the reform commencement.

Regulation 1.2

Rights and obligations — injunctions

- (3) However, subregulation (2) does not apply to the extent to which that law of a State or Territory, or another law, provides for the granting of an injunction in relation to conduct that has not yet occurred.

Note The effect of subregulation (3) is that subsection 16 (1) of the Act will apply to a law of a State or Territory to the extent to which it deals with injunctions about rights or obligations in relation to future conduct, and the Act will apply to the exclusion of that law of the State or Territory.

Termination of employment

- (4) Subsection 16 (1) does not apply to a law of a State or Territory (including a law relating to appeals) to the extent to which it relates to a termination of employment that occurred before the reform commencement.

Unfair contracts

- (5) Subsection 16 (1) does not apply to a law of a State or Territory (including a law relating to appeals) to the extent to which it:
- (a) relates to proceedings that commenced before the reform commencement; and
 - (b) provides for the variation or setting aside of rights and obligations arising under:
 - (i) a contract of employment; or
 - (ii) another arrangement for employment;that a court or tribunal finds is unfair.

Succession, transmission or assignment of business

- (6) Subsection 16 (1) does not apply to a law of a State or Territory (including a law relating to appeals) to the extent to which it relates to a succession, transmission or assignment of a business, or a part of a business, that occurred before the reform commencement.

Regulation 1.3

Training arrangements

- (7) Subsection 16 (1) does not apply to a State or Territory industrial law to the extent that the law provides a remedy that arises from the suspension, cancellation or termination of a training contract or agreement in circumstances that are contrary to a law of a State or Territory relating to training arrangements.

Note **Training arrangement** is defined in section 4 of the Act.

- (8) However, subregulation (7) does not apply to a State or Territory industrial law described in that subregulation to the extent that it relates to the termination of employment that may be harsh, unjust or unreasonable.

1.3 State and Territory laws that are not excluded by the Act — specified laws

Industrial Relations Act 1999 of Queensland

For paragraph 16 (2) (b) of the Act:

- (a) paragraph 73 (2) (f) of the *Industrial Relations Act 1999* of Queensland is prescribed to the extent to which that paragraph provides a remedy for the dismissal of a person for the making by anyone, or a belief that anyone has made or may make:
- (i) a public interest disclosure under the *Whistleblowers Protection Act 1994* of Queensland; or
 - (ii) a complaint under the *Health Rights Commission Act 1991* of Queensland; and
- (b) a provision of the *Industrial Relations Act 1999* of Queensland is prescribed to the extent to which the provision facilitates or otherwise gives effect to paragraph 73 (2) (f); and
- (c) a provision of the *Industrial Relations Act 1999* of Queensland is prescribed to the extent to which the provision facilitates or otherwise gives effect to section 174 of the *Workplace Health and Safety Act 1995* of Queensland.

Regulation 1.5

1.4 Exclusion of prescribed State and Territory laws

Contracts Review Act of New South Wales

- (1) For subsection 16 (4) of the Act, the *Contracts Review Act 1980* of New South Wales is prescribed to the extent to which that Act applies to:
- (a) a contract that:
 - (i) involves an employer and an employee; and
 - (ii) deals with their employment relationship; and
 - (b) a matter that occurred after the reform commencement.

Note Subsection 16 (4) of the Act provides that the Act is intended to apply to the exclusion of a law of a State or Territory that is prescribed by the regulations for the purposes of the subsection.

- (2) In subregulation (1):
employee has the meaning given by subsection 5 (1) of the Act.
employer has the meaning given by subsection 6 (1) of the Act.

**Division 3 Awards, agreements and
Commission orders prevail over
State and Territory law etc**

1.5 Laws about training arrangements

- (1) For subsection 17 (2) of the Act, the laws of a State or Territory set out in this regulation are prescribed as laws to which awards and workplace agreements are not subject.

Note Under subsection 17 (2) of the Act, a term of an award or workplace agreement dealing with:

- (a) occupational health and safety; or
- (b) workers compensation; or
- (c) training arrangements; or
- (d) a matter prescribed by the regulations;

has effect subject to a law of a State or Territory dealing with the matter, except a law that is prescribed by the regulations as a law to which awards and workplace agreements are not subject.

Regulation 1.5

Monetary allowances and benefits

- (2) A law of a State or Territory is prescribed to the extent to which it:
- (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for:
 - (i) remuneration, including basic rates of pay; or
 - (ii) any other payment of an amount of money to an employee.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

Non-monetary allowances and benefits

- (3) A law of a State or Territory is prescribed to the extent to which it:
- (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for, an allowance or benefit that is not made available as money.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

Example

The provision of uniforms, tools or meals.

Leave

- (4) A law of a State or Territory is prescribed to the extent to which it:
- (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for:
 - (i) leave (whether paid or unpaid); or
 - (ii) leave loadings.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

Example

The provision of:

- (a) annual leave; or
- (b) long service leave; or
- (c) personal leave (including sick leave and carer's leave); or

Regulation 1.5

- (d) bereavement leave; or
- (e) leave without pay.

Public holidays

- (5) A law of a State or Territory is prescribed to the extent to which it:
 - (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for, the observance of:
 - (i) days declared by or under a law of the State or Territory to be observed generally within that State or Territory, or a region of that State or Territory, as public holidays by employees who work in that State, Territory or region, and entitlements of employees to payment in respect of those days; and
 - (ii) days to be substituted for, or a procedure for substituting, days mentioned in subparagraph (i).

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

Hours of work

- (6) A law of a State or Territory is prescribed to the extent to which it:
 - (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for:
 - (i) ordinary time hours; or
 - (ii) the time within which ordinary time hours are performed; or
 - (iii) overtime or additional hours; or
 - (iv) rest breaks; or
 - (v) notice periods; or
 - (vi) variations to working hours; or
 - (vii) rostering arrangements.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

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Types of employment

- (7) A law of a State or Territory is prescribed to the extent to which it:
- (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for, types of employment.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

Examples

Full-time employment, casual employment, regular part-time employment and shift work.

Probationary employment

- (8) A law of a State or Territory is prescribed to the extent to which it:
- (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for, probationary employment.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

Termination of employment

- (9) A law of a State or Territory:
- (a) is prescribed to the extent to which it relates to training arrangements and deals with, or allows arrangements to be made for:
 - (i) the way in which employment is terminated; or
 - (ii) the entitlements that may apply if employment is terminated; or
 - (iii) the remedies available to a person whose employment is terminated; but
 - (b) is not prescribed to the extent to which:
 - (i) it deals with, or allows arrangements to be made for, the termination of a training contract or a training agreement by a State or Territory training authority; and

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- (ii) it provides a remedy that arises from that termination of the training contract or training agreement otherwise than by the State or Territory training authority.

Note **State or Territory training authority** is defined in section 4 of the Act.

Stand down

- (10) A law of a State or Territory is prescribed to the extent to which it:
- (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for, the standing down of employees.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

Jury service

- (11) A law of a State or Territory is prescribed to the extent to which it:
- (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for, jury service.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

Superannuation

- (12) A law of a State or Territory is prescribed to the extent to which it:
- (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for, superannuation.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

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Dispute resolution

- (13) A law of a State or Territory:
- (a) is prescribed to the extent to which it:
 - (i) relates to training arrangements; and
 - (ii) deals with, or allows arrangements to be made for, dispute resolution and dispute resolution processes; but
 - (b) is not prescribed to the extent to which it deals with, or allows arrangements to be made for, dispute resolution processes about matters arising under a training contract or a training agreement.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

Training qualifications

- (14) A law of a State or Territory:
- (a) is prescribed to the extent to which it:
 - (i) relates to training arrangements; and
 - (ii) deals with, or allows arrangements to be made for, the performance, conduct and discipline of an employee; but
 - (b) is not prescribed to the extent to which it deals with, or allows arrangements to be made for, the award of training qualifications.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

Outworkers

- (15) A law of a State or Territory is prescribed to the extent to which it:
- (a) relates to training arrangements; and
 - (b) deals with, or allows arrangements to be made for, the conditions (other than pay) of an outworker.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

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Other conditions

- (16) A law of a State or Territory is prescribed to the extent to which it:
- (a) deals with any matter that could be included in an award; and
 - (b) deals with, or allows arrangements to be made for, any term or condition of employment not mentioned in subregulations (2) to (15) in relation to a training arrangement.

Note **Training arrangement** is defined in subsection 4 (1) of the Act.

1.6 Laws about prevailing awards, agreements and Commission orders

- (1) For paragraph 17 (2) (d) of the Act, the following matters are prescribed:
- (a) child labour;
 - (b) discrimination;
 - (c) EEO.
- (2) For subsection 17 (2) of the Act, the following laws are prescribed as laws to which awards and workplace agreements are not subject:
- (a) a State or Territory industrial law to the extent to which it relates to the prevention of discrimination;
 - (b) a State or Territory industrial law to the extent to which it relates to the promotion of EEO.

Note Under subsection 17 (2) of the Act, a term of an award or workplace agreement dealing with:

- (a) occupational health and safety; or
- (b) workers compensation; or
- (c) training arrangements; or
- (d) a matter prescribed by the regulations;

has effect subject to a law of a State or Territory dealing with the matter, except a law that is prescribed by the regulations as a law to which awards and workplace agreements are not subject.

Regulation 3.1

**Part 3 Australian Industrial Relations
Commission**

Division 1 Establishment of Commission

**3.1 Prescribed State industrial authorities — section 67
and subsections 71 (2) and 696 (1), (2) and (5) of the
Act**

For the purposes of section 67 and subsections 71 (2) and 696 (1), (2) and (5) of the Act, each of the following State industrial authorities is prescribed:

- (a) the Industrial Relations Commission of New South Wales;
- (b) the Queensland Industrial Relations Commission;
- (c) the Western Australian Industrial Relations Commission;
- (d) the Industrial Relations Commission of South Australia;
- (e) the Tasmanian Industrial Commission.

**3.2 Prescribed tribunals — subsections 69 (1), 69 (2) and
79 (5) of the Act**

For the purposes of subsections 69 (1), 69 (2) and 79 (5) of the Act:

- (a) each of the following tribunals is a prescribed Commonwealth tribunal:
 - (i) Defence Force Remuneration Tribunal;
 - (ii) Pharmaceutical Benefits Remuneration Tribunal;
 - (iii) Administrative Appeals Tribunal;
 - (iv) Security Appeals Tribunal;
 - (v) National Native Title Tribunal; and
- (b) each of the following tribunals is a prescribed Territory tribunal:
 - (i) the Industrial Appeals Tribunal established by the *Industrial Relations Ordinance 1976* of the Territory of Christmas Island;

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- (ii) the Prison Officers Arbitral Tribunal established by the Prisons (Arbitral Tribunal) Act of the Northern Territory;
- (iii) the Police Arbitral Tribunal established by the Police Administration Act of the Northern Territory.

Division 3 Representation and intervention

3.3 Representation of employing authorities before the Commission or Court

For the purposes of subsections 100 (5) and 854 (4) of the Act, each of the following persons is a prescribed person in relation to an employing authority:

- (a) if the employing authority in relation to a class of persons specified in column 2 of item 1 in Schedule 2 is the Minister administering the enactment by or under which the Commonwealth authority employing persons in that class was established — a person who is an officer or employee of that Commonwealth authority;
- (b) if the employing authority in relation to a class of persons specified in column 2 of item 1 in Schedule 2 is the principal executive officer of the Commonwealth authority employing persons in that class — a person who is:
 - (i) an officer or employee of that Commonwealth authority; or
 - (ii) an APS employee or Parliamentary Service employee;
- (c) if the employing authority in relation to a class of persons specified in column 2 of item 1 in Schedule 2 is the Workplace Relations Minister — an APS employee or Parliamentary Service employee;
- (d) if the employing authority in relation to a class of persons specified in column 2 of item 2 in Schedule 2 is the principal executive officer of the Commonwealth authority employing persons in that class — a person who is an officer or employee of that Commonwealth authority;

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- (e) if:
- (i) the employing authority in relation to a class of persons specified in column 2 of item 2 in Schedule 2 is the principal executive officer of the Commonwealth authority employing persons in that class; and
 - (ii) that Commonwealth authority consents to being represented by an APS employee or Parliamentary Service employee;
- a person who is an officer of the Australian Public Service;
- (f) if the employing authority in relation to a class of persons specified in column 2 of item 2 in Schedule 2 is the Minister administering the enactment by or under which the Commonwealth authority employing persons in that class was established — an officer or employee of that Commonwealth authority;
- (g) if:
- (i) the employing authority in relation to a class of persons is a Minister of the Northern Territory and the persons included in that class are employed by a Northern Territory authority; or
 - (ii) the employing authority is a Northern Territory authority (being a body corporate of the kind referred to in paragraph (a) of the definition of *Northern Territory authority* in subsection 4 (1) of the Act); or
 - (iii) the employing authority is the principal executive officer of a Northern Territory authority (being a body corporate of the kind referred to in paragraph (b) of the definition of *Northern Territory authority* in subsection 4 (1) of the Act);
- a person who is:
- (iv) an officer or employee of the Northern Territory authority; or
 - (v) an officer or employee of the Public Service Commissioner for the Northern Territory;

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- (h) if:
- (i) the employing authority in relation to a class of persons is a Minister of the Northern Territory and the persons included in that class are employed by the Northern Territory; or
 - (ii) the employing authority is the Public Service Commissioner for the Northern Territory;
a person who is an officer or employee of the Public Service Commissioner for the Northern Territory;
- (i) if the employing authority in relation to a class of persons specified in column 2 of item 14 in Schedule 2 is:
- (i) the Minister administering the *Australian Federal Police Act 1979*; or
 - (ii) the Commissioner within the meaning of that Act;
a person who is:
 - (iii) an officer appointed under section 25 or 26 of that Act; or
 - (iv) an APS employee or Parliamentary Service employee;
- (j) if the employing authority for staff employed under the *Legislative Assembly (Members' Staff) Act 1989* of the Australian Capital Territory is the Chief Minister for that Territory — an officer or employee within the meaning of the *Public Sector Management Act 1994* of the Territory (the **ACTPS Act**);
- (k) if the employing authority for officers and employees within the meaning of the ACTPS Act (**ACTPS staff**) of a government agency, or an autonomous instrumentality, within the meaning of that Act, is:
- (i) the Chief Minister for the Australian Capital Territory; or
 - (ii) the Minister within the meaning of the *Australian Capital Territory (Self-Government) Act 1988* (the **Self-Government Act**) who administers the government agency or the Act under which the autonomous instrumentality is established; or

Regulation 3.3

- (iii) the Minister, within the meaning of that Act, who is responsible for exercising the power of the Australian Capital Territory Executive in relation to industrial relations (the *ACT industrial relations Minister*);
- an officer or employee within the meaning of the ACTPS Act;
- (l) if the employing authority for staff of a body corporate (except a Territory instrumentality within the meaning of the ACTPS Act) that is incorporated under a law of the Australian Capital Territory (an *ACT law*), and in which the Territory has a controlling interest, is the principal executive officer (however described) of the body corporate or the ACT industrial relations Minister:
- (i) a member of the staff of the body corporate; or
 - (ii) an officer or employee within the meaning of the ACTPS Act;
- (m) if the employing authority for ACTPS staff is the Chief Executive Officer of Calvary Hospital A.C.T. Incorporated, the Minister (within the meaning of the Self-Government Act) who is responsible for exercising the power of the Australian Capital Territory Executive in relation to public health or the ACT industrial relations Minister:
- (i) a member of the staff of Calvary Hospital A.C.T. Incorporated; or
 - (ii) an officer or employee within the meaning of the ACTPS Act;
- (n) if the employing authority for staff of a body corporate, or an authority, that is established by or under an ACT law, and to which paragraph (j), (k), (l) or (m) does not apply, is the principal executive officer (however described) of the body or authority, the Minister administering the ACT law or the ACT industrial relations Minister:
- (i) a member of the staff of the body corporate or authority; or
 - (ii) an officer or employee within the meaning of the ACTPS Act;

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- (o) in the case of any other employing authority — an APS employee or Parliamentary Service employee.

3.4 Representation of certain persons by unregistered associations

- (1) If a party to a proceeding before the Commission is an employer who is a member of an association of employers, being an association that is not registered under the Act, the party may be represented by an officer or employee of that association.
- (2) If a party to a proceeding before the Commission is an employee who is a member of the Australian International Flight Engineers' Association, being an association that is not registered under the Act, the party may be represented by an officer or employee of that Association.

Division 4 General matters relating to the powers and procedures of the Commission

3.5 Compulsory conferences

- (1) Subject to subregulation (2), a person directed to attend a compulsory conference under section 115 of the Act must be paid by the Commonwealth:
- (a) such allowances as the Minister determines; and
 - (b) the amount of any salary, wages or other earnings actually lost by the person during the time spent in travelling and attending the conference; and
 - (c) the amount of any travelling expenses actually and properly incurred by the person.
- (2) A payment must not be made under subregulation (1) unless certified by a Registrar.

Regulation 3.6

3.6 Power to override certain laws affecting public sector employment

For paragraph (b) of the definition of *relevant law* in subsection 116 (2) of the Act, the following laws are prescribed:

- (a) *Superannuation (Productivity Benefit) Act 1988*;
- (b) Prisons (Arbitral Tribunal) Act of the Northern Territory;
- (c) Police Administration Act of the Northern Territory.

Division 6 Miscellaneous

3.7 President must provide certain information etc to the Minister

- (1) For subsections 125 (1) and (2) of the Act:
 - (a) information, or copies of documents, of the kind mentioned in an item of Part 1 of Schedule 4 must be given to the Minister by the time mentioned in the item; and
 - (b) the information, and the copies of documents, may be given to the Minister:
 - (i) in paper form; or
 - (ii) in electronic form, in accordance with any particular information technology requirements notified to the President by the Secretary.
- (2) Paragraph (1) (b) does not prevent the President from including other relevant information with information given to the Minister in electronic form.

Note Information prescribed in Schedule 4 is minimum information only.
- (3) For subsection 125 (2) of the Act:
 - (a) copies of documents that are given to the Minister in paper form must be posted to the address notified to the President by the Secretary for this paragraph; and

Regulation 3.8

- (b) information, and copies of documents, that are given to the Minister in electronic form must be sent to the e-mail address notified to the President by the Secretary for this paragraph; and
- (c) the President must ensure that:
 - (i) all copies of documents that are to be given to the Minister in paper form during a week are given at the same time in that week; and
 - (ii) all information, or copies of documents, of a particular kind that are to be given to the Minister in electronic form during a week are given at the same time in that week.

3.8 Power of Commission to waive procedural requirements and effect of non-compliance

- (1) Subject to the Act, the Commission may:
 - (a) in relation to any proceeding before the Commission; and
 - (b) in special circumstances; and
 - (c) absolutely or subject to conditions;exempt a person from compliance with any procedural requirement of these Regulations.
- (2) Subject to the Act, non-compliance with any of these Regulations does not render void any proceedings before a Commission.
- (3) However, for subregulation (2), the proceedings may be:
 - (a) set aside, either wholly or in part, as irregular; or
 - (b) amended; or
 - (c) otherwise dealt with in such manner and upon such terms as the Commission thinks fit.

Regulation 4.1

Part 4 Australian Industrial Registry

4.1 Office hours

- (1) Each registry of the Industrial Registry must be open on ordinary working days between the hours of 9 am and 5 pm.
- (2) If:
 - (a) an act is to be done at a registry; and
 - (b) the time for doing the act expires on a day on which that registry is not open; and
 - (c) for that reason that act cannot be done on that day;
that act is taken to have been done within that time if it is done on the next day on which the registry is open.
- (3) If:
 - (a) a proceeding is to be taken at a registry; and
 - (b) the time for taking the proceeding expires on a day on which that registry is not open; and
 - (c) for that reason the proceeding cannot be taken, on that day;
the proceeding is taken to have been taken within that time if it is taken on the next day on which the registry is open.

4.2 Lodgment of documents in Industrial Registry

A document that is required under Part 15 of the Act or Part 15 of these Regulations to be lodged in the Industrial Registry may be lodged by:

- (a) leaving it with a Registrar; or
- (b) properly addressing, prepaying and posting the document;
or
- (c) electronic means prescribed by Rules of the Commission made under section 124 of the Act; or
- (d) another means authorised in writing by the Commission.

Regulation 4.5

4.3 Endorsement of documents

- (1) A document that is lodged in connection with a matter before a Registrar must be endorsed with:
 - (a) the name of the party lodging it; and
 - (b) the party's address for service.
- (2) However, subregulation (1) does not apply if other arrangements are required by:
 - (a) a form prescribed under the Act or these Regulations; or
 - (b) regulations made under the Act; or
 - (c) Rules of the Commission made under section 124 of the Act.

4.4 Inspection of documents

- (1) A document lodged in the Industrial Registry under Part 15 of the Act or under Part 15 of these Regulations may be inspected, upon giving reasonable notice, at a registry during the hours of opening mentioned in subregulation 4.1 (1).
- (2) A person may, on application, obtain an office copy or a certified copy of the document.

4.5 Power to waive procedural requirements and effect of non-compliance

- (1) Subject to the Act, a Registrar may:
 - (a) in relation to any proceeding before the Registrar; and
 - (b) in special circumstances; and
 - (c) absolutely or subject to conditions;
exempt a person from compliance with any procedural requirement of these Regulations.
- (2) Subject to the Act, non-compliance with any of these Regulations does not render void any proceedings before a Registrar.
- (3) However, for subregulation (2), the proceedings may be:
 - (a) set aside, either wholly or in part, as irregular; or

Regulation 4.6

- (b) amended; or
- (c) otherwise dealt with in such manner and upon such terms as the Registrar thinks fit.

4.6 Use of previous evidence

- (1) Subject to subregulations (2) and (3), any evidence given (whether orally, by statutory declaration or otherwise) in the course of proceedings before the Court, the Commission or a Registrar (in this regulation called *the first proceedings*) may, in the discretion of a Registrar and subject to such terms and conditions as he or she determines, be used in any subsequent proceedings before that Registrar.
- (2) A person who is a party to subsequent proceedings referred to in subregulation (1) may object to the use in those proceedings of any evidence given in the course of the first proceedings if the person was not a party to those first proceedings.
- (3) The Registrar, in exercising his or her discretion under subregulation (1) and in determining under that subregulation the terms and conditions, if any, to which the use of such evidence is subject, must have regard to any objection made by a person under subregulation (2).
- (4) If evidence has been given orally, this regulation does not authorise its use in subsequent proceedings before a Registrar unless:
 - (a) a written record of the evidence is available for the use of the Registrar; and
 - (b) the Registrar is satisfied that that record is a true record of the evidence.

4.7 Recovery of cost of providing copies of documents

- (1) This regulation applies if a Registrar provides a copy or copies of a document to a person (whether in the form of photocopies, facsimile transmissions, electronic data, printed documents or otherwise).

Regulation 4.9

- (2) The person must pay to the Registrar in advance an amount that:
- (a) the Registrar requires to be paid in relation to a copy or copies in the form provided; and
 - (b) the Registrar has determined, on reasonable grounds, to be equal to the costs that will be incurred by the Registry in providing a copy or copies in a particular form.

4.8 Custody and use of seals of the Industrial Registry

The seal mentioned in subsection 131 (1) of the Act, and the duplicate of the seal kept at each registry in accordance with subsection 131 (2) of the Act:

- (a) must be kept in custody in the way that the Industrial Registrar directs; and
- (b) must be used in accordance with the directions of the Industrial Registrar.

4.9 General powers of Registrar

- (1) For the purpose of giving effect to the Act, the Registrar may, in relation to any application or proceeding with which the Registrar is authorised to deal:
- (a) require a person, by summons served on the person, to appear before the Registrar:
 - (i) to give evidence; and
 - (ii) to produce such books, documents or things as are referred to in the summons for inspection by the Registrar or by such party as the Registrar determines;
 - (b) take evidence on oath; and
 - (c) adjourn any matter or hearing; and
 - (d) amend or give leave to amend any application, notice or other document; and
 - (e) extend the time fixed by these Regulations for the lodging of any document or the doing of any act (whether that time has expired or not); and

Regulation 4.10

- (f) give directions to any party in relation to the service of documents and the manner of service of documents; and
- (g) order any party to pay any other party such reasonable sum for costs as he or she thinks just.

- (2) A person must not refuse or fail to comply with a summons served on him or her for the purposes of paragraph (1) (a).
- (3) Strict liability applies to the physical elements in subregulation (2).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) If a power is exercised under subregulation (1) on the application of a party, it may be exercised on such terms, as to payment of fees and costs and otherwise, as the Registrar thinks just.

- (5) Subregulation (2) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

4.10 Signing of documents etc on behalf of persons, organisations etc

- (1) This regulation applies if:
 - (a) a document is required by the Act or these Regulations to be taken out, made or signed; or
 - (b) a document may, under the Act or these Regulations, be taken out, made or signed; or
 - (c) a step is required to be taken, or may be taken by any person, organisation, branch, company or committee of management;

in relation to any application or proceeding with which the Registrar is authorised to deal.

- (2) Subject to the Act, the document may be taken out, made or signed, or the step taken, on behalf of that person, organisation, branch, company or committee of management:
 - (a) in the case of a person — by that person or by any other person authorised by him in writing; and

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- (b) in the case of an organisation or branch — by a person authorised by, or in accordance with the rules of, the organisation or branch; and
- (c) in the case of a company not being an organisation — by an officer or person duly authorised under the seal of the company to represent it under the Act, or in the proceedings; and
- (d) in the case of a committee of management of an organisation or branch — by a person authorised by the committee.

4.11 Application of the *Criminal Code* to civil remedy provisions

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Part as if those provisions were offences.

Regulation 5.2

Part 5 Workplace Authority Director

**Division 2 Remuneration and allowances of
Workplace Authority Director**

5.2 Remuneration and allowances

For subsection 151B (2) of the Act, the Workplace Authority Director is to be paid the allowances payable to an SES employee (within the meaning given by section 34 of the *Public Service Act 1999*).

**Division 3 Disclosure of identity of parties to
ITEA**

**5.3 Identity of parties to ITEA not to be disclosed —
exception relating to analyses and reports**

- (1) For subsection 164A (5) of the Act, a disclosure by a person (the *entrusted person*) to an authorised person of protected information that the entrusted person knows, or has reasonable grounds to believe, will identify another person as being, or having been, a party to an ITEA is permitted if the disclosure of the protected information is for the purpose of:
 - (a) providing analyses of trends in agreement making; or
 - (b) preparing reports on enterprise bargaining for the purposes of section 844 of the Act.
- (2) In subregulation (1):

authorised person means:

 - (a) for paragraph (1) (a):
 - (i) the Workplace Authority Director; or
 - (ii) a person authorised in writing by the Workplace Authority Director; and
 - (b) for paragraph (1) (b):
 - (i) the Workplace Authority Director; or

Regulation 5.6

(ii) a person authorised in writing by the Workplace Authority Director; or

(iii) a person authorised in writing by the Minister.

protected information has the same meaning as in subsection 165 (2) of the Act.

**Division 4 Disclosure of information by
workplace agreement official**

**5.6 Disclosure of information by workplace agreement
official**

- (1) For subsection 164A (5) and paragraph 165 (1) (e) of the Act:
 - (a) a workplace agreement official is prescribed; and
 - (b) the workplace agreement official may disclose information prescribed in subregulation (3) to a person prescribed in subregulation (2) for a purpose prescribed in subregulation (4).
- (2) The persons are:
 - (a) a Minister; or
 - (b) the Secretary; or
 - (c) an SES employee or an APS employee performing duties in the Department.
- (3) The information is:
 - (a) information that is:
 - (i) acquired by the workplace agreement official in the course of exercising powers, or performing functions, as a workplace agreement official; and
 - (ii) relevant to a purpose in paragraph (4) (a); and
 - (b) information that has previously been disclosed to the public other than information that has been disclosed to the public in contravention of the Act or regulations made under the Act; and
 - (c) information relating to a proceeding initiated by a workplace inspector.

Regulation 5.6

- (4) The purposes are:
- (a) the purpose of briefing a Minister, or considering briefing a Minister:
 - (i) to assist the Minister:
 - (A) to consider a complaint or issue raised with the Minister by or on behalf of a person (in writing or orally); and
 - (B) to respond to the person in relation to the complaint or issue; or
 - (ii) in relation to a meeting or other event that the Minister is to attend; or
 - (iii) for an issue that has been raised publicly, or is proposed to be raised publicly, by or on behalf of the person to whom the information of a kind mentioned in paragraph (3) (a) relates — to assist the Minister to respond to the issue; or
 - (iv) in relation to an error or delay on the part of the Workplace Authority; or
 - (v) in relation to an instance of an anomalous or unusual operation of:
 - (A) Commonwealth workplace relations legislation; or
 - (B) the *Building and Construction Industry Improvement Act 2005*; or
 - (C) Schedule 1 to the Act; and
 - (b) for information mentioned in paragraphs (3) (b) or (3) (c) — to provide information to the person
 - (i) about a matter that has previously been disclosed to the public; or
 - (ii) about a proceeding initiated by a workplace inspector.
- (5) In this regulation:
- APS employee* has the same meaning as in the *Public Service Act 1999*.

Regulation 5.6

Minister means:

- (a) a Minister of State administering any part of Commonwealth workplace relations legislation; or
- (b) the Prime Minister.

SES employee has the same meaning as in the *Public Service Act 1999*.

Note Under subsection 164A (7) of the Act, a workplace agreement official is not authorised to disclose to the Minister information relating to a decision under Division 5A of Part 8 of the Act about whether a particular workplace agreement passes the no-disadvantage test.

Regulation 6.1

Part 6 Workplace inspectors

Note Transitional provisions relating to workplace inspectors are located in Division 13 of Part 2 of Chapter 7.

6.1 Period of appointment

- (1) For subsection 167 (3) of the Act, a person appointed as a workplace inspector under paragraph 167 (2) (a) of the Act is appointed for the period of 2 years.

Note Paragraph 167 (2) (a) of the Act relates to the appointment as a workplace inspector of a person who has been appointed, or who is employed, by the Commonwealth.

- (2) For subsection 167 (4) of the Act, the maximum period for which a person may be appointed as a workplace inspector under paragraph 167 (2) (b) of the Act is 2 years.

Note Paragraph 167 (2) (b) of the Act relates to the appointment as a workplace inspector of a person who has not been appointed, and who is not employed, by the Commonwealth.

6.2 Advice about rights and obligations

- (1) This regulation applies if:
- (a) a workplace inspector exercises his or her powers, or performs his or her functions, under the Act or these Regulations; and
 - (b) the workplace inspector:
 - (i) is requested by an employer, an employee or another party to whom any of the following relates to advise that employer, employee or party of his or her rights and obligations:
 - (A) an award;
 - (B) the Australian Fair Pay and Conditions Standard;
 - (C) a workplace agreement;
 - (D) a workplace determination;

Regulation 6.3

- (E) an undertaking about post-termination conditions;
 - (EA) an instrument given effect to by the Act;
 - (F) an order of the Australian Industrial Relations Commission;
 - (G) the Act;
 - (H) regulations made under the Act; or
 - (ii) considers it necessary or appropriate to give advice of that kind to an employer, employee or other party.
- (2) The inspector:
- (a) is authorised to give the advice; and
 - (b) must, to the extent necessary, explain:
 - (i) the employer's or employee's rights; and
 - (ii) the manner in which the award, agreement or other matter is to be observed.

6.3 Notification of failure to observe requirements

- (1) This regulation applies if a workplace inspector is satisfied that a person has failed to observe a requirement imposed by or for any of the following:
- (a) an award;
 - (b) the Australian Fair Pay and Conditions Standard;
 - (c) a workplace agreement;
 - (d) a workplace determination;
 - (e) an undertaking about post-termination conditions;
 - (ea) an instrument given effect to by the Act;
 - (f) an order of the Australian Industrial Relations Commission;
 - (g) the Act;
 - (h) regulations made under the Act.
- (2) The workplace inspector may, by notice in writing:
- (a) inform the person of the failure; and

Regulation 6.4

- (b) require the person to take the action specified in the notice, within the period specified in the notice, to rectify the failure; and
- (c) require the person to notify the workplace inspector in accordance with the notice of any action taken to comply with the notice; and
- (d) advise the person of the consequences of failure to comply with the notice.

6.4 Investigating alleged breach of section 34 of the *Independent Contractors Act 2006*

For subsection 167 (5) of the Act, it is a function of a workplace inspector to investigate an alleged breach of section 34 of the *Independent Contractors Act 2006*.

Note Section 34 of the *Independent Contractors Act 2006* prohibits certain coercive conduct in relation to reform opt-in agreements which may be entered into by parties to services contracts under the transitional provisions of that Act.

6.5 Taking of samples

For the purposes of subparagraph 169 (2) (b) (ii) of the Act, a workplace inspector may take a sample of any goods or substance after informing:

- (a) the owner; or
 - (b) another person in charge of the goods or substances; or
 - (c) a representative of the owner or other person;
- of the inspector's intention to do so.

6.6 Disclosure of information by Workplace Ombudsman

- (1) For paragraph 165 (1) (e) and subsection 166U (3) of the Act:
 - (a) a member of the Office of the Workplace Ombudsman is prescribed; and
 - (b) the member of the Office of the Workplace Ombudsman may disclose information prescribed in subregulation (3) to a person prescribed in subregulation (2) for a purpose prescribed in subregulation (4).

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- (2) The persons are:
 - (a) a Minister; or
 - (b) the Secretary; or
 - (c) an SES employee or an APS employee performing duties in the Department.
- (3) The information is:
 - (a) information that is:
 - (i) acquired by the member in the course of exercising powers, or performing functions, as a member of the Office of the Workplace Ombudsman; and
 - (ii) relevant to a purpose in paragraph (4) (a); and
 - (b) information that has previously been disclosed to the public other than information that has been disclosed to the public in contravention of the Act or regulations made under the Act; and
 - (c) information relating to a proceeding initiated by a workplace inspector.
- (4) The purposes are:
 - (a) the purpose of briefing a Minister, or considering briefing a Minister:
 - (i) to assist the Minister:
 - (A) to consider a complaint or issue raised with the Minister by or on behalf of a person (in writing or orally); and
 - (B) to respond to the person in relation to the complaint or issue; or
 - (ii) in relation to a meeting or other event that the Minister is to attend; or
 - (iii) for an issue that has been raised publicly, or is proposed to be raised publicly, by or on behalf of the person to whom the information of a kind mentioned in paragraph (3) (a) relates — to assist the Minister to respond to the issue; or
 - (iv) in relation to an error or delay on the part of the Office of the Workplace Ombudsman; or

Regulation 6.6

- (v) in relation to an instance of an anomalous or unusual operation of:
 - (A) Commonwealth workplace relations legislation; or
 - (B) the *Building and Construction Industry Improvement Act 2005*; or
 - (C) Schedule 1 to the Act; and
- (b) for information mentioned in paragraphs (3) (b) or (3) (c) — to provide information to the person
 - (i) about a matter that has previously been disclosed to the public; or
 - (ii) about a proceeding initiated by a workplace inspector.

(5) In this regulation:

APS employee has the same meaning as in the *Public Service Act 1999*.

Minister means:

- (a) a Minister of State administering any part of Commonwealth workplace relations legislation; or
- (b) the Prime Minister.

SES employee has the same meaning as in the *Public Service Act 1999*.

Part 7 The Australian Fair Pay and Conditions Standard

Division 1 Preliminary

7.1 Operation of the Australian Fair Pay and Conditions Standard — provision of more favourable outcome

- (1) For subsection 172 (4) of the Act, this regulation explains:
- (a) what a particular respect is or is not for the purposes of subsection 172 (2) or (3) of the Act; and
 - (b) the circumstances in which the Australian Fair Pay and Conditions Standard provides or does not provide a more favourable outcome in the particular respect.

Note Under subsection 172 (2) of the Act, the Australian Fair Pay and Conditions Standard prevails over a workplace agreement or a contract of employment that operates in relation to an employee to the extent to which, in a particular respect, the Australian Fair Pay and Conditions Standard provides a more favourable outcome for the employee. Subsection 172 (3) of the Act makes further provision in this matter.

Subsection 172 (4) of the Act authorises the regulations to explain:

- (a) what a particular respect is or is not for the purposes of subsection (2) or (3); or
- (b) the circumstances in which the Australian Fair Pay and Conditions Standard provides or does not provide a more favourable outcome in a particular respect.

Wages

- (2) Each of the following is a particular respect:
- (a) the guaranteed basic periodic rate of pay;
 - (b) the guaranteed basic piece rate of pay.
- (3) The Standard does not provide a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) a workplace agreement or a written contract of employment which binds the employee provides for a period within which the guarantee of basic rates of pay in

Regulation 7.1

Subdivision B of Division 2 of Part 7 of the Act may be satisfied; and

- (b) the period does not exceed 12 months.

Note This regulation does not affect the operation of section 189 of the Act.

Example 1 — seasonal employees

An employee works in an industry in which there are significant seasonal fluctuations in work demands. As a result, the employee is required to work more hours during peak season and fewer in the off season in a 12 month period. However, under the employee's workplace agreement the employee is paid the same amount each pay period despite the fluctuations.

If, over the 12 month period, the employee is paid on average at least the guaranteed basic rate of pay, and the employer and employee have agreed, in writing, that the wages guarantee will be complied with over a 12 month period, the Standard will not be more favourable.

Example 2 — employees on commission

An employer and employee, a salesperson, agree that the employee will be paid by commission (eg percentage of sales), rather than by weekly pay, even though the employee is guaranteed a basic hourly rate of pay under the wage guarantee in section 182 of the Act.

They agree in writing that the employee's wage guarantee will be satisfied at the end of every quarter.

- If the employee's commission earnings over a particular quarter are greater than the guaranteed amount under the employee's wage guarantee for the same quarter, no further amount is payable. The Standard will not be more favourable.
- If the employee's commission earnings over a particular quarter fall below the amount guaranteed for the same quarter, the employer must make up any shortfall at the end of the quarter. Otherwise, the Standard will be more favourable and the employee's wage guarantee will not have been satisfied.

The agreement under subregulation 7.1 (3) does not change the obligation to pay the guaranteed basic rate of pay for each hour worked.

- (4) The Standard does not provide a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) a provision in a workplace agreement or written contract of employment binding the employee and the employer provides for the employer to pay an amount in respect of the employee under a salary sacrifice arrangement; and

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- (b) the employee gives the employer a written election, separate to the workplace agreement or contract of employment, for a salary sacrifice arrangement; and
 - (c) the guarantee of basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act would be satisfied if the payment were instead paid to the employee.
- (5) The Standard does not provide a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) a law, or a workplace agreement or a written contract of employment which binds the employee, provides for the employer to make a deduction from the employee's remuneration for the purpose of recovering a previous overpayment of remuneration; and
 - (b) the guarantee of basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act would be satisfied if the amount were instead paid to the employee.
- (5A) The Standard provides a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) a workplace agreement or contract of employment which binds the employee (whether the contract is in writing or not) allows for the imposition of a penalty on an employee; and
 - (b) a consequence of the imposition of the penalty is that the employee's guaranteed basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act would not be satisfied.

Leave

- (6) Each of the following is a particular respect:
- (a) paid annual leave;
 - (b) paid sick leave;
 - (c) paid carer's leave;
 - (d) unpaid carer's leave;
 - (da) paid personal/carer's leave (but only to the extent to which it is a particular respect for the purposes of subregulations (11C) and (11G));
 - (e) paid compassionate leave;

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- (f) special maternity leave;
 - (g) ordinary maternity leave;
 - (h) the paid leave provided for in section 268 of the Act;
 - (i) long paternity leave;
 - (j) short paternity leave;
 - (k) pre-adoption leave;
 - (l) short adoption leave;
 - (m) long adoption leave.
- (7) Each of the matters mentioned in subregulation (6) has the same meaning as in Divisions 4 to 6 of Part 7.
- (8) The Standard provides a more favourable outcome in any of the respects mentioned in subregulation (6) if it provides for a greater amount of one of these types of leave (for example, a greater number of days or hours).

Example

If a workplace agreement provides for 3 weeks paid annual leave and 8 weeks unpaid annual leave, this would be a less favourable outcome than the Standard in respect of paid annual leave because the Standard provides employees with 4 weeks of paid annual leave (but no equivalent unpaid leave entitlement). The employee would be entitled to 4 weeks paid annual leave and 8 weeks unpaid annual leave.

- (9) The Standard does not provide a more favourable outcome in any of the respects mentioned in subregulation (6) if the amount of the entitlement to leave is expressed in a form that is different from, but equivalent to, the Standard.

Example

A workplace agreement which provides that a full-time employee is entitled to 20 days of annual leave would not be less favourable than the Standard (as 20 days is the equivalent of 152 hours of annual leave for a full-time employee working 38 hours per week).

- (10) The Standard does not provide a more favourable outcome in respect of paid annual leave if a workplace agreement or contract of employment which binds the employee permits the employee to take an additional period of annual leave by forgoing an equivalent amount of pay.

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Example

A provision permitting an employee to take 8 weeks of annual leave at half pay (where the available entitlement is 4 weeks of paid annual leave) would not be less favourable than the Standard.

- (11) The Standard does not provide a more favourable outcome in respect of paid carer's leave if a workplace agreement or contract of employment which binds the employee provides that the employee is entitled to access a greater amount of paid personal leave as paid carer's leave annually than the annual cap provided for in the Standard.

Example

A provision which provides no cap on the amount of personal leave that may be taken as carer's leave taken by an employee in a 12 month period would be more favourable than the Standard.

- (11C) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave if a workplace agreement or written contract of employment that binds the employee permits accumulated paid personal/carer's leave to be paid out on termination of employment.
- (11D) The Standard provides a more favourable outcome in respect of paid compassionate leave if:
- (a) for a workplace agreement or written contract of employment that binds the employee and that provides for an amount of paid compassionate leave per occasion that is not more than the amount per occasion provided by the Standard — the employee is entitled to forgo any of that leave in return for an amount of pay or other benefit; or
 - (b) for a workplace agreement or written contract of employment that binds the employee and that provides for an amount of paid compassionate leave per occasion that is greater than the amount per occasion provided by the Standard — the employee is entitled to forgo more than the amount per occasion by which that leave exceeds the amount per occasion provided by the Standard in return for an amount of pay or other benefit.

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- (11E) The Standard does not provide a more favourable outcome in respect of paid compassionate leave if, for a workplace agreement or written contract of employment that binds the employee and that provides for an amount of paid compassionate leave per occasion that is greater than the amount per occasion provided by the Standard, the employee is entitled to forgo the amount per occasion, or less than the amount per occasion, by which that leave exceeds the amount per occasion provided by the Standard in return for an amount of pay or other benefit.

Note For subregulations 7.1 (11D) and (11E), the Standard provides that full-time employees are entitled to an amount of 2 days of paid compassionate leave per occasion (section 257 of the Act).

- (11F) The Standard does not provide a more favourable outcome in respect of paid compassionate leave if:
- (a) a provision in a workplace agreement or contract of employment binding the employee and the employer provides for leave of that type to be forgone in return for an amount of pay or other benefit in a manner that is consistent with these Regulations; and
 - (b) the employee gives the employer a written election, separate to the workplace agreement or contract of employment, to forgo leave in return for an amount of pay or other benefit.
- (11G) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave if a workplace agreement or contract of employment that binds the employee permits the employee to take an additional period of personal/carer's leave by forgoing an equivalent amount of pay.

Example

A provision permitting an employee to take 20 days of personal/carer's leave at half pay (where the available entitlement is 10 days of paid personal/carer's leave) would not be less favourable than the Standard.

Accruing and crediting of leave

- (12) Each of the following is a particular respect:
- (a) accrual of the leave mentioned in subregulation (6);
 - (b) crediting of the leave mentioned in subregulation (6).

Regulation 7.1

Example

A contract of employment provides that an employee is to be credited with annual leave every fortnight instead of every month (annual leave is credited every month under the Standard). This circumstance would not be less favourable than the Standard. However, crediting annually would be less favourable than the Standard.

Crediting of leave annually in arrears of service would be less favourable than the Standard, but crediting in advance of service would be more favourable.

Statutory declarations for parental leave

- (13) The content of a statutory declaration is a particular respect.
- (14) The Standard does not provide a more favourable outcome in the respect mentioned in subregulation (13) if a workplace agreement or contract of employment which binds the employee provides that a statutory declaration is required to include matters additional to those required by the Standard.

Notice periods and evidentiary requirements relating to leave

- (15) Each of the following is a particular respect:
 - (a) the giving of notice in relation to a period of sick leave taken (or to be taken) by the employee;
 - (b) the giving of notice in relation to a period of carer's leave taken (or to be taken) by the employee;
 - (c) the giving of documentary evidence in relation to a period of sick leave taken (or to be taken) by the employee;
 - (d) the giving of documentary evidence in relation to a period of carer's leave taken (or to be taken) by the employee;
 - (e) the giving of evidence in relation to a period of compassionate leave taken (or to be taken) by the employee.
- (16) The Standard provides a more favourable outcome in any of the respects mentioned in subregulation (15) if a workplace agreement or contract of employment which binds the employee (whether the contract is in writing or not) imposes obligations on the employee that are more onerous than the requirements in the Standard.

Regulation 7.2

- (17) The Standard provides a more favourable outcome in any of the respects mentioned in subregulation (15) if a workplace agreement or contract of employment which binds the employee (whether the contract is in writing or not) allows for the imposition of a penalty on an employee for a breach of a requirement or condition to give the notice or evidence.
- (18) In subregulations (5A) and (17):
penalty:
- (a) means any of the following:
 - (i) a deduction of an amount from an employee's remuneration;
 - (ii) a reduction of an employee's entitlements;
 - (iii) a requirement that an employee makes a payment to the employer; but
 - (b) does not include a deduction, reduction or requirement that is:
 - (i) for the benefit of the employee; or
 - (ii) authorised under a law; or
 - (iii) made or imposed because the employee was provided with an entitlement to which the employee was not entitled.

Division 2 Wages

Subdivision A Preliminary

7.2 Definitions for Division 2 of the Act — *pre-reform federal wage instrument*

Minimum wage order

- (1) For subparagraph (d) (ii) of the definition of *pre-reform federal wage instrument* in section 178 of the Act, a minimum wage order:
- (a) made under section 501 or 501A of the pre-reform Act; and

Regulation 7.3

- (b) as in force immediately before the reform commencement; is prescribed.

Certificates of exemption

- (2) For subparagraph (d) (ii) of the definition of *pre-reform federal wage instrument* in section 178 of the Act, the following instruments are prescribed:
- (a) an instrument:
- (i) issued by a particular person or authority pursuant to an award provision made under section 123 of the pre-reform Act; and
 - (ii) as in force immediately before the reform commencement;
- (b) a certificate:
- (i) made under section 509 of the pre-reform Act; and
 - (ii) as in force immediately before the reform commencement.
- (3) Subregulation (2) ceases to have effect at the end of 2 years after the reform commencement.

7.3 Definitions for Division 2 of the Act — *pre-reform State wage instrument*

- (1) For subparagraph (d) (ii) of the definition of *pre-reform State wage instrument* in section 178 of the Act, the following instruments are prescribed:
- (a) an instrument:
- (i) issued by a person or authority under a law of a State, or provision of a law of a State, to a person, because of the person's age, infirmity or slowness, that sets out an enforceable minimum rate of pay for that person; and
 - (ii) as in force immediately before the reform commencement;
- (b) an arrangement:
- (i) made under section 9 of the *Minimum Conditions of Employment Act 1993* of Western Australia; and

Regulation 7.4

- (ii) as in force immediately before the reform commencement.
- (2) Subregulation (1) ceases to have effect at the end of 2 years after the reform commencement.

Subdivision I Australian Pay and Classification Scales: preserved APCSS

7.4 Deriving preserved APCSSs from pre-reform wage instruments — supported employment services

- (1) For subsection 208 (3) of the Act, a preserved APCSS is taken to include any provision of the pre-reform wage instrument to the extent to which it treats the rate provisions of that instrument to be satisfied in relation to a supported employment service that:
 - (a) has entered into, or enters into, an agreement with the Australian Government to phase in minimum wages for employees with a disability; and
 - (b) complies with the phase-in obligations of that agreement.

- (2) In subregulation (1):

employee with a disability has the meaning given by section 178 of the Act.

supported employment services has the meaning given by the *Disability Services Act 1986*.

7.5 Notional adjustments — general

- (1) For subsection 212 (2) of the Act, this regulation explains how to work out certain notional adjustments to rate provisions under subsection 211 (1) of the Act.

Hours per week

- (2) An employee's specified hours of work per week are taken to be:
 - (a) the hours determined in accordance with a provision of:
 - (i) the pre-reform wage instrument from which the relevant preserved APCSS was derived; or

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- (ii) a law; or
- (iii) a provision of a law;
that determined the hours of work per week for the
employee; or
- (b) if weekly hours are not specified in that way — 38 hours
per week.

Conversion of annualised salary

- (3) If an employee's remuneration is expressed as an annualised
rate of pay, the equivalent monetary hourly rate is taken to be
the rate calculated:
 - (a) in accordance with, or by reference to, any provision of
the pre-reform wage instrument that provided for the
conversion of annualised rates of pay; or
 - (b) if the conversion is not provided for in that way — by:
 - (i) multiplying the employee's annualised rate of pay
by 6; and
 - (ii) dividing the result by 313; and
 - (iii) dividing the result by the employee's specified hours
of work per week calculated in accordance with
subregulation (2).

**7.6 Notional adjustments — Victorian minimum wage
orders**

- (1) For subsection 212 (1) of the Act, the coverage provisions of a
preserved APCS to which subregulation 7.2 (1) applies are to
be adjusted to the extent necessary to ensure that they apply to
an employee (within the meaning of subsection 5 (1) of the
Act) who is employed in Victoria.
- (2) For subsection 212 (1) of the Act, the coverage provisions of a
preserved APCS to which paragraph 861 (1) (e) of the Act
applies are to be adjusted to the extent necessary to ensure that
they apply to an employee (within the meaning of section 858
of the Act) who is employed in Victoria.

Regulation 7.7

Subdivision L Adjustments to incorporate 2005 Safety Net Review etc

7.7 Adjustments to incorporate 2005 Safety Net Review — other matters

- (1) For subsection 219 (1) of the Act:
 - (a) the AFPC must adjust rate provisions in each APCS that is derived from a pre-reform State wage instrument mentioned in paragraph (a) of the definition of *pre-reform State wage instrument* in section 178 of the Act to increase the rates in accordance with any decision made by a State industrial authority that relates to the Commission's 2005 Safety Net Review decision, unless the AFPC is satisfied that it is not appropriate to adjust the rate provisions because of the effect of subsection 208 (4) of the Act; and
 - (b) the adjustment must be made as part of the first exercise of the powers of the AFPC under Division 2 of Part 7 of the Act.
- (2) Subregulation (1) applies only if:
 - (a) the State industrial authority did not, before the reform commencement, adjust the instrument in accordance with its decision relating to the Commission's 2005 Safety Net Review decision (by way of general order or otherwise); and
 - (b) either:
 - (i) the instrument was adjusted, before the reform commencement, in accordance with the State industrial authority's decision relating to the Commission's 2004 Safety Net Review decision (by general order or otherwise); or
 - (ii) the instrument came into effect after that decision.
- (3) After the adjustment has been made, section 190 of the Act is taken to have effect in relation to an employee as if the adjustment had been made to the pre-reform State wage instrument immediately before the reform commencement.

Division 4 Annual Leave

7.7A Piece rate employees — basic periodic rate of pay

For section 231 of the Act, the *basic periodic rate of pay* for a piece rate employee is worked out in accordance with the formula:

$$\text{BPR} = \frac{\text{TA}}{\text{TH}}$$

where:

BPR is the employee's basic periodic rate of pay, expressed as an hourly rate of pay.

TA is the total amount earned by the employee at the employee's basic piece rate of pay during the relevant period.

TH is the total hours worked by the employee during the relevant period.

the relevant period is:

- (a) for an employee who was continuously employed by the employer for a period of 12 months or more immediately before the basic periodic rate of pay is to be worked out — the 12 months before the rate is to be worked out; or
- (b) for an employee who was continuously employed by the employer for a period less than 12 months immediately before the rate of pay is to be worked out — that period.

Note The Act contains the following relevant definitions:

- (a) **piece rate employee** — section 228;
- (b) **basic piece rate of pay** — section 178.

Regulation 7.8

Division 5 Personal leave

7.8 Medical certificates issued by registered health practitioners

A medical certificate issued by a registered health practitioner is taken to be a medical certificate for Division 5 of Part 7 of the Act only if it is issued in respect of the area of practice in which the practitioner is registered or licensed under a law of a State or Territory that provides for the registration or licensing of health practitioners.

7.9 Piece rate employees — basic periodic rate of pay

For section 243 of the Act, the *basic periodic rate of pay* for a piece rate employee is worked out in accordance with the formula:

$$\text{BPR} = \frac{\text{TA}}{\text{TH}}$$

where:

BPR is the employee's basic periodic rate of pay, expressed as an hourly rate of pay.

TA is the total amount earned by the employee at the employee's basic piece rate of pay during the relevant period.

TH is the total hours worked by the employee during the relevant period.

the relevant period is:

- (a) for an employee who was continuously employed by the employer for a period of 12 months or more immediately before the basic periodic rate of pay is to be worked out — the 12 months before the rate is to be worked out; or
- (b) for an employee who was continuously employed by the employer for a period less than 12 months immediately before the rate of pay is to be worked out — that period.

Note The Act contains the following relevant definitions:

- (a) **piece rate employee** — section 240;

(b) *basic piece rate of pay* — section 178.

Division 6 Parental leave

7.10 Piece rate employees — basic periodic rate of pay

For section 264A of the Act, the *basic periodic rate of pay* for a piece rate employee is worked out in accordance with the formula:

$$\text{BPR} = \frac{\text{TA}}{\text{TH}}$$

where:

BPR is the employee's basic periodic rate of pay, expressed as an hourly rate of pay.

TA is the total amount earned by the employee at the employee's basic piece rate of pay during the relevant period.

TH is the total hours worked by the employee during the relevant period.

the relevant period is:

- (a) for an employee who was continuously employed by the employer for a period of 12 months or more immediately before the basic periodic rate of pay is to be worked out — the 12 months before the rate is to be worked out; or
- (b) for an employee who was continuously employed by the employer for a period less than 12 months immediately before the rate of pay is to be worked out — that period.

Note The Act contains the following relevant definitions:

- (a) *piece rate employee* — section 263;
- (b) *basic piece rate of pay* — section 178.

Regulation 8.1

Part 8 Workplace agreements

Division 2 Types of workplace agreements

8.1 Authorisation of multiple-business agreements

- (1) For subsection 332 (2) of the Act, the procedure for applying to the Workplace Authority Director for an authorisation to make a multiple-business agreement is that:
 - (a) the application must be in writing; and
 - (b) a copy of the proposed multiple-business agreement must be attached to the application; and
 - (c) the application must identify each employer that will be bound by the proposed agreement; and
 - (d) the application must identify the business, or part of the business, of the employer or employers that will be covered by the proposed agreement; and
 - (e) the application must include reasons supporting the request for the authorisation.

- (2) For subsection 332 (2) of the Act, the procedure for applying to the Workplace Authority Director for an authorisation to vary a multiple-business agreement is that:
 - (a) the application must be in writing; and
 - (b) a copy of the proposed variation to the multiple-business agreement must be attached to the application; and
 - (c) the application must:
 - (i) if the variation relates to the parties to the agreement — identify:
 - (A) the proposed new employers; and
 - (B) the business, or part of the business, of the employers;
that will be covered by the agreement as varied; or
 - (ii) in any other case — identify the proposed variations to the agreement; and

Regulation 8.3

- (d) the application must include reasons supporting the request for the authorisation.
- (3) For subsection 332 (2) of the Act, after the Workplace Authority Director has considered the application, the Workplace Authority Director must give the applicant a notice in writing stating whether the authorisation is granted.

Division 6 Operation of workplace agreements and persons bound

8.2 Workplace agreement displaces certain Commonwealth laws — prescribed conditions of employment

For subsection 350 (1) of the Act, the following conditions of employment are prescribed:

- (a) each condition of employment specified in a determination mentioned in paragraph 8.3 (1) (a), other than a condition of employment specified in a determination made:
- (i) under subsection 24 (1) of the *Public Service Act 1999*; and
 - (ii) in accordance with regulations made for the purpose of subsection 72 (5) of that Act;
- (b) each condition of employment specified in a determination mentioned in paragraphs 8.3 (1) (b) to (f).

8.3 Workplace agreement displaces certain Commonwealth laws — prescribed Commonwealth laws

- (1) For section 350 of the Act, the following laws are prescribed:
- (a) a determination made by an Agency Head under subsection 24 (1) of the *Public Service Act 1999*, other than a determination made under that subsection in accordance with regulations made for the purpose of subsection 72 (5) of that Act;
- (i) under that subsection; and

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- (ii) in accordance with regulations made for the purpose of subsection 72 (5) of that Act;
- (b) a determination made by a Secretary under subsection 24 (1) of the *Parliamentary Service Act 1999*;
- (c) Determination No. 1 (Determination of Remuneration and Allowances and Terms and Conditions of Service of Deputy Commissioners of Police), made under sections 17 and 20 of the *Australian Federal Police Act 1979*, to the extent to which it relates to an entitlement to an adjustment payment within the meaning of that Act;
- (d) a determination made under subsection 26E (1) or (1A) of the *Australian Federal Police Act 1979*;
- (e) Determination No. 5 (Determination of Adjustment Payment for Members and Staff Members), made under section 30 of the *Australian Federal Police Act 1979*, to the extent to which it relates to an entitlement to an adjustment payment;
- (f) Determination No. 2 (Determination of Terms and Conditions of Service of the Senior Executive Service), made under section 30 of the *Australian Federal Police Act 1979*, to the extent to which it relates to an entitlement to an adjustment payment.

(2) In subregulation (1):

adjustment payment has the meaning given by subsection 4 (1) of the *Australian Federal Police Act 1979*.

Agency Head has the meaning given by section 7 of the *Public Service Act 1999*.

Secretary has the meaning given by section 7 of the *Parliamentary Service Act 1999*.

**Division 7.1 Prohibited content under
section 356 of the Act**

Subdivision A Preliminary

8.4 Purpose of Division

This Part specifies the matters that under section 356 of the Act are matters that are prohibited content for the purposes of the Act.

**Subdivision B Various matters that are prohibited
content**

8.5 Various matters

- (1) A term of a workplace agreement is prohibited content to the extent that it deals with the following:
 - (a) deductions from the pay or wages of an employee bound by the agreement of trade union membership subscriptions or dues;
 - (b) the provision of payroll deduction facilities for the subscriptions or dues referred to in paragraph (a);
 - (c) employees bound by the agreement receiving leave to attend training (however described) provided by a trade union;
 - (d) employees bound by the agreement receiving paid leave to attend meetings (however described) conducted by or made up of trade union members;
 - (e) the renegotiation of a workplace agreement;
 - (f) the rights of an organisation of employers or employees to participate in, or represent an employer or employee bound by the agreement in, the whole or part of a dispute settling procedure, unless the organisation is the representative of the employer's or employee's choice;

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- (g) the rights of an official of an organisation of employers or employees to enter the premises of the employer bound by the agreement;
- (h) restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement;
- (i) restrictions on the engagement of labour hire workers, and requirements relating to the conditions of their engagement, imposed on an entity or person for whom the labour hire worker performs work under a contract with a labour hire agency;
- (j) the forgoing of annual leave credited to an employee bound by the agreement for an amount of pay or other benefit otherwise than at the written election of the employee;
- (k) the provision of information about employees bound by the agreement to a trade union, or a member acting in a representative capacity, officer, or employee of a trade union, unless provision of that information is required or authorised by law;
- (l) the forgoing of paid compassionate leave for an amount of pay or other benefit otherwise than in a manner that would result in a more favourable outcome than the Standard, consistent with these Regulations;
- (m) the forgoing of paid personal/carer's leave credited to an employee bound by the agreement for an amount of pay or other benefit otherwise than at the written election of the employee.

Note In these Regulations a reference to an independent contractor is not confined to a natural person (see subsection 4 (2) of the Act).

Terms that encourage or discourage union membership

- (2) A term of a workplace agreement is prohibited content to the extent that it:
 - (a) directly or indirectly requires a person bound by the agreement:

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- (i) to encourage another person bound by the agreement to become, or remain, a member of an industrial association; or
- (ii) to discourage another person bound by the agreement from becoming, or remaining, a member of an industrial association; or
- (b) requires a person bound by the agreement to indicate support, or lack of support, for persons bound by the agreement being members of an industrial association.

Terms allowing for industrial action

- (3) A term of a workplace agreement is prohibited content to the extent that it permits a person bound by the agreement to engage in or organise industrial action.

Terms dealing with disclosure of details of workplace agreement

- (4) A term of a workplace agreement is prohibited content to the extent that it prohibits or restricts disclosure of details of the workplace agreement by a person bound by the agreement.

Terms providing for remedies for unfair dismissal

- (5) A term of a workplace agreement is prohibited content to the extent that it confers a right or remedy in relation to the termination of employment of an employee bound by the agreement for a reason that is harsh, unjust or unreasonable.
- (6) To avoid doubt, a term is not prohibited content under subregulation (5) to the extent that it provides a process for managing an employee's performance or conduct.

Objectionable provisions

- (7) A term of a workplace agreement is prohibited content to the extent that it is an objectionable provision within the meaning of the Act.

Note Section 810 of the Act deals with objectionable provisions.

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Term concerning AWA

- (8) A term of a workplace agreement is prohibited content to the extent that it directly or indirectly restricts the ability of a person bound by the agreement to offer, negotiate or enter into an AWA.

Terms allowing for penalties

- (8A) A term of a workplace agreement is prohibited content to the extent that the term allows for the imposition of a penalty on an employee for breach of a requirement to provide notice or evidence:
- (a) for the purpose of substantiating an entitlement to sick leave or carer's leave; or
 - (b) for the purpose of substantiating a reason for absence from work due to:
 - (i) an illness, injury or emergency affecting the employee; or
 - (ii) an illness, injury or emergency affecting a member of the employee's immediate family or household.

Example

Zoe's Adventures Pty Ltd is concerned about the number of its employees who take sick leave on Mondays.

To try to reduce the costs of these absences to its business, Zoe's Adventures would like to include a term in its workplace agreement that requires the employee to provide notice to the office manager of needing to take sick leave the day before taking it, and if the employee does not do so, the employee will not be entitled to 2 hours of paid sick leave for that day.

As the term penalises the employee (by reducing the employee's entitlement to paid sick leave by 2 hours) for not providing notice in accordance with the agreement, this term would be prohibited content.

- (8B) A term of a workplace agreement is prohibited content to the extent that the term allows for the imposition of a penalty on an employee for being absent from work due to:
- (a) an illness, injury or emergency affecting the employee; or
 - (b) an illness, injury or emergency affecting a member of the employee's immediate family or household.

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Deryk works as a casual waiter at a restaurant that only employs waiters who have 'silver service' training. When one of its waiters is sick, the restaurant is often unable to find a suitable replacement at short notice.

The restaurant proposes to include a term in its workplace agreements so that, if a waiter is unable to make a shift because he or she is sick, the waiter will pay the restaurant \$150. The proposed term of the workplace agreement also provides that this amount will be split among the waiters who do work as an extra tip for working a shift with fewer waiters.

As the term would penalise Deryk by requiring him to pay an amount to his employer for not working a shift because he was sick, this term would be prohibited content.

Meaning of terms

(9) In paragraph (1) (i):

labour hire agency means an entity or a person who conducts a business that includes the employment or engagement of workers for the purpose of supplying those workers to another entity or person under a contract with that other entity or person.

labour hire worker means a person:

(a) who:

(i) is employed by a labour hire agency; or

(ii) is engaged by a labour hire agency as an independent contractor; and

(b) who performs work for another entity or person under a contract between that entity or person and the labour hire agency.

(10) In subregulations (8A) and (8B):

penalty:

(a) means any of the following:

(i) a deduction of an amount from an employee's remuneration;

(ii) a reduction of an employee's entitlements;

(iii) a requirement that an employee makes a payment to the employer; but

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- (b) does not include a deduction, reduction or requirement that is:
 - (i) for the benefit of the employee; or
 - (ii) authorised under a law; or
 - (iii) made or imposed because the employee was provided with an entitlement to which the employee was not entitled.

8.6 Discriminatory terms

- (1) A term of a workplace agreement is prohibited content to the extent that it discriminates against an employee, who is bound by the agreement, because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (2) For the purposes of subregulation (1), a provision of an agreement does not discriminate against an employee or class of employees merely because:
 - (a) it provides for a rate or rates of pay that comply with a rate or rates of pay that are contained in the Australian Pay and Classification Scale or a special Federal Minimum Wage that would otherwise apply to the employee or class of employees; or
 - (b) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
 - (c) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed:
 - (i) on the basis of those teachings or beliefs; and
 - (ii) in good faith.

Note For **Australian Pay and Classification Scale** see Division 2 of Part 7 of the Act and for **special Federal Minimum Wage** see section 197 of the Act.

Regulation 8.7

**Subdivision C Matters that do not pertain to the
employment relationship are prohibited
content**

**8.7 Matters that do not pertain to the employment
relationship are prohibited content**

- (1) Subject to subregulation (2), a term of a workplace agreement is prohibited content to the extent that it deals with a matter that does not pertain to the employment relationship.

Exception to rule in subregulation (1)

- (2) If:
- (a) a term deals with a matter that does not pertain to the employment relationship; and
 - (b) the matter is:
 - (i) incidental or ancillary to a matter contained in the agreement which does pertain to the employment relationship; or
 - (ii) a machinery matter; or
 - (iii) so trivial that it should be disregarded as insignificant;

then, to the extent that the term deals with the matter, it is not prohibited content.

*Meaning of **pertains to the employment relationship***

- (3) In this regulation, a matter pertains to the employment relationship:
- (a) in the case of a collective agreement — if it pertains to the relationship between the employer bound by the agreement and all persons who, at any time when the agreement is in operation, are employed by the employer and who are bound by the agreement; or
 - (b) in the case of an ITEA — if it pertains to the relationship between the employer bound by the agreement and the employee bound by the agreement.

Regulation 8.8

**Division 7.2 Prohibited content under
Schedule 8 to the Act**

8.8 Prohibited content

Term preventing the making of an AWA

- (1) A term of:
- (a) a preserved individual State agreement; or
 - (b) a preserved collective State agreement; or
 - (c) a notional agreement preserving State awards;
- is prohibited content for the purposes of clauses 9 (a preserved individual State agreement), 15B (a preserved collective State agreement) and 37 (a notional agreement preserving State awards) of Schedule 8 to the Act to the extent that it prevents the employer bound by the agreement from making an AWA.

Term restricting training

- (2) A term of a notional agreement preserving State awards is prohibited content for the purposes of clause 37 of Schedule 8 to the Act to the extent that it restricts the range or duration of training arrangements.
- (3) In this regulation, *preserved individual State agreement*, *preserved collective State agreement* and *notional agreement preserving State awards* have the meanings given in Schedule 8 to the Act.

Subdivision B Prohibited content

**8.9 Employer must not lodge workplace agreement
containing prohibited content**

For paragraph 357 (2) (b) of the Act, advice given by the Workplace Authority Director to an employer that a workplace agreement (or a workplace agreement as varied) does not contain prohibited content must:

- (a) be in writing; and

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- (b) be signed by the Workplace Authority Director; and
- (c) state the date, or dates, on which the advice was provided; and
- (d) identify the content of the agreement that was considered by the Workplace Authority Director; and
- (e) if the Workplace Authority Director concludes that the content is prohibited — include an explanation, with appropriate detail, of the Workplace Authority Director's reasons; and
- (f) if the Workplace Authority Director is unable to conclude whether the content is prohibited or not — include an explanation of the Workplace Authority Director's reasons.

Division 12 Miscellaneous

8.10 Qualifications and appointment of bargaining agents

- (1) This regulation applies to bargaining agents for making an ITEA, an employee collective agreement and an employer greenfields agreement (an *agreement*).
- (2) For paragraph 418 (b) of the Act, a person is excluded from being appointed or holding an appointment as a bargaining agent for an agreement if the person:
 - (a) has been appointed as the bargaining agent for the other party to the agreement; or
 - (b) is bankrupt or is applying to take the benefit of any law for the relief of a bankrupt or insolvent debtor; or
 - (c) has not attained the age of 18 years.
- (3) For paragraph 418 (b) of the Act, if, before or after the commencement of this regulation, a person:
 - (a) has been convicted of an offence against a Commonwealth, State or Territory law punishable by imprisonment for 1 year or longer; or
 - (b) has been convicted of an offence against a Commonwealth, State or Territory law that involves

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dishonesty and is punishable by imprisonment for 6 months or longer; or

- (c) has been the subject of an order by a Court or the Federal Magistrates Court in relation to a civil remedy provision in connection with the negotiation of:
 - (i) a workplace agreement (whether or not as a bargaining agent); or
 - (ii) a State agreement under a State law; or
- (d) has been convicted of an offence under the Act or the *Criminal Code*;

that person is excluded from being appointed or holding an appointment as a bargaining agent within the period of 5 years after the date of conviction, the date of the order, or, if the person was sentenced to imprisonment, after release from prison.

Note The *Criminal Code* is set out in the *Criminal Code Act 1995*.

- (4) A person who is excluded from being appointed or holding an appointment as a bargaining agent under subregulation (2) or (3) may apply to a court for leave to hold an appointment as a bargaining agent.
- (5) When granting leave under this regulation, the court may impose any conditions or restrictions that it thinks fit.
- (6) The court may at any time, on the application of the Workplace Authority Director, revoke leave granted by the court under this regulation.
- (7) It is a condition of the appointment of an organisation, or any other incorporated body, as a bargaining agent that each individual who carries out the functions of a bargaining agent on its behalf is, at all material times, a person who is not excluded by the preceding provisions of this regulation from being a bargaining agent.

8.11 Required form of workplace agreements

- (1) For paragraph 418 (c) of the Act, a workplace agreement must:
 - (a) be in the English language; and

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- (b) be printed in legible typescript; and
- (c) include the full name and address of each person who signs the agreement.

- (2) Strict liability applies to the physical elements in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

8.12 Witnessing of signatures on ITEAs and variations to ITEAs

- (1) For paragraph 418 (d) of the Act, a person who signs an ITEA or a variation to an ITEA as a witness must also include his or her full name and address.
- (2) For paragraph 418 (d) of the Act, the following persons are not entitled to witness a party's signature on an ITEA or a variation to an ITEA:
 - (a) the other party to the ITEA or the variation;
 - (b) the bargaining agent of the other party to the ITEA or the variation;
 - (c) where the other party to the ITEA or the variation is a corporation — a person who is a director of the corporation or a person involved in the day to day management of the corporation.

8.13 Signing of workplace agreements

- (1) For paragraph 418 (e) of the Act, an employer must obtain the signatures of:
 - (a) for all workplace agreements — the employer or employers in relation to the agreement; and

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- (b) in addition to paragraph (a):
- (i) if the workplace agreement is an employee collective agreement — a representative of the employees to the agreement or a bargaining agent appointed under section 335; or
 - (ii) if the workplace agreement is a union collective agreement — the organisation or organisations of employees with which the employer made the agreement; or
 - (iii) if the workplace agreement is a union greenfields agreement — the organisation or organisations of employees with which the employer made the agreement.

- (2) For subregulation (1), a signature to the workplace agreement must be accompanied by:
- (a) the full name and address of each person signing the workplace agreement in accordance with subregulation (1); and
 - (b) an explanation of the person's authority to sign the workplace agreement.

Note The requirements for the signing of an ITEA are set out in section 340 of the Act.

- (3) Strict liability applies to the physical elements in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Subregulations (1) and (2) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

- (4A) It is a defence to a contravention of subregulation (1) that the workplace agreement:
- (a) is a collective agreement; and
 - (b) does not include the signature of a person (other than the employer) because of the person's failure or refusal to sign the agreement.

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8.13A Signing of variations to workplace agreements

- (1) For paragraph 418 (ea) of the Act, this regulation applies in relation to a variation of a workplace agreement.
- (2) For a variation to any workplace agreement, an employer must obtain the signature of the employer or employers in relation to the variation.
- (3) In addition to subregulation (2), the employer must obtain the following:
 - (a) if the workplace agreement that is being varied is an employee collective agreement — the signature of a representative of the employees bound by the variation or a bargaining agent appointed under section 335;
 - (b) if the workplace agreement that is being varied is a union collective agreement — the signature of the organisation or organisations of employees with which the employer made the variation;
 - (c) if the workplace agreement that is being varied is a union greenfields agreement — the signature of the organisation or organisations of employees with which the employer made the variation;
 - (d) if:
 - (i) the workplace agreement that is being varied is an employer greenfields agreement; and
 - (ii) there are employees bound by that agreement;
the signature of a representative of the employees bound by the variation or a bargaining agent appointed under section 335.
- (4) For subregulations (2) and (3), a signature to the variation must be accompanied by:
 - (a) the full name and address of each person signing the variation in accordance with subregulation (2) or (3); and

Note for paragraph (d) The signature of a representative of the employees is required if any employees are employed under the employer greenfields agreement at the time it is varied. If no employees are bound by the employer greenfields agreement at the time it is varied, only the employer or employers need sign the variation (see subregulation (2)).

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- (b) an explanation of the person's authority to sign the variation.

Note The requirements for the signing of a variation to an ITEA are set out in section 373 of the Act.

- (5) Strict liability applies to the physical elements in subregulations (2) and (3).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (6) Subregulations (2), (3) and (4) are civil remedy provisions.

Note Part 14 sets out provisions dealing with contraventions of civil remedy provisions.

- (7) It is a defence to a contravention of subregulation (2) or (3) that:

- (a) the workplace agreement that is being varied is a collective agreement; and
(b) does not include the signature of a person (other than the employer) because of the person's failure or refusal to sign the variation to the agreement.

8.14 Retention of signed workplace agreement

- (1) For paragraph 418 (f) of the Act, an employer must retain a signed copy of a workplace agreement for:

- (a) the duration of the workplace agreement; and
(b) the period of 7 years after the workplace agreement is terminated.

- (2) Regulation 19.20 applies to a workplace agreement as if a reference in that regulation to a record were a reference to a workplace agreement.

- (3) Strict liability applies to the physical elements in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

Regulation 8.15

- (5) It is a defence to a contravention of subregulation (1) that the workplace agreement:
- (a) is a collective agreement; and
 - (b) does not include the signature of a person (other than the employer) because of the person's failure or refusal to sign the agreement.

8.15 Application of the *Criminal Code* to civil remedy provisions

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Part as if those provisions were offences.

Regulation 9.1

Part 9 Industrial action

Division 2 Bargaining periods

9.1 Employee may appoint agent to initiate bargaining period — qualifications for appointment

- (1) For subsection 424 (3) of the Act, this regulation sets out the qualifications of a person appointed as an agent to initiate a bargaining period on another person's behalf.

Note Subsection 424 (1) of the Act authorises persons to appoint agents.

Person is already an agent

- (2) A person is not qualified to be appointed, or to hold an appointment, as an agent if the person has been appointed as the agent for another negotiating party in relation to the proposed collective agreement.

Person is under legal restriction

- (3) A person is not qualified to be appointed, or to hold an appointment, as an agent if the person:
- (a) is bankrupt; or
 - (b) is applying to take the benefit of any law for the relief of a bankrupt or insolvent debtor; or
 - (c) is less than 18 years old.

Person has been convicted of certain offences

- (4) A person is not qualified to be appointed, or to hold an appointment, as an agent if, before or after the commencement of this regulation, the person:
- (a) has been convicted of an offence against a Commonwealth, State or Territory law punishable by imprisonment for 1 year or longer; or

Regulation 9.2

- (b) has been convicted of an offence against a Commonwealth, State or Territory law that involves dishonesty and is punishable by imprisonment for 6 months or longer; or
 - (c) has been the subject of an order by a court in relation to a civil remedy provision in connection with the negotiation of:
 - (i) a workplace agreement (whether or not as a bargaining agent); or
 - (ii) a State agreement under a State law; or
 - (d) has been convicted of an offence under the Act or the *Criminal Code*.
- (5) A person to whom subregulation (4) applies is not qualified to be appointed, or to hold an appointment, as an agent for a period of 5 years starting on the date of the conviction.

Leave to hold appointment as agent

- (6) A person who is not qualified to be appointed, or to hold an appointment, as an agent under subregulations (2) to (4) may apply to the Court for leave to hold an appointment as an agent.
- (7) If the Court grants leave under this regulation, the Court may impose any conditions or restrictions that it thinks fit.
- (8) The Court may at any time, on the application of the Workplace Authority Director, revoke leave granted by the Court under this regulation.

9.2 Employee may appoint agent to initiate bargaining period — appointment

For subsection 424 (3) of the Act, it is a condition of the appointment of an organisation, or any other incorporated body, as an agent that each individual who carries out the functions of an agent on its behalf is, at all material times, a person who is not disqualified from being an agent under regulation 9.1.

Regulation 9.3

Division 3 Protected action

9.3 Protected action

For subsection 435 (5) of the Act, the following purposes are prescribed:

- (a) superannuation;
- (b) authorised leave entitlements;
- (c) remuneration and promotion, as affected by seniority;
- (d) an entitlement (if any) to notice on termination of employment.

Note Under subsection 435 (5) of the Act, an employer is not entitled to engage in industrial action against employees (and so the industrial action will not be protected action) unless the continuity of the employees' employment, for such purposes as are prescribed by the regulations, is not affected by the industrial action.

**Division 4 Secret ballots on proposed
protected action**

Subdivision A General

9.4 Declaration envelope

- (1) For the definition of *declaration envelope* in section 450 of the Act, a declaration envelope provided to an employee by an authorised ballot agent must comply with the following form:
 - (a) the declaration envelope must be a smaller envelope that fits inside a prepaid envelope without needing to be folded;
 - (b) the declaration envelope must contain on it a removable flap or label with the following details printed on it:
 - (i) the name and postal address of the employee;
 - (ii) the declaration mentioned in subregulation (2);
 - (iii) a place for the signature of the employee.
- (2) The declaration must state that the employee:
 - (a) is the employee named on the envelope; and

Regulation 9.5

- (b) has voted on the ballot paper contained in the envelope;
and
 - (c) has not voted before in this ballot.
- (3) To preserve the secrecy of the vote, the authorised ballot agent must remove the flap or label mentioned in paragraph (1) (b) from the declaration envelope before removing the ballot paper from the envelope.

9.5 Employee may appoint agent to apply for ballot order — qualifications for appointment

- (1) For paragraph 493 (a) of the Act, this regulation sets out the qualifications of a person appointed as an agent to represent another person in making an application for an order for a protected action ballot to be held.

Note Subsection 451 (5) of the Act authorises persons to appoint agents.

Person is already an agent

- (2) A person is not qualified to be appointed, or to hold an appointment, as an agent if the person has been appointed as the agent for another party in relation to an application for an order relating to the same protected action ballot.

Person is under legal restriction

- (3) A person is not qualified to be appointed, or to hold an appointment, as an agent if the person:
- (a) is bankrupt; or
 - (b) is applying to take the benefit of any law for the relief of a bankrupt or insolvent debtor; or
 - (c) is less than 18 years old.

Person has been convicted of certain offences

- (4) A person is not qualified to be appointed, or to hold an appointment, as an agent if, before or after the commencement of this regulation, the person has been convicted of:

Regulation 9.6

- (a) an offence against a Commonwealth, State or Territory law punishable by imprisonment for 1 year or longer; or
 - (b) an offence against a Commonwealth, State or Territory law that involves dishonesty and is punishable by imprisonment for 6 months or longer; or
 - (c) has been the subject of an order by a court in relation to a civil remedy provision in connection with the negotiation of:
 - (i) a workplace agreement (whether or not as a bargaining agent); or
 - (ii) a State agreement under a State law; or
 - (d) an offence under the Act or the *Criminal Code*.
- (5) A person to whom subregulation (4) applies is not qualified to be appointed, or to hold an appointment, as an agent for a period of 5 years starting on the date of the conviction.

Leave to hold appointment as agent

- (6) A person who is not qualified to be appointed, or to hold an appointment, as an agent under subregulations (2) to (4) may apply to the Court for leave to hold an appointment as an agent.
- (7) If the Court grants leave under this regulation, the Court may impose any conditions or restrictions that it thinks fit.
- (8) The Court may at any time, on the application of the Workplace Authority Director, revoke leave granted by the Court under this regulation.

9.6 Employee may appoint agent to apply for ballot order — appointment

For paragraph 493 (a) of the Act, it is a condition of the appointment of an organisation, or any other incorporated body, as an agent that each individual who carries out the functions of an agent on its behalf is, at all material times, a person who is not disqualified from being an agent under regulation 9.5.

**Subdivision B Application for order for protected
action ballot to be held**

9.7 Material to accompany application

- (1) For subsection 453 (5), a declaration by an applicant must be a written statement in one of the following forms:
 - (a) “the industrial action to which the application relates does not involve claims for prohibited content”;
 - (b) “the industrial action to which the application relates is not for the purpose of supporting or advancing claims to include in the proposed collective agreement any prohibited content”.
- (2) The document in which the declaration is made must include the statement “Giving false or misleading information is a serious offence”.

Note See section 137.1 of the *Criminal Code*.
- (3) The Commission is not required to accept, as a declaration, a document that does not include the statement mentioned in subregulation (2).

**Subdivision C Secret ballots on proposed protected
action**

Note See section 493 of the Act.

9.8 Notifying employees of ballot

- (1) This regulation applies if the Commission makes an order for a protected action ballot to be held.
- (2) The authorised ballot agent in relation to the ballot must, as soon as practicable after the Commission makes the order, take all reasonable steps to give all employees eligible to be included on the roll of voters the following information:
 - (a) advice that the Commission has made the order;
 - (b) the matters specified in the ballot order;
 - (c) the times and locations at which an attendance vote (if any) may occur;

Regulation 9.9

- (d) the contact details of the authorised ballot agent;
 - (e) if a person has been authorised to be the independent advisor for the ballot — the person’s name and contact details;
 - (f) a statement of the employee’s right to contact the authorised ballot agent to confirm whether the employee is on the roll of voters;
 - (g) a statement of the employee’s right to seek to be included on the roll of voters under section 468 of the Act;
 - (h) a statement of the employee’s right to inform the authorised ballot agent or the independent advisor (if any) of any irregularities in the conduct of the ballot.
- (3) The authorised ballot agent is taken to have complied with subregulation (2) if the agent:
- (a) displays notices containing the information in subregulation (2) in prominent places around each workplace at which employees affected by the ballot are located; or
 - (b) e-mails or posts a copy of that information to all employees who are eligible to be included on the roll of voters.
- (4) An employer must allow the authorised ballot agent access to the workplace for the purpose of placing notices containing the information around the workplace.
- (5) Strict liability applies to the physical elements in subregulation (4).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (6) Subregulation (4) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

9.9 Information relevant to roll of voters

- (1) This regulation applies if an employer or an applicant provides a list of employees, or other information, to the Commission or an authorised ballot agent under section 465 of the Act.

Regulation 9.11

Declaration of accuracy of information

- (2) The list of employees or other information provided by the employer must be accompanied by a declaration by the employer that the list or other information includes all of the employees who are not a party to an ITEA.
- (3) The list of employees or other information provided by the applicant must be accompanied by a declaration by the applicant that the list or other information includes all of the employees whose employment would be subject to the proposed agreement.

Disclosure of information

- (4) For section 486 of the Act, a person is taken not to be performing functions or duties as, or on behalf of, an authorised ballot agent if the person discloses information that the person has reasonable grounds to believe would identify another person as a person who is mentioned in paragraph 485 (1) (a), (b), (c) or (d) of the Act to:
 - (a) an employer; or
 - (b) an applicant; or
 - (c) a scrutineer; or
 - (d) a representative of an employer, applicant or scrutineer.

9.10 Form of ballot paper

A ballot paper for use in a protected action ballot must be in accordance with Form 1 of Schedule 1.

9.11 Conduct of ballot — access to workplace

- (1) An employer must allow an authorised ballot agent access to:
 - (a) a workplace; or
 - (b) another place of business for the employer;for the purpose of preparing for, or conducting, a ballot.
- (2) Strict liability applies to the physical elements in subregulation (1).

Regulation 9.12

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

9.12 Directions about ballot paper

An authorised ballot agent conducting a ballot may provide with the ballot paper:

- (a) directions to be followed by an employee entitled to vote in the ballot so that the vote complies with these Regulations; and
- (b) other directions that the agent reasonably believes may assist in ensuring an irregularity does not occur in the conduct of the ballot; and
- (c) notes to assist an employee entitled to vote in the ballot by informing him or her of matters relating to conduct of the ballot.

9.13 Issuing of ballot papers — attendance voting

- (1) This regulation applies if the Commission orders a protected action ballot to be conducted by a method of voting other than postal voting.
- (2) The authorised ballot agent must issue to each employee entitled to vote in the ballot a ballot paper or multiple ballot paper (whichever applies) bearing:
 - (a) the initials of the authorised ballot agent; or
 - (b) a facsimile of those initials.

9.14 Duplicate ballot papers — attendance voting

- (1) This regulation applies if the Commission orders a protected action ballot to be conducted by a method of voting other than postal voting.
- (2) If an employee entitled to vote in the ballot satisfies the authorised ballot agent, before depositing the ballot paper in

Regulation 9.16

the ballot box, that the employee has accidentally spoiled the paper, the agent must:

- (a) mark “spoilt” on the paper and initial the marking; and
- (b) keep the paper; and
- (c) issue a fresh ballot paper to the employee.

9.15 Dispatch of ballot papers — postal voting

- (1) This regulation applies if the Commission orders a protected action ballot to be conducted by postal voting.
- (2) The authorised ballot agent must, as soon as practicable, post to each employee entitled to vote in the ballot a sealed envelope, addressed to the postal address of the employee shown on the roll of voters, containing:
 - (a) one ballot paper for the ballot:
 - (i) bearing the initials of the authorised ballot agent or a facsimile of those initials; and
 - (ii) stating the time, on the closing day of the ballot, by which the vote must be received; and
 - (b) any document that the Act or these Regulations requires to be posted with the ballot paper; and
 - (c) any other material that the authorised ballot agent considers to be relevant to the ballot; and
 - (d) a declaration envelope in which the employee must place his or her ballot paper; and
 - (e) a prepaid envelope, addressed to the authorised ballot agent, that may be posted without cost to the employee; and
 - (f) details of the place where the employee may obtain information about the proposed industrial action.

9.16 Duplicate ballot paper etc — postal voting

- (1) This regulation applies if the Commission orders a protected action ballot to be conducted by postal voting.

Regulation 9.17

- (2) If, on the written application of an employee entitled to vote in the ballot, the authorised ballot agent is satisfied that:
- (a) a ballot paper; or
 - (b) another document required to be posted with a ballot paper or ballot papers;
that was posted to the employee under regulation 9.15:
 - (c) has not been received by the employee; or
 - (d) has been lost or destroyed; or
 - (e) in the case of a ballot paper, has been spoilt;
- the authorised ballot agent must immediately issue a duplicate of the relevant document to the employee.
- (3) An application under subregulation (2) must:
- (a) be received by the authorised ballot agent on or before the closing day of the ballot; and
 - (b) state the grounds for making the application; and
 - (c) if practicable, be accompanied by evidence that verifies, or tends to verify, those grounds; and
 - (d) contain a declaration to the effect that the member has not voted at the ballot; and
 - (e) in a case mentioned in paragraph (2) (e), be accompanied by that paper.
- (4) An authorised ballot agent to whom a spoilt paper is returned under paragraph (3) (e) must deal with the paper in accordance with paragraphs 9.14 (2) (a) and (b).

9.17 Manner of voting — postal voting

- (1) This regulation applies if the Commission orders a protected action ballot to be conducted by postal voting.
- (2) After recording his or her vote in a protected action ballot, an employee must:
- (a) comply with any direction under regulation 9.12; and
 - (b) place the ballot paper in the declaration envelope, complete the declaration and seal the declaration envelope; and

Regulation 9.18

- (c) place the declaration envelope in the prepaid envelope and seal the prepaid envelope; and
- (d) send the prepaid envelope to the authorised ballot agent to reach the agent no later than the time on the closing day of the ballot noted on the ballot paper.

9.18 Scrutiny

- (1) The authorised ballot agent conducting a protected action ballot must determine the result of the ballot by conducting a scrutiny in accordance with this regulation.
- (2) As soon as practicable after the close of the ballot, the authorised ballot agent must:
 - (a) admit the valid ballot papers and reject the informal ballot papers; and
 - (b) count the valid ballot papers, and record the number:
 - (i) in favour of the question or questions; and
 - (ii) against the question or questions; and
 - (c) count the informal ballot papers.
- (3) The authorised ballot agent may:
 - (a) remove a ballot paper from a declaration envelope; and
 - (b) act under subregulation (2);
as soon as the agent receives the declaration envelope.
- (4) A vote is informal only if:
 - (a) the ballot paper does not bear:
 - (i) the initials of an authorised ballot agent; or
 - (ii) a facsimile of those initials; or
 - (b) the ballot paper is marked in a way that permits the employee to be identified; or
 - (c) the ballot paper is not marked in a way that makes it clear how the employee meant to vote; or
 - (d) a person returning material mentioned in paragraph 9.15 (2) (c) with the ballot paper does not comply with a direction given under regulation 9.12.

Regulation 9.19

- (5) However, a vote is not informal because of paragraph (4) (a) if the authorised ballot agent is satisfied the ballot paper in question is authentic.
- (6) If the authorised ballot agent conducting the ballot is informed by a scrutineer that the scrutineer objects to a ballot paper being admitted as formal or rejected as informal, the agent must:
 - (a) decide whether the ballot paper is to be admitted as formal or rejected as informal; and
 - (b) endorse that decision on the ballot paper and initial the endorsement.
- (7) If the authorised ballot agent conducting the ballot is informed by a scrutineer to the effect that, in the scrutineer's opinion, an error has been made in the conduct of the scrutiny, the authorised ballot agent must decide whether an error has been made and, if appropriate, direct what action is to be taken to correct or mitigate the error.

9.19 Appointment of scrutineers

Appointment

- (1) In relation to a protected action ballot, the employer and the applicant or applicants may appoint scrutineers to perform the functions mentioned in regulation 9.22.
- (2) The appointment must be made by an instrument signed on behalf of the employer or applicant.

9.20 Qualifications of scrutineers

- (1) For paragraph 493 (c) of the Act, this regulation sets out the qualifications of a person appointed as a scrutineer.

Person is already a scrutineer

- (2) A person is not qualified to be appointed, or to hold an appointment, as a scrutineer if the person has been appointed as a scrutineer for another party in relation to the protected action ballot.

Regulation 9.20

Person is under legal restriction

- (3) A person is not qualified to be appointed, or to hold an appointment, as a scrutineer if the person:
- (a) is bankrupt; or
 - (b) is applying to take the benefit of any law for the relief of a bankrupt or insolvent debtor; or
 - (c) is less than 18 years old.

Person has been convicted of certain offences

- (4) A person is not qualified to be appointed, or to hold an appointment, as a scrutineer if, before or after the commencement of this regulation, the person:
- (a) has been convicted of an offence against a Commonwealth, State or Territory law punishable by imprisonment for 1 year or longer; or
 - (b) has been convicted of an offence against a Commonwealth, State or Territory law that involves dishonesty and is punishable by imprisonment for 6 months or longer; or
 - (c) has been the subject of an order by a court in relation to a civil remedy provision in connection with the negotiation of:
 - (i) a workplace agreement (whether or not as a bargaining agent); or
 - (ii) a State agreement under a State law; or
 - (d) has been convicted of an offence under the Act or the *Criminal Code*.
- (5) A person to whom subregulation (4) applies is not qualified to be appointed, or to hold an appointment, as a scrutineer for a period of 5 years starting on the date of the conviction,

Leave to hold appointment as scrutineer

- (6) A person who is not qualified to be appointed, or to hold an appointment, as a scrutineer under subregulations (2) to (4) may apply to the Court for leave to hold an appointment as a scrutineer.

Regulation 9.21

- (7) If the Court grants leave under this regulation, the Court may impose any conditions or restrictions that it thinks fit.
- (8) The Court may at any time, on the application of the Workplace Authority Director, revoke leave granted by the Court under this regulation.

9.21 Scrutineers — appointment

For regulation 9.19, it is a condition of the appointment of an organisation, or any other incorporated body, as a scrutineer that each individual who carries out the functions of a scrutineer on its behalf is, at all material times, a person who is not disqualified from being a scrutineer under regulation 9.20.

9.22 Functions of scrutineers

- (1) Subject to subregulations (2), (3) and (4):
 - (a) a scrutineer for a protected action ballot may be present at the scrutiny of ballot material:
 - (i) for a ballot conducted by postal voting — after the authorised ballot agent has acted under subregulation 9.4 (3) to remove the flap or label from the declaration envelope; or
 - (ii) for a ballot conducted by a method of voting other than postal voting — when the authorised ballot agent is ready to conduct the scrutiny of the ballot material; and
 - (b) at the scrutiny mentioned in paragraph (a):
 - (i) if the scrutineer objects to a decision that a ballot paper is formal or informal; or
 - (ii) if the scrutineer considers that an error has been made in the conduct of the scrutiny;
the scrutineer may inform the authorised ballot agent conducting the ballot accordingly.
- (2) At any time during the period of scrutiny, the total number of scrutineers appointed under regulation 9.19 and in attendance at the scrutiny must not exceed the total number of people who are:

Regulation 9.23

- (a) performing functions and duties as, or on behalf of, the authorised ballot agent; and
 - (b) engaged on the scrutiny at that time.
- (3) If a person fails to produce the person's instrument of appointment as a scrutineer for inspection by the authorised ballot agent conducting the ballot, when requested by the agent to do so, the agent may refuse to allow the person to attend or act as a scrutineer.
- (4) If a person:
- (a) is not entitled to be present, or to remain present, at a scrutiny; or
 - (b) interrupts the scrutiny of a ballot, except to perform a function mentioned in paragraph (1) (b);
- the authorised ballot agent conducting the ballot may direct the person to leave the place where the scrutiny is being conducted.
- (5) A person to whom a direction is given under subregulation (4) must comply with the direction.
- (6) Strict liability applies to the physical elements in subregulation (5).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (5) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

9.23 Powers and duties of authorised independent advisers

An authorised independent adviser may exercise the following powers and perform the following duties:

- (a) being present at the conduct of any part of a protected action ballot (including the scrutiny of the roll of voters);
- (b) receiving complaints about irregularities from the applicant or applicants, an employee or the employer;

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- (c) requesting information held by the authorised ballot agent in relation to the ballot, including information provided to the authorised ballot agent under section 486 of the Act;
- (d) making a lawful recommendation with which the authorised ballot agent must comply;
- (e) setting out in his or her report under subsection 477 (4) of the Act whether the ballot agent complied with a recommendation under paragraph (d).

Division 5 Industrial action not to be engaged in before nominal expiry date of workplace agreement or workplace determination

9.24 Industrial action etc must not be taken before nominal expiry date of collective agreement or workplace determination

- (1) For paragraphs 494 (7) (d) and 494 (8) (e) of the Act, a person to whom significant harm is reasonably likely to be caused by industrial action engaged in by an employer, employee or organisation of employees is prescribed.

Note Under subsection 494 (8) of the Act, an application for an order under subsection 494 (5), in relation to a contravention of subsection 494 (3) (under which an employer must not engage in industrial action against an employee whose employment is subject to an agreement or determination in certain circumstances), may be made by specified persons or a person prescribed by the regulations.

- (2) For subregulation (1), in considering whether significant harm is reasonably likely to be caused by the industrial action, the Court may have regard to the following:
 - (a) if the person is an employee — the extent to which the action affects the interests of the person as an employee;
 - (b) the extent to which the person is particularly vulnerable to the effects of the action;

Regulation 9.25

- (c) the extent to which the action threatens to:
 - (i) damage the ongoing viability of a business carried on by the person; or
 - (ii) disrupt the supply of goods or services to a business carried on by the person; or
 - (iii) reduce the person's capacity to fulfil a contractual obligation; or
 - (iv) cause other economic loss to the person;
- (d) any other matters that the Court considers relevant.

Note 1 The criteria mentioned in subregulation (2) are the same as the criteria applied by the Commission for the purpose of considering whether industrial action is threatening to cause significant harm to a person for paragraph 433 (1) (d) of the Act.

Note 2 Under subsections 494 (4) and (5) of the Act:

- (a) a breach of subsection 494 (3) is a civil remedy provision; and
- (b) the Court will consider any application made by a person who claims to be covered by subregulation (1).

9.25 Industrial action must not be taken before nominal expiry date of ITEA

- (1) For paragraphs 495 (6) (c) and 495 (7) (d) of the Act, a person to whom significant harm is reasonably likely to be caused by industrial action engaged in by an employer, employee or organisation of employees is prescribed.

Note Under subsection 495 (7) of the Act, an application for an order under subsection 495 (4), in relation to a contravention of subsection 495 (2) (under which an employer must not engage in industrial action against an employee in certain circumstances), may be made by specified persons or a person prescribed by the regulations.

- (2) For subregulation (1), in considering whether significant harm is reasonably likely to be caused by the industrial action, the Court may have regard to the following:
 - (a) if the person is an employee — the extent to which the action affects the interests of the person as an employee;
 - (b) the extent to which the person is particularly vulnerable to the effects of the action;

Regulation 9.26

- (c) the extent to which the action threatens to:
 - (i) damage the ongoing viability of a business carried on by the person; or
 - (ii) disrupt the supply of goods or services to a business carried on by the person; or
 - (iii) reduce the person's capacity to fulfil a contractual obligation; or
 - (iv) cause other economic loss to the person;
- (d) any other matters that the Court considers relevant.

Note 1 The criteria mentioned in subregulation (2) are the same as the criteria applied by the Commission for the purpose of considering whether industrial action is threatening to cause significant harm to a person for paragraph 433 (1) (d) of the Act.

Note 2 Under subsections 495 (3) and (4) of the Act:

- (a) a breach of subsection 495 (2) is a civil remedy provision; and
- (b) the Court will consider any application made by a person who claims to be covered by subregulation (1).

9.26 Application of the *Criminal Code* to civil remedy provisions

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Part as if those provisions were offences.

Part 10 Awards

Division 2 Terms that may be included in awards

Subdivision D Regulations relating to part-time employees

10.1 Award conditions for part-time employees

- (1) For paragraph 526 (1) (b) of the Act, this Subdivision applies only in relation to:
 - (a) an award that does not provide for part-time employment as a type of employment under the award; or
 - (b) an award that:
 - (i) provides for part-time employment as a type of employment; but
 - (ii) limits the application of pro-rata conditions for part-time employees to:
 - (A) a period of part-time employment after parental leave; or
 - (B) a specified class of work.

Note A specified class of work could be identified by reference to the nature of the work, for example:

- (a) work as a cleaner; or
- (b) work in particular classifications (such as clerical office employees).

If a specified class of work is identified, all other part-time employees outside that class would be affected by the regulation.

- (2) The award has effect in relation to the matter so that conditions (other than the conditions mentioned in sub-subparagraph 10.1 (1) (b) (ii) (A) or (B)) to which a part-time employee is otherwise entitled under the award are adjusted, in accordance with this regulation, in proportion to the hours worked by the part-time employee.

Regulation 10.2

- (3) The adjustment is to be made on a pro-rata basis, in accordance with the following principles:
- (a) the conditions are to be adjusted on a pro-rata basis, using all hours worked by the part-time employee for which the part-time employee is entitled to be paid;
 - (b) if time spent in approved training forms part of the hours for which a part-time employee to whom a training arrangement applies is entitled to be paid, that time is to be counted as time worked by the employee;
 - (c) the application of the pro-rata basis does not affect any condition that is not related directly to the hours worked by:
 - (i) employees in general; or
 - (ii) the part-time employee;
 - (d) the pro-rata basis is to be applied in relation to conditions to which a full-time employee who is doing the same kind of work is entitled under the award.

Example for paragraph (c)

Conditions that provide an entitlement to the reimbursement of expenses incurred in the course of employment (for example, reimbursement of meal expenses) do not relate directly to the hours worked by the part-time employee: the fact that meals will be required at particular times is only incidental to the hours that the part-time employee works. Therefore, the condition will continue to apply in full to the part-time employee despite the application of the pro-rata basis.

Division 3 Preserved award entitlements

10.2 Preservation of certain award terms

- (1) For paragraph 527 (8) (a) of the Act, parental leave does not include one or both of the following:
- (a) special maternity leave (within the meaning of section 265 of the Act);
 - (b) the entitlement under section 268 of the Act to transfer to a safe job or to take paid leave.

Note The effect of excluding these terms is that the entitlement in relation to that form of leave or matter under the Australian Fair Pay and Conditions Standard will automatically apply.

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- (2) For paragraph 527 (8) (b) of the Act, personal/carer's leave does not include one or both of the following:
- (a) compassionate leave (within the meaning of section 257 of the Act);
 - (b) unpaid carer's leave (within the meaning of section 244 of the Act).

Note The effect of excluding these terms is that the entitlement in relation to that form of leave or matter under the Australian Fair Pay and Conditions Standard will automatically apply.

10.3 Meaning of *more generous*

- (1) For paragraph 530 (1) (a) of the Act, this regulation explains how to determine whether an employee's entitlement under a preserved award term in relation to:
- (a) annual leave; or
 - (b) personal/carer's leave; or
 - (c) parental leave, including maternity and adoption leave;
- is more generous than the employee's entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard.

- (2) The entitlements are to be compared on the basis of their effect on the employee alone, rather than on the basis of their effect on employees generally.

Note 1 The comparison between entitlements will focus on the individual employee's entitlements.

Note 2 A type of employee may have an entitlement under a preserved award term, but not a corresponding entitlement under the Australian Fair Pay and Conditions Standard. For example, a casual employee may have an entitlement to annual leave under a preserved award term, but is not covered by the Australian Fair Pay and Conditions Standard. In this example, the casual employee would retain the entitlement under the preserved award term.

- (3) However:
- (a) if the total annual quantum of a kind of leave permitted under the preserved award term is greater than the total annual quantum of that kind of leave permitted under the Australian Fair Pay and Conditions Standard, the

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entitlement specified under the preserved award term is taken to be more generous; and

- (b) if the total annual quantum of a kind of leave permitted under the preserved award term is less than or equal to the total annual quantum of that kind of leave permitted under the Australian Fair Pay and Conditions Standard, the entitlement under the Australian Fair Pay and Conditions Standard has effect.

Examples of comparisons between preserved award terms and the Australian Fair Pay and Conditions Standard for a full-time employee

Preserved award term	Australian Fair Pay and Conditions Standard	The entitlement that applies is set out in
<i>1 Annual leave</i>		
<i>Workers other than shift workers</i>		
Not more than 4 weeks	4 weeks	Australian Fair Pay and Conditions Standard
More than 4 weeks	4 weeks	the preserved award term
<i>Shift workers</i>		
Not more than 5 weeks	5 weeks	Australian Fair Pay and Conditions Standard
More than 5 weeks	5 weeks	the preserved award term
<i>2 Personal/carer's leave</i>		
Sum of paid sick leave and paid carer's leave of not more than 10 days	10 days paid personal leave, of which 10 days can be taken as carer's leave in any 12 month period	Australian Fair Pay and Conditions Standard
Sum of paid sick leave and paid carer's leave of more than 10 days	10 days paid personal leave, of which 10 days can be taken as carer's leave in any 12 month period	the preserved award term

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Preserved award term	Australian Fair Pay and Conditions Standard	The entitlement that applies is set out in
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Note An entitlement to war service sick leave or infectious diseases leave or any other like form of sick leave under a preserved award term is treated as a separate entitlement in accordance with regulation 10.4. Therefore, the entitlement is not the subject of a comparison between entitlements under the preserved award term and the Australian Fair Pay and Conditions Standard because there is no comparable entitlement under the Australian Fair Pay and Conditions Standard.

3 Parental leave

Not more than 52 weeks unpaid leave	52 weeks unpaid leave	Australian Fair Pay and Conditions Standard
More than 52 weeks unpaid leave	52 weeks unpaid leave	the preserved award term
52 weeks unpaid leave plus a right to request additional leave	52 weeks unpaid leave	the preserved award term

Note An entitlement to paid parental leave is treated as a separate entitlement in accordance with regulation 10.5. Therefore, the entitlement is not the subject of a comparison between entitlements under the preserved award term and the Australian Fair Pay and Conditions Standard because there is no comparable entitlement under the Australian Fair Pay and Conditions Standard.

- (3A) A reference in the table in subregulation (3) to a period of annual leave or personal/carer's leave is a reference to paid annual leave or personal/carer's leave.
- (4) If, under this regulation, an entitlement under the Australian Fair Pay and Conditions Standard, or the preserved award term, is taken to be more generous, the entitlement is to be applied in accordance with the administrative provisions and other arrangements (if any) that relate to the entitlement.

10.4 Modifications in relation to personal/carer's leave

For subsection 531 (1) of the Act, a preserved award term about personal/carer's leave is to be treated as a separate preserved award term about separate matters, to the extent that the preserved award term is about any of the following:

- (a) war service sick leave;
- (b) infectious diseases sick leave;

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- (c) any other like form of sick leave.

Note There is no entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the Australian Fair Pay and Conditions Standard.

Therefore, if:

- (a) there are entitlements in relation to personal/carer's leave under the preserved award term and the Australian Fair Pay and Conditions Standard; and
- (b) there is an entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the preserved award term;

the effect of this regulation is that the entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave will continue to operate independently of the entitlement which applies in relation to personal/carer's leave under either the preserved award term or the Australian Fair Pay and Conditions Standard.

10.5 Modifications in relation to parental leave

For subsection 532 (1) of the Act, a preserved award term about parental leave is to be treated as being about separate matters to the extent that it is about paid and unpaid parental leave.

Note There is no entitlement in relation to paid parental leave under the Australian Fair Pay and Conditions Standard.

Therefore, if:

- (a) there is an entitlement in relation to parental leave, including maternity and adoption leave, under the preserved award term and the Australian Fair Pay and Conditions Standard; and
- (b) there is an entitlement to paid parental leave under the preserved award term;

the effect of this regulation is that the entitlement to paid parental leave will continue to operate independently of the entitlement which applies in relation to parental leave under either the preserved award term or the Australian Fair Pay and Conditions Standard.

**Division 6 Binding additional employers,
employees and organisations to
awards**

10.7 Process for valid majority of employees

- (1) For section 562 of the Act, a valid majority of the employees of an employer is constituted for the purposes of Division 6 of Part 10 of the Act if:
- (a) the employer has given all of the employees at least 7 days notice to consider the application to be bound by the award; and
 - (b) the employer has made copies of the award readily available to the employees for at least the period of notice under paragraph (a); and

Note An employer may decide to make copies of the award readily available by providing an electronic copy of the award to the employees (eg via an intranet service or e-mail). Employees would need to have ready access to facilities that would enable them to view the award in electronic form.

- (c) either:
 - (i) if the decision is made by vote — a majority of the employees who cast a valid vote have decided that they want to be bound by the award; or
 - (ii) otherwise — a majority of the employees decide that they want to be bound by the award.
- (2) For section 562 of the Act, a valid majority of a class of employees of an employer is constituted for the purposes of Division 6 of Part 10 of the Act if:
- (a) the employer has given all of the employees in the class at least 7 days notice to consider the application to be bound by the award; and
 - (b) the employer has made copies of the award readily available to the employees in the class for at least the period of notice under paragraph (a); and

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Note An employer may decide to make copies of the award readily available by providing an electronic copy of the award to the employees (eg via an intranet service or e-mail). Employees would need to have ready access to facilities that would enable them to view the award in electronic form.

- (c) either:
- (i) if the decision is made by vote — a majority of the employees in the class who cast a valid vote have decided that they want to be bound by the award; or
 - (ii) otherwise — a majority of the employees in the class decide that they want to be bound by the award.

Part 12 Minimum entitlements of employees

Division 1 Entitlement to meal breaks

12.1 Displacement of entitlement to meal breaks

- (1) For paragraph 608 (c) of the Act, the following industrial agreements are prescribed:
 - (a) a pre-reform certified agreement;
 - (b) a preserved State agreement;
 - (c) a transitional award;
 - (d) a notional agreement preserving State awards;
 - (e) an old IR agreement;
 - (f) a pre-reform AWA;
 - (g) a common rule continued in effect by clause 82 of Schedule 6 to the Act.
- (2) In subregulation (1):
 - notional agreement preserving State awards* has the meaning given by Schedule 8 to the Act.
 - old IR agreement* has the meaning given by Schedule 7 to the Act.
 - pre-reform AWA* has the meaning given by Schedule 7 to the Act.
 - pre-reform certified agreement* has the meaning given by Schedule 7 to the Act.
 - preserved State agreement* has the meaning given by Schedule 8 to the Act.
 - transitional award* has the meaning given by Schedule 6 to the Act.

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Division 4 Termination of employment

12.2 Interpretation for Division 4

(1) In this Division:

authorised leave, in relation to an employee, means leave authorised by:

- (a) the employer; or
- (b) the Australian Fair Pay and Conditions Standard; or
- (c) a workplace agreement; or
- (d) an award; or
- (e) a transitional award; or
- (f) an award or order of a court or tribunal that has power to fix wages and other terms and conditions of employment; or
- (g) a pre-reform certified agreement; or
- (h) a pre-reform AWA; or
- (i) a State employment agreement; or
- (j) an employment agreement within the meaning of section 887 of the Act; or
- (k) an old IR agreement (within the meaning given by Schedule 7 to the Act); or
- (l) the employee's contract of employment; or
- (m) a law of the Commonwealth, or of a State or Territory.

industrial instrument means any of the following:

- (a) a workplace agreement;
- (b) a workplace determination;
- (c) an award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement;
- (f) a section 170MX award (within the meaning given by Schedule 7 to the Act);
- (g) a transitional award;
- (h) a preserved State agreement;
- (i) a notional agreement preserving State awards;

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- (j) a State employment agreement;
- (k) a State award.

- (2) In this Division, a word or expression that is defined in the Termination of Employment Convention has the meaning given by that Convention.

12.3 Specified rate

For paragraphs 638 (6) (b) and (7) (b) of the Act, the specified rate is:

- (a) \$94 900 per year; or
- (b) the rate worked out by indexing that amount in accordance with regulation 12.6.

12.4 Rate of remuneration per year

For paragraph 638 (7) (b) of the Act, the rate of remuneration per year that is taken to be applicable to an employee immediately before termination is:

- (a) for an employee who was continuously employed by the employer and was not on leave without full pay at any time during the period of 12 months immediately before termination — the greater of:
 - (i) the remuneration that the employee actually received in that period; and
 - (ii) the remuneration that the employee was entitled to receive in that period; or
- (b) for an employee who was continuously employed by the employer and was on leave without full pay at any time during the period of 12 months immediately before termination — the total of:
 - (i) the actual remuneration received by the employee for the days during that period that the employee was not on leave without full pay; and

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- (ii) for the days that the employee was on leave without full pay an amount worked out using the formula:

$$\frac{\text{remuneration mentioned in subparagraph (i)} \times \text{days on leave without full pay}}{\text{days not on leave without full pay}}; \text{ or}$$

- (c) for an employee who was continuously employed by the employer for a period less than 12 months immediately before termination — the amount worked out using the formula:

$$\frac{\text{remuneration received} \times 365}{\text{days employed}}.$$

12.5 Amount taken to have been received by the employee

For paragraphs 654 (11) (b) and 665 (3) (b) of the Act, an employee is taken to have received the remuneration that the employee would ordinarily have received during the period of leave if the employee had not been on leave without pay or without full pay.

12.6 Annual indexation of certain amounts

- (1) This regulation prescribes a formula under which each of the following amounts (the *indexable amount*) is to be varied annually by the indexation factor (if any):
- (a) the amount mentioned in regulation 12.3;
 - (ab) the amount mentioned in paragraph 19.9 (1) (b);
 - (b) the amount mentioned in paragraph 654 (12) (b) of the Act;
 - (c) the amount mentioned in paragraph 665 (4) (b) of the Act.
- (2) In this regulation:
- base weekly earnings average* means:
- (a) for the amount mentioned in regulation 12.3 — the last amount published by the Australian Statistician before 1 July 2005 as an estimate (except a preliminary estimate)

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- of the average total weekly earnings (seasonally adjusted) for full-time adult employees of all employees in Australia in a particular month; and
- (ab) for the amount mentioned in paragraph 19.9 (1) (b) — the last amount published by the Australian Statistician before 1 July 2006 as an estimate (except a preliminary estimate) of the average total weekly earnings (seasonally adjusted) for full-time adult employees of all employees in Australia in a particular month; and
- (b) for the amount mentioned in paragraph 654 (12) (b) or 665 (4) (b) of the Act — the last amount published by the Australian Statistician before 1 July 1996 as an estimate (except a preliminary estimate) of the average total weekly earnings (seasonally adjusted) for full-time adult employees of all employees in Australia in a particular month.

current weekly earnings average, in relation to an indexation day, means the last amount published by the Australian Statistician before that day as an estimate (except a preliminary estimate) of the average total weekly earnings (seasonally adjusted) for full-time adult employees of all employees in Australia in a particular month.

indexation day means 1 July in a year.

indexation factor, for an indexation day, means the number, worked out to 3 decimal places, resulting from the following formula:

$$\frac{\text{current weekly earnings average in relation to the indexation day}}{\text{base weekly earnings average}}$$

- (3) If at any time (whether before or after the commencement of this regulation) the Australian Statistician publishes an estimate of the average total weekly earnings (seasonally adjusted) for full-time adult employees in a particular month in substitution for such an estimate (except a preliminary estimate) previously published by the Australian Statistician for that month, the publication of the later estimate is to be disregarded for the purposes of this regulation.

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- (4) Subject to subregulation (5), if, on any indexation day, the indexation factor is greater than 1, then, on and after that day, until a later application of this subregulation, an indexable amount is taken to be replaced by the amount worked out by multiplying the indexable amount by the indexation factor.
- (5) If an amount worked out under subregulation (4) is not \$100, or a multiple of \$100:
 - (a) if the amount is not \$50, or a multiple of \$50 — it is to be rounded up or down to \$100, or the nearest amount that is a multiple of \$100 as appropriate; or
 - (b) if the amount is \$50, or a multiple of \$50 — it is to be rounded up to \$100, or the next highest amount that is a multiple of \$100 as appropriate.

12.7 Schedule of costs (Act, s 658)

- (1) For subsection 658 (7) of the Act, the schedule of costs set out in Schedule 7 is prescribed.

Note 1 Under subsection 658 (9) of the Act, in awarding costs, the Commission is not limited to the items of expenditure mentioned in Schedule 7. However, if an item of expenditure is mentioned in Schedule 7, the Commission must not award costs for that item at a rate or of an amount in excess of the rate or amount mentioned in Schedule 7 for that item.

Note 2 An application for an order for costs must be made in accordance with the *Australian Industrial Relations Commission Rules 1998*.

- (2) The Commission may allow the costs of briefing more than 1 counsel only if the Commission before which all counsel appear certifies that such attendance is necessary.

Note It is likely that certification under subregulation (2) would occur only in relation to a very large or complex case.

- (3) If the Commission considers it appropriate, a charge applicable to a solicitor in Schedule 7 is applicable to a person who:
 - (a) is not a solicitor; and
 - (b) is mentioned in section 100 of the Act.

Note Section 100 of the Act sets out who may represent a party to a proceeding before the Commission.

- (4) A bill of costs must identify, by an item number, each cost and disbursement claimed.

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- (5) In exercising its discretion under item 1002 of Schedule 7, the Commission must have regard to commercial rates for copying and binding and is not obliged to apply the photographic or machine-made copy costs otherwise allowable in the Schedule.
- (6) In Schedule 7:
folio means 72 words.
Note There are generally 3 folios to a page.

12.8 Temporary absence because of illness or injury

- (1) For paragraph 659 (2) (a) of the Act, an employee's absence from work because of illness or injury is a temporary absence if:
- (a) the employee provides a medical certificate for the illness or injury within:
 - (i) 24 hours after the commencement of the absence; or
 - (ii) such longer period as is reasonable in the circumstances; or
 - (b) the employee:
 - (i) is required by the terms of an industrial instrument to:
 - (A) notify the employer of an absence from work; and
 - (B) substantiate the reason for the absence; and
 - (ii) complies with those terms; or
 - (c) the employee has provided the employer with a required document in accordance with section 254 of the Act.
- (2) Subregulation (1) does not apply if:
- (a) the employee's absence extends for more than 3 months, unless the employee is on paid sick leave for the duration of the absence; or
 - (b) the total absences of the employee, within a 12 month period, whether based on a single or separate illnesses or injuries, extend for more than 3 months, unless the employee is on paid sick leave for the duration of the absences.

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(3) In this regulation:

medical certificate has the meaning given by section 240 of the Act.

Note Any finding that an absence is not a temporary absence for paragraph 659 (2) (a) of the Act is without prejudice to the rights of an employee whose employment has been terminated by an employer on the basis of such an absence:

- (a) to apply to the Commission for relief under subsection 643 (1), on the ground, or on grounds including the ground, that the termination was harsh, unjust or unreasonable; or
- (b) to apply under a law of a State on the ground that the termination was harsh, unjust or unreasonable (however described);

in respect of the termination of that employment.

12.9 Prescribed notice of intended terminations — subsection 660 (2) of the Act

For subsection 660 (2) of the Act:

- (a) the prescribed body is Centrelink; and
- (b) the prescribed form is Form 4 of Schedule 1.

12.10 Required period of notice — exception for serious misconduct

(1) For paragraph 661 (1) (c) of the Act, serious misconduct includes:

- (a) wilful, or deliberate, behaviour by an employee that is inconsistent with the continuation of the contract of employment; and
- (b) conduct that causes imminent, and serious, risk to:
 - (i) the health, or safety, of a person; or
 - (ii) the reputation, viability or profitability of the employer's business.

(2) For subregulation (1), conduct that is serious misconduct includes:

- (a) the employee, in the course of the employee's employment, engaging in:
 - (i) theft; or

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- (ii) fraud; or
 - (iii) assault; or
 - (b) the employee being intoxicated at work; or
 - (c) the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.
- (3) Subregulation (2) does not apply if the employee is able to show that, in the circumstances, the conduct engaged in by the employee was not conduct that made employment in the period of notice unreasonable.
- (4) For this regulation, an employee is taken to be intoxicated if the employee's faculties are, by reason of the employee being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the employee is unfit to be entrusted with the employee's duty or with any duty that the employee may be called upon to perform.

12.11 Required period of notice — ascertaining period of continuous service

- (1) For subsection 661 (3) of the Act, in ascertaining an employee's period of continuous service, the following actions and events must be disregarded:
- (a) a termination, suspension, stand down or other interruption imposed by the employer for the purpose of avoiding an obligation under section 661 of the Act;
 - (b) absence of the employee, on authorised leave, from work;
 - (c) absence of the employee from work due to:
 - (i) the employee's illness; or
 - (ii) an injury to the employee;
 - (d) absence of the employee from work, if there was reasonable cause for the absence;
 - (e) absence of the employee from work due to:
 - (i) action that is protected action under section 435 of the Act; or

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- (ii) a reason that would have been disregarded if paragraph 30CB(1)(e) of the pre-reform Regulations were still in effect;
 - (f) any other absence from work, unless the employer has given the employee notice, under subregulation (4), that the employer will take an absence by the employee to break the employee's continuity of service with the employer.
- (2) Paragraphs (1)(c) and (d) do not apply unless:
- (a) if the employee is required, under an industrial instrument, to notify the employer of an absence and to substantiate the reason for the absence — the employee has done so; or
 - (b) in any other case — the employee informs the employer within 24 hours after the commencement of the absence, or such longer period as is reasonable in the circumstances, of:
 - (i) the employee's absence; and
 - (ii) whether the absence is due to illness, injury or other reason; and
 - (iii) the likely duration of the absence.
- (3) Paragraph (1)(e) does not apply if the Commission or a State industrial authority has determined that, for the purpose of determining the employee's entitlement to notice of termination or to compensation instead of notice, an absence is to be taken as breaking the employee's continuity of service.
- (4) For paragraph (1)(f), notice must be given:
- (a) in writing; and
 - (b) by delivering it to the employee personally or posting it to the employee's last known address; and
 - (c) during, or within 14 days after the end of, the period of absence.
- (5) A notice under paragraph (1)(f):
- (a) may be withdrawn by the employer; and
 - (b) if withdrawn, is taken not to have been given.

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**12.12 Compensation in lieu of required period of notice —
commission or piece rates employees**

For paragraph 661 (5) (c) of the Act, the amount taken to be payable, under an employee's contract of employment, to an employee whose remuneration before termination was determined wholly or partly on the basis of commission or piece rates is the average actual remuneration received by the employee:

- (a) for an employee who was continuously employed by the employer for a period of 3 months or more immediately before termination — in the 3 months before termination; or
- (b) for an employee who was continuously employed by the employer for a period less than 3 months immediately before termination — in that period.

**12.13 Inapplicability of section 661 of the Act —
succession, assignment or transmission of business**

- (1) There is excluded from the operation of section 661 of the Act a termination of employment that occurs because of the succession, assignment or transmission of the business of the employer (the *former employer*) to another person (the *new employer*) if:
 - (a) the employee is employed by the new employer after the succession, assignment or transmission; and
 - (b) either:
 - (i) the new employer is under an obligation, enforceable by the employee, to recognise, for subsection 661 (2) of the Act, the employee's entire period of service to the former employer as continuous with service to the new employer; or
 - (ii) the new employer is under an obligation to:
 - (A) give the period of notice that is equivalent to the relevant period; or

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(B) pay the relevant amount of compensation;
in the event that the new employer terminates the employee's employment (except for serious misconduct) during the period, starting from the date of succession, assignment or transmission, that is equivalent to the relevant period.

(2) In this regulation:

relevant period means the period of notice that, but for this regulation, the former employer would have been required to give to the employee under section 661 of the Act by reason of the employee's employment by the former employer having been terminated at the time when the succession, assignment or transmission occurred.

relevant amount of compensation means the amount of compensation equivalent to the amount of compensation instead of notice that the new employer would be required to pay to the employee under section 661 of the Act if the required period of notice for the purposes of that section was equivalent to the relevant period.

Part 13 Dispute resolution processes

Division 2 Model dispute resolution process

13.1 Alternative dispute resolution process — parties cannot agree on a provider

For subsection 696 (4) of the Act, the following information is prescribed:

- (a) information about the dispute resolution services that are provided by the AIRC and the dispute resolution services that may be provided by private providers;
- (b) information about the register of private dispute resolution bodies providing alternative dispute resolution processes;
- (c) information about funding that may be available to help subsidise the cost of alternative dispute resolution processes.

Note It is expected that the Department of Employment and Workplace Relations will prepare and make available Fact Sheets about these issues for the information of parties and potential parties.

Division 3 Alternative dispute resolution process conducted by Commission under model dispute resolution process

13.2 Dispute resolution processes — application

- (1) For paragraph 699 (2) (a) of the Act, an application to the Commission to have an alternative dispute resolution process conducted by the Commission under Division 3 of Part 13 of the Act must be in accordance with Form 5 of Schedule 1.

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- (2) For paragraph 704 (2) (a) of the Act, an application to the Commission to have an alternative dispute resolution process conducted by the Commission under Division 4 of Part 13 of the Act must be in accordance with Form 5 of Schedule 1.
- (3) For paragraph 709 (2) (a) of the Act, an application to the Commission to have an alternative dispute resolution process conducted by the Commission under Division 5 of Part 13 of the Act must be in accordance with Form 5 of Schedule 1.

Part 14 Compliance

Note Transitional provisions relating to compliance are located in Division 14 of Part 2 of Chapter 7.

Division 2 Penalties and other remedies for contravention of applicable provisions

14.1 Recovery of wages etc — small claims procedure

- (1) For paragraph 724 (b) of the Act, the manner in which a person indicates that he or she wants a small claims procedure to apply to an action that the person starts in a magistrate's court is:
 - (a) by:
 - (i) endorsing the papers initiating the action with a statement that the person wants a small claims procedure to apply to the action; or
 - (ii) lodging with the magistrate's court a paper that identifies the action and states that the person wants a small claims procedure to apply to the action; and
 - (b) by serving a copy of the papers initiating the action, together with a copy of the paper (if any) mentioned in subparagraph (a) (ii), on every other party to the action.
- (2) Subregulation (1) does not apply to an action that a person starts in a magistrate's court if rules of court relating to that court prescribe the manner in which the person indicates that he or she wants a small claims procedure to apply to the action.

14.2 Recovery of small claims under award, order, ITEA or certified agreement — maximum amount

For paragraph 725 (2) (a) of the Act, the prescribed amount is \$10 000.

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Note Paragraph 725 (2) (a) of the Act relates to certain small claims actions. Under the paragraph, the court may not award an amount exceeding \$5 000 or a higher prescribed amount.

Division 3 General provisions relating to civil remedies

14.3 Standing for civil remedies

- (1) A workplace inspector may apply to:
 - (a) the Federal Court; or
 - (b) the Federal Magistrates Court;for an order for a contravention of a civil remedy provision in Part 4 or 8 of this Chapter.
- (2) A workplace inspector may apply to a section 717 court for an order for a contravention of a civil remedy provision in these Regulations, other than a civil remedy provision in Part 4 or 8 of this Chapter.

14.4 Court may order pecuniary penalty

A court to which regulation 14.3 applies may order a person who contravenes a civil remedy provision in these Regulations to pay a pecuniary penalty of up to the maximum penalty permissible under paragraph 846 (2) (g) of the Act.

14.5 Multiple contraventions of civil remedy provisions

- (1) This regulation applies if:
 - (a) a person commits 2 or more contraventions of a civil remedy provision of these Regulations; and
 - (b) each contravention relates to the same action or course of conduct of the person.
- (2) The contraventions are taken, for these Regulations, to be a single contravention of the civil remedy provision.

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(3) However, if:

- (a) a penalty has been imposed on the person in relation to a contravention of a civil remedy provision relating to an action or course of conduct of the person; and
- (b) the person subsequently commits a contravention of the civil remedy provision relating to the same action or course of conduct;

subregulation (2) does not apply to the contravention mentioned in paragraph (b).

Note The intention of subregulations (2) and (3) is that multiple contraventions of a civil remedy provision, in relation to the same action or course of conduct, will be treated as a single contravention until a penalty is imposed on the person.

Multiple contraventions after that time, in relation to the same action or course of conduct, will be treated as a single, but separate, contravention of the civil remedy provision. If another penalty is imposed, subsequent contraventions will again be treated as a single, but separate, contravention of the civil remedy provision.

14.6 Crown not liable to penalty for contravention of civil remedy provision

Nothing in this Division makes the Crown in right of the Commonwealth, a State or a Territory liable to proceedings for a contravention of a civil remedy provision in these Regulations.

Regulation 15.1

Part 15 Right of entry

Division 1 Preliminary

15.1 Definitions — *OHS law*

- (1) For the definition of *OHS law* in section 737 of the Act, the following laws are prescribed:
 - (a) the *Occupational Health and Safety Act 2000* of New South Wales;
 - (b) the **Occupational Health and Safety Act 2004** of Victoria;
 - (c) the *Workplace Health and Safety Act 1995* of Queensland;
 - (d) the *Occupational Health and Safety Act 1989* of the Australian Capital Territory.
- (2) For the definition of *OHS law* in section 737 of the Act, sections 49G and 49I to 49O of the *Industrial Relations Act 1979* of Western Australia are prescribed, but only to the extent to which those provisions provide for or relate to a right of entry to investigate a suspected breach of:
 - (a) the *Occupational Safety and Health Act 1984* of that State; or
 - (b) the *Mines Safety and Inspection Act 1994* of that State.

Division 2 Issue of permits

15.2 Issue of permit — form of application

For paragraph 740 (4) (a) of the Act, an application for the issue of a permit to an official of an organisation must:

- (a) be in writing; and
- (b) be signed by a member of the committee of management of the organisation or of the appropriate branch of the organisation; and

Regulation 15.5

- (c) state the name of the official in whose name the permit is to be issued; and
- (d) state the capacity in which the person is an official.

15.3 Issue of permit — form of permit

For paragraph 740 (4) (a) of the Act, the form of a permit issued to an official of an organisation is set out in Form 2 of Schedule 1.

Division 3 Expiry, revocation, suspension, etc of permits

15.4 Revocation, suspension etc by Registrar — application for revocation of a permit

For subsection 744 (1) of the Act, an application by a workplace inspector to take action under section 744 of the Act against a permit holder must:

- (a) be made in writing; and
- (b) be signed by the workplace inspector; and
- (c) state the grounds on which the application is made.

Division 4 Right of entry to investigate suspected breaches

15.5 Exemption from requirement to provide entry notice — form of application

For paragraph 750 (4) (a) of the Act, an application by an organisation for an exemption certificate in respect of the entry onto premises under section 747 of the Act must:

- (a) be made in writing; and
- (b) identify the organisation; and
- (c) identify the premises to which the application relates; and
- (d) set out particulars of the suspected breach or breaches to which the application relates; and

Regulation 15.6

- (e) state the grounds on which it is alleged that advance notice of entry onto premises under section 747 of the Act might result in the destruction, concealment or alteration of relevant evidence; and
- (f) be signed by or for the organisation.

15.6 Exemption from requirement to provide entry notice — form of exemption certificate

For paragraph 750 (4) (b) of the Act, the form of an exemption certificate is set out in Form 3.

Division 6 Right of entry to hold discussions with employees

15.7 Limitation on rights — conscientious objection certificates

An application under subsection 762 (2) of the Act must contain a declaration signed by the employer stating that:

- (a) the conditions mentioned in paragraphs 762 (1) (a) and (c) of the Act are satisfied; and
- (b) the employer is a practising member of a religious society or order whose doctrines or beliefs preclude membership of an organisation or body other than the religious society or order of which the employer is a member.

Division 9 Powers of the Commission

15.8 Unreasonable requests by occupier or affected employee

For subsection 771 (4) of the Act, an application for an order in respect of the rights of an organisation, or officials of an organisation, to investigate breaches as mentioned in section 747 of the Act, to enter premises under an OHS law in accordance with section 756 or 760 of the Act, or to hold discussions with employees as mentioned in section 760 of the Act, must:

Regulation 15.8

- (a) be in writing; and
- (b) be signed by:
 - (i) an official of the organisation; or
 - (ii) a permit holder as mentioned in section 751, 758 or 765 of the Act; and
- (c) state the grounds on which the application is made.

Regulation 19.1

**Part 19 Records relating to employees
and pay slips**

Division 1 Preliminary

19.1 Purpose of Part 19

- (1) For sections 836 and 846 of the Act, these Regulations provide for:
 - (a) the making and retention by employers of records relating to the employment of employees; and
 - (b) the inspection of records by workplace inspectors; and
 - (c) the issue of pay slips to employees by employers.
- (2) This Part also provides for transitional matters arising out of the reform commencement.

19.2 Application of Part 19

- (1) This Part applies to:
 - (a) employees and employers within the meaning of subsections 5 (1) and 6 (1) of the Act; and
 - (b) employment within the meaning affected by subsection 7 (1) of the Act.
- (2) This Part applies as if:
 - (a) a reference to an employee were a reference to:
 - (i) an employee within the meaning of section 858 of the Act; and
 - (ii) a transitional employee within the meaning of Schedule 6 to the Act; and
 - (b) a reference to an employer were a reference to:
 - (i) an employer within the meaning of section 858 of the Act; and
 - (ii) a transitional employer within the meaning of Schedule 6 to the Act; and

Regulation 19.4

- (c) a reference to employment were a reference to:
- (i) employment within the meaning of section 858 of the Act; and
 - (ii) employment within the meaning of Schedule 6 to the Act.

Note Section 884 of the Act and clause 107C of Schedule 6 to the Act allow regulations made under section 836 of the Act to deal with matters relating to record keeping and pay slips mentioned in that section and Schedule.

19.3 Application of the *Criminal Code* to civil remedy provisions

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Part as if those provisions were offences.

Division 2 Rules concerning keeping records

19.4 Obligation to make and keep records relating to employees

- (1) An employer who employs an employee must make, or cause to be made, a record in accordance with Divisions 3 and 4 relating to the employee.
- (2) Subject to regulation 19.15, an employer must keep, or cause to be kept, an entry in a record:
 - (a) in the case of a matter of a kind mentioned in regulation 19.8 or paragraph 19.13 (1) (e) — for a continuous period of 7 years after the date on which:
 - (i) the entry is changed; or
 - (ii) the employee's employment with the employer is terminated;whichever happens first; or

Regulation 19.5

(b) in any other case — for a continuous period of 7 years after the date on which the entry is made.

(3) Strict liability applies to the physical elements in subregulations (1) and (2).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(4) Subregulations (1) and (2) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.5 Condition of records

(1) The record relating to the employee must be in a condition that allows a workplace inspector to determine the employee's entitlements and whether the employee is receiving those entitlements.

(2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.6 Form of records

(1) The record must be:

(a) in a legible form in the English language; and

(b) in a form that is readily accessible to a workplace inspector.

(2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

Regulation 19.9

Division 3 Content of records

19.7 Content requirement for records

The record relating to the employee must contain the matters specified in the provisions of Divisions 3 and 4 of this Part to the extent that they apply to the employee.

19.8 Contents of records — general

- (1) The record relating to the employee must contain the following:
 - (a) the name of the employer;
 - (b) the name of the employee;
 - (c) whether the employee's employment is:
 - (i) full-time; or
 - (ii) part-time;
 - (d) whether the employee's employment is:
 - (i) permanent; or
 - (ii) temporary; or
 - (iii) casual;
 - (e) the date on which the employee's employment began.
- (2) Strict liability applies to a physical element in subregulation (1).
- (3) Subregulation (1) is a civil remedy provision.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.9 Contents of records — overtime hours worked

- (1) If a penalty rate or loading (however described) must be paid for overtime hours actually worked by an employee, the record relating to the employee must state:
 - (a) the number of overtime hours worked by the employee during each day; or

Regulation 19.10

(b) when the employee started and ceased working overtime hours.

(2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.10 Contents of records — reasonable additional hours

(1) If the employer and employee agree in writing to an averaging of the employee's hours of work under section 226 of the Act, the employer must keep a copy of that agreement.

(2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.11 Contents of records — pay

(1) The record relating to the employee must contain details of the rate of remuneration paid to the employee.

(2) If the employee is a casual or irregular part-time employee who is guaranteed a basic periodic rate of pay, the record relating to the employee must also contain a record of the hours worked by the employee.

(3) If the employee is entitled to be paid:

- (a) an incentive-based payment; or
- (b) a bonus; or
- (c) a loading; or
- (d) a penalty rate; or

Regulation 19.12

(e) another monetary allowance or separately identifiable entitlement;

the record relating to the employee must contain details of the payment, bonus, loading, rate, allowance or entitlement.

(4) The record relating to the employee must also contain details of:

(a) the gross and net amounts paid to the employee; and

(b) any deductions made from the gross amount paid to the employee.

(5) Strict liability applies to a physical element in subregulations (1), (2), (3) and (4).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(6) Subregulations (1), (2), (3) and (4) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.12 Contents of records — leave

(1) If the employee is entitled to leave, the record relating to the employee must contain the following details:

(a) the accrual of that leave;

(b) any leave taken by the employee;

(c) the balance of the employee's entitlement to that leave from time to time.

(2) If the employee has elected to forgo an entitlement to take an amount of leave, an employer must keep the following:

(a) a copy of the employee's written election to forgo the amount of leave;

(b) a record of the rate of payment for the amount of leave forgone and when the payment was made.

(3) Strict liability applies to the physical elements in subregulations (1) and (2).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

Regulation 19.13

- (4) Subregulations (1) and (2) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.13 Contents of records — superannuation contributions

- (1) If the employer is required to make superannuation contributions for the benefit of the employee, the record relating to the employee must contain the following:

- (a) the amount of the contributions made;
- (b) the period over which the contributions were made;
- (c) the dates on which the contributions were made;
- (d) the name of any fund to which the contributions were made;
- (e) the basis on which the employer became liable to make the contributions, including:
 - (i) the keeping of a record of any election made by the employee as to the fund to which contributions are to be made; and
 - (ii) the date of any relevant election.

- (2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

- (4) In subregulation (1):

contributions does not include a contribution in respect of a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*) in a defined benefit fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

Regulation 19.15

19.14 Contents of records — termination of employment

- (1) If the employee's employment is terminated, the record relating to the employee must contain the following:
 - (a) whether the employment was terminated:
 - (i) by consent; or
 - (ii) by notice; or
 - (iii) summarily; or
 - (iv) in some other manner, specifying the manner;
 - (b) the name of the person who acted to terminate the employment.
- (2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

Division 4 Transmission of business

19.15 Transmission of business

- (1) This regulation applies if:
 - (a) a person (the *new employer*) becomes a successor, transmittee or assignee of the whole, or a part, of a business of another person (the *old employer*); and
 - (b) the new employer employs any of the following persons (a *transferring employee*):
 - (i) a transferring employee within the meaning of sections 581 and 582 of the Act;
 - (ii) a transferring transitional employee within the meaning of clauses 72E and 72F of Schedule 6 to the Act;
 - (iii) a transferring employee within the meaning of clauses 5 and 6 of Schedule 9 to the Act.

Regulation 19.16

- (2) Subject to subregulation (3), the old employer must transfer to the new employer all records concerning the transferring employee that, at the time of succession, transmission or assignment, the old employer is required to keep under Divisions 2, 3 and 4.
- (3) If the old employer is a Commonwealth authority, the old employer only has to provide copies of those records.
- (4) If the transferring employee becomes an employee of the new employer after the time of transmission, the new employer must request the old employer to provide the new employer with the transferring employee's records.
- (5) If the old employer receives a request under subregulation (4), the old employer must transfer those records to the new employer.
- (6) The new employer who receives transferred records must keep the transferred records as if they had been made by the new employer at the time they were made by the old employer.
- (7) The new employer is not required to make records relating to the transferring employee's employment with the old employer.
- (8) Strict liability applies to the physical elements in subregulations (2), (4), (5) and (6).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (9) Subregulations (2), (4), (5) and (6) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

Division 5 Miscellaneous

19.16 Alteration and correction of a record

- (1) Subject to subregulations (2) and (3), an employer must not alter a record, or allow a record to be altered.
- (2) An employer must correct any error in a record as soon as the employer becomes aware of the error.

Regulation 19.18

(3) An employer who corrects an error in a record must record the nature of the error with the correction.

(4) Strict liability applies to the physical elements in subregulations (1), (2) and (3).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(5) Subregulations (1), (2) and (3) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.17 False or misleading entry in a record

(1) A person must not make, or make use of, an entry in any record required to be kept under Division 2, 3 or 4 if the person does so knowing that the entry is false or misleading.

(2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.18 Inspection and copying of a record

(1) An employer must make a copy of a record available, in accordance with subregulations (2) and (3), on request by:

- (a) the employee, or the former employee, to whom the record relates; or
- (b) a workplace inspector.

Note Divisions 4 and 5 of Part 15 of the Act deal with a registered organisation's right to inspect records in relation to employment.

(2) The employer must make the copy available in a legible form in the English language to the person making the request for inspection and copying.

Regulation 19.19

- (3) The employer must make the copy available:
- (a) if the request is from an employee or former employee and the record is kept at the premises where the employee works or worked — within 3 business days at those premises or by posting a copy of the record to the employee or former employee within 14 days of receiving the request; or
 - (b) if the request is from a workplace inspector — within 3 business days at the employer's business premises or by posting or faxing a copy of the record to the workplace inspector within 14 days of receiving the request.
- (4) Strict liability applies to the physical elements in subregulations (1), (2) and (3).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (5) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.19 Information concerning a record

- (1) An employer who has received a request under subregulation 19.18 must tell a person entitled to inspect and copy a record, on request, where records relating to an employee, or a class of employees, are kept.
- (2) The person may interview the employer, or a representative of the employer, at any time during ordinary working hours, about a record made or to be made by the employer.
- (3) The employer must give reasonable assistance to the person in the conduct of the interview.
- (4) Strict liability applies to the physical elements in subregulation (1) and (3).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (5) Subregulations (1) and (3) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

Division 6 Pay slips

19.20 Pay slips

- (1) An employer who employs an employee must issue to the employee a written pay slip relating to each payment by the employer of an amount to the employee as remuneration.
- (2) The pay slip:
 - (a) must be issued within 1 day of the payment to which the pay slip relates being made to the employee; and
 - (b) may be issued in electronic form or as hard copy.
- (3) The employer must include on a pay slip particulars specified in regulation 19.21.
- (4) Strict liability applies to the physical elements in subregulations (1) to (3).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (5) Subregulations (1) to (3) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.21 Contents of pay slips

- (1) For subregulation 19.20 (3), the following particulars are specified:
 - (a) the name of the employer;
 - (b) the name of the employee;
 - (c) the date on which the payment to which the pay slip relates was made;
 - (d) the period to which that pay slip relates;
 - (e) if the employee is paid at an hourly rate of pay:
 - (i) the ordinary hourly rate; and
 - (ii) the number of hours in that period for which the employee was employed at that rate; and
 - (iii) the amount of the payment made at that rate;

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- (f) if the employee is paid at an annual rate of pay — that rate as at the latest date to which the payment relates;
- (g) the gross amount of the payment;
- (h) the net amount of the payment;
- (i) any amount paid that is an incentive-based payment, bonus, loading, monetary allowance, penalty rate or other separately identifiable entitlement the employee has;
- (j) the details in respect of each amount deducted from the gross amount of the payment including the name, or the name and number, of the fund or account into which the deduction was paid;
- (k) if the employer is required to make superannuation contributions for the benefit of the employee:
 - (i) the amount of each contribution that the employer has made for the benefit of the employee during the period to which the pay slip relates, and the name of any fund to which that contribution was made; or
 - (ii) the amounts of contributions that the employer is liable to make in relation to the period to which the pay slip relates, and the name of any fund to which those contributions will be made.

- (2) In subregulation (1):

contributions does not include a contribution in respect of a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*) in a defined benefit fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

Division 7 Transitional provisions

19.22 Effect of repeal of pre-reform Regulations

- (1) The repeal of Parts 9A and 9B of the pre-reform Regulations is taken not to affect:
 - (a) a right under those Parts which had accrued before the reform commencement; or

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- (b) a cause of action under those Parts which had not been finally determined before the reform commencement.
- (2) Despite the repeal of Parts IV and 9A of the pre-reform Regulations, those provisions are taken to continue to apply to the extent necessary to ensure that:
 - (a) the penalty provisions specified in Part 9A of the pre-reform Regulations continue to apply in relation to a failure to make or keep a record that was required to be kept under that Part; and
 - (b) a record that was required to be kept for a period of time under that Part is retained for the relevant period of time; and
 - (c) a workplace inspector has the powers set out in Part IV of the pre-reform Regulations in respect of the offence provisions specified in Part 9A of the pre-reform Regulations.
- (3) Despite the repeal of Parts IV and 9B of the pre-reform Regulations, those provisions are taken to continue to apply to the extent necessary to ensure that:
 - (a) the penalty provisions specified in Part 9B of the pre-reform Regulations continue to apply in relation to a failure to issue pay slips as provided for in that Part; and
 - (b) a workplace inspector has the powers set out in Part IV of the pre-reform Regulations in respect of the offence provisions in Part 9B of the pre-reform Regulations.

19.23 Application of provisions after transitional award ceases to operate

- (1) After the transitional award ceases to be in force, Parts IV and 9A of the pre-reform Regulations are taken to continue to apply to the extent necessary to ensure that:
 - (a) a record that was required to be kept for a period of time under that Part of the pre-reform Regulations is retained for the relevant period of time; and
 - (b) the penalty provisions specified in Part 9A of the pre-reform Regulations continue to apply in relation to:
 - (i) records made under that Part; and

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- (ii) a failure to keep those records as provided for in that Part; and
 - (c) a workplace inspector has the powers set out in Part IV of the pre-reform Regulations in respect of the offence provisions specified in Part 9A of the pre-reform Regulations.
- (2) After the transitional award ceases to be in force, Parts IV and 9B of the pre-reform Regulations are taken to continue to apply to the extent necessary to ensure that:
 - (a) the penalty provisions specified in Part 9B of the pre-reform Regulations continue to apply in relation to pay slips; and
 - (b) a workplace inspector has the powers set out in Part IV of the pre-reform Regulations in respect of the offence provisions specified in Part 9B of the pre-reform Regulations.
- (3) In this regulation, *transitional award* has the meaning given in Division 2 of Part 1 of Schedule 6 to the Act.

Part 19B Infringement notices

Division 1 Preliminary

19.44 Purpose of Part

- (1) The purpose of this Part is to set up a system of infringement notices for alleged contraventions of infringement notice penalties as an alternative to the institution of proceedings.
- (2) This Part does not:
 - (a) require an infringement notice to be issued to a person for an alleged contravention of an infringement notice penalty; or
 - (b) affect the liability of a person to proceedings for contravention of an infringement notice penalty if an infringement notice is not issued to the person for the alleged contravention; or
 - (c) prevent the issue of 2 or more infringement notices to a person for an alleged contravention; or
 - (d) affect the liability of a person to proceedings for contravention of an infringement notice penalty if the person does not comply with an infringement notice for the alleged contravention; or
 - (e) limit or otherwise affect the penalty that may be imposed by a court on a person for a contravention.

19.45 Definitions

- (1) In this Part:

contravention means a contravention of an infringement notice penalty.

infringement notice means an infringement notice under regulation 19.47.

infringement notice penalty has the meaning given in subregulation (2).

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- (2) A provision is an infringement notice penalty if:
 - (a) it is a civil remedy provision in Part 19; and
 - (b) strict liability applies to the physical elements of the provision.

Division 2 Infringement notices

19.46 When an infringement notice can be given

- (1) If a workplace inspector has reasonable grounds to believe that a person has committed 1 or more contraventions of a particular infringement notice penalty, the workplace inspector may give to the person (the *recipient*) an infringement notice relating to those alleged contraventions.
- (2) An infringement notice must be given within 12 months after the day on which the contraventions are alleged to have taken place.
- (3) This regulation does not authorise the giving of 2 or more infringement notices to a person in relation to contraventions of a particular infringement notice penalty that allegedly occurred on the same day.
- (4) A workplace inspector may only issue an infringement notice in respect of a contravention that occurs after the end of the period of 6 months starting on the reform commencement.

19.47 Contents of infringement notice

- (1) The infringement notice:
 - (a) must state the name of the workplace inspector who issued it; and
 - (b) must state its date of issue; and
 - (c) must state the full name, or the surname and initials, and the address, of the recipient; and
 - (d) must give brief details of the alleged contravention for which it is issued, including the regulation allegedly contravened; and

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- (e) must state the penalty for the alleged contravention payable under the notice; and
 - (f) must state where and how that penalty can be paid (including, if the penalty can be paid by posting the payment, the place to which it should be posted); and
 - (g) must state that, if the recipient pays the penalty within the time required under regulation 19.49, then (unless the infringement notice is subsequently withdrawn and any penalty paid refunded):
 - (i) any liability of the recipient for the alleged contravention will be discharged; and
 - (ii) proceedings will not be brought against the recipient for the alleged contravention; and
 - (iii) the recipient will not be taken to have admitted guilt in respect of the alleged contravention; and
 - (iv) the recipient will not be taken to have been convicted of the contravention; and
 - (h) must state the maximum penalty that a section 717 court could impose on the recipient for the alleged contravention; and
 - (i) must state how and to whom (the *nominated person*) the recipient can apply to have the notice withdrawn or be allowed more time to pay the penalty; and
 - (j) must be signed by the workplace inspector who issued it.
- (2) An infringement notice may contain any other information that the workplace inspector who issues it thinks necessary.

19.48 Amount of penalty if infringement notice issued

The penalty for an alleged contravention payable under the infringement notice for the alleged contravention is:

- (a) for an individual — one-tenth of the maximum penalty that the section 717 court could impose on an individual for the contravention; and
- (b) for a body corporate — one-tenth of the maximum penalty that the section 717 court could impose on a body corporate for the contravention.

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19.49 Time for payment of penalty

The penalty stated in the infringement notice must be paid:

- (a) within 28 days after the day on which the notice is served on the recipient; or
- (b) if the recipient applies for a further period of time in which to pay the penalty, and that application is granted — within the further period allowed; or
- (c) if the recipient applies for a further period of time in which to pay the penalty, and the application is refused — within 7 days after the notice of the refusal is served on the recipient; or
- (d) if the recipient applies for the notice to be withdrawn, and the application is refused — within 28 days after the notice of the refusal is served on the person.

19.50 Extension of time to pay penalty

- (1) Before the end of 28 days after receiving the infringement notice, the recipient may apply, in writing, to the nominated person for a further period of up to 28 days in which to pay the penalty stated in the notice.
- (2) Within 14 days after receiving the application, the nominated person must:
 - (a) grant or refuse a further period not longer than the period sought (but less than 28 days); and
 - (b) notify the person in writing of the decision and, if the decision is a refusal, the reasons for the decision.

19.51 Effect of payment of penalty

If the infringement notice is not withdrawn, and the recipient pays the penalty stated in the notice:

- (a) any liability of the recipient for the alleged contravention is discharged; and
- (b) no proceedings may be brought against the recipient for the alleged contravention; and
- (c) the recipient is not taken to have admitted guilt in respect of the alleged contravention; and

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- (d) the recipient is not taken to have been convicted of the contravention.

19.52 Withdrawal of infringement notice

- (1) Before the end of 28 days after receiving the infringement notice, the recipient may apply, in writing, to the nominated person for the infringement notice to be withdrawn.
- (2) Within 14 days after receiving the application, the nominated person must:
 - (a) withdraw or refuse to withdraw the notice; and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.
- (3) If the nominated person has not approved, or refused to approve, the withdrawal of the notice within the period allowed by subregulation (2), the application is taken to have been refused.
- (4) A workplace inspector may also withdraw an infringement notice issued by him or her without an application having been made.

19.53 Notice of withdrawal of infringement notices

A notice withdrawing the infringement notice served on the recipient:

- (a) must include the following information:
 - (i) the full name, or surname and initials, and address of the recipient;
 - (ii) the date of issue of the infringement notice; and
- (b) must state that the notice is withdrawn.

19.54 Refund of penalty

If an infringement notice is withdrawn after the penalty stated in it has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

Regulation 21.1

Part 21 Matters referred by Victoria

**21.1 Additional effect of Act — workplace agreements
(related provisions)**

- (1) For subsection 869 (3) of the Act, each of the following provisions of the Act is a related provision:
 - (a) section 17;
 - (b) paragraph 120 (1) (e);
 - (c) paragraph 120 (3) (f);
 - (d) section 151;
 - (e) section 152;
 - (f) section 165;
 - (g) section 166;
 - (h) section 169;
 - (i) subsection 172 (2);
 - (j) section 173;
 - (k) paragraph 174 (4) (c);
 - (l) paragraph 174 (5) (c);
 - (m) each provision of Part 13;
 - (n) each provision of Part 14;
 - (o) section 831;
 - (p) section 844.
- (2) For subsection 869 (3) of the Act, each provision of Part 15 of the Act, as it has effect in accordance with section 882 of the Act, is a related provision.

**21.2 Workplace agreements — mandatory term about
basic periodic rate of pay**

- (1) For paragraph 870 (2) (b) of the Act, this regulation specifies:
 - (a) rates of pay; and
 - (b) methods of working out a rate of pay.

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- (2) If:
- (a) the employee is a junior employee; and
 - (b) the employee does not have a disability; and
 - (c) a training arrangement does not apply to the employee; and
 - (d) a transitional award would apply to the employment of the employee except for:
 - (i) the existence of a workplace agreement; and
 - (ii) the operation of section 349 of the Act and clause 89, 95 or 102 of Schedule 6 to the Act; and
 - (e) the transitional award specifies a rate of pay or method of calculation that would have applied to the employee except for the matters mentioned in paragraph (d);
- the rate of pay, or the method of working out the rate of pay, is the rate or method specified in the transitional award.
- (3) If:
- (a) the employee is a junior employee; and
 - (b) the employee does not have a disability; and
 - (c) a training arrangement does not apply to the employee; and
 - (d) either or both of paragraphs (2) (d) and (e) do not apply; and
 - (e) a special FMW under subsection 194 (2) of the Act would have applied to the employee if he or she were an employee within the meaning of subsection 5 (1) of the Act;
- the rate of pay, or method of working out the rate of pay, is the rate or method specified in the special FMW.
- (4) If:
- (a) a training arrangement applies to the employee; and
 - (b) the employee does not have a disability; and
 - (c) a transitional award would apply to the employment of the employee except for:
 - (i) the existence of a workplace agreement; and

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- (ii) the operation of section 349 of the Act and clause 89, 95 or 102 of Schedule 6 to the Act; and
- (d) the transitional award specifies a rate of pay or method of calculation that would have applied to the employee except for the matters mentioned in paragraph (c);

the rate of pay, or the method of working out the rate of pay, is the rate or method specified in the transitional award.

(5) If:

- (a) a training arrangement applies to the employee; and
- (b) the employee does not have a disability; and
- (c) either or both of paragraphs (4) (c) and (d) do not apply; and
- (d) a special FMW under subsection 194 (4) of the Act would have applied to the employee if he or she were an employee within the meaning of subsection 5 (1) of the Act;

the rate of pay, or the method of working out the rate of pay, is the rate or method specified in the special FMW.

(6) If:

- (a) the employee has a disability; and
- (b) a transitional award would apply to the employment of the employee except for:
 - (i) the existence of a workplace agreement; and
 - (ii) the operation of section 349 of the Act and clause 89, 95 or 102 of Schedule 6 to the Act; and
- (c) the transitional award specifies a rate of pay or method of calculation that would have applied to the employee except for the matters mentioned in paragraph (b);

the rate of pay, or the method of working out the rate of pay, is the rate or method specified in the transitional award.

(7) If:

- (a) the employee has a disability; and
- (b) either or both of paragraphs (6) (b) and (c) do not apply; and

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- (c) a special FMW under subsection 194 (3) of the Act would have applied to the employee if he or she were an employee within the meaning of subsection 5 (1) of the Act;

the rate of pay, or the method of working out the rate of pay, is the rate or method specified in the special FMW.

21.3 Relationship between employment agreements and Australian Fair Pay and Conditions Standard

- (1) For subsection 896 (3) of the Act, this regulation explains:
- (a) what a particular respect is or is not for the purposes of subsection 896 (1) or (2) of the Act; and
 - (b) the circumstances in which the Australian Fair Pay and Conditions Standard provides or does not provide a more favourable outcome in the particular respect.

Note Under subsection 896 (1) of the Act, the Australian Fair Pay and Conditions Standard prevails over an employment agreement that operates in relation to an employee to the extent to which, in a particular respect, the Australian Fair Pay and Conditions Standard provides a more favourable outcome for the employee. Subsection 896 (2) of the Act makes further provision for this matter.

Subsection 896 (3) of the Act authorises the regulations to explain:

- (a) what a particular respect is or is not for the purposes of subsection (1) or (2); or
- (b) the circumstances in which the Australian Fair Pay and Conditions Standard provides or does not provide a more favourable outcome in a particular respect.

Wages

- (2) Each of the following is a particular respect:
- (a) the guaranteed basic periodic rate of pay;
 - (b) the guaranteed basic piece rate of pay.
- (3) The Standard does not provide a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) an employment agreement which binds the employee provides for a period within which the guarantee of basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act may be satisfied; and

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- (b) the period does not exceed 12 months.

Note This regulation does not affect the operation of section 189 of the Act.

Example

An employee works in an industry in which there are significant seasonal fluctuations in work demands. As a result, the employee is required to work more hours during peak season and fewer in the off season in a 12 month period. However, under the employee's employment agreement the employee is paid the same amount each pay period despite the fluctuations.

If, over the 12 month period, the employee is paid on average at least the guaranteed basic rate of pay, and the employer and employee have agreed that the wages guarantee will be complied with over a 12 month period, the Standard will not be more favourable.

- (4) The Standard does not provide a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) a provision in an employment agreement binding the employee and the employer provides for the employer to pay an amount in respect of the employee under a salary sacrifice arrangement; and
 - (b) the employee gives the employer a written election, separate to the employment agreement, for a salary sacrifice arrangement; and
 - (c) the guarantee of basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act would be satisfied if the payment were instead paid to the employee.
- (5) The Standard does not provide a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) a law, or an employment agreement which binds the employee provides for the employer to make a deduction from the employee's remuneration for the purpose of recovering a previous overpayment of remuneration; and
 - (b) the guarantee of basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act would be satisfied if the amount were instead paid to the employee.
- (5A) The Standard provides a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) an employment agreement that binds the employee allows for the imposition of a penalty on an employee; and

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- (b) a consequence of the imposition of the penalty is that the employee's guaranteed basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act would not be satisfied.

Leave

- (6) Each of the following is a particular respect:
- (a) paid annual leave;
 - (b) paid sick leave;
 - (c) paid carer's leave;
 - (d) unpaid carer's leave;
 - (da) paid personal/carer's leave (but only to the extent to which it is a particular respect for the purposes of subregulations (11C) and (11G));
 - (e) paid compassionate leave;
 - (f) special maternity leave;
 - (g) ordinary maternity leave;
 - (h) the paid leave provided for in section 268 of the Act;
 - (i) long paternity leave;
 - (j) short paternity leave;
 - (k) pre-adoption leave;
 - (l) short adoption leave;
 - (m) long adoption leave.
- (7) Each of the matters mentioned in subregulation (6) has the same meaning as in Divisions 4 to 6 of Part 7.
- (8) The Standard provides a more favourable outcome in any of the respects mentioned in subregulation (6) if it provides for a greater amount of one of these types of leave (for example, a greater number of days or hours).

Example

If an employment agreement provides for 3 weeks paid annual leave and 8 weeks unpaid annual leave, this would be a less favourable outcome than the Standard in respect of paid annual leave because the Standard provides employees with 4 weeks of paid annual leave (but no equivalent unpaid leave entitlement). The employee would be entitled to 4 weeks paid annual leave and 8 weeks unpaid annual leave.

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- (9) The Standard does not provide a more favourable outcome in any of the respects mentioned in subregulation (6) if the amount of the entitlement to leave is expressed in a form that is different from, but equivalent to, the Standard.

Example

An employment agreement which provides that a full-time employee is entitled to 20 days of annual leave would not be less favourable than the Standard (as 20 days is the equivalent of 152 hours of annual leave for a full-time employee working 38 hours per week).

- (10) The Standard does not provide a more favourable outcome in respect of paid annual leave if an employment agreement which binds the employee permits the employee to take an additional period of annual leave by forgoing an equivalent amount of pay.

Example

A provision permitting an employee to take 8 weeks of annual leave at half pay (where the available entitlement is 4 weeks of paid annual leave) would not be less favourable than the Standard.

- (11) The Standard does not provide a more favourable outcome in respect of paid carer's leave if an employment agreement which binds the employee provides that the employee is entitled to access a greater amount of paid personal leave as paid carer's leave annually than the annual cap provided for in the Standard.

Example

A provision which provides no cap on the amount of personal leave that may be taken as carer's leave taken by an employee in a 12 month period would be more favourable than the Standard.

- (11C) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave if an employment agreement that binds the employee permits accumulated paid personal/carer's leave to be paid out on termination of employment.

- (11D) The Standard provides a more favourable outcome in respect of paid compassionate leave if:

- (a) for an employment agreement that binds the employee and that provides for an amount of paid compassionate leave per occasion that is not more than the amount per occasion

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provided by the Standard — the employee is entitled to forgo any of that leave in return for an amount of pay or other benefit; or

- (b) for an employment agreement that binds the employee and that provides for an amount of paid compassionate leave per occasion that is greater than the amount per occasion provided by the Standard — the employee is entitled to forgo more than the amount per occasion by which that leave exceeds the amount per occasion provided by the Standard in return for an amount of pay or other benefit.

- (11E) The Standard does not provide a more favourable outcome in respect of paid compassionate leave if, for an employment agreement that binds the employee and that provides for an amount of paid compassionate leave per occasion that is greater than the amount per occasion provided by the Standard, the employee is entitled to forgo the amount per occasion, or less than the amount per occasion, by which that leave exceeds the amount per occasion provided by the Standard in return for an amount of pay or other benefit.

Note For subregulations 21.3 (11D) and (11E), the Standard provides that full-time employees are entitled to accrue an amount of 2 days of paid compassionate leave per occasion (section 257 of the Act).

- (11F) The Standard does not provide a more favourable outcome in respect of paid compassionate leave if:
 - (a) a provision in an employment agreement binding the employee and the employer provides for leave of that type to be forgone in return for an amount of pay or other benefit in a manner that is consistent with these Regulations; and
 - (b) the employee gives the employer a written election, separate to the employment agreement, to forgo leave in return for an amount of pay or other benefit.
- (11G) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave if a provision in an employment agreement binding the employee and the employer permits the employee to take an additional period of personal/carer's leave by forgoing an equivalent amount of pay.

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Example

A provision permitting an employee to take 20 days of personal/carer's leave at half pay (where the available entitlement is 10 days of paid personal/carer's leave) would not be less favourable than the Standard.

Accruing and crediting of leave

- (12) Each of the following is a particular respect:
- (a) accrual of the leave mentioned in subregulation (6);
 - (b) crediting of the leave mentioned in subregulation (6).

Example

An employment agreement provides that an employee is to be credited with annual leave every fortnight instead of every month (annual leave is credited every month under the Standard). This circumstance would not be less favourable than the Standard. However, crediting annually would be less favourable than the Standard.

Crediting of leave annually in arrears of service would be less favourable than the Standard, but crediting in advance of service would be more favourable.

Statutory declarations for parental leave

- (13) The content of a statutory declaration is a particular respect.
- (14) The Standard does not provide a more favourable outcome in the respect mentioned in subregulation (13) if an employment agreement or contract of employment which binds the employee provides that a statutory declaration is required to include matters additional to those required by the Standard.

Notice periods and evidentiary requirements relating to leave

- (15) Each of the following is a particular respect:
- (a) the giving of notice in relation to a period of sick leave taken (or to be taken) by the employee;
 - (b) the giving of notice in relation to a period of carer's leave taken (or to be taken) by the employee;
 - (c) the giving of documentary evidence in relation to a period of sick leave taken (or to be taken) by the employee;

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- (d) the giving of documentary evidence in relation to a period of carer's leave taken (or to be taken) by the employee;
 - (e) the giving of evidence in relation to a period of compassionate leave taken (or to be taken) by the employee.
- (16) The Standard provides a more favourable outcome in any of the respects mentioned in subregulation (15) if an employment agreement that binds the employee imposes obligations on the employee that are more onerous than the requirements in the Standard.
- (17) The Standard provides a more favourable outcome in any of the respects mentioned in subregulation (15) if an employment agreement that binds the employee allows for the imposition of a penalty on an employee for a breach of a requirement or condition to give the notice or evidence.
- (18) In subregulations (5A) and (17):
- penalty:***
- (a) means any of the following:
 - (i) a deduction of an amount from an employee's remuneration;
 - (ii) a reduction of an employee's entitlements;
 - (iii) a requirement that an employee makes a payment to the employer; but
 - (b) does not include a deduction, reduction or requirement that is:
 - (i) for the benefit of the employee; or
 - (ii) authorised under a law; or
 - (iii) made or imposed because the employee was provided with an entitlement to which the employee was not entitled.

Chapter 3	Transitional arrangements for parties bound by federal awards
Part 3	Powers and procedures of Commission for dealing with industrial disputes
Division 2	Variation and revocation of transitional awards
Regulation 3.1	

Chapter 3 Transitional arrangements for parties bound by federal awards

Note This Chapter is made for Schedule 6 to the Act.

Part 3 Powers and procedures of Commission for dealing with industrial disputes

Division 2 Variation and revocation of transitional awards

3.1 Variation of transitional awards — dealing with industrial dispute

- (1) For subclause 29 (3) of Schedule 6 to the Act each of the matters mentioned in subclause 17 (1) of that Schedule is a matter in respect of which a transitional award may be varied as mentioned in subclause 29 (3).
- (2) However, the transitional award may be varied as mentioned in subclause 29 (3) only if:
 - (a) the Commission is, for the first time, introducing rates of pay into the transitional award for a class of part-time transitional employees; and
 - (b) the award does not already specify the basis on which the conditions of the award are to apply to the class of part-time transitional employees.

Regulation 3.1*Example of variation of a transitional award*

The Commission, for the first time, introduces rates of pay for school-based apprentices (which would be a class of part-time transitional employees), and school-based apprentices are not provided for in the transitional award.

In this circumstance, the Commission would be entitled to determine the rates of pay for school-based apprentices and then vary any of the allowable transitional award matters in the transitional award so as to provide a basis on which the conditions of the transitional award would apply to the school-based apprentices on the basis of hours worked.

- (3) For subregulation (2), a *part-time transitional employee* includes:
- (a) a part-time junior; and
 - (b) a part-time employee to whom training arrangements apply.

Regulation 7.1

Part 7 Matters relating to Victoria

Division 1 Matters referred by Victoria

Subdivision A Introduction

7.1 Definitions for Part 7

In this Part:

employee has the same meaning as in Division 1 of Part 21 of the Act.

Subdivision B Industrial disputes

7.2 Industrial disputes — prescribed laws of Victoria

For clause 75 of Schedule 6 to the Act, the following laws of Victoria are prescribed:

- (a) the **Police Regulation Act 1958**;
- (b) all regulations, standing orders and instructions made or issued under that Act.

Subdivision D Preserved transitional award terms — transitional Victorian reference awards

7.3 Preserved transitional award terms

- (1) For paragraph 77 (3) (a) of Schedule 6 to the Act, parental leave does not include one or both of the following:
 - (a) special maternity leave (within the meaning of section 265 of the Act);
 - (b) the entitlement under section 268 of the Act to transfer to a safe job or to take paid leave.
- (2) For paragraph 77 (3) (b) of Schedule 6 to the Act, personal/carer's leave does not include one or both of the following:

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- (a) compassionate leave (within the meaning of section 257 of the Act (as that section applies to an employee in Victoria because of section 861 of the Act));
- (b) unpaid carer's leave (within the meaning of section 244 of the Act (as that section applies to an employee in Victoria because of section 861 of the Act)).

7.4 Meaning of *more generous*

- (1) For paragraph 79 (1) (a) of Schedule 6 to the Act, this regulation explains how to determine whether an employee's entitlement under a preserved transitional award term in relation to:
 - (a) annual leave; or
 - (b) personal/carer's leave; or
 - (c) parental leave, including maternity and adoption leave;is more generous than the employee's entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard.
- (2) The entitlements are to be compared on the basis of their effect on the employee alone, rather than on the basis of their effect on employees generally.

Note 1 The comparison between entitlements will focus on the individual employee's entitlements.

Note 2 A type of employee may have an entitlement under a preserved transitional award term, but not a corresponding entitlement under the Australian Fair Pay and Conditions Standard. For example, a casual employee may have an entitlement to annual leave under a preserved transitional award term, but is not covered by the Australian Fair Pay and Conditions Standard. In this example, the casual employee would retain the entitlement under the preserved transitional award term.

- (3) However:
 - (a) if the total annual quantum of a kind of leave permitted under the preserved transitional award term is greater than the total annual quantum of that kind of leave permitted under the Australian Fair Pay and Conditions Standard, the entitlement specified under the preserved transitional award term is taken to be more generous; and

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- (b) if the total annual quantum of a kind of leave permitted under the preserved transitional award term is less than or equal to the total annual quantum of that kind of leave permitted under the Australian Fair Pay and Conditions Standard, the entitlement under the Australian Fair Pay and Conditions Standard has effect.

Examples of comparisons between preserved award terms and the Australian Fair Pay and Conditions Standard for a full-time employee

Preserved transitional award term	Australian Fair Pay and Conditions Standard	The entitlement that applies is set out in
<i>1 Annual leave</i>		
<i>Workers other than shift workers</i>		
Not more than 4 weeks	4 weeks	Australian Fair Pay and Conditions Standard
More than 4 weeks	4 weeks	the preserved transitional award term
<i>Shift workers</i>		
Not more than 5 weeks	5 weeks	Australian Fair Pay and Conditions Standard
More than 5 weeks	5 weeks	the preserved transitional award term
<i>2 Personal/carer's leave</i>		
Sum of paid sick leave and paid carer's leave of not more than 10 days	10 days paid personal leave, of which 10 days can be taken as carer's leave in any 12 month period	Australian Fair Pay and Conditions Standard
Sum of paid sick leave and paid carer's leave of more than 10 days	10 days paid personal leave, of which 10 days can be taken as carer's leave in any 12 month period	the preserved transitional award term

Regulation 7.5

Preserved transitional award term	Australian Fair Pay and Conditions Standard	The entitlement that applies is set out in
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Note An entitlement to war service sick leave or infectious diseases leave or any other like form of sick leave under a preserved transitional award term is treated as a separate entitlement in accordance with regulation 7.5. Therefore, the entitlement is not the subject of a comparison between entitlements under the preserved transitional award term and the Australian Fair Pay and Conditions Standard because there is no comparable entitlement under the Australian Fair Pay and Conditions Standard.

3 Parental leave

Not more than 52 weeks unpaid leave	52 weeks unpaid leave	the Australian Fair Pay and Conditions Standard
More than 52 weeks unpaid leave	52 weeks unpaid leave	the preserved transitional award term
52 weeks unpaid leave plus a right to request additional leave	52 weeks unpaid leave	the preserved transitional award term

Note An entitlement to paid parental leave is treated as a separate entitlement in accordance with regulation 7.6. Therefore, the entitlement is not the subject of a comparison between entitlements under the preserved transitional award term and the Australian Fair Pay and Conditions Standard because there is no comparable entitlement under the Australian Fair Pay and Conditions Standard.

- (3A) A reference in the table in subregulation (3) to a period of annual leave or personal/carer's leave is a reference to paid annual leave or personal/carer's leave.
- (4) If, under this regulation, an entitlement under the Australian Fair Pay and Conditions Standard, or the preserved transitional award term, is taken to be more generous, the entitlement is to be applied in accordance with the administrative provisions and other arrangements (if any) that relate to the entitlement.

7.5 Modifications in relation to personal/carer's leave

For subclause 80 (2) of Schedule 6 to the Act, a preserved transitional award term about personal/carer's leave is to be treated, for the purposes of the application of Schedule 6 to the Act, as a separate preserved transitional award term about separate matters, to the extent that the preserved transitional award term is about any of the following:

- (a) war service sick leave;

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- (b) infectious diseases sick leave;
- (c) any other like form of sick leave.

Note 1 This regulation applies to a transitional Victorian reference award: see subclause 80 (1) of Schedule 6 to the Act.

Note 2 There is no entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the Australian Fair Pay and Conditions Standard.

Therefore, if:

- (a) there are entitlements in relation to personal/carer's leave under the preserved transitional award term and the Australian Fair Pay and Conditions Standard; and
- (b) there is an entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the preserved transitional award term;

the effect of this regulation is that the entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave will continue to operate independently of the entitlement which applies in relation to personal/carer's leave under either the preserved transitional award term or the Australian Fair Pay and Conditions Standard.

7.6 Modifications in relation to parental leave

For subclause 81 (2) of Schedule 6 to the Act, a preserved transitional award term about parental leave is to be treated, for the purposes of the application of Schedule 6 to the Act, as being about separate matters to the extent that it is about paid and unpaid parental leave.

Note 1 This regulation applies to a transitional Victorian reference award: see subclause 81 (1) of Schedule 6 to the Act.

Note 2 There is no entitlement in relation to paid parental leave under the Australian Fair Pay and Conditions Standard.

Therefore, if:

- (a) there is an entitlement in relation to parental leave, including maternity and adoption leave, under the preserved transitional award term and the Australian Fair Pay and Conditions Standard; and
- (b) there is an entitlement to paid parental leave under the preserved transitional award term;

the effect of this regulation is that the entitlement to paid parental leave will continue to operate independently of the entitlement which applies in relation to parental leave under either the preserved transitional award term or the Australian Fair Pay and Conditions Standard.

Subdivision E Common rules

7.7 Proposed variation of common rules — notice of hearing by the Commission

- (1) For subclause 85 (2) of Schedule 6 to the Act, the notice referred to in that subclause in relation to a term of a transitional award that is the underlying award for a common rule in Victoria for an industry must be given to:
 - (a) the person or organisation (if any) that made an application for the variation of the term; and
 - (b) the Victorian Employers' Chamber of Commerce and Industry; and
 - (c) the Australian Council of Trade Unions; and
 - (d) the Australian Industry Group; and
 - (e) the Victorian Trades Hall Council; and
 - (f) any other person or organisation that the Commission considers appropriate.
- (2) The notice must be:
 - (a) in the approved form; and
 - (b) given by serving a copy of the notice on the person or body to whom the notice is to be given.

7.8 Publication of a notice inviting objections to a variation

- (1) A notice:
 - (a) to which subclause 85 (3) of Schedule 6 to the Act relates; or
 - (b) to which subsection 142 (4) of the pre-reform Act continues to apply because of clause 84 of Schedule 6 to the Act;must be published in accordance with subregulation (2).
- (2) The notice must be published:
 - (a) in the approved form; and
 - (b) in the *Gazette*; and

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- (c) in a newspaper or newspapers circulating in Victoria; and
- (d) in any other publication circulating in Victoria that the Commission considers appropriate.

7.9 Notice of declaration that a variation is not binding on the organisation or person

- (1) A notice:
 - (a) to which subclause 85 (5) of Schedule 6 to the Act relates; or
 - (b) to which subsection 142 (6) of the pre-reform Act continues to apply because of clause 84 of Schedule 6 to the Act;must be published in accordance with subregulation (2).
- (2) The notice must be published:
 - (a) in accordance with the approved form; and
 - (b) given by being published in the *Gazette*.

Division 2 Other matters

Subdivision B Preserved transitional award terms — transitional awards (other than transitional Victorian reference awards) in respect of employees in Victoria

7.10 Preserved transitional award terms

- (1) For paragraph 97 (4) (a) of Schedule 6 to the Act, parental leave does not include one or both of the following:
 - (a) special maternity leave (within the meaning of section 265 of the Act);
 - (b) the entitlement under section 268 of the Act to transfer to a safe job or to take paid leave.
- (2) For paragraph 97 (4) (b) of Schedule 6 to the Act, personal/carer's leave does not include one or both of the following:

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- (a) compassionate leave (within the meaning of section 257 of the Act);
- (b) unpaid carer's leave (within the meaning of section 244 of the Act).

7.11 Meaning of *more generous*

- (1) For paragraph 99 (1) (a) of Schedule 6 to the Act, this regulation explains how to determine whether an employee's entitlement under a preserved transitional award term in relation to:
 - (a) annual leave; or
 - (b) personal/carer's leave; or
 - (c) parental leave, including maternity and adoption leave;is more generous than the employee's entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard.
- (2) The entitlements are to be compared on the basis of their effect on the employee alone, rather than on the basis of their effect on employees generally.

Note 1 The comparison between entitlements will focus on the individual employee's entitlements.

Note 2 A type of employee may have an entitlement under a preserved transitional award term, but not a corresponding entitlement under the Australian Fair Pay and Conditions Standard. For example, a casual employee may have an entitlement to annual leave under a preserved transitional award term, but is not covered by the Australian Fair Pay and Conditions Standard. In this example, the casual employee would retain the entitlement under the preserved transitional award term.

- (3) However:
 - (a) if the total annual quantum of a kind of leave permitted under the preserved transitional award term is greater than the total annual quantum of that kind of leave permitted under the Australian Fair Pay and Conditions Standard, the entitlement specified under the preserved transitional award term is taken to be more generous; and
 - (b) if the total annual quantum of a kind of leave permitted under the preserved transitional award term is less than or equal to the total annual quantum of that kind of leave

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permitted under the Australian Fair Pay and Conditions Standard, the entitlement under the Australian Fair Pay and Conditions Standard has effect.

Examples of comparisons between preserved award terms and the Australian Fair Pay and Conditions Standard for a full-time employee

Preserved transitional award term	Australian Fair Pay and Conditions Standard	The entitlement that applies is set out in
<i>1 Annual leave</i>		
<i>Workers other than shift workers</i>		
Not more than 4 weeks	4 weeks	Australian Fair Pay and Conditions Standard
More than 4 weeks	4 weeks	the preserved transitional award term
<i>Shift workers</i>		
Not more than 5 weeks	5 weeks	Australian Fair Pay and Conditions Standard
More than 5 weeks	5 weeks	the preserved transitional award term
<i>2 Personal/carer's leave</i>		
Sum of paid sick leave and paid carer's leave of not more than 10 days	10 days paid personal leave, of which 10 days can be taken as carer's leave in any 12 month period	Australian Fair Pay and Conditions Standard
Sum of paid sick leave and paid carer's leave of more than 10 days	10 days paid personal leave, of which 10 days can be taken as carer's leave in any 12 month period	the preserved transitional award term

Note An entitlement to war service sick leave or infectious diseases leave or any other like form of sick leave under a preserved transitional award term is treated as a separate entitlement in accordance with regulation 7.12. Therefore, the entitlement is not the subject of a comparison between entitlements under the preserved transitional award term and the Australian Fair Pay and Conditions Standard because there is no comparable entitlement under the Australian Fair Pay and Conditions Standard.

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Preserved transitional award term	Australian Fair Pay and Conditions Standard	The entitlement that applies is set out in
<i>3 Parental leave</i>		
Not more than 52 weeks unpaid leave	52 weeks unpaid leave	the Australian Fair Pay and Conditions Standard
More than 52 weeks unpaid leave	52 weeks unpaid leave	the preserved transitional award term
52 weeks unpaid leave plus a right to request additional leave	52 weeks unpaid leave	the preserved transitional award term

Note An entitlement to paid parental leave is treated as a separate entitlement in accordance with regulation 7.13. Therefore, the entitlement is not the subject of a comparison between entitlements under the preserved transitional award term and the Australian Fair Pay and Conditions Standard because there is no comparable entitlement under the Australian Fair Pay and Conditions Standard.

- (3A) A reference in the table in subregulation (3) to a period of annual leave or personal/carer's leave is a reference to paid annual leave or personal/carer's leave.
- (4) If, under this regulation, an entitlement under the Australian Fair Pay and Conditions Standard, or the preserved transitional award term, is taken to be more generous, the entitlement is to be applied in accordance with the administrative provisions and other arrangements (if any) that relate to the entitlement.

7.12 Modifications in relation to personal/carer's leave

For subclause 100 (2) of Schedule 6 to the Act, a preserved transitional award term about personal/carer's leave is to be treated, for the purposes of the application of Schedule 6 to the Act, as a separate preserved transitional award term about separate matters, to the extent that the preserved transitional award term is about any of the following:

- (a) war service sick leave;
- (b) infectious diseases sick leave;
- (c) any other like form of sick leave.

Note 1 This regulation applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded

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employers in respect of the employment of employees in Victoria: see subclause 100 (1) of Schedule 6 to the Act.

Note 2 There is no entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the Australian Fair Pay and Conditions Standard.

Therefore, if:

- (a) there are entitlements in relation to personal/carer's leave under the preserved transitional award term and the Australian Fair Pay and Conditions Standard; and
- (b) there is an entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the preserved transitional award term;

the effect of this regulation is that the entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave will continue to operate independently of the entitlement which applies in relation to personal/carer's leave under either the preserved transitional award term or the Australian Fair Pay and Conditions Standard.

7.13 Modifications in relation to parental leave

For subclause 101 (2) of Schedule 6 to the Act, a preserved transitional award term about parental leave is to be treated, for the purposes of the application of Schedule 6 to the Act, as being about separate matters to the extent that it is about paid and unpaid parental leave.

Note 1 This regulation applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria: see subclause 100 (1) of Schedule 6 to the Act.

Note 2 There is no entitlement in relation to paid parental leave under the Australian Fair Pay and Conditions Standard.

Therefore, if:

- (a) there is an entitlement in relation to parental leave, including maternity and adoption leave, under the preserved transitional award term and the Australian Fair Pay and Conditions Standard; and
- (b) there is an entitlement to paid parental leave under the preserved transitional award term;

the effect of this regulation is that the entitlement to paid parental leave will continue to operate independently of the entitlement which applies in relation to parental leave under either the preserved transitional award term or the Australian Fair Pay and Conditions Standard.

Part 8 Transitional arrangements for parties bound by federal awards — miscellaneous

8.1 Varying or setting aside obligation to pay redundancy pay

- (1) For subclause 108 (1) of Schedule 6 to the Act, this regulation applies if:
 - (a) a transitional employer would be obliged under a transitional award to pay redundancy pay in relation to the redundancy of a transitional employee; and
 - (b) a term of a transitional award permits the transitional employer to make an application to the Commission to have the obligation to pay redundancy pay in relation to the transitional employee varied or set aside where the transitional employer has obtained alternative employment for the transitional employee.
- (2) The Commission may:
 - (a) receive an application to vary or set aside an obligation to pay redundancy pay; and
 - (b) by order, determine the application if the Commission is satisfied that the alternative employment is acceptable.

Note The acceptability of alternative employment in a particular matter is an objective assessment that requires the Commission to consider matters including pay, hours of work, seniority, workload and other matters particular to the application.

Regulation 1.1

Chapter 4 Extra provisions relating to definitions

Note This Chapter is made for Schedule 2 to the Act. See also sections 4, 5, 6 and 7 of the Act.

1.1 Purpose of Chapter 4

For subclause 5 (1) of Schedule 2 to the Act, clauses 2, 3 and 4 of that Schedule are amended as set out in Schedule 8.

Note Clauses 2, 3 and 4 of Schedule 2 explain when a reference in the Act to:

- (a) an employee; or
- (b) an employer; or
- (c) employment;

has its ordinary meaning. Under subclause 5 (1) of Schedule 2, the Governor-General may make regulations amending those clauses.

For the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of that item are to be treated as if they had been made by an Act.

Chapter 5 Transitional treatment of State employment agreements and State awards

Note This Chapter is made for Schedule 8 to the Act.

Part 2 Preserved State agreements

2.1 Varying or setting aside obligation to pay redundancy pay

- (1) For clause 30 of Schedule 8 to the Act, this regulation applies if:
 - (a) an employer would be obliged under a preserved State agreement to pay redundancy pay in relation to the redundancy of an employee; and
 - (b) a term of a preserved State agreement permits the employer to make an application to the State industrial authority to have the obligation to pay redundancy pay in relation to the employee varied or set aside where the employer has obtained alternative employment for the employee.
- (2) The Commission may:
 - (a) receive an application to vary or set aside an obligation to pay redundancy pay; and
 - (b) by order, determine the application if the Commission is satisfied that the alternative employment is acceptable.

Note 1 The acceptability of alternative employment in a particular matter is an objective assessment that requires the Commission to consider matters including pay, hours of work, seniority, workload and other matters particular to the application.

Note 2 Subclause 15 (1) of Schedule 8 to the Act provides that a function conferred by a preserved collective State agreement on a State industrial

Regulation 2.2

authority must not be exercised by that authority from reform commencement. Subclause 15 (2) of Schedule 8 provides that the employer and persons bound by the agreement may agree to confer that function on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

This regulation is made under clause 30 of Schedule 8 to the Act, and modifies subclause 15 (2) of the Act to the extent that the Commission may exercise the function in relation to redundancy pay variation even though:

- (a) the employer and persons bound by the agreement might not agree to the Commission exercising this function; or
- (b) the function relates to the resolution of a dispute about the application of the agreement.

2.2 Protected preserved conditions where termination of preserved State agreement occurred before Transition to Forward with Fairness Act

- (1) This regulation applies if a preserved State agreement was terminated in accordance with clause 21 of Schedule 8 to the Act before the commencement of Schedule 1 to the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.
- (2) Each protected preserved condition (within the meaning of subclause 25A (4) of Part 2 of Schedule 8 to the Act) has effect in relation to the employer and the employee who were bound by the preserved State agreement immediately before it was terminated until either of the following occurs:
 - (a) an award comes into operation in relation to the employer and the employee;
 - (b) a workplace agreement comes into operation in relation to the employer and the employee.
- (3) Subregulation (2) does not affect the operation of protected preserved conditions in accordance with clause 25A of Part 2 of Schedule 8 to the Act.
- (4) Parts 6 and 14 of the Act apply to a protected preserved condition mentioned in subregulation (2) as if the protected preserved condition were a preserved State agreement in its operation.

Regulation 2.3

2.3 Outworker conditions under preserved State agreements to continue to have effect for employees subject to workplace agreements or workplace determinations

- (1) Despite subclause 15G (2) of Schedule 8 to the Act, if:
- (a) a person's employment is subject to a workplace agreement or workplace determination; and
 - (b) but for that agreement or determination, a preserved State agreement would have effect in relation to the person's employment;

the terms of the preserved State agreement have effect to the extent that they are about outworker conditions, despite any terms of the workplace agreement or workplace determination that provide, in a particular respect, a less favourable outcome for that person.

- (2) In this regulation:
outworker conditions has the same meaning as in section 349 of the Act.

Note This regulation is made under clause 30 of Schedule 8 to the Act, and modifies the operation of subclause 15G (2) of Schedule 8 to the Act in relation to the effect of outworker conditions in preserved State agreements which have been replaced by workplace agreements or workplace determinations.

Chapter 5	Transitional treatment of State employment agreements and State awards
Part 3	Notional agreements preserving State awards
Division 2	Effect and operation of a notional agreement preserving State awards

Regulation 3.1A

Part 3 Notional agreements preserving State awards

Division 2 Effect and operation of a notional agreement preserving State awards

3.1A Outworker conditions under notional agreements preserving State awards to continue to have effect for employees subject to workplace agreements

- (1) Despite subclause 38A (2) of Schedule 8 to the Act, if:
- (a) a person's employment is subject to a workplace agreement; and
 - (b) but for that agreement, a notional agreement preserving State awards would have effect in relation to the person's employment;

the terms of the notional agreement preserving State awards have effect to the extent that they are about outworker conditions, despite any terms of the workplace agreement or pre-transition workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

- (2) In this regulation:
outworker conditions has the same meaning as in section 349 of the Act.

Note This regulation is made under clause 55 of Schedule 8 to the Act, and modifies the operation of subclause 38 (2) of Schedule 8 to the Act in relation to the effect of outworker conditions in notional agreements preserving State awards which have been replaced by workplace agreements.

Division 5 Preserved notional terms and preserved notional entitlements

3.1 Preserved notional terms of notional agreement

- (1) For paragraph 45 (5) (a) of Schedule 8 to the Act, parental leave, including maternity and adoption leave, does not include one or both of the following:
 - (a) special maternity leave (within the meaning of section 265 of the Act);
 - (b) the entitlement under section 268 of the Act to transfer to a safe job or to take paid leave.
- (2) For paragraph 45 (5) (b) of Schedule 8 to the Act, personal/carer's leave does not include one or both of the following:
 - (a) compassionate leave (within the meaning of section 257 of the Act);
 - (b) unpaid carer's leave (within the meaning of section 244 of the Act).

3.2 Meaning of *more generous*

- (1) For paragraph 47 (1) (a) of Schedule 8 to the Act, this regulation explains how to determine whether an employee's entitlement under a preserved notional term in relation to:
 - (a) annual leave; or
 - (b) personal/carer's leave; or
 - (c) parental leave, including maternity and adoption leave;is more generous than the employee's entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard.
- (2) The entitlements are to be compared on the basis of their effect on the employee alone, rather than on the basis of their effect on employees generally.

Note 1 The comparison between entitlements will focus on the individual employee's entitlements.

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Division 5	Preserved notional terms and preserved notional entitlements

Regulation 3.2

Note 2 A type of employee may have an entitlement under a preserved notional term, but not a corresponding entitlement under the Australian Fair Pay and Conditions Standard. For example, a casual employee may have an entitlement to annual leave under a preserved notional term, but is not covered by the Australian Fair Pay and Conditions Standard. In this example, the casual employee would retain the entitlement under the preserved notional term.

(3) However:

- (a) if the total annual quantum of a kind of leave permitted under the preserved notional term is greater than the total annual quantum of that kind of leave permitted under the Australian Fair Pay and Conditions Standard, the entitlement specified under the preserved notional term is taken to be more generous; and
- (b) if the total annual quantum of a kind of leave permitted under the preserved notional term is less than or equal to the total annual quantum of that kind of leave permitted under the Australian Fair Pay and Conditions Standard, the entitlement under the Australian Fair Pay and Conditions Standard has effect.

Examples of comparisons between preserved award terms and the Australian Fair Pay and Conditions Standard for a full-time employee

Preserved notional term	Australian Fair Pay and Conditions Standard	The entitlement that applies is set out in
<i>Annual leave</i>		
<i>Workers other than shift workers</i>		
Not more than 4 weeks	4 weeks	Australian Fair Pay and Conditions Standard
More than 4 weeks	4 weeks	the preserved notional term
<i>Shift workers</i>		
Not more than 5 weeks	5 weeks	Australian Fair Pay and Conditions Standard
More than 5 weeks	5 weeks	the preserved notional term

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Preserved notional term	Australian Fair Pay and Conditions Standard	The entitlement that applies is set out in
<i>Personal/carer's leave</i>		
Sum of paid sick leave and paid carer's leave of not more than 10 days	10 days paid personal leave, of which 10 days can be taken as carer's leave in any 12 month period	Australian Fair Pay and Conditions Standard
Sum of paid sick leave and paid carer's leave of more than 10 days	10 days paid personal leave, of which 10 days can be taken as carer's leave in any 12 month period	the preserved notional term

Note An entitlement to war service sick leave or infectious diseases leave or any other like form of sick leave under a preserved notional term is treated as a separate entitlement in accordance with regulation 3.3. Therefore, the entitlement is not the subject of a comparison between entitlements under the preserved notional term and the Australian Fair Pay and Conditions Standard because there is no comparable entitlement under the Australian Fair Pay and Conditions Standard.

Parental leave

Not more than 52 weeks unpaid leave	52 weeks unpaid leave	the Australian Fair Pay and Conditions Standard
More than 52 weeks unpaid leave	52 weeks unpaid leave	the preserved notional term
52 weeks unpaid leave plus a right to request additional leave	52 weeks unpaid leave	the preserved notional term

Note An entitlement to paid parental leave is treated as a separate entitlement in accordance with regulation 3.4. Therefore, the entitlement is not the subject of a comparison between entitlements under the preserved notional term and the Australian Fair Pay and Conditions Standard because there is no comparable entitlement under the Australian Fair Pay and Conditions Standard.

(3A) A reference in the table in subregulation (3) to a period of annual leave or personal/carer's leave is a reference to paid annual leave or personal/carer's leave.

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Part 3	Notional agreements preserving State awards
Division 5	Preserved notional terms and preserved notional entitlements

Regulation 3.3

- (4) If, under this regulation, an entitlement under the Australian Fair Pay and Conditions Standard, or the preserved notional term, is taken to be more generous, the entitlement is to be applied in accordance with the administrative provisions and other arrangements (if any) that relate to the entitlement.

3.3 Modifications in relation to personal/carer's leave

For subclause 48 (1) of Schedule 8 to the Act, a preserved notional term about personal/carer's leave is to be treated as a separate preserved notional term about separate matters, to the extent that the preserved transitional award term is about any of the following:

- (a) war service sick leave;
- (b) infectious diseases sick leave;
- (c) any other like form of sick leave.

Note There is no entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the Australian Fair Pay and Conditions Standard.

Therefore, if:

- (a) there are entitlements in relation to personal/carer's leave under the preserved notional term and the Australian Fair Pay and Conditions Standard; and
- (b) there is an entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the preserved notional term;

the effect of this regulation is that the entitlement to war service sick leave, infectious diseases sick leave or any other like form of sick leave will continue to operate independently of the entitlement which applies in relation to personal/carer's leave under either the preserved notional term or the Australian Fair Pay and Conditions Standard.

3.4 Modifications in relation to parental leave

For subclause 49 (1) of Schedule 8 to the Act, a preserved notional term about parental leave is to be treated as being about separate matters to the extent that it is about paid and unpaid parental leave.

Note There is no entitlement in relation to paid parental leave under the Australian Fair Pay and Conditions Standard.

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Therefore, if:

- (a) there is an entitlement in relation to parental leave, including maternity and adoption leave, under the preserved notional term and the Australian Fair Pay and Conditions Standard; and
- (b) there is an entitlement to paid parental leave under the preserved notional term;

the effect of this regulation is that the entitlement to paid parental leave will continue to operate independently of the entitlement which applies in relation to parental leave under either the preserved notional term or the Australian Fair Pay and Conditions Standard.

3.5 Varying or setting aside obligation to pay redundancy pay

- (1) For clause 55 of Schedule 8 to the Act, this regulation applies if:
 - (a) an employer would be obliged under a notional agreement preserving State awards to pay redundancy pay in relation to the redundancy of an employee; and
 - (b) a term of a notional agreement preserving State awards permits the employer to make an application to the State industrial authority to have the obligation to pay redundancy pay in relation to the employee varied or set aside where the employer has obtained alternative employment for the employee.
- (2) The Commission may:
 - (a) receive an application to vary or set aside an obligation to pay redundancy pay; and
 - (b) by order, determine the application if the Commission is satisfied that the alternative employment is acceptable.

Note 1 The acceptability of alternative employment in a particular matter is an objective assessment that requires the Commission to consider matters including pay, hours of work, seniority, workload and other matters particular to the application.

Note 2 Subclause 35 (1) of Schedule 8 to the Act provides that a function conferred by a notional agreement preserving State awards on a State industrial authority must not be exercised by that authority from reform commencement. Subclause 35 (2) of Schedule 8 provides that the employer and persons bound by the notional agreement may agree to confer that function on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

Chapter 5	Transitional treatment of State employment agreements and State awards
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Division 5	Preserved notional terms and preserved notional entitlements

Regulation 3.5

This regulation is made under clause 55 of Schedule 8 to the Act and modifies subclause 35 (2) of Schedule 8 to the Act to the extent that the Commission may exercise the function in relation to redundancy pay variation even though:

- (a) the employer and persons bound by the agreement might not agree to the Commission exercising this function; or
- (b) the function relates to the resolution of a dispute about the application of the agreement.

Chapter 6 Transitionally registered associations

Note This Chapter is made for Schedule 10 to the Act.

Part 1 Preliminary

1.1 Definitions

In this Chapter:

demarcation dispute means a demarcation dispute within the meaning given by subsection 4 (1) of the Act, applied as if references in that definition to an organisation included a reference to a transitionally registered association.

State-registered association has the meaning given by subclause 1 (1) of Schedule 10 to the Act.

Chapter 6	Transitionally registered associations
Part 2	Representation rights of transitionally registered associations of employees
Division 1	Orders about representation rights of transitionally registered associations of employees — no prior order in relation to State-registered association

Regulation 2.1

Part 2 Representation rights of transitionally registered associations of employees

Division 1 Orders about representation rights of transitionally registered associations of employees — no prior order in relation to State-registered association

2.1 Order

- (1) For subclause 4 (1) of Schedule 10 to the Act, this clause applies if:
 - (a) an organisation, a transitionally registered association of employees, an employer or the Minister applies to the Commission to make any of the following orders in relation to a demarcation dispute:
 - (i) an order that a transitionally registered association of employees is to have the right, to the exclusion of 1 or more other associations or organisations, to represent, under the Act, the industrial interests of a particular class or group of employees who are eligible for membership of the association;
 - (ii) an order that a transitionally registered association of employees that does not have the right to represent, under the Act, the industrial interests of a particular class or group of employees is to have that right;
 - (iii) an order that a transitionally registered association of employees is not to have the right to represent, under the Act, the industrial interests of a particular class or group of employees who are eligible for membership of the association; and

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- (b) immediately before the reform commencement:
 - (i) the transitionally registered association mentioned in subparagraph (a) (i), (ii) or (iii) was a State-registered association; and
 - (ii) there was no order of a similar kind in force in relation to the State-registered association immediately before the reform commencement.

Note If an order of a similar kind was in force immediately before the reform commencement, see Division 3.

- (2) The Commission may make the order.
- (3) The Commission must not make an order unless the Commission is satisfied that:
 - (a) the conduct, or threatened conduct, of a transitionally registered association or organisation to which the order would relate, or of an officer, member or employee of the transitionally registered association or organisation:
 - (i) is preventing, obstructing or restricting the performance of work; or
 - (ii) is harming the business of an employer; or
 - (b) the consequences referred to in subparagraph (a) (i) or (ii):
 - (i) have ceased, but are likely to recur; or
 - (ii) are imminent;as a result of such conduct or threatened conduct.
- (4) In considering whether to make an order under subregulation (2), the Commission must have regard to the wishes of the employees who are affected by the dispute and, where the Commission considers it appropriate, is also to have regard to:
 - (a) the effect of any order on the operations (including operating costs, work practices, efficiency and productivity) of an employer who is a party to the dispute or who is a member of a transitionally registered association or organisation that is a party to the dispute; and

Chapter 6	Transitionally registered associations
Part 2	Representation rights of transitionally registered associations of employees
Division 1	Orders about representation rights of transitionally registered associations of employees — no prior order in relation to State-registered association

Regulation 2.2

- (b) any agreement or understanding of which the Commission becomes aware that deals with the right of a transitionally registered association or organisation to represent under the Act or the Registration and Accountability of Organisations Schedule the industrial interests of a particular class or group of employees; and
 - (c) the consequences of not making an order for any employer, employees, transitionally registered association or organisation involved in the dispute; and
 - (d) any other order made by the Commission, in relation to another demarcation dispute involving the transitionally registered association or organisation to which the order under subregulation (2) would relate, that the Commission considers to be relevant.
- (5) The powers of the Commission under this Division are exercisable only by a Full Bench or Presidential Member.

2.2 Variation of order

The Commission may, on application by an organisation, a transitionally registered association of employees, an employer or the Minister, vary an order made under subregulation 2.1 (2).

2.3 Organisations and transitionally registered association must comply with order

- (1) An organisation or a transitionally registered association to which the order applies must comply with the order.
- (2) The Federal Court may, on application by the Minister or a person, organisation or transitionally registered association affected by an order, make such orders as it thinks fit to ensure compliance with that order.

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Representation rights of transitionally registered associations of employees	Part 2
Orders about representation rights of transitionally registered associations of employees — prior order in relation to State-registered association	Division 2

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Division 2 Orders about representation rights of transitionally registered associations of employees — prior order in relation to State-registered association

2.4 Order

- (1) For subclause 4 (1) of Schedule 10 to the Act, this clause applies if:
- (a) an organisation, transitionally registered association, an employer or the Minister applies to the Commission to make any of the following orders:
 - (i) an order that a transitionally registered association of employees is to have the right, to the exclusion of 1 or more other associations or organisations, to represent, under the Act, the industrial interests of a particular class or group of employees who are eligible for membership of the association;
 - (ii) an order that a transitionally registered association of employees that does not have the right to represent, under the Act, the industrial interests of a particular class or group of employees is to have that right;
 - (iii) an order that a transitionally registered association of employees is not to have the right to represent, under the Act, the industrial interests of a particular class or group of employees who are eligible for membership of the association; and
 - (b) immediately before the reform commencement:
 - (i) the transitionally registered association mentioned in subparagraph (a) (i), (ii) or (iii) was a State-registered association (within the meaning given by subclause 1 (1) of Schedule 10 to the Act); and

Chapter 6	Transitionally registered associations
Part 2	Representation rights of transitionally registered associations of employees
Division 2	Orders about representation rights of transitionally registered associations of employees — prior order in relation to State-registered association

Regulation 2.5

- (ii) there was an order of a similar kind in force in relation to the State-registered association.

Note If no order of a similar kind was in force immediately before the reform commencement, see Division 1.

- (2) The Commission must make an order to the same effect as the order mentioned in subparagraph (1) (b) (ii).
- (3) The Commission may, on application by an organisation, a transitionally registered association of employees, an employer or the Minister, vary an order made under subregulation (2).

2.5 Order may be subject to limits or alterations

- (1) The order may be subject to conditions or limitations.
- (2) The order:
- (a) may be made with changes from the text of the order mentioned in subparagraph 2.4 (1) (b) (ii) that the Commission considers necessary to reflect the language and content of the Act and the Registration and Accountability of Organisations Schedule; but
- (b) must be the same in substance as the order mentioned in subparagraph 2.4 (1) (b) (ii).

2.6 Organisations and transitionally registered association must comply with order

- (1) An organisation and a transitionally registered association to which the order applies must comply with the order.
- (2) The Federal Court may, on application by the Minister or a person, organisation or transitionally registered association affected by an order, make such orders as it thinks fit to ensure compliance with that order.

Transitionally registered associations	Chapter 6
Representation rights of transitionally registered associations of employees	Part 2
Proceedings regarding representation rights in a State or Territory immediately before the reform commencement	Division 3

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Division 3 Proceedings regarding representation rights in a State or Territory immediately before the reform commencement

2.7 Representation rights — evidence in prior proceedings

- (1) For subclause 4 (1) of Schedule 10 to the Act, this regulation applies in relation to a transitionally registered association if:
- (a) immediately before the reform commencement:
 - (i) it was a State-registered association (within the meaning given by subclause 4 (1) of Schedule 10 to the Act) that was party to proceedings concerning representation rights under a State or Territory industrial law; and
 - (ii) no order regarding the representation rights of it and the other parties to the proceedings had been made by the court or tribunal hearing the proceedings; and
 - (b) the transitionally registered association is involved in proceedings before the Commission concerning the dispute which gave rise to the proceedings mentioned at (a) (i).
- (2) The Commission must have regard to any evidence that was given in the proceedings mentioned at subparagraph (a) (i).

Note The Commission may treat the evidence which was before the State tribunal as being before the Commission.

Regulation 3.1

Part 3 Cancellation of transitional registration

3.1 Application for cancellation of transitional registration by Commission — form of application

For paragraph 5 (5) (a) of Schedule 10 to the Act, an application by a transitionally registered association to cancel its registration under that Schedule must:

- (a) be made in writing; and
- (b) state the grounds on which the application is made; and
- (c) be made by an officer of the association who is authorised to make the application.

3.2 Application for cancellation of transitional registration by Commission — registration by mistake

For subparagraph 5 (5) (b) (i) of Schedule 10 to the Act, the Commission will be satisfied that a transitionally registered association was registered by mistake if, after giving the association an opportunity to be heard, the Commission considers that the association did not satisfy subclause 2 (1) of that Schedule to the Act at the time at which it was granted transitional registration.

3.3 Application for cancellation of transitional registration by Commission — association no longer State-registered association

For subparagraph 5 (5) (b) (ii) of Schedule 10 to the Act, the Commission will be satisfied that a transitionally registered association is no longer a State-registered association if, after giving the association an opportunity to be heard, the Commission considers that it is no longer a body that is:

- (a) an industrial organisation for the purposes of the *Industrial Relations Act 1996* of New South Wales; or

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- (b) an organisation for the purposes of Chapter 12 of the *Industrial Relations Act 1999* of Queensland; or
- (c) an association or organisation for the purposes of the *Industrial Relations Act 1979* of Western Australia; or
- (d) a registered association for the purposes of the *Fair Work Act 1994* of South Australia; or
- (e) an organisation for the purposes of the *Industrial Relations Act 1984* of Tasmania.

Regulation 4.1

Part 4 **Modification of Registration
and Accountability of
Organisations Schedule for
transitionally registered
associations**

4.1 **Modifications**

For clause 7 of Schedule 10 to the Act, this Part explains how section 19 of the Registration and Accountability of Organisations Schedule applies in relation to an association that is a transitionally registered association.

4.2 **Provisions not to apply**

The following provisions of section 19 of the Registration and Accountability of Organisations Schedule are taken not to apply in relation to the association:

- (a) paragraph 19 (1) (j);
- (b) subsection 19 (2);
- (c) subsection 19 (3).

4.3 **Other criteria for registration of transitionally
registered association — being substantially
identical to another body**

- (1) Section 19 of the Registration and Accountability of Organisations Schedule applies in relation to the association as if the section required the Commission to refuse to grant an application for registration made by a transitionally registered association if:
 - (a) the transitionally registered association is substantially identical to a body (the *other body*) that is:
 - (i) a State branch of an organisation; or

Regulation 4.4

- (ii) another organisation; or
 - (iii) a constituent element of another organisation; and
- (b) the circumstance mentioned in subregulation (2) does not exist.

Note The matters that will be assessed to determine whether a body mentioned in subparagraph (1) (a) (i), (ii) or (iii) is substantially similar to a transitionally registered association will be based on the individual circumstances of each case.

However, the matters that will be considered include the extent to which the body and the association:

- (a) share the same premises; or
- (b) share officers and personnel; or
- (c) use the same equipment and stationery; or
- (d) have coverage over the same kinds of employees (or employers).

- (2) For paragraph (1) (b), the circumstance is that all, or a significant number, of the members of the transitionally registered association are not permitted to join the other body because of the existence of different eligibility provisions in the rules of the transitionally registered association and the other body.

4.4 Other criteria for registration of transitionally registered association — coverage rules

Section 19 of the Registration and Accountability of Organisations Schedule applies in relation to the association as if the section required the Commission to refuse to grant an application for registration made by the association unless the rules of the association state that the association is eligible to represent members only within the State in which it had been registered as a State-registered association immediately before its registration as a transitionally registered association.

Regulation 4.5

4.5 Change of rules not to prevent registration

Section 19 of the Registration and Accountability of Organisations Schedule applies in relation to the association as if the section provided that the Commission is not prevented from granting an application for registration made by the association only because the association amended its rules after its registration as a transitionally registered association.

Chapter 7 Transitional and other provisions for the Work Choices Act

Note This Chapter is made for Schedule 4 to the Work Choices Act.

Part 1 Preliminary

1.1 Purpose of Chapter 7

For item 1 of Schedule 4 to the Work Choices Act, this Chapter provides for matters of a transitional, saving or application nature relating to amendments made by that Act.

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Division 1	Repeal of Part XV of the pre-reform Act

Regulation 2.1

Part 2 Regulations for transitional etc provisions and consequential amendments — Act

Division 1 Repeal of Part XV of the pre-reform Act

2.1 Effect of repeal

- (1) The repeal of Part XV of the pre-reform Act is taken not to affect:
 - (a) an entitlement under that Part which had accrued before the reform commencement; or
 - (b) a cause of action under that Part which had not been finally determined before the reform commencement.

Note Part XV was repealed by item 240 of Schedule 1 to the Work Choices Act.

- (2) For paragraph (1) (b), the causes of action mentioned in that paragraph include the ability to bring proceedings under section 178 or 179 of the pre-reform Act, in accordance with subsection 506 (1) or (2) of the pre-reform Act

Note Sections 506 and 533 were repealed as part of the repeal of Part XV of the Act by item 240 of Schedule 1 to the Work Choices Act. Section 506 dealt with penalties and recovery of wages, while section 533 dealt with penalties for contravening penalty provisions.

Division 2 Transmission of transitional awards

2.2 Succession, transmission or assignment of a business before reform commencement — application of Part 7 of Schedule 6 to the Act

Part 7 of Schedule 6 to the Act does not apply in relation to the succession, transmission or assignment of a business, or a part of a business, that occurred before the reform commencement.

Division 2A Matters referred by Victoria

2.2A Additional effect of Act — exclusion of Victorian laws under section 898

- (1) Subsection 898 (1) of the Act does not apply in relation to a law of Victoria so far as that law deals with a matter mentioned in section 5 of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria.

Note Part 15 of the Act (Right of entry) sets prerequisites for a trade union representative to enter premises for a purpose connected with occupational health and safety under a prescribed law of a State or Territory.

The prerequisites may apply to entry to premises in Victoria as set out in section 755 of the Act, and are not affected by the non-application of subsection 898 (1) of the Act to a Victorian law that deals with a matter in section 5 of the **Commonwealth Powers (Industrial Relations) Act 1996** (Vic) (which matters include occupational health and safety).

- (2) Subsection 898 (1) of the Act does not apply in relation to a law of Victoria so far as that law:
- (a) deals with the promotion of EEO, and is neither a State or Territory industrial law nor contained in such a law; or
 - (b) is a law that deals with any of the matters (*non-excluded matters*) mentioned in subregulation (3).
- (3) The non-excluded matters are:
- (a) matters relating to outworkers (including entry of a representative of a trade union to premises for a purpose connected with outworkers); and

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Division 3	Matters relating to Victoria — transmission of business (transitional Victorian reference awards)

Regulation 2.3

- (b) child labour; and
- (c) the method of payment of wages or salaries; and
- (d) the frequency of the payment of wages and salaries; and
- (e) industrial action (within the ordinary meaning of the expression) affecting an essential service; and
- (f) attendance for service on a jury; and
- (g) the regulation of any of the following:
 - (i) associations of employees;
 - (ii) associations of employers;
 - (iii) members of an association of employees or of an association of employers.

Division 3 Matters relating to Victoria — transmission of business (transitional Victorian reference awards)

2.3 Transmission of business — application of Subdivision F of Division 1 of Part 7 of Schedule 6 to the Act

Subdivision F of Division 1 of Part 7 of Schedule 6 to the Act does not apply in relation to the succession, transmission or assignment of a business, or a part of a business, that occurred before the reform commencement.

Division 4 **Matters relating to Victoria —
transmission of business
(transitional awards other than
transitional Victorian reference
awards)**

2.4 **Transmission of business — application of
Subdivision BA of Division 2 of Part 7 of Schedule 6
to the Act**

Subdivision BA of Division 2 of Part 7 of Schedule 6 to the Act does not apply in relation to the succession, transmission or assignment of a business, or a part of a business, that occurred before the reform commencement.

Division 4A **Matters relating to Victoria —
employees covered by transitional
awards or common rules**

2.4A **Hours of work**

- (1) Division 3 of Part 7 of the Act (hours of work) does not apply to the employment of an employee while the employee's employment is subject to a transitional award or a common rule.
- (2) In subregulation (1):
common rule means a common rule that has effect because of Subdivision E of Division 1 of Part 7 of Schedule 6 to the Act.
employee has the meaning given by section 858 of the Act.
employment has the meaning given by section 858 of the Act.
transitional award has the meaning given by clause 2 of Schedule 6 to the Act.
- (3) Subregulation (1) ceases to have effect at the end of the period of 3 years that starts on the reform commencement.

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Division 5	Succession, transmission or assignment of a business before reform commencement

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Division 5 Succession, transmission or assignment of a business before reform commencement

2.5 Application of pre-reform Act

- (1) This Division applies if a succession, transmission or assignment of a business, or part of a business, occurred before the reform commencement.
- (2) The following provisions of the pre-reform Act are taken to continue to apply in relation to the succession, transmission or assignment:
 - (a) paragraph 149 (1) (d);
 - (b) section 170MB;
 - (c) section 170MBA;
 - (d) section 170VS.
- (3) If an order is made under paragraph 149 (1) (d) of the pre-reform Act, as continued by subregulation (2):
 - (a) the order is taken to bind a successor, assignee or transmittee of the business (or part of the business) to an award as if the order had been made immediately before the reform commencement; but
 - (b) any obligation or entitlement under the award takes effect only from the date specified in the Commission's order, which must not be earlier than the date on which the order is made.

Division 6 Amendment of Part VIA of the pre-reform Act

2.6 Effect of amendments — equal remuneration for work of equal value

- (1) The amendments of Division 2 of Part VIA of the pre-reform Act made by Schedule 1 to the Work Choices Act apply in relation to an application for the making of an order under that Division:
 - (a) that was made before the reform commencement; and
 - (b) in relation to which the Commission had not made an order before the reform commencement.
- (2) For the avoidance of doubt, subregulation (1) does not affect the enforceability of an order made by the Commission under Division 2 of Part VIA of the pre-reform Act before the reform commencement.

2.7 Effect of amendments — parental leave (repeal of pre-reform leave provisions)

- (1) This regulation applies in relation to an employee if:
 - (a) the employee:
 - (i) applied for a period of leave including (or constituted by) maternity, paternity or adoption leave before the reform commencement; or
 - (ii) commenced a period of leave including (or constituted by) maternity, paternity or adoption leave before the reform commencement; and
 - (b) the period of leave was not completed before the reform commencement; and
 - (c) the operation of Division 6 of Part 7 of the Act is not excluded in relation to the employee by:
 - (i) section 529 of the Act; or
 - (ii) clause 78 or 98 of Schedule 6 to the Act; or
 - (iii) paragraph 30 (a), (b) or (c) of Schedule 7 to the Act;
or

Regulation 2.7

- (iv) clause 15E or 46 of Schedule 8 to the Act; or
- (v) item 18 of Schedule 4 to the Work Choices Act; and
- (d) the employee's parental leave entitlements were covered by 1 or more of the following provisions (the *pre-reform leave provisions*):
 - (i) Division 5 of Part VIA of the pre-reform Act;
 - (ii) Schedule 14 to the pre-reform Act;
 - (iii) Division 2 of Part 5A of the pre-reform Regulations;
 - (iv) Parts 2, 3 and 4 of Schedule 1A to the pre-reform Act.
- (2) If the employee is described in subparagraph (1) (a) (i), the pre-reform leave provisions cease to apply in relation to the employee when the first of the following events occurs under a pre-reform leave provision:
 - (a) the employee commences a period of leave including (or constituted by) maternity, paternity or adoption leave of a type covered by section 265, 282 or 300 of the Act;
 - (b) each of the following occurs:
 - (i) the employee is pregnant;
 - (ii) the employee has a pregnancy related illness;
 - (iii) the employee takes a period of special maternity leave of a type covered by subsection 265 (1) of the Act;
 - (c) each of the following occurs:
 - (i) the employee is pregnant;
 - (ii) the pregnancy ends otherwise than by the birth of a living child;
 - (iii) the employee takes a period of special maternity leave of a type covered by subsection 265 (1) of the Act;
 - (d) the employee is required to transfer to a safe job in circumstances of a type covered by section 268 of the Act;
 - (e) the employee takes paid leave in circumstances of a type covered by section 268 of the Act;

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- (f) a placement of the employee's adopted child occurs in circumstances of a type covered by section 300 of the Act;
 - (g) a placement of the employee's adopted child is cancelled before it starts in circumstances of a type covered by paragraph 310 (1) (a) of the Act.
- (3) If the employee is described in subparagraph (1) (a) (ii), the pre-reform leave provisions cease to apply in relation to the employee when the first of the following events occurs:
- (a) the employee is required to give notice to the employer to give effect to a return to work guarantee of a type covered by in section 278, 296 or 314 of the Act;
 - (b) the employee is given notice by the employer to return to work to give effect to a return to work guarantee of a type covered by in section 278, 296 or 314 of the Act;
 - (c) both of the following occur:
 - (i) the employee applies to vary or extend the period of leave including (or constituted by) maternity, paternity or adoption leave; and
 - (ii) the application is of a type covered by section 278, 294 or 312 of the Act;
 - (d) each of the following occurs:
 - (i) an employee (or the employee's spouse) gives birth to a living child;
 - (ii) either:
 - (A) the employee has started a period of ordinary maternity leave in relation to the child's birth; or
 - (B) if the employee's spouse gives birth — the employee has started a period of paternity leave in relation to the child's birth;
 - (iii) the child later dies in circumstances of a type covered by section 276 or 292 of the Act;
 - (e) both of the following occur:
 - (i) the employee ceases to be the child's primary care-giver; and

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- (ii) the cessation is of a type covered by section 277, 293 or 311 of the Act;
- (f) both of the following occur:
 - (i) the pregnancy ends otherwise than by the birth of a living child in circumstances of a type covered by section 275 or 291 of the Act;
 - (ii) the employee who would have been entitled to a period of ordinary maternity leave becomes entitled to take a period of special maternity leave;
- (g) both of the following occur:
 - (i) the employee terminates his or her employment during a period of maternity, paternity or adoption leave; and
 - (ii) the termination is of a type covered by section 279, 295 or 313 of the Act;

Note The employee's right to terminate his or her employment is subject to any notice required to be given by the employee by or under a term or condition of their employment or a law or a instrument in force under a law of the Commonwealth, a State or Territory.

- (h) an adoption placement starts but is later discontinued for any reason in circumstances of a type covered by paragraph 310 (1) (b) of the Act.
- (4) When the employee's coverage under the pre-reform leave provisions ceases, Division 6 of Part 7 of the Act applies in relation to the employee's parental leave entitlements.
- (5) Any conduct which is engaged in:
 - (a) before the first event mentioned in subregulation (2) or (3); and
 - (b) in accordance with the pre-reform leave provisions; is taken to be an action taken in accordance with the equivalent provisions of Division 6 of Part 7 of the Act.
- (6) For section 175 of the Act, a dispute about the application of a pre-reform leave provision, as it continues in force under this regulation, is taken to be a dispute about entitlements under Division 6 of Part 7 of the Act.

Note 1 Section 175 of the Act provides that the model dispute resolution process in Part 13 of the Act applies to such a dispute.

Note 2 Section 175 of the Act would also apply to a dispute about whether, as a result of this regulation, Division 6 of Part 7 of the Act applies.

2.8 Replacement employees

If an employer takes action in accordance with:

- (a) clause 25 of Schedule 14 to the pre-reform Act; or
- (b) regulation 30ZB of Division 2 of Part 5A of the pre-reform Regulations; or
- (c) clauses 15, 27 and 40 of Schedule 1A to the pre-reform Act;

relating to the engagement of a replacement employee, the action is taken to be an action taken in accordance with section 281, 297 or 315 of the Act, as necessary.

Division 7 Operation of matters relating to permit ships

2.9 Awards in relation to permit ships

- (1) This regulation applies if:
 - (a) an application was made to the Commission for the making or variation of an award, that had the effect of setting wages and conditions of employment in relation to non-citizen crew members on permit ships who are employed by a foreign corporation, before the reform commencement; and
 - (b) the Commission made or varied an award in response to the application before the reform commencement.
- (2) On and from the reform commencement:
 - (a) the award ceases to have effect to the extent to which it applies to:
 - (i) non-citizen crew members who are operating on permit ships; and

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Regulation 2.10

- (ii) foreign corporations in their capacity as employers of non-citizen crew members who are operating on permit ships; and
- (b) the cessation of the award is taken not to affect:
 - (i) any right of a person as immediately before the reform commencement; or
 - (ii) any liability imposed on a person in respect of anything done or omitted to be done before the reform commencement.
- (3) In subregulation (1):
 - non-citizen* has the same meaning as in the *Migration Act 1958*.
 - permit ship* means a ship:
 - (a) to which a permit has been granted under section 286 of the *Navigation Act 1912* for a single voyage or as a continuing permit; and
 - (b) for which the permit is in force.

Division 8 Amendment of Part XII of the pre-reform Act

2.10 Costs only where proceeding instituted vexatiously etc

The amendments of section 347 of the pre-reform Act made by Schedule 1 to the Work Choices Act do not apply in relation to an action or omission that occurred before the reform commencement.

Division 9 Amendment of Part XIII of the pre-reform Act

2.11 Signature on behalf of body corporate

Section 827 of the Act applies only in relation to the signing of a document on or after the reform commencement.

Note Section 827 was inserted in the Act by Schedule 1 to the Work Choices Act.

Division 10 Application of Act and Regulations to Australia's exclusive economic zone and continental shelf

2.12 Application of Act and Regulations

- (1) This regulation applies if:
 - (a) an industrial instrument applied to an employee working:
 - (i) in Australia's exclusive economic zone; or
 - (ii) on Australia's continental shelf; and
 - (b) the industrial instrument was in force immediately before the reform commencement; and
 - (c) the employee:
 - (i) is an employee, or a transitional employee within the meaning given by Schedule 13 to the Act; and
 - (ii) would not be covered by this Act after the reform commencement.
- (2) Despite the amendment of the Act by the Work Choices Act:
 - (a) the industrial instrument is taken to continue to apply to the person in relation to the person's work in Australia's exclusive economic zone or on Australia's continental shelf; and
 - (b) Part 14 of the Act is taken to apply to the person in relation to the industrial instrument; and

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Regulation 2.12

- (c) regulations made for Part 14 of the Act are taken to apply to the person in relation to the industrial instrument.
- (3) Subregulation (2) ceases to have effect at the end of 1 year after the reform commencement.
- (4) Subregulation (2) is not intended to apply to the exclusion of an applicable law of a State or Territory that regulates the relationships between employers and employees or provides for the prevention or settlement of disputes between employers and employees.
- (5) In this regulation:
- industrial instrument*** means an award or agreement, however designated, that:
- is made under or recognised by an industrial law; and
 - concerns the relationship between an employer and the employer's employees, or provides for the prevention or settlement of a dispute between an employer and the employer's employees.
- industrial law*** means the Act, the Registration and Accountability of Organisations Schedule or a law, however designated, of the Commonwealth or of a State or Territory that regulates the relationships between employers and employees or provides for the prevention or settlement of disputes between employers and employees.
- Note* ***Australia's exclusive economic zone*** is defined in subsection 4 (1) of the Act to mean the exclusive economic zone (as defined in the *Seas and Submerged Lands Act 1973*) of Australia. ***Australia's continental shelf*** is defined in subsection 4 (1) of the Act to mean the continental shelf (as defined in the *Seas and Submerged Lands Act 1973*) of Australia.
- (6) In paragraphs (1) (a) and (c):
- employee*** has its ordinary meaning.

**Division 11 Application of pre-reform Act in
relation to certain pre-reform
certified agreements and
pre-reform AWAs**

2.13 Application of pre-reform Act

- (1) This regulation applies if:
- (a) any of the following matters occurred before the reform commencement:
 - (i) a written agreement to vary the nominal expiry date of a pre-reform AWA in accordance with subsection 170VH (3) of the pre-reform Act was filed with the Workplace Authority Director;
 - (ii) a written agreement to vary the terms of a pre-reform AWA in accordance with subsection 170VL (1) of the pre-reform Act was filed with the Workplace Authority Director;
 - (iii) a written agreement to terminate a pre-reform AWA in accordance with subsection 170VM (1) of the pre-reform Act was filed for approval with the Workplace Authority Director;
 - (iv) an application to terminate a pre-reform AWA in accordance with subsection 170VM (3) of the pre-reform Act was made to the Commission;
 - (v) a termination notice under subsection 170VM (6) of the pre-reform Act was filed for approval with the Workplace Authority Director;
 - (vi) an application was lodged with the Commission in relation to a dispute over the application of a pre-reform certified agreement under section 170LW of the pre-reform Act;
 - (vii) an application was lodged with the Commission to approve an extension of the nominal expiry date of a pre-reform certified agreement for subsection 170MC (2) of the pre-reform Act;

Regulation 2.14

- (viii) an application was lodged with the Commission to approve a variation of a pre-reform certified agreement for subsection 170MD (2) of the pre-reform Act;
 - (ix) an application was lodged with the Commission to vary a pre-reform certified agreement for subsection 170MD (6) of the pre-reform Act;
 - (x) an application was lodged with the Commission to approve the termination of a pre-reform certified agreement for subsection 170MG (2) of the pre-reform Act;
 - (xi) an application was lodged with the Commission to approve the termination of a pre-reform certified agreement for subsection 170MH (4) of the pre-reform Act;
 - (xii) an application was lodged with the Commission to approve the termination of a pre-reform certified agreement for subsection 170MHA (4) of the pre-reform Act; and
- (b) the Workplace Authority Director or the Commission had not made a decision in relation to the matter before the reform commencement.
- (2) The pre-reform Act continues to apply in relation to the matter.

Division 12 Workplace inspectors

2.14 Powers of workplace inspectors in relation to investigation of alleged breaches of pre-reform Act or pre-reform Regulations

Despite the amendments of the pre-reform Act by the Work Choices Act, and the repeal of the pre-reform Regulations, a workplace inspector may, subject to any directions given by the Minister under subsection 167 (7) of the Act:

- (a) institute, or give evidence in, any proceedings; or

Regulation 2.16

- (b) conduct, or assist in the conduct of, any prosecution;
in respect of an alleged breach of a matter under the pre-reform
Act or the pre-reform Regulations.

Note Paragraph 169 (1) (b) of the Act provides that the powers of a
workplace inspector under section 169 may be exercised for the purpose of
a provision of the regulations that confers powers or functions on
inspectors.

**2.15 Repeal of Part IVA of the pre-reform Act — other
functions and powers of pre-reform authorised
officers in relation to investigation of alleged
breaches not started before the reform
commencement**

- (1) This regulation applies if:
- (a) an alleged breach of a matter under the pre-reform Act or
the pre-reform Regulations occurred before the reform
commencement; and
 - (b) an investigation had not been commenced for the
compliance purposes mentioned in section 83BH of the
pre-reform Act before the reform commencement.
- (2) Despite the repeal of Division 2 of Part IVA of the pre-reform
Act, a workplace inspector is authorised:
- (a) to investigate the alleged breach; and
 - (b) to exercise the workplace inspector's powers, and perform
the workplace inspector's functions, under the Act in
relation to the alleged breach.
- (3) However, the pre-reform Act and pre-reform Regulations are
taken to apply in relation to criminal proceedings dealing with
the imposition of a penalty in respect of the alleged breach.

**2.16 Repeal of Part IVA of the pre-reform Act — other
functions and powers of pre-reform authorised
officers in relation to investigation of alleged
breaches started before the reform commencement**

- (1) This regulation applies if:

Regulation 2.17

- (a) a pre-reform authorised officer was conducting an investigation of an alleged breach of a matter for the compliance purposes mentioned in section 83BH of the pre-reform Act before the reform commencement; and
 - (b) the investigation had not been completed before the reform commencement.
- (2) Despite the repeal of Division 2 of Part IVA of the pre-reform Act, a workplace inspector is authorised to exercise the workplace inspector's powers, and perform the workplace inspector's functions, under the Act in relation to the alleged breach.
 - (3) However, the pre-reform Act and pre-reform Regulations are taken to apply in relation to proceedings dealing with the imposition of a penalty in respect of the alleged breach.

2.17 Disclosure of information

- (1) If a pre-reform authorised officer acquired information in accordance with the pre-reform Act before the reform commencement, section 170 of the Act is taken to authorise a workplace inspector to disclose any information acquired by the pre-reform authorised officer in the course of that investigation, in accordance with that section.
- (2) If a pre-reform inspector acquired information in accordance with the pre-reform Act before the reform commencement, section 170 of the Act is taken to authorise a workplace inspector to disclose any information acquired by the pre-reform inspector in the course of that investigation, in accordance with that section.

Division 13 Compliance

2.18 Repeal of Part VA — review by Commonwealth Ombudsman

- (1) This regulation applies in addition to item 14 of Schedule 4 to the Act.

Regulation 2.20

- (2) Despite the repeal of Part VA of the pre-reform Act, section 88AI of the pre-reform Act continues to apply in relation to the period starting on 13 January 2005 and ending on 12 January 2006.

2.19 Enforcement of rights and obligations

- (1) Unless the contrary intention appears in a provision of:
- (a) the Act; or
 - (b) the Work Choices Act; or
 - (c) regulations made under the Act or the Work Choices Act; the amendments made by the Work Choices Act do not affect the enforcement in a court of rights and obligations that arose under the pre-reform Act.
- (2) Subregulation (1) applies whether or not proceedings had been commenced in a court before the reform commencement.

Division 14 Interpretation of transitional instruments

2.20 Interpretation of transitional instruments

- (1) The Court or the Federal Magistrates Court may give an interpretation of a transitional instrument on application by:
- (a) the Minister; or
 - (b) an organisation or person bound by the transitional instrument; or
 - (c) an employee whose employment is subject to the transitional instrument.
- (2) The decision of the Court or the Federal Magistrates Court is final and conclusive and is binding on:
- (a) the organisations and persons bound by the transitional instrument; and

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Regulation 2.21

(b) the employees whose employment is subject to the transitional instrument;

who have been given an opportunity of being heard by the Court or the Federal Magistrates Court.

(3) In this regulation:

transitional instrument means any of the following:

- (a) a pre-reform certified agreement within the meaning given by clause 1 of Schedule 7 to the Act;
- (b) a notional agreement preserving State awards within the meaning given by subclause 1 (1) of Schedule 8 to the Act;
- (c) a preserved State agreement within the meaning given by subclause 1 (1) of Schedule 8 to the Act.

Division 15 Industrial action before nominal expiry date of workplace agreement or workplace determination

2.21 Industrial action

Sections 494 and 495 of the Act are taken to apply in relation to:

- (a) a pre-reform certified agreement; and
- (b) a pre-reform AWA;

as if the instruments were mentioned in those sections.

Division 16 **Accrual and crediting of leave in lump sums (in advance or in arrears)**

2.22 **Accrual and crediting of leave in advance of service**

- (1) This regulation applies if:
- (a) before the reform commencement, an employee was credited with annual leave, or personal/carer's leave, in advance of the employee's service; and
 - (b) the leave was credited on a lump sum basis; and
 - (c) on the reform commencement:
 - (i) the employee's employment is covered by a pre-reform award, a notional agreement preserving State awards or a contract of employment; and
 - (ii) the employee would be entitled to accrue and be credited with annual leave, or personal/carer's leave, in accordance with section 232, 234 or 246 of the Act.

Note After the reform commencement, an award is taken to be replaced by an instrument in the same terms (a *pre-reform award*) by operation of subclause 4 (3) of Schedule 4 to the Act to the extent that it relates to an employee as defined in subsection 6 (1) of the Act.

This regulation does not apply to a pre-reform AWA because of the operation of clause 17 of Schedule 7 to the Act. The regulation does not apply in relation to a pre-reform certified agreement because of the operation of clause 2 of Schedule 7 to the Act.

- (2) On the reform commencement, the employee is taken not to accrue leave of the relevant type under section 232, 234 or 246 of the Act until the amount of that type of leave that the employee would have accrued is equal to the amount of that type of leave with which the employee has been credited in advance of the employee's service.

Note The effect of subregulation (2) is that the amount of leave which the employee would have accrued in accordance with the Standard will be offset against the amount of leave already credited to the employee in advance. When the amount of leave already credited has been accounted

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for, the accrual and crediting of leave will then occur in accordance with the Standard.

- (3) Subregulation (2) ceases to have effect at the end of 2 years after the reform commencement.

2.23 Accrual and crediting of leave in arrears of service

- (1) This regulation applies if:
- (a) before the reform commencement, an employee is to be credited with annual leave, or personal/carer's leave, in arrears after a period of service on the anniversary date of his or her employment after reform commencement; and
 - (b) the leave is to be credited on a lump sum basis; and
 - (c) immediately before the reform commencement, the employee had completed part of that period of service; and
 - (d) on the reform commencement:
 - (i) the employee's employment is covered by a pre-reform award, a notional agreement preserving State awards or a contract of employment; and
 - (ii) the employee would be entitled to accrue and be credited with leave of the relevant type, in accordance with section 232, 234 or 246 of the Act.

Note After the reform commencement, an award is taken to be replaced by an instrument in the same terms (a *pre-reform award*) by operation of subclause 4 (3) of Schedule 4 to the Act to the extent that it relates to an employer as defined in subsection 6 (1) of the Act.

This regulation does not apply to a pre-reform AWA because of the operation of clause 17 of Schedule 7 to the Act. The regulation does not apply in relation to a pre-reform certified agreement because of the operation of clause 2 of Schedule 7 to the Act.

- (2) On the reform commencement, the employee is taken to be credited, for the part of the period of service mentioned in paragraph (1) (c), with the amount of leave of that type that the employee would have accrued if the employee had accrued and been credited with leave for that period in accordance with section 232, 234 or 246 of the Act.

Division 17 Pre-reform personal/carer's leave and compassionate leave

2.23A Pre-reform personal/carer's leave and compassionate leave

- (1) The Australian Fair Pay and Conditions Standard does not apply in relation to paid personal/carer's leave or paid compassionate leave of an employee that accrued before the Standard applied to that employee.

Note 1 The Standard may have applied to an employee from 27 March 2006. However, if an employee's employment is subject to a pre-reform certified agreement, pre-reform Australian Workplace Agreement or a section 170MX award, the Standard will not apply to that employee until the pre-reform instrument is terminated or replaced (clause 30 of Schedule 7 to the *Workplace Relations Act 1996*).

Note 2 The Standard does not apply to annual leave entitlements of an employee that accrued before the Standard applied to that employee as a result of the operation of subsection 232 (1) of the *Workplace Relations Act 1996*.

- (2) A term of a workplace agreement which allows for the forgoing of an amount of leave of the type described in subregulation (1) for an amount of pay or other benefit, is not prohibited content under paragraph 8.5 (1) (l) or (m) of Chapter 2.
- (3) An employee wishing to forgo an amount of leave of the type described in subregulation (1) for an amount of pay or other benefit must elect to do so in writing.
- (4) This regulation ceases to have effect at the end of 5 years after 27 March 2006.

Regulation 2.24

Division 18 Redundancy pay obligations

2.24 Varying or setting aside obligation to pay redundancy pay

- (1) This regulation applies if:
 - (a) an employer would be obliged under a pre-reform award to pay redundancy pay in relation to the redundancy of an employee; and
 - (b) a term of a pre-reform award permits the employer to make an application to the Commission to have the obligation to pay redundancy pay in relation to the employee varied or set aside where the employer has obtained alternative employment for the employee.
- (2) The Commission may:
 - (a) receive an application to vary or set aside an obligation to pay redundancy pay; and
 - (b) by order, determine the application if the Commission is satisfied that the alternative employment is acceptable.

Note The acceptability of alternative employment in a particular matter is an objective assessment that requires the Commission to consider matters including pay, hours of work, seniority, workload and other matters particular to the application.

- (3) This regulation ceases to have effect at the end of the period of 12 months starting on the day on which this regulation commences.

Part 3 Regulations for transitional etc provisions and consequential amendments — pre-reform Regulations

Division 1 Repeal of Division 2 of Part 5A of the pre-reform Regulations

3.1 Effect of repeal

Despite the repeal of Division 2 of Part 5A of the pre-reform Regulations, that Division is taken to continue to apply to the extent that Division 5 of Part VIA of the pre-reform Act is taken to continue to apply in accordance with subclause 18 (2) of Schedule 4 to the Work Choices Act.

Note Division 5 of Part VIA of the pre-reform Act dealt with adoption leave.

Division 2 Matters referred by Victoria

3.2 Effect of repeal of regulation 132G

- (1) Despite the repeal of regulation 132G of the pre-reform Regulations, that regulation is taken to continue to apply to the extent that section 533 of the pre-reform Act is taken to continue to apply in accordance with subregulation 2.1 (2) of this Chapter.

Note Regulation 132G dealt with a matter relating to penalties for contravening penalty provisions.

- (2) For subregulation (1), a reference in regulation 132G of the pre-reform Regulations to an inspector is taken to be a reference to a workplace inspector within the meaning of the Act.

Regulation 4.1

Part 4 Regulations for transitional etc provisions and consequential amendments — part-heard matters

Division 1 Interpretation

4.1 Definitions

In this Part:

appeal includes an application for leave to appeal.

employer has the meaning given by subsection 6 (1) of the Act.

transitional employer has the meaning given by subclause 2 (1) of Schedule 6 to the Act.

Division 2 Appeals under Part VI of the pre-reform Act

4.2 Appeals against findings in relation to industrial disputes

- (1) An appeal to a Full Bench in relation to a decision mentioned in paragraph 45 (1) (a) of the pre-reform Act that:
 - (a) has been instituted but not finally determined before the reform commencement; and
 - (b) relates to an employer;lapses, to the extent that it relates to the employer, on the reform commencement.
- (2) An appeal to a Full Bench in relation to a decision mentioned in paragraph 45 (1) (a) of the pre-reform Act, to the extent that the decision relates to an employer, must not be instituted after the reform commencement.

Regulation 4.3

- (3) Despite the repeal of paragraph 45 (1) (a) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a decision mentioned in that paragraph that:
- (a) has been instituted but not finally determined before the reform commencement; and
 - (b) relates to a transitional employer;
continues, to the extent that it relates to the transitional employer, and is to be determined under Schedule 6 to the Act.
- (4) Despite the repeal of paragraph 45 (1) (a) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a decision mentioned in that paragraph, to the extent that it relates to a transitional employer:
- (a) may be instituted within the period mentioned in regulation 4.13; and
 - (b) is to be determined under Schedule 6 to the Act.

4.3 Appeals against awards or orders

- (1) Despite the amendment of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench that:
- (a) is in relation to a matter mentioned in paragraph 45 (1) (b) of the pre-reform Act; and
 - (b) has been instituted but not finally determined before the reform commencement;
continues and is to be determined under the pre-reform Act as if that Act had not been amended.
- (2) Despite the amendment of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a matter mentioned in paragraph 45 (1) (b) of the pre-reform Act:
- (a) may be instituted within the period mentioned in regulation 4.13; and
 - (b) is to be determined under the pre-reform Act as if that Act had not been amended.

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Regulation 4.3

- (3) If the Commission varies or sets aside an award as a result of the appeal, to the extent that the appeal relates to an employer:
- (a) for the purposes of:
- (i) Part 7, Division 2, Subdivisions E and I of the Act; and
- (ii) Part 10, Division 3 of the Act; and
- (iii) clause 4 of Schedule 4 to the Work Choices Act;
- the variation is taken to form part of the award as if the variation had been made immediately before the reform commencement; but
- (b) any resulting variation to an entitlement under the provisions mentioned in paragraph (a) takes effect only from the date specified in the Commission's order, which must not be earlier than the date on which the order is made.
- (4) If the Commission varies or sets aside an award as a result of the appeal, to the extent that the appeal relates to a transitional employer:
- (a) for the purposes of:
- (i) Part 1, Division 3 of Schedule 6 to the Act; and
- (ii) Part 3, Division 1 of Schedule 6 to the Act;
- the variation is taken to form part of the award as if the variation had been made immediately before the reform commencement; but
- (b) any resulting variation to an entitlement under the provisions mentioned in paragraph (a) takes effect only from the date specified in the Commission's order, which must not be earlier than the date on which the order is made.

Note After reform commencement, an award:

- (a) is taken to be replaced by an instrument in the same terms (a pre-reform award) under subclause 4 (3) of Schedule 4 to the Work Choices Act to the extent that it relates to an employer; and
- (b) continues in force under clause 4 of Schedule 6 to the Act as a transitional award to the extent that it relates to an excluded employer as defined in clause 2 of that Schedule.

4.4 Appeals against decisions not to make orders or awards

- (1) Despite the amendment of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench that:
 - (a) is in relation to a decision mentioned in paragraph 45 (1) (c) of the pre-reform Act; and
 - (b) was instituted, but not finally determined before the reform commencement;
continues, and is to be determined under the pre-reform Act as if that Act had not been amended.
- (2) Despite the amendment of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a decision mentioned in paragraph 45 (1) (c) of the pre-reform Act:
 - (a) may be instituted within the period mentioned in regulation 4.13; and
 - (b) is to be determined under the pre-reform Act as if that Act had not been amended.
- (3) If the Commission makes an award or order as a result of the appeal, to the extent that the appeal relates to an employer:
 - (a) for the purposes of:
 - (i) Part 7, Division 2, Subdivisions E and I of the Act; and
 - (ii) Part 10, Division 3 of the Act; and
 - (iii) clause 4 of Schedule 4 to the Work Choices Act;
the award or order is taken to have been made immediately before the reform commencement; but
 - (b) any resulting variation to an entitlement under the provisions mentioned in paragraph (a) takes effect only from the date specified in the award or order, which must not be earlier than the date on which the award or order is made.

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Regulation 4.5

- (4) If the Commission makes an award or order as a result of the appeal, to the extent that the appeal relates to a transitional employer:
- (a) for the purposes of:
- (i) Part 1, Division 3 of Schedule 6 to the Act; and
 - (ii) Part 3, Division 1 of Schedule 6 to the Act;
- the award or order is taken to have been made immediately before the reform commencement; but
- (b) any resulting variation to an entitlement under the provisions mentioned in paragraph (a) takes effect only from the date specified in the award or order, which must not be earlier than the date on which the award or order is made.

Note After reform commencement, an award:

- (a) is taken to be replaced by an instrument in the same terms (a pre-reform award) under subclause 4 (3) of Schedule 4 to the Work Choices Act to the extent that it relates to an employer; and
- (b) continues in force under clause 4 of Schedule 6 to the Act as a transitional award to the extent that it relates to an excluded employer as defined in clause 2 of that Schedule.

4.5 Appeals against decisions under paragraph 111 (1) (g) of pre-reform Act

- (1) An appeal to a Full Bench in relation to a decision mentioned in paragraph 45 (1) (d) of the pre-reform Act that:
 - (a) has been instituted but not finally determined before the reform commencement; and
 - (b) relates to an employer;

lapses, to the extent that it relates to the employer, on the reform commencement.
- (2) An appeal to a Full Bench in relation to a decision mentioned in paragraph 45 (1) (d) of the pre-reform Act, to the extent that the decision relates to an employer, must not be instituted after the reform commencement.

Regulation 4.6

- (3) Despite the amendment of paragraph 45 (1) (d) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a decision mentioned in that paragraph, that:
- (a) has been instituted but not finally determined before the reform commencement; and
 - (b) relates to a transitional employer;
continues, to the extent that it relates to the transitional employer, and is to be determined under the pre-reform Act as if that Act had not been amended.
- (4) Despite the amendment of paragraph 45 (1) (d) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a decision mentioned in that paragraph, to the extent that it relates to a transitional employer:
- (a) may be instituted within the period mentioned in regulation 4.13; and
 - (b) is to be determined under the pre-reform Act as if that Act had not been amended.

4.6 Appeals against decisions under Division 5 of Part VI of pre-reform Act

- (1) Despite the repeal of paragraph 45 (1) (da) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench that:
- (a) is in relation to a matter mentioned in that paragraph; and
 - (b) has been instituted but not finally determined before the reform commencement;
continues and is to be determined under the pre-reform Act as if that Act had not been amended.
- (2) Despite the repeal of paragraph 45 (1) (da) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a matter mentioned in that paragraph:
- (a) may be instituted within the period mentioned in regulation 4.13; and

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Regulation 4.7

- (b) is to be determined under the pre-reform Act as if that Act had not been amended.
- (3) For this regulation, a matter mentioned in paragraph 45 (1) (da) of the pre-reform Act includes a declaration made by a member of the Commission under subsection 142 (5) of the pre-reform Act as continued in force by regulation 4.46.
- (4) If, as a result of an appeal to which this regulation applies, a declaration under Division 5 of Part VI of the pre-reform Act is made or revoked:
 - (a) for the purposes of:
 - (i) Subdivisions E and I of Division 2 of Part 7 of the Act; and
 - (ii) Division 3 of Part 10 of the Act; and
 - (iii) Subdivision E of Division 1 of Part 7 of Schedule 6 to the Act; and
 - (iv) clause 4 of Schedule 4 to the Work Choices Act;

the making or revocation of the declaration is taken to have effect from the reform commencement; but
 - (b) the making or revocation of the declaration takes effect only from the date specified in the Commission's order, which must not be earlier than the date on which the order is made.

4.7 Appeals against decisions not to certify agreements

- (1) Despite the repeal of paragraph 45 (1) (e) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench that:
 - (a) is in relation to a matter mentioned in that paragraph; and
 - (b) has been instituted but not finally determined before the reform commencement;

continues and is to be determined under the pre-reform Act as if that Act had not been amended.

Regulation 4.9

- (2) Despite the repeal of paragraph 45 (1) (e) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a decision mentioned in that paragraph:
- (a) may be instituted within the period mentioned in regulation 4.13; and
 - (b) is to be determined under the pre-reform Act as if that Act had not been amended.

4.8 Appeal against decision to certify agreement

- (1) Despite the repeal of paragraph 45 (1) (eaa) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench that:
- (a) is in relation to a decision mentioned in that paragraph, on the ground mentioned in that paragraph; and
 - (b) was instituted but not finally determined before the reform commencement;
continues and is to be determined under the pre-reform Act as if that Act had not been amended.
- (2) Despite the repeal of paragraph 45 (1) (eaa) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a decision mentioned in that paragraph, on the ground mentioned in that paragraph:
- (a) may be instituted within the period mentioned in regulation 4.13; and
 - (b) is to be determined under the pre-reform Act as if that Act had not been amended.

4.9 Appeal against decision to vary, or not to vary, award or certified agreement (objectionable provision)

- (1) Despite the amendment of paragraph 45 (1) (eba) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench that:
- (a) is in relation to a matter mentioned in that paragraph; and

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- (b) has been instituted but not finally determined before the reform commencement;
continues and is to be determined under the pre-reform Act as if that Act had not been amended.
- (2) Despite the amendment of paragraph 45 (1) (eba) of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a decision mentioned in that paragraph:
- (a) may be instituted within the period mentioned in regulation 4.13; and
- (b) is to be determined under the pre-reform Act as if that Act had not been amended.
- (3) If the Commission varies an award or order as a result of the appeal, to the extent that the appeal relates to an employer:
- (a) for the purposes of:
- (i) Part 7, Division 2, Subdivisions E and I of the Act; and
- (ii) Part 10, Division 3 of the Act; and
- (iii) clause 4 of Schedule 4 to the Work Choices Act;
the award or order is taken to have been made immediately before the reform commencement; but
- (b) any resulting variation to an entitlement under the provisions mentioned in paragraph (a) takes effect only from the date specified in the award or order, which must not be earlier than the date on which the award or order is made.
- (4) If the Commission varies an award or order as a result of the appeal, to the extent that the appeal relates to a transitional employer:
- (a) for the purposes of:
- (i) Part 1, Division 3 of Schedule 6 to the Act; and
- (ii) Part 3, Division 1 of Schedule 6 to the Act;
the award or order is taken to have been made immediately before the reform commencement; but

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- (b) any resulting variation to an entitlement under the provisions mentioned in paragraph (a) takes effect only from the date specified in the award or order, which must not be earlier than the date on which the award or order is made.

Note After reform commencement, an award:

- (a) is taken to be replaced by an instrument in the same terms (a pre-reform award) under subclause 4 (3) of Schedule 4 to the Work Choices Act to the extent that it relates to an employer; and
(b) continues in force under clause 4 of Schedule 6 to the Act as a transitional award to the extent that it relates to an excluded employer as defined in clause 2 of that Schedule.

4.10 Appeal against decision to vary, or not to vary, award or certified agreement (sex discrimination)

- (1) Despite the amendment of paragraph 45 (1) (ed) of the pre-reform Act by the Work Choices Act, an appeal to a Full Bench that:
- (a) is in relation to a decision mentioned in that paragraph; and
(b) has been instituted but not finally determined before the reform commencement;
continues and is to be determined under the pre-reform Act as if that Act had not been amended.
- (2) Despite the amendment of paragraph 45 (1) (ed) of the pre-reform Act by the Work Choices Act, an appeal to a Full Bench in relation to a decision mentioned in that paragraph:
- (a) may be instituted within the period mentioned in regulation 4.13; and
(b) is to be determined under the pre-reform Act as if that Act had not been amended.
- (3) If the Commission varies an award or order as a result of the appeal, to the extent that the appeal relates to an employer:
- (a) for the purposes of:
- (i) Part 7, Division 2, Subdivisions E and I of the Act; and

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- (ii) Part 10, Division 3 of the Act; and
 - (iii) clause 4 of Schedule 4 to the Work Choices Act;
- the award or order is taken to have been made immediately before the reform commencement; but
- (b) any resulting variation to an entitlement under the provisions mentioned in paragraph (a) takes effect only from the date specified in the award or order, which must not be earlier than the date on which the award or order is made.
- (4) If the Commission varies an award or order as a result of the appeal, to the extent that the appeal relates to a transitional employer:
- (a) for the purposes of:
 - (i) Part 1, Division 3 of Schedule 6 to the Act; and
 - (ii) Part 3, Division 1 of Schedule 6 to the Act;
 the award or order is taken to have been made immediately before the reform commencement; but
 - (b) any resulting variation to an entitlement under the provisions mentioned in paragraph (a) takes effect only from the date specified in the award or order, which must not be earlier than the date on which the award or order is made.
- Note* After reform commencement, an award:
- (a) is taken to be replaced by an instrument in the same terms (a pre-reform award) under subclause 4 (3) of Schedule 4 to the Work Choices Act to the extent that it relates to an employer; and
 - (b) continues in force under clause 4 of Schedule 6 to the Act as a transitional award to the extent that it relates to an excluded employer as defined in clause 2 of that Schedule.

4.11 Appeal against decision in relation to jurisdiction

- (1) Despite the amendment of the pre-reform Act by the Work Choices Act, but subject to subregulation (2) and regulation 4.13, an appeal to a Full Bench that:
 - (a) is in relation to a matter mentioned in paragraph 45 (1) (g) of the pre-reform Act; and

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- (b) has been instituted, but not finally determined, before the reform commencement;
continues, and is to be determined under the pre-reform Act as if that Act had not been amended.
- (2) To the extent that an appeal mentioned in subregulation (1) relates to:
- (a) an employer; and
- (b) a question as to the existence of an industrial dispute; the appeal lapses on the reform commencement.
- (3) Despite the amendment of the pre-reform Act by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a decision mentioned in paragraph 45 (1) (g) of the pre-reform Act:
- (a) may be instituted within the period mentioned in regulation 4.13; and
- (b) is to be determined under the pre-reform Act as if that Act had not been amended.

**4.12 Appeals relating to matters arising under
Registration and Accountability of Organisations
Schedule**

- (1) Despite the amendments of section 45A of the pre-reform Act, and Schedule 1B to that Act, by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench that:
- (a) is in relation to a matter mentioned in that section; and
- (b) has been instituted but not finally determined before the reform commencement;
continues and is to be determined under the pre-reform Act as if that Act had not been amended.
- (2) Despite the amendments of section 45A of the pre-reform Act, and Schedule 1B to that Act, by the Work Choices Act, but subject to regulation 4.13, an appeal to a Full Bench in relation to a matter mentioned in that section:
- (a) may be instituted within the period mentioned in regulation 4.13; and

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Regulation 4.13

- (b) is to be determined under the pre-reform Act as if that Act had not been amended.

4.13 Time within which appeals may be instituted

- (1) The period within which an appeal may be instituted under a provision of this Division that allows appeals to be instituted after the reform commencement is:
 - (a) 21 days after the date of the award, order, decision or declaration appealed against (whether the date of the award, order or decision was before or after the reform commencement); or
 - (b) if a request for a statement of reasons has been made under rule 46 of the *Australian Industrial Relations Commission Rules 1998*, as in force immediately before the reform commencement — 21 days after the date on which the statement of reasons is given (whether that date was before or after the reform commencement).
- (2) The Commission must not grant an extension of time for the institution of an appeal under this Division.

4.14 General rules relating to continuing appeals

- (1) This regulation applies to an appeal that continues, or may be instituted, under this Division.
- (2) The Full Bench may determine that an appeal should not be heard, or further heard, to the extent that the Full Bench believes that:
 - (a) a decision to uphold the appeal could not be effectively implemented under the Act; or
 - (b) the matter has no practical application under the Act.

Example

If an appeal related to the variation of a term of an award that would cease to have effect after the reform commencement under section 525 of, or clause 27 of Schedule 6 to, the Act, the Full Bench could decide that the appeal (or part of the appeal) should not continue.

Regulation 4.16

- (3) If an appeal has not been finally determined within 6 months after the reform commencement, it lapses at the end of that period.
- (4) Despite the repeal of section 45 of the pre-reform Act by the Work Choices Act, subsections 45 (2) to (9) of the pre-reform Act apply as if those subsections had not been repealed.

Division 3 Registrar — references and appeals

4.15 Reference to Commission by Registrar

- (1) Despite the amendments of the pre-reform Act by the Work Choices Act, but subject to subregulation (2), if a matter, or a question arising in a matter, has been referred to the President for decision by the Commission under section 79 of the pre-reform Act before the reform commencement, the Commission may deal with the matter or question under that section as if the pre-reform Act had not been amended.
- (2) The Commission may determine that a matter or question to which this regulation applies should not be dealt with under section 79 of the pre-reform Act, if the Commission believes that:
 - (a) a decision made in dealing with the matter or question could not be effectively implemented under the Act; or
 - (b) the matter or question has no practical application under the Act.

4.16 Removal of matter before Registrar

- (1) Despite the amendments of the pre-reform Act by the Work Choices Act, but subject to subregulation (2), if the President has ordered that a matter be heard and determined by the Commission under section 80 of the pre-reform Act before the reform commencement, the Commission may deal with the matter under that section as if the pre-reform Act had not been amended.

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- (2) The Commission may determine that a matter to which this regulation applies should not be heard and determined under section 80 of the pre-reform Act, if the Commission believes that:
 - (a) its determination could not be effectively implemented under the Act; or
 - (b) the matter has no practical application under the Act.

4.17 Appeal from Registrar to Commission

- (1) Despite the amendments of the pre-reform Act by the Work Choices Act, but subject to subregulation (2), if, before the reform commencement, an appeal has been instituted to the Commission under section 81 of the pre-reform Act, the Commission may hear, or continue to hear, and determine, the appeal under that section as if the pre-reform Act had not been amended.
- (2) The Commission may determine that an appeal to which this regulation applies should not be heard, further heard or determined under section 81 of the pre-reform Act, if the Commission believes that:
 - (a) its determination could not be effectively implemented under the Act; or
 - (b) the matter has no practical application under the Act.

4.18 Reference to Court by Registrar

- (1) Despite the amendments of the pre-reform Act by the Work Choices Act, but subject to subregulation (2), if, before the reform commencement, a question of law arising in a matter has been referred for the opinion of the Court under section 82 of the pre-reform Act, the Court may give its opinion under that section as if the pre-reform Act had not been amended.
- (2) The Court may determine that a question to which this regulation applies should not be dealt with under section 82 of the pre-reform Act, if the Court believes that:
 - (a) its opinion could not be effectively implemented under the Act; or

- (b) the question has no practical application under the Act.

Division 4 Dispute prevention and settlement

4.19 Review of certain awards

A review of an award under section 89B of the pre-reform Act that is not finally determined before the reform commencement lapses on the reform commencement.

4.20 Dealing with disputes

- (1) Subject to subregulation (2), if an alleged industrial dispute was notified under section 99 of the pre-reform Act before the reform commencement, but the matter was not finally determined before the reform commencement, proceedings in relation to the matter lapse, to the extent that the matter relates to an employer, on the reform commencement.
- (2) If, immediately before the reform commencement, the Commission was dealing, under section 102 or 103 of the pre-reform Act, with an industrial dispute about any of the following matters:
 - (a) the application of awards;
 - (b) meal breaks;
 - (c) public holidays;
 - (d) parental leave;and the dispute involves an employer, the Commission may deal with the dispute in accordance with its powers under section 701 of the Act.
- (3) If an alleged industrial dispute was notified under section 99 of the pre-reform Act before the reform commencement, but the matter was not finally determined before the reform commencement, the matter is to be dealt with, to the extent that it relates to a transitional employer, in accordance with Schedule 6 to the Act.

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Regulation 4.21

- (4) For subregulations (1) and (3) a matter was finally determined before the reform commencement if:
- (a) the Commission made a determination under section 101 of the pre-reform Act that the alleged industrial dispute was not an industrial dispute; or
 - (b) the industrial dispute was fully settled by conciliation under sections 102 and 103 of the pre-reform Act; or
 - (c) the Commission dealt with the industrial dispute, or matters remaining in dispute, by arbitration under section 104 of the pre-reform Act.

4.21 Principles about making or varying awards in relation to allowable award matters

Proceedings that were begun but not finally determined under subsection 106 (1) of the pre-reform Act for the establishment, or variation, of principles about the making or varying of awards in relation to 1 or more allowable award matters lapse on the reform commencement.

4.22 Reference of disputes to Full Bench

- (1) A reference of a dispute to a Full Bench under section 107 of the pre-reform Act lapses on the reform commencement, to the extent that it involves an employer.
- (2) A reference of a dispute to a Full Bench under section 107 of the pre-reform Act remains in force on the reform commencement as if it were a reference under clause 41 of Schedule 6 to the Act, to the extent that it involves a transitional employer.

4.23 Proceedings being dealt with by President

- (1) A proceeding being dealt with under section 108 of the pre-reform Act lapses on the reform commencement, to the extent that it involves an employer.

Regulation 4.24

- (2) A proceeding being dealt with under section 108 of the pre-reform Act continues after the reform commencement as a proceeding under clause 42 of Schedule 6 to the Act, to the extent that it involves a transitional employer.

4.24 Review on application by Minister

- (1) Despite the repeal of section 109 of the pre-reform Act by the Work Choices Act, but subject to subregulations (3), (4) and (5), an application under that section may be dealt with under the pre-reform Act as if that Act had not been amended.
- (2) Despite the repeal of section 109 of the pre-reform Act by the Work Choices Act, but subject to subregulations (3) and (4), an application under that section:
- (a) may be instituted within 21 days after:
- (i) the date of the award, order, decision or declaration that is the subject of the application; or
- (ii) if a request for a statement of reasons has been made under rule 46 of the *Australian Industrial Relations Commission Rules 1998*, as in force immediately before the reform commencement — the date on which the statement of reasons is given; and
- (b) is to be determined under the pre-reform Act as if that Act had not been amended.
- (3) The Commission may determine that an application of the kind mentioned in this regulation should not be heard, or further heard, to the extent that the Commission believes that:
- (a) a decision to uphold the application could not be effectively implemented under the Act; or
- (b) the matter has no practical application under the Act.
- (4) If an application that continues, or is instituted, under this regulation has not been finally determined within 6 months after the reform commencement, it lapses at the end of that period.
- (5) The Commission must not grant an extension of time for the institution of an application under this Division.

Regulation 4.25

4.25 Particular powers of Commission

- (1) Subject to subregulation (2), in a proceeding at first instance begun before the reform commencement that:
 - (a) is to be determined under these regulations according to the provisions of the pre-reform Act; and
 - (b) relates to an employer;
the Commission may, after the reform commencement, for the purpose of disposing of the proceedings, do any of the things mentioned in subsection 111 (1) of the Act.
- (2) After the reform commencement, the Commission must not, to the extent that a proceeding at first instance relates to an employer:
 - (a) make, vary or set aside an award under paragraph 111 (1) (b), (e) or (f) or subsection 113 (1) of the pre-reform Act; or
 - (b) exercise its powers under paragraph 111 (1) (g) of the pre-reform Act.
- (3) Nothing in subregulation (2) affects the Commission's power to make or vary awards in an appeal to which Division 2 of this Part applies.
- (4) If an industrial dispute that arose under the pre-reform Act would, if it had arisen after the reform commencement, be an industrial dispute arising under Schedule 6 to the Act, the Commission may exercise its powers under clauses 31 and 46 of Schedule 6 to the Act in relation to the dispute to the extent that the dispute relates to a transitional employer.

4.26 Commission to cease dealing with industrial dispute in certain circumstances

Proceedings to which section 111AAA of the pre-reform Act applies lapse on the reform commencement.

Regulation 4.29

4.27 Recommendations by consent

- (1) In a proceeding begun before the reform commencement, to the extent that the proceeding involves an employer, the Commission must not conduct a hearing, continue to conduct a hearing or make recommendations under section 111AA of the pre-reform Act after the reform commencement.
- (2) To the extent that a proceeding involves a transitional employer and allowable transitional award matters:
 - (a) if the parties to the proceeding have asked the Commission to conduct a hearing under paragraph 111AA (1) (b) of the pre-reform Act, the Commission may, to the extent that the proceeding relates to the transitional employer, conduct a hearing, and make recommendations, under clause 47 of Schedule 6 to the Act; and
 - (b) if the Commission has begun conducting a hearing under section 111AA of the pre-reform Act, the Commission may, to the extent that the proceeding relates to the transitional employer, continue to conduct the hearing, and make recommendations, under clause 47 of Schedule 6 to the Act.

4.28 Varying awards (ambiguity or uncertainty)

If a proceeding for the purpose of subsection 113 (2) of the pre-reform Act was begun, but not finally determined, before the reform commencement, the Commission may continue the proceeding and, if necessary, make an order under:

- (a) to the extent that the proceeding relates to an employer — subsection 554 (1) of the Act; or
- (b) to the extent that the proceeding relates to a transitional employer — subclause 30 (1) of Schedule 6 to the Act.

4.29 Varying awards (removal of discrimination)

- (1) This regulation applies if:

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- (a) an award was referred to the Commission under section 46PW of the *Australian Human Rights Commission Act 1986*; and
 - (b) immediately before the reform commencement:
 - (i) the Commission had not refused the reference; and
 - (ii) the Commission had not taken the action mentioned in subsection 113 (2A) of the pre-reform Act.
- (2) The Commission must continue the proceeding and, if necessary, make an order under:
- (a) to the extent that the award relates to an employer — subsection 554 (1) of the Act; or
 - (b) to the extent that the award relates to a transitional employer — clause 30 of Schedule 6 to the Act.

4.30 Varying certified agreements (removal of discrimination)

- (1) This regulation applies if:
 - (a) a certified agreement was referred to the Commission under section 46PW of the *Australian Human Rights Commission Act 1986*; and
 - (b) immediately before the reform commencement:
 - (i) the Commission had not refused the application; and
 - (ii) the Commission had not taken the action mentioned in subsection 113 (2A) of the pre-reform Act.
- (2) The Commission must continue the proceeding in accordance with clause 3 of Schedule 7 to the Act.

4.31 Varying awards (change of name)

If a proceeding for the purpose of subsection 113 (3) of the pre-reform Act was begun, but not finally determined, before the reform commencement, the Commission may continue the proceeding and, if necessary, make an order under:

- (a) to the extent that the proceeding relates to an employer — subsection 554 (5) of the Act; or

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- (b) to the extent that the proceeding relates to a transitional employer — subclause 30 (5) of Schedule 6 to the Act.

4.32 Varying awards (junior rates of pay)

- (1) If:
- (a) an application to vary an award under subsection 113 (3A) of the pre-reform Act was received before the reform commencement; and
 - (b) the matter was not finally determined before the reform commencement; and
 - (c) the matter involves an employer;
the matter lapses, to the extent that it relates to the employer, on the reform commencement.
- (2) If:
- (a) an application to vary an award under subsection 113 (3A) of the pre-reform Act was received before the reform commencement; and
 - (b) the matter was not finally determined before the reform commencement; and
 - (c) the matter involves a transitional employer;
the matter continues, to the extent that it relates to the transitional employer, and the Commission may vary the award in accordance with paragraph 29 (2) (a) of Schedule 6 to the Act.

4.33 Enterprise flexibility provisions

- (1) Proceedings under section 113A of the pre-reform Act that were begun but not finally determined before the reform commencement lapse on the reform commencement.
- (2) Proceedings under section 113B of the pre-reform Act that were begun but not finally determined before the reform commencement lapse on the reform commencement.

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4.34 Compulsory conferences

A direction to attend a conference given under section 119 of the pre-reform Act before the reform commencement lapses on the reform commencement.

4.35 Exceptional matters orders

The Commission must not make an exceptional matters order under section 120A of the pre-reform Act after the reform commencement, including in a proceeding begun before the reform commencement.

4.36 Orders to stop or prevent industrial action

- (1) Despite the amendments made to the pre-reform Act by the Work Choices Act, proceedings for:
 - (a) an order under subsection 127 (1) of the pre-reform Act; or
 - (b) an interim order under subsection 127 (3A) of the pre-reform Act;
 that have been instituted but not finally determined before the reform commencement continue and are to be determined under the pre-reform Act as if that Act had not been amended.
- (2) Despite the repeal of section 127 of the pre-reform Act by the Work Choices Act, an order under subsection 127 (1), or an interim order under subsection 127 (3A), of the pre-reform Act that was made:
 - (a) before the reform commencement; or
 - (b) after the reform commencement, in accordance with subregulation (1);
 has effect after the reform commencement as if that section had not been repealed.
- (3) Despite the repeal of section 127 of the pre-reform Act by the Work Choices Act, an application under subsection 127 (6) of the pre-reform Act that has been made before the reform commencement continues and is to be determined under that subsection as if the pre-reform Act had not been amended.

Regulation 4.38

- (4) Despite the repeal of section 127 of the pre-reform Act by the Work Choices Act, an application under subsection 127 (6) of the pre-reform Act, including an application in relation to an order made in accordance with subregulation (1):
- (a) may be made after the reform commencement; and
 - (b) is to be determined under subsection 127 (6) of the pre-reform Act as if that Act had not been amended.

4.37 Unfair contracts

Despite the repeal of sections 127A and 127B of the pre-reform Act, if an application was made under subsection 127A (2) of the pre-reform Act before the reform commencement, the Court may, after the reform commencement:

- (a) review, or continue to review, and form an opinion in relation to, the contract under section 127A of the pre-reform Act; and
- (b) make an order under section 127B of the pre-reform Act in relation to the opinion.

4.38 Orders restraining State authorities from dealing with disputes

Proceedings

- (1) If a proceeding:
- (a) was begun under section 128 of the pre-reform Act; and
 - (b) involved an employer;
- the proceeding continues, and is to be determined, under section 117 of the Act to the extent to which section 117 is capable of permitting the proceeding to continue and be determined.
- (2) Despite the repeal of section 128 of the pre-reform Act, if a proceeding:
- (a) was begun under that section; and

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- (b) involved a transitional employer; the proceeding continues, and is to be determined, under that section as if the pre-reform Act had not been amended by the Work Choices Act.

Orders

- (3) If an order:
 - (a) was made as a result of a proceeding under section 128 of the pre-reform Act; and
 - (b) involved an employer; the order has effect to the extent to which section 117 is capable of permitting the order to have effect.
- (4) Despite the repeal of section 128 of the pre-reform Act, if an order:
 - (a) was made as a result of a proceeding under that section; and
 - (b) involved a transitional employer; the order has effect as if the pre-reform Act had not been amended by the Work Choices Act.

4.39 Reference of dispute to local industrial board

A reference of an industrial dispute to a local industrial board for investigation and report under section 130 of the pre-reform Act lapses on the reform commencement.

4.40 Boards of reference

- (1) If proceedings were begun, but not finally determined, under subsection 131 (1) of the pre-reform Act in relation to an award involving an employer, the proceedings continue and are to be determined in accordance with section 895 of the Act.
- (2) If proceedings were begun, but not finally determined, under subsection 131 (1) of the pre-reform Act in relation to an award involving a transitional employer, the proceedings continue after the reform commencement and are to be determined in accordance with clause 26 of Schedule 6 to the Act.

Division 5 Ballots ordered by Commission

4.41 Secret ballots — industrial disputes

- (1) Subject to subregulation (2), an order under subsection 135 (1) of the pre-reform Act lapses on the reform commencement.
- (2) An order under subsection 135 (1) of the pre-reform Act in relation to an industrial dispute with which the Commission is empowered to deal under Schedule 6 to the Act (or with which the Commission would be so empowered if the dispute occurred after the reform commencement) has effect after the reform commencement as if it were an order under subclause 52 (1) of that Schedule.

4.42 Secret ballots — industrial action

An order under subsection 135 (2) of the pre-reform Act lapses on the reform commencement.

4.43 Secret ballots — approval of certified agreements

- (1) Despite the repeal of subsection 135 (2A), and Part VIB, of the pre-reform Act, but subject to subregulation (2), an order under that subsection that was given before the reform commencement continues to have effect after the reform commencement as if that subsection and Part had not been repealed.
- (2) The Commission may revoke an order given before the reform commencement under subsection 135 (2A) of the pre-reform Act.

4.44 Secret ballots — industrial action during bargaining period

An order under subsection 135 (2B) of the pre-reform Act lapses on the reform commencement.

Regulation 4.45

4.45 Application for secret ballot

- (1) An application under subsection 136 (1) of the pre-reform Act that was made but not determined before the reform commencement lapses on the reform commencement.
- (2) An order under subsection 136 (2) of the pre-reform Act lapses on the reform commencement.

Division 6 Common rules

4.46 Common rules

- (1) The Commission must not, after the reform commencement, make a declaration under section 141 of the pre-reform Act, including in a proceeding begun before the reform commencement.
- (2) An application under section 141A of the pre-reform Act made before the reform commencement lapses on the reform commencement.
- (3) Despite the repeal of sections 142 and 493A of the pre-reform Act by the Work Choices Act, if:
 - (a) before the reform commencement, the Commission varied a term of an award that was a common rule under section 141 of the pre-reform Act (including that section as applied by section 493A of the pre-reform Act); and
 - (b) before the reform commencement, a Registrar published a notice under subsection 142 (4) of the pre-reform Act (including that section as applied by section 493A of the pre-reform Act); and
 - (c) either:
 - (i) the prescribed time (as defined by subsection 142 (8) of the pre-reform Act) had not expired before the reform commencement; or

Regulation 4.46

- (ii) a notice of objection was lodged before the reform commencement, but the objection had not been finally determined before the reform commencement;

then, to the extent that the variation relates to a common rule that was binding on an employer, subsections 142 (4) to (8) of the pre-reform Act (including those subsections as applied by section 493A of the pre-reform Act) continue to apply, in relation to the variation, as if those repeals had not happened.

- (4) In proceedings to which subregulation (3) applies, the Commission may discontinue hearing the matter to the extent that the Commission is of the opinion that:
 - (a) a decision made in dealing with the matter could not be effectively implemented under the Act; or
 - (b) the matter has no practical application under the Act.
- (5) If a declaration under subsection 142 (5) of the pre-reform Act is made after the reform commencement:
 - (a) for the purposes of:
 - (i) Subdivisions E and I of Division 2 of Part 7 of the Act; and
 - (ii) Division 3 of Part 10 of the Act; and
 - (iii) clause 4 of Schedule 4 to the Work Choices Act;the declaration is taken to have effect from the reform commencement; but
 - (b) the declaration takes effect only from the date specified in the Commission's order, which must not be earlier than the date on which the order is made.

Note Provisions relating to common rules for an industry in Victoria, to the extent that they relate to employers and employees within the meaning of section 858 of the Act, are contained at Subdivision E of Division 1 of Part 7 of Schedule 6 to the Act.

Regulation 4.47

Division 7 Awards of Commission

4.47 Review of operation of awards

Proceedings under section 151 of the pre-reform Act lapse on the reform commencement.

Division 8 Boycotts

4.48 Disputes relating to boycotts

- (1) If the Registrar is notified of a dispute under section 157 of the pre-reform Act before the reform commencement, he or she is not required, after the reform commencement, to inform the President under that section.
- (2) A proceeding under section 158 of the pre-reform Act that has been instituted but not finally determined before the reform commencement lapses on the reform commencement.

4.49 Restriction on certain actions in tort

- (1) Despite the repeal of section 166A of the pre-reform Act by the Work Choices Act, that section continues to apply, after the reform commencement, to conduct that occurred before the reform commencement.
- (2) If, before the reform commencement, a notice was given to the Commission under subsection 166A (3) of the pre-reform Act in respect of conduct to which subsection 166A (1) of the pre-reform Act applied, but the Commission had not:
 - (a) stopped the conduct; or
 - (b) given a certificate under subsection 166A (6) of the pre-reform Act;the Commission is taken to have given a certificate under paragraph 166A (6) (c) of the pre-reform Act in respect of the conduct immediately before the reform commencement.

Division 9 Cancellation and suspension of awards and orders

4.50 Cancellation and suspension of awards and orders

Despite the repeal of section 187 of the pre-reform Act by the Work Choices Act, if an application was made, or a matter was referred, to the President under that section before the reform commencement, but the matter has not been finally determined before the reform commencement, the matter continues and is to be dealt with in accordance with section 119 of the Act.

Division 10 Right of entry

4.51 Civil penalty proceedings

- (1) Despite the repeal of section 285F of the pre-reform Act by the Work Choices Act, if, before the reform commencement, an application for an order under subsection 285F (2) of the pre-reform Act was made but not finally determined, the application continues and is to be determined under that section as if the pre-reform Act had not been amended.
- (2) Despite the repeal of section 285F of the pre-reform Act by the Work Choices Act, if, before the reform commencement, proceedings for an injunction under subsection 285F (5) of the pre-reform Act were begun but not finally determined, those proceedings continue and are to be determined under that section as if the pre-reform Act had not been amended.

4.52 Powers of Commission

If proceedings under section 285G of the pre-reform Act were begun but not finally determined before the reform commencement, those proceedings continue and are to be determined under section 772 of the Act.

Regulation 4.53

Division 11 Freedom of association

4.53 Remedies for breaches

Despite the repeal of Part XA of the pre-reform Act by the Work Choices Act, if, before the reform commencement, an application was made to the Court under section 298T of the pre-reform Act, but was not finally determined, the application continues and is to be determined under section 298U of the pre-reform Act as if that Act had not been amended.

4.54 Removal of objectionable provisions

Despite the repeal of Part XA of the pre-reform Act by the Work Choices Act, if, before the reform commencement, an application was made to the Commission under section 298Z of the pre-reform Act, but was not finally determined, the application continues and is to be determined under that section as if the pre-reform Act had not been amended.

Division 12 State laws

4.55 Appeal rights under State laws

- (1) Subject to subregulation (2), for paragraph 16 (2) (b) of the Act, subsection 16 (1) of the Act does not apply to a law of a State or Territory that allows or otherwise relates to an appeal to a State industrial authority against a decision to make or vary a State award, including a decision under which an employer, employee or industrial association becomes bound or ceases to be bound by the State award.
- (2) Subregulation (1) ceases to apply 6 months after the reform commencement.
- (3) If, after the reform commencement, a State industrial authority makes, sets aside or varies a State award as a result of an appeal (including where this results in an employer, employee or industrial association becoming bound or ceasing to be

Regulation 4.55

bound by the State award), to the extent that that the award relates to an employer:

- (a) for the purposes of:
 - (i) Part 7, Division 2, Subdivisions E and I of the Act; and
 - (ii) Schedule 8 to the Act;the State award is taken to have been made, set aside or varied immediately before the reform commencement; but
- (b) any resulting alteration of an entitlement under the provisions of the Act mentioned in paragraph (a) takes effect only from the later of:
 - (i) the date specified in the State industrial authority's order determining the appeal; and
 - (ii) the date on which the order determining the appeal is made.

- (4) In this regulation:
industrial association has the meaning given by section 779 of the Act.

Regulation 1.1

Chapter 8 Miscellaneous provisions

1.1 Ballots conducted by the Australian Electoral Commission — no unauthorised action

- (1) If a secret ballot is conducted by the Australian Electoral Commission under the Act, a person other than:
- (a) the authorised ballot agent; or
 - (b) a person authorised or directed by the authorised ballot agent;

must not do, or purport to do, any act in the conduct of the ballot.

- (2) Strict liability applies to the physical elements in subregulation (1).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of Chapter 2 sets out provisions dealing with contraventions of civil remedy provisions.

1.2 No action for defamation in certain cases

No action or proceeding, civil or criminal, for defamation lies:

- (a) against the Commonwealth or an electoral official conducting, on behalf of the Australian Electoral Commission, a ballot under the Act in relation to the printing or issuing of a document or other material by the electoral official; or
- (b) if the document or other material mentioned in paragraph (a) is printed by another person — against that person, in relation to the printing.

Regulation 1.3**1.3 Application of the *Criminal Code* to civil remedy provisions**

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Chapter as if those provisions were offences.

Schedule 1 Forms

(regulation 1.3, definition of *Form*)

Form 1 Ballot paper under Part 3 of Chapter 3

(regulation 9.10)

Workplace Relations Act 1996, Part 9, Division 4

BALLOT OF MEMBERS OF
(*Name of organisation*)

**BALLOT PAPER IN RESPECT OF
PROTECTED ACTION BALLOT**

(Initials, or facsimile of
initials, of the person
conducting the ballot)

CLOSING DATE OF BALLOT: (*Date*)

The proposed industrial action to which this ballot applies is [*description*].

DIRECTIONS TO VOTERS

1. Record your vote on the ballot paper as follows:
 - if you approve the proposed industrial action, tick the **YES** box opposite the question;
 - if you do not approve the proposed industrial action, tick the **NO** box opposite the question.
2. Do not place on this paper any mark or writing that may identify you.

QUESTION(S) FOR VOTERS

(Text of question or questions
as ordered by the Commission)

YES

NO

INFORMATION FOR VOTERS

1. The applicant is *[name]*.¹
1. The applicant's agent is *[name]*.¹
¹ *omit if inapplicable*
2. The employees who are to be balloted are *[description]*.
3. The ballot agent authorised to conduct the ballot is *[name]*.

**YOUR VOTE IS SECRET, AND YOU ARE FREE TO CHOOSE WHETHER OR
NOT TO SUPPORT THE PROPOSED INDUSTRIAL ACTION.**

Section 747 of the *Workplace Relations Act 1996* authorises entry to premises for the purpose of investigating breaches, or potential breaches, of certain laws, awards or agreements. This certificate exempts the organisation from the obligation to comply with the notice requirements under section 748 of that Act for entry to the premises.

For this certificate:

(a) The premises to which it applies are

[*name of premises*]

(b) The day or days on which it operates are

[*day or days*]

(c) The suspected breach or breaches to which it relates are

[*particulars of breach or breaches*]

Dated 20

Registrar

Notes

- (a) Entry to the premises must be on a day specified in this certificate.
- (b) The organisation must give a copy of this certificate to the occupier of the premises not more than 14 days before the entry.

Form 4 Notice of proposed terminations

(regulation 12.9)

Workplace Relations Act 1996, section 660 (2)

NOTICE OF PROPOSED TERMINATIONS

TO: CENTRELINK

I, [*full name of employer or person completing notice on behalf of employer*], the [*position held*] of [*name of employer of person completing notice*], give notice, under section 660 of the *Workplace Relations*

Act 1996, that [name of employer] proposes to terminate the employment of 15 or more of its employees, for the following reasons:

[Set out reasons for proposed terminations. Reasons may be of an economic, technological, structural or similar nature, or for reasons including such reasons]

The number and categories of employees likely to be affected by the proposal are:

[Set out the categories and number per category]

It is intended that [name of employer] will carry out the proposed terminations at the following time/s, or over the following period/s of time:

[Provide specific dates if known, or approximate period of time]

Dated

.....
Signature

.....
Position

**Form 5 Application to the Commission to have a
dispute resolution process conducted**
(regulation 13.2)

Workplace Relations Regulations 2006, regulation 13.2

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**APPLICATION TO HAVE A DISPUTE RESOLUTION PROCESS
CONDUCTED**

[Name of applicant] applies to the Commission to have a dispute resolution process conducted under [insert Division 3, 4 or 5] of Part 13 of the *Workplace Relations Act 1996*.

The matter in dispute relates to [*description of matters in dispute*].

Note Identify:

- (a) the provision(s) in the Workplace Relations Act to which the dispute relates (for example, a particular entitlement that is guaranteed by the Australian Fair Pay and Conditions Standard); or
- (b) the award or workplace agreement to which the dispute relates.

The parties to the matter in dispute are [*description of parties*].

Note If the application relates to collective bargaining negotiations, identify the other persons or organisations with whom you propose to reach an agreement.

The following steps of the dispute settling process have been taken:

[*List the steps taken and enclose a copy of the dispute settling process*].

The type(s) of assistance sought from the AIRC is or are:

[*Describe the assistance*].

Note The types of assistance that the AIRC might provide can be varied by agreement while the dispute resolution process is underway.

Dated 20 .

[*Applicant's signature*]

Schedule 2 **Employing authorities (Act, subsection 4 (1))**

(regulations 1.4 and 3.3)

Column 1 Item	Column 2 Class of employees	Column 3 Person or body
1	Persons employed in public sector employment by a particular Commonwealth authority under terms and conditions determined, or approved, by the Workplace Relations Minister	<p>The Minister administering the enactment by or under which the Commonwealth authority employing the persons specified in column 2 of this item was established</p> <p>The principal executive officer (however called) of the Commonwealth authority employing the persons specified in column 2 of this item</p> <p>The Workplace Relations Minister</p>
2	Persons employed in public sector employment by a particular Commonwealth authority other than persons specified in column 2 of item 1	<p>The Minister administering the enactment by or under which the Commonwealth authority employing the persons specified in column 2 of this item was established</p> <p>The principal executive officer (however called) of the Commonwealth authority employing the persons specified in column 2 of this item</p>

Column 1 Item	Column 2 Class of employees	Column 3 Person or body
3	APS employees, within the meaning of the <i>Public Service Act 1999</i> , performing duties or employed in a particular Agency as defined in the <i>Public Service Act 1999</i>	The Agency Minister within the meaning of the <i>Public Service Act 1999</i> The Agency Head within the meaning of the <i>Public Service Act 1999</i> The Workplace Relations Minister
4	Parliamentary Service employees, within the meaning of the <i>Parliamentary Service Act 1999</i> , performing duties or employed in a particular Department as defined in the <i>Parliamentary Service Act 1999</i>	A Presiding Officer within the meaning of the <i>Parliamentary Service Act 1999</i> The Secretary within the meaning of the <i>Parliamentary Service Act 1999</i>
5	Persons employed under section 42 of the <i>Naval Defence Act 1910</i>	The Minister administering the enactment specified in column 2 of this item The persons empowered under the enactment specified in column 2 of this item to employ persons
6	Persons employed under section 10 of the <i>Supply and Development Act 1939</i>	The persons empowered under the enactment specified in column 2 of this item to employ persons The Minister administering the enactment specified in column 2 of this item
7	Persons engaged as consultants under Part II, or employed under Part III or IV, of the <i>Members of Parliament (Staff) Act 1984</i>	The Minister administering the enactment specified in column 2 of this item

Column 1 Item	Column 2 Class of employees	Column 3 Person or body
8	Persons employed as employees in a particular Department of the Public Service of the Northern Territory	The Minister of the Northern Territory responsible for the Department of the Public Service of the territory in which the persons specified in column 2 of this item are employed The Public Service Commissioner for the Northern Territory
9	Persons employed by the Northern Territory other than persons specified in column 2 of item 8	The Public Service Commissioner for the Northern Territory
10	Persons employed by a particular Northern Territory authority (being a body corporate referred to in paragraph (a) of the definition of <i>Northern Territory authority</i> in subsection 4 (1) of the Act) under terms and conditions determined or approved by the Public Service Commissioner for the Northern Territory	The Minister administering the Act of the Northern Territory by or under which the authority employing the persons specified in column 2 of this item was established The principal executive officer (however called) of the authority employing the persons specified in column 2 of this item The Public Service Commissioner for the Northern Territory
11	Persons employed by one of the following Northern Territory authorities (being bodies corporate referred to in paragraph (a) of the definition of <i>Northern Territory authority</i> in subsection 4 (1) of the Act), namely: (a) Northern Territory Power and Water Authority, (b) Territory Insurance Office	The principal executive officer (however called) of the authority employing the persons specified in column 2 of this item

Column 1 Item	Column 2 Class of employees	Column 3 Person or body
12	Persons employed by a particular Northern Territory authority (being a body corporate of the kind referred to in paragraph (a) of the definition of <i>Northern Territory authority</i> in subsection 4 (1) of the Act), other than persons specified in column 2 of item 10 or 11	<p>The Minister administering the Act of the Northern Territory by or under which the authority employing the persons specified in column 2 of this item was established</p> <p>The authority employing the persons specified in column 2 of this item</p> <p>The Public Service Commissioner for the Northern Territory</p>
13	Persons employed by a particular Northern Territory authority (being a body corporate of the kind referred to in paragraph (b) of the definition of <i>Northern Territory authority</i> in subsection 4 (1) of the Act)	<p>The Minister administering the Act of the Northern Territory by or under which the authority employing the persons specified in column 2 of this item was established</p> <p>The principal executive officer (however called) of the authority employing the persons specified in column 2 of this item</p> <p>The Public Service Commissioner for the Northern Territory</p>
14	Persons appointed under section 25 or 26 of the <i>Australian Federal Police Act 1979</i>	<p>The Minister administering the <i>Australian Federal Police Act 1979</i></p> <p>The Commissioner within the meaning of that Act</p>
15	Staff employed under the <i>Legislative Assembly (Members' Staff) Act 1989</i> of the Australian Capital Territory	The Chief Minister for the Australian Capital Territory

Column 1 Item	Column 2 Class of employees	Column 3 Person or body
16	Officers and employees (within the meaning of the <i>Public Sector Management Act 1994</i> of the Australian Capital Territory) of a government agency, or autonomous instrumentality, within the meaning of that Act	<p>The Chief Minister for the Australian Capital Territory</p> <p>The Minister (within the meaning of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (the <i>Self-Government Act</i>)) who administers the government agency, or the Act under which the autonomous instrumentality is established</p> <p>The Minister, within the meaning of the <i>Self-Government Act</i>, who is responsible for exercising the power of the Australian Capital Territory Executive in relation to industrial relations</p>
17	Persons employed by or in the service of a body corporate (except a Territory instrumentality within the meaning of <i>Public Sector Management Act 1994</i> of the Australian Capital Territory) that is incorporated under a law of the Territory and in which the Territory has a controlling interest	<p>The principal executive officer (however described) of the body corporate</p> <p>The Minister, within the meaning of the <i>Australian Capital Territory (Self-Government) Act 1988</i>, who is responsible for exercising the power of the Australian Capital Territory Executive in relation to industrial relations</p>
18	Officers and employees (within the meaning of the <i>Public Sector Management Act 1994</i> of the Australian Capital Territory) employed at Calvary Hospital under an arrangement with the Territory under section 26 of that Act	<p>The Chief Executive Officer of Calvary Hospital A.C.T. Incorporated</p> <p>The Minister, within the meaning of the <i>Australian Capital Territory (Self-Government) Act 1988</i>, who is responsible for exercising the power of the Australian Capital Territory Executive in relation to public health</p>

Column 1 Item	Column 2 Class of employees	Column 3 Person or body
19	Persons employed by or in the service of a body corporate, or an authority, that is established by or under a law of the Australian Capital Territory and to which item 15, 16, 17 or 18 does not apply	<p>The Minister, within the meaning of the Self-Government Act, who is responsible for exercising the power of the Australian Capital Territory Executive in relation to industrial relations</p> <p>The principal executive officer (however described) of the body corporate or authority</p> <p>The Minister administering the law of the Australian Capital Territory</p> <p>The Minister, within the meaning of the <i>Australian Capital Territory (Self-Government) Act 1988</i>, who is responsible for exercising the power of the Australian Capital Territory Executive in relation to industrial relations</p>

Schedule 3 Commonwealth authorities (definition of public sector employment)

(paragraph 1.5 (2) (c))

Aerospace Technologies of Australia Pty Ltd

AIDC Ltd

ANL Limited

Australian Airlines Limited

Australian Defence Industries Ltd

Australian National Railways Commission

Australian Overseas Telecommunications Corporation

Australian Postal Corporation

Civil Aviation Authority

Commonwealth Funds Management Limited

Federal Airports Corporation

Qantas Airways Limited

Schedule 4 Information and copies of documents to be given to Minister by AIRC

(regulation 3.7)

Item	Information or copy of document	Time by which information or copy to be given
Industrial action		
1	Notification of an application under section 496 of the Act filed with the AIRC	Upon registration of the application with the Australian Industrial Registry
2	A list of all applications filed under section 496 of the Act in a week, which includes the following information: <ul style="list-style-type: none">(a) a statement that the matter has commenced;(b) the case number;(c) the matter type, identified by reference to relevant section of the Act;(d) the names of the parties, identifying whether the party is the applicant or the respondent;(e) whether the party is an individual or an organisation;(f) if a party is an organisation — whether the party is an employee or employer organisation;	As soon as practicable after the end of the week

Item	Information or copy of document	Time by which information or copy to be given
	(g) the outcome of the matter (if reached), and the remedies obtained (if any)	
3	A copy of an order made under section 496 of the Act, if the Minister or the Department asks for the copy	Either: <ul style="list-style-type: none"> (a) within 24 hours after the request; or (b) if the order has not been written within that 24 hours — as soon as practicable after the request
4	The number of orders made under section 496 of the Act in a quarter of the year (ending on 31 March, 30 June, 30 September and 31 December)	As soon as practicable after the end of the quarter
5	A list of all applications for a secret ballot for protected industrial action under Division 4 of Part 9 of the Act in a week, which includes the following information: <ul style="list-style-type: none"> (a) a statement that the matter has commenced; (b) the case number; (c) the matter type, identified by reference to relevant section of the Act; (d) the names of the parties, identifying whether the party is the applicant or the respondent; (e) whether the party is an individual or an organisation; (f) if a party is an organisation — whether the party is an employee or employer organisation; 	As soon as practicable after the end of the week

Item	Information or copy of document	Time by which information or copy to be given
	(g) the outcome of the matter (if reached), and the remedies obtained (if any)	
6	A copy of an order for a secret ballot for protected industrial action under Division 4 of Part 9 of the Act, if the Minister or the Department asks for the copy	Either: (a) within 24 hours after the request; or (b) if the order has not been written within that 24 hours — as soon as practicable after the request
7	Application filed with the Australian Industrial Registry for the suspension or termination of a bargaining period under Part 9 of the Act	Upon registration of the application with the Australian Industrial Registry
8	A list of all applications for the suspension or termination of a bargaining period under Division 2 of Part 9 of the Act in a week, which includes the following information: (a) a statement that the matter has commenced; (b) the case number; (c) the matter type, identified by reference to relevant section of the Act; (d) the names of the parties, identifying whether the party is the applicant or the respondent; (e) whether the party is an individual or an organisation;	As soon as practicable after the end of the week

Item	Information or copy of document	Time by which information or copy to be given
	<p>(f) if a party is an organisation — whether the party is an employee or employer organisation;</p> <p>(g) the outcome of the matter (if reached), and the remedies obtained (if any)</p>	
9	A copy of an order for the suspension or termination of a bargaining period under Part 9 of the Act, if the Minister or the Department asks for the copy	<p>Either:</p> <p>(a) within 24 hours after the request; or</p> <p>(b) if the order has not been written within that 24 hours — as soon as practicable after the request</p>
10	The number of applications for commencement of bargaining period made in a week	As soon as practicable after the end of the week
11	The number of applications for commencement of bargaining period made in a quarter	As soon as practicable after the end of the quarter
12	The number of orders under section 429 of the Act, restricting the initiation of a new bargaining period, made in a quarter	As soon as practicable after the end of the quarter
13	The number of bargaining periods suspended or terminated under section 430 of the Act in a quarter	As soon as practicable after the end of the quarter
14	The number of bargaining periods suspended or terminated under section 431 of the Act in a quarter	As soon as practicable after the end of the quarter
15	The number of bargaining periods suspended or terminated under section 432 of the Act in a quarter	As soon as practicable after the end of the quarter

Item	Information or copy of document	Time by which information or copy to be given
16	The number of bargaining periods suspended or terminated under section 433 of the Act in a quarter	As soon as practicable after the end of the quarter
17	The number of bargaining periods terminated under section 498 of the Act in a quarter	As soon as practicable after the end of the quarter

Registered organisations and right of entry

18	The number of: (a) applications for registration by organisations made in a quarter; and (b) applications for permits under section 740 of the Act made in a quarter; and (c) orders under section 770 of the Act made in a quarter; and (d) orders under section 771 made in a quarter; and (e) related disputes under section 772 occurring in a quarter	As soon as practicable after the end of the quarter
19	The number of: (a) applications for registration of employer or employee organisations made in a quarter; and (b) approvals of registration of employer or employee organisations granted in a quarter; and	As soon as practicable after the end of the quarter

Item	Information or copy of document	Time by which information or copy to be given
	(c) orders in relation to the registration of employer or employee organisations made in a quarter	
20	Copy of: (a) right of entry permit issued; or (b) revocation of right of entry permit; if the Minister or the Department asks for the copy	Either: (a) within 24 hours after the request; or (b) if the permit or revocation has not been written within that 24 hours — as soon as practicable after the request
21	The following information in relation to applications for the registration of an employer or employee organisation, or an application made under section 740, 770, 771 or 772 of the Act, made in a week: (a) a statement that the matter has commenced; (b) the case number; (c) the matter type, identified by reference to relevant section of the Act; (d) the names of the parties, identifying whether the party is the applicant or the respondent; (e) whether the party is an individual or an organisation; (f) if a party is an organisation — whether the party is an employee or employer organisation;	As soon as practicable after the end of the week

Item	Information or copy of document	Time by which information or copy to be given
	(g) the outcome of the matter (if reached), and the remedies obtained (if any)	
22	Copy of an application for registration of an organisation, if the Minister or the Department asks for the copy	Within 24 hours after the request
Dispute resolution		
23	The number of matters notified to the Industrial Registrar under subsection 696 (3) of the Act in a quarter	As soon as practicable after the end of the quarter
24	The number of matters notified to the Industrial Registrar under section 699 of the Act in a quarter, and information about: (a) which paragraph of section 694 of the Act applies to the matter; and (b) whether the application was made by consent or by 1 party only	As soon as practicable after the end of the quarter
25	For each matter to which section 699 of the Act applies in a quarter — advice of the number of days between when the application was made and when the dispute was resolved or otherwise discontinued	As soon as practicable after the end of the quarter
26	The number of applications refused under section 700 of the Act in a quarter	As soon as practicable after the end of the quarter

Item	Information or copy of document	Time by which information or copy to be given
27	The number of applications to which section 704 of the Act applies made in a quarter	As soon as practicable after the end of the quarter
28	The number of applications to which section 709 of the Act applies made in a quarter	As soon as practicable after the end of the quarter
29	The number of applications made under section 709 of the Act, and refused on the grounds mentioned in section 710 of the Act, in a quarter	As soon as practicable after the end of the quarter

Workplace determinations

30	The number of workplace determinations under section 503 of the Act made in a quarter	As soon as practicable after the end of the quarter
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Termination of employment

31	The number of applications under section 643 of the Act filed in a quarter, identified by State and Territory	As soon as practicable after the end of the quarter
32	The number of applications determined by the Commission to be out of jurisdiction in a quarter, and an explanation of the reason for the determination	As soon as practicable after the end of the quarter
33	The number of applications determined on the papers in a quarter	As soon as practicable after the end of the quarter
34	The number of applications under section 643 of the Act, settled by conciliation in a quarter	As soon as practicable after the end of the quarter

Item	Information or copy of document	Time by which information or copy to be given
35	The number of applications under section 659 of the Act made in a quarter, identified by State and Territory	As soon as practicable after the end of the quarter
36	The number of applications under section 659 of the Act, settled by conciliation in a quarter	As soon as practicable after the end of the quarter
37	The number termination proceedings which proceed to hearing in a quarter	As soon as practicable after the end of the quarter

Schedule 7 Schedule of costs

(regulation 12.7)

Part 1 Instructions

Item	Matter for which charge may be made	Charge
101	Instructing to make or oppose an application under section 643 of the Act	Either: (a) \$210; or (b) at the discretion of the Commission
102	Instructing to make or oppose any other proceeding relating to an application under section 643 of the Act (see subsection 658 (10) of the Act)	Either: (a) \$210; or (b) at the discretion of the Commission
103	Instructing for a case for opinion of counsel or for counsel to advise (including attendance on counsel with brief)	Either: (a) \$91; or (b) at the discretion of the Commission
104	Instructing for a necessary document in response to directions given by the Commission	Either: (a) \$125; or (b) at the discretion of the Commission
105	Instructing for brief to counsel or brief notes for solicitor (if necessary)	An amount that the Commission considers appropriate having regard to all the circumstances of the case
106	Instructing for a necessary document not otherwise provided for in this Part	An amount that the Commission considers appropriate having regard to all the circumstances of the case

Part 2 Documents

Item	Matter for which charge may be made	Charge
201	A notice of appearance, including copies, filing and service by respondent	\$115
202	An application or notice of motion, including copies to file and serve, and attendance to file	The sum of: (a) for the first 3 folios — \$93; and (b) for each additional folio — \$6
203	A necessary document prepared in response to directions given by the Commission, including copies to file and serve, and attendance to file	\$74
204	A brief to counsel (including a brief to hear judgment) and attending counsel with the brief	The sum of: (a) for the first 3 folios — \$80; and (b) for each additional folio — \$7
205	Copy of a document to accompany a brief	The charge mentioned in item 501
206	A necessary summons, and issuing 1 copy to serve and arranging for service	\$63

Part 3 Drawing

Item	Matter for which charge may be made	Charge
301	Drawing a necessary document not covered by Part 1 or 2 of this Schedule	\$8 per folio

Part 4 Writing or typing legal letters

Item	Matter for which charge may be made	Charge
401	Writing or typing a legal letter	\$4 per folio

Part 5 Copies

Item	Matter for which charge may be made	Charge
501	Copy of a document, including a carbon, photographic or machine-made copy	Either: (a) \$2 per page; or (b) if allowance for 10 or more pages is claimed in respect of a document or documents — at the discretion of the Commission

Part 6 Perusal and scanning

Item	Matter for which charge may be made	Charge
601	Perusing a document, including a special letter (for example, a letter from counsel that includes an opinion)	Either: (a) if paragraph (b) does not apply: (i) for a document that contains up to 3 folios — \$16; or (ii) for a document that contains more than 3 folios — \$4 per folio; or (b) if allowance for 30 or more folios is claimed for a document — at the discretion of the Commission

Item	Matter for which charge may be made	Charge
602	Scanning a document, if it is not necessary to peruse the document	Either: (a) \$6 per page; or (b) if allowance for 10 or more pages is claimed in respect of any document or documents — at the discretion of the Commission

Part 7 Examination

Item	Matter for which charge may be made	Charge
701	Examining a document, if it is not necessary to peruse or scan the document (for example, an examination of an appeal book):	
	(a) by a solicitor	\$74 per half hour
	(b) by a clerk	\$16 per half hour

Part 8 Letters

Item	Matter for which charge may be made	Charge
801	Short letter (for example, a formal acknowledgment, a letter comprising 1 page or a letter concisely dealing with a subject)	\$12
802	Ordinary letter, including letter between principal and agent	\$24
803	Circular letter (for example, a letter sent to more than 1 party)	\$7 for each letter (after the first)

Item	Matter for which charge may be made	Charge
804	Special letter (for example, a letter from counsel that includes an opinion)	Either: (a) \$50; or (b) an amount that the Commission considers reasonable having regard to the length of the letter, the questions involved and appropriate items and charges in this Schedule
805	Facsimile copy including attendance to dispatch	Either: (a) \$63; or (b) an amount that the Commission considers reasonable in the circumstances
806	Receiving and filing an incoming letter	\$7

Part 9 Service

Item	Matter for which charge may be made	Charge
901	Personal service of any document of which personal service is required (other than service that may be claimed under another item of this Schedule)	Either: (a) \$62; or (b) an amount that the Commission considers reasonable having regard to time occupied, distance travelled and other relevant circumstances
902	Service of a document at the office of the address for service, either by delivery or by post	\$16

Part 10 Preparation of appeal books

Item	Matter for which charge may be made	Charge
1001	Preparation of appeal books, if some of the work is done outside the solicitor's office (for example, attendance on the printer for printing or collating documents, or general oversight of the preparation of the appeal books), and the Commission is satisfied that the work or general oversight has been done efficiently: (a) for work done or overseen by a solicitor (b) for work done or overseen by a clerk	\$135 per hour \$34 per hour
1002	Preparation of appeal books, if the work is done entirely within the solicitor's office	An amount that the Commission considers appropriate, having regard to the charges for the material used

Part 11 Attendances

Item	Matter for which charge may be made	Charge
1101	An attendance that is capable of being made by a clerk, such as at the Commission registry	\$34
1102	An attendance that requires the attendance of a solicitor or managing clerk (or other equally suitably qualified person) and involves the exercise of skill or legal knowledge (including an attendance to inspect or negotiate):	

Item	Matter for which charge may be made	Charge
	(a) by a solicitor	\$60 per quarter hour
	(b) by a managing clerk or other equally suitably qualified person	\$13 per quarter hour
1103	An attendance for which no other provision is made in this Schedule	\$56
1104	An attendance by telephone that does not involve the exercise of skill or legal knowledge	\$11
1105	An attendance on counsel in person with brief or papers (if not otherwise provided for in this Schedule)	\$35
1106	An attendance on counsel in person to set a time, date and place for a conference or consultation	\$35
1107	An attendance on counsel by telephone to set a time, date and place for a conference or consultation	\$11
1108	A necessary conference or consultation with counsel	Either: (a) for a conference of up to half an hour — \$93; or (b) for a conference of more than half an hour — \$135 for each hour or part of an hour
1109	An attendance at the Commission or chambers for hearing with counsel (where the Commission considers such attendance is necessary):	

Item	Matter for which charge may be made	Charge
	(a) for attendance by a solicitor	\$221 for each hour or part of an hour of the attendance: (a) during the hearing; and (b) when likely to be heard, but not heard; up to a maximum of \$1 005 per day
	(b) for attendance by a managing clerk or other equally suitably qualified person in place of a solicitor	\$93 for each hour, up to a maximum of \$409 per day
	(c) for attendance by any other clerk or person in place of a solicitor	\$49 for each hour, up to a maximum of \$218 per day
1110	An attendance to hear judgment	\$62
1111	An attendance on taxation of costs:	
	(a) if a solicitor attends	\$135 for each hour or part of an hour
	(b) if a clerk attends	\$34 for each hour or part of an hour
1112	An attendance by a solicitor at the Commission or chambers for the hearing of an application or appeal, or on conference with counsel, at a distance of more than 50 kilometres from his or her place of business, if it is neither appropriate nor proper for an agent to attend	The Commission may allow an amount that the Commission considers reasonable, not exceeding \$309, for each day of absence from the place of business (except a Saturday, Sunday or public holiday)

Part 12 General care and conduct

Item	Matter for which charge may be made	Charge
1201	<p>If the case or circumstances warrant it, an allowance may be claimed under this item in addition to any other item that appears in this Schedule, for general care and conduct in relation to the following:</p> <ul style="list-style-type: none">(a) the complexity of the matter and the difficulty and novelty of questions raised;(b) the importance of the matter to the party and the amount involved;(c) the skill, labour, specialised knowledge and responsibility involved in the matter on the part of the solicitor;(d) the number and importance of the documents prepared or perused, without regard to length;(e) the time taken by the solicitor;(f) research and consideration of questions of law and fact	<p>The Commission may allow an amount the Commission considers reasonable in the circumstances of the case</p>

Part 13 Fees for Counsel for solicitor appearing as Counsel

Item	Matter for which charge may be made	Charge
1301	For counsel's fees incurred by a solicitor <i>Note</i> The fees incurred may be claimed as a disbursement.	An amount that the Commission considers to be fair and reasonable according to the circumstances of the case and the seniority of counsel
1302	For solicitor's fees if a solicitor appears as counsel (or briefs another solicitor as counsel) when it would be appropriate to brief counsel	An amount that the Commission considers to be fair and reasonable according to the circumstances of the case and the seniority of the solicitor

Part 14 Witnesses' expenses

Item	Matter for which charge may be made	Charge
1401	For the attendance of a witness who is called because of his or her professional, scientific or other special skill or knowledge	\$161 to \$801 per day
1402	For the attendance of a witness, other than a witness covered in item 1401:	
	(a) who is not remunerated in his or her occupation by wages, salary or fees	\$93 to \$149 per day
	(b) who is remunerated in his or her occupation by wages, salary or fees	The amount lost by attendance at the Commission
1403	For travel expenses for a witness who lives more than 50 kilometres from the Commission (in addition to a charge under item 1401 or 1402)	An amount that the Commission considers reasonable for the actual cost of travel, plus a reasonable amount for meals and accommodation

Part 15 Disbursements

Item	Matter for which charge may be made	Charge
1501	Registry fee or other fee or payment	The amount of the fee or payment to the extent to which it has been properly and reasonably incurred and paid
1502	Travelling expenses, if a solicitor attends at the Commission or chambers, or on conference with counsel, in the circumstances mentioned in item 1110	An amount that the Commission considers reasonable for travelling expenses, to the extent to which they have been reasonably incurred and paid
1503	Postage and transmission expenses in relation to a matter mentioned in Part 8	The amount of the expenses to the extent that it has been properly and reasonably incurred and paid

Schedule 8 Further provisions — amendments of the Act relating to definitions

(Chapter 4, item 1.1)

Part 1 Amendments of clause 2 of Schedule 2 to the Act

Note Clause 2 of Schedule 2 explains when a reference in the Act to an employee has its ordinary meaning. Under subclause 5 (1) of Schedule 2, the Governor-General may make regulations amending that clause.

For the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of that item are to be treated as if they had been made by an Act.

[1] Clause 2

omit

Each

insert

- (1) Each

[2] Paragraph 2 (f)

omit

[3] Clause 2

insert

- (2) Each of the references to employee in the following provisions has its ordinary meaning (subject to subsections 5 (3) and (4)):
- (a) subsection 4 (1), definition of *demarcation dispute*;
 - (b) subsection 4 (1), definition of *peak council*;
 - (c) paragraph 35 (1) (c);

- (d) paragraph 43 (1) (c);
- (e) subparagraph 64 (2) (b) (i);
- (f) paragraph 100 (6) (d);
- (g) paragraph 100 (8) (a);
- (h) paragraph 100 (8) (b);
- (i) paragraph 100 (11) (a);
- (j) paragraph 100 (11) (b);
- (k) paragraph 100 (11) (c);
- (l) paragraph 100 (11) (d);
- (m) paragraph 151 (1) (b);
- (n) paragraph 151 (1) (c);
- (o) paragraph 151 (1) (f);
- (p) section 178, definition of *pre-reform State wage instrument*, subparagraph (b) (ii);
- (q) section 178, definition of *pre-reform Territory wage instrument*, subparagraph (a) (ii);
- (r) paragraph 513 (1) (e);
- (s) section 518;
- (sa) section 576R;
- (t) Schedule 8, paragraph 3 (b), the second reference to *employee*, but not the first reference to *employee*;
- (u) Schedule 8, paragraph 10 (b), the reference to *employees* but not the reference to *employee*.

Part 2 **Amendments of clause 3 of Schedule 2 to the Act**

Note Clause 3 of Schedule 2 explains when a reference in the Act to an employer has its ordinary meaning. Under subclause 5 (1) of Schedule 2, the Governor-General may make regulations amending that clause.

For the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of that item are to be treated as if they had been made by an Act.

[4] Clause 3

omit

Each

insert

- (1) Each

[5] Paragraph 3 (d)

omit

[6] Clause 3

insert

- (2) Each of the references to employer in the following provisions has its ordinary meaning (subject to subsections 5 (3) and (4)):
- (a) subsection 4 (1), definition of *demarcation dispute*;
 - (b) subsection 4 (1), definition of *peak council*;
 - (c) paragraph 35 (1) (c);
 - (d) paragraph 43 (1) (c);
 - (e) subparagraph 64 (2) (b) (i);
 - (f) paragraph 151 (1) (b);
 - (g) paragraph 151 (1) (c);
 - (h) paragraph 151 (1) (f);
 - (i) section 518;
 - (j) section 576R.

Part 3 Amendments of clause 4 of Schedule 2 to the Act

Note Clause 4 of Schedule 2 explains when a reference in the Act to employment has its ordinary meaning. Under subclause 5 (1) of Schedule 2, the Governor-General may make regulations amending that clause.

For the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of that item are to be treated as if they had been made by an Act.

[7] Clause 4

omit

Each

insert

- (1) Each

[8] Paragraph 4 (d)

omit

[9] Clause 4

insert

- (2) Each of the references to employment in the following provisions has its ordinary meaning (subject to subsections 5 (3) and (4)):
- (a) subsection 4 (1), definition of *demarcation dispute*;
 - (b) paragraph 16 (1) (d);
 - (c) paragraph 23 (a);
 - (d) section 32;
 - (e) subparagraph 35 (1) (d) (i);
 - (f) section 53;
 - (g) paragraph 56 (1) (d);
 - (h) subsection 83 (1);
 - (i) paragraph 84 (3) (a);
 - (j) paragraph 84 (4) (a);
 - (k) paragraph 86 (2) (c);
 - (l) section 105;
 - (m) section 158;
 - (n) paragraph 162 (2) (g);
 - (o) subsection 170 (4);
 - (p) subsection 515 (4), definition of *labour hire agency*;
 - (q) Schedule 8, paragraph 3 (1) (b);

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- (r) Schedule 8, paragraph 10 (1) (b);
 - (s) Schedule 8, clause 31.

Table of Instruments**Notes to the *Workplace Relations Regulations 2006*****Note 1**

The *Workplace Relations Regulations 2006* (in force under the *Workplace Relations Act 1996 and Workplace Relations Amendment (Work Choices) Act 2005*) as shown in this compilation comprise Select Legislative Instrument 2006 No. 52 amended as indicated in the Tables below.

For cessation details of regulation 2.23A of Chapter 7 *see* subregulation 2.23A (4) of Chapter 7.

For cessation details of regulation 2.24 of Chapter 7 *see* subregulation 2.24 (3) of Chapter 7.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Instruments

Year and Number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
2006 No. 52	17 Mar 2006 (see F2006L00835)	27 Mar 2006 (see r. 1.2)	
2006 No. 68	30 Mar 2006 (see F2006L00970)	31 Mar 2006	—
2006 No. 118	4 June 2006 (see F2006L01658)	Rr. 1–3 and Schedule 1: 27 Mar 2006 (see r. 2 (a)) Remainder: 5 June 2006	—
2006 No. 247	22 Sept 2006 (see F2006L03154)	Rr. 1–3, 5 and Schedule 1: 27 Mar 2006 Remainder: 23 Sept 2006	R. 5
2006 No. 340	14 Dec 2006 (see F2006L04068)	Rr. 1–3 and Schedule 1: 15 Dec 2006 Remainder: 27 Mar 2007	—
2006 No. 341	14 Dec 2006 (see F2006L04067)	Rr. 1–3 and Schedule 1: 15 Dec 2006 Remainder: (a)	—
2007 No. 24	21 Feb 2007 (see F2007L00415)	1 Mar 2007	R. 4
2007 No. 183	29 June 2007 (see F2007L01880)	1 July 2007	—

Table of Instruments

Year and Number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
2007 No. 216	19 July 2007 (see F2007L02288)	20 July 2007	—
2007 No. 306 (b)	26 Sept 2007 (see F2007L03829)	27 Sept 2007	—
2008 No. 38	27 Mar 2008 (see F2008L00960)	28 Mar 2008 (see r. 2)	—
2008 No. 39	27 Mar 2008 (see F2008L00961)	28 Mar 2008	—
2008 No. 243	1 Dec 2008 (see F2008L04525)	2 Dec 2008	—
2009 No. 185	3 Aug 2009 (see F2009L02973)	5 Aug 2009 (see r.2)	—

(a) Regulation 2 (b) of SLI 2006 No. 341 provides as follows:

These regulations commence as follows:

(b) immediately after the commencement of Schedule 1 to the *Workplace Relations Amendment Regulations 2006 (No. 4)*— regulation 4 and Schedule 2.

Schedule 1 to the *Workplace Relations Amendment Regulations 2006 (No. 4)* (SLI 2006 No. 340) commenced on 15 December 2006.

(b) The *Workplace Relations Amendment Regulations 2007 (No. 4)* (SLI 2007 No. 306) was disallowed by the House of Representatives on 12 March 2008.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 1	
R. 1.3	am. 2006 No. 118; 2008 No. 38
Chapter 2	
Part 1	
Division 2	
R. 1.2	am. 2006 No. 340
R. 1.3	am. 2006 No. 118
Division 3	
R. 1.5	am. 2006 Nos. 118 and 340
Part 3	
Division 3	
R. 3.3	am. 2006 No. 118
Part 4	
R. 4.9	am. 2006 No. 340
R. 4.11	rs. 2006 Nos. 68 and 340
Part 5	
Heading to Part 5 of Chapt. 2	rs. 2007 No. 183
Div. 1 of Part 5 of Chapt. 2	rep. 2007 No. 183
R. 5.1	am. 2006 No. 341 rep. 2007 No. 183
Division 2	
Heading to Div. 2 of Part 5 of Chapt. 2	rs. 2007 No. 183
R. 5.2	am. 2007 No. 183
Division 3	
Heading to Div. 3 of Part 5 of Chapt. 2	rs. 2007 No. 183 am. 2008 No. 38
Heading to r. 5.3	rs. 2006 No. 341 am. 2008 No. 38
R. 5.3	am. 2007 No. 183; 2008 No. 38
Div. 3A of Part 5 of Chapt. 2	ad. 2007 No. 216 rep. 2008 No. 38
R. 5.4	ad. 2006 No. 341 rep. 2007 No. 183 ad. 2007 No. 216 rep. 2008 No. 38

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 5.5	ad. 2006 No. 341 rep. 2007 No. 183
Division 4	
Div. 4 of Part 5 of Chapt. 2	ad. 2007 No. 183
R. 5.6	ad. 2007 No. 183
Note to r. 5.6	rs. 2008 No. 38
Part 6	
R. 6.2	am. 2006 No. 247; 2007 No. 183
R. 6.3	am. 2006 No. 247; 2007 No. 183
R. 6.4	rs. 2007 No. 183
R. 6.6	rs. 2006 No. 341; 2007 No. 183
Part 7	
Division 1	
R. 7.1	am. 2006 Nos. 68, 118, 247, 340 and 341
Example to r. 7.1 (3)	rep. 2006 No. 341
Examples 1, 2 to r. 7.1 (3)...	ad. 2006 No. 341
Example to r. 7.1 (12)	am. 2006 No. 341
Division 4	
Div. 4 of Part 7 of Chapt. 2	ad. 2006 No. 118
R. 7.7A	ad. 2006 No. 118 rs. 2006 No. 341
Division 5	
R. 7.9	ad. 2006 No. 341
Division 6	
Div. 6 of Part 7 of Chapt. 2	ad. 2006 No. 341
R. 7.10	ad. 2006 No. 341
Part 8	
Division 2	
R. 8.1	am. 2007 No. 183
Division 6	
R. 8.3	am. 2006 No. 118
Division 7.1	
Subdivision B	
R. 8.5	am. 2006 Nos. 118, 247 and 341
Note to r. 8.5 (8B)	am. 2008 No. 38
Subdivision C	
R. 8.7	am. 2008 No. 38

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 7.2	
Subdivision B	
R. 8.9	am. 2007 No. 183
Division 12	
R. 8.10	am. 2007 No. 183; 2008 No. 38
Note to r. 8.11 (3)	rs. 2006 No. 340
Heading to r. 8.12	rs. 2008 No. 38
R. 8.12	am. 2008 No. 38
R. 8.13	am. 2006 No. 68; 2008 No. 38
Note to r. 8.13 (2)	am. 2008 No. 38
Note to r. 8.13 (4)	rs. 2006 No. 340
R. 8.13A	ad. 2008 No. 38
R. 8.14	am. 2006 Nos. 68 and 340
R. 8.15	rs. 2006 Nos. 68 and 340
Part 9	
Division 2	
R. 9.1	am. 2007 No. 183
Division 4	
Subdivision A	
R. 9.5	am. 2007 No. 183
Subdivision C	
R. 9.8	am. 2006 No. 340
R. 9.9	am. 2008 No. 38
R. 9.11	am. 2006 No. 340
R. 9.16	am. 2006 No. 118
R. 9.20	am. 2007 No. 183
R. 9.21	am. 2006 No. 118
R. 9.22	am. 2006 No. 340
Division 5	
Heading to r. 9.25	am. 2008 No. 38
R. 9.26	rs. 2006 Nos. 68 and 340
Part 10	
Division 3	
R. 10.3	am. 2006 No. 118
Div. 4 of Part 10 of Chapt. 2	rep. 2008 No. 38
R. 10.6	rep. 2008 No. 38

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 12	
Division 4	
R. 12.6	am. 2006 No. 118
Part 14	
Division 2	
Heading to r. 14.2	am. 2008 No. 38
Division 3	
Div. 3 of Part 14 of Chapt. 2	ad. 2006 No. 340
R. 14.3	ad. 2006 No. 340
R. 14.4	ad. 2006 No. 340
R. 14.5	ad. 2006 No. 340
R. 14.6	ad. 2006 No. 340
Part 15	
Division 1	
R. 15.1	am. 2006 No. 118
Part 19	
Part 19	rs. 2006 No. 340
Division 1	
R. 19.1	rs. 2006 No. 340
R. 19.2	rs. 2006 No. 340
R. 19.3	rs. 2006 Nos. 68 and 340
Division 2	
R. 19.4	rs. 2006 No. 340
R. 19.5	rs. 2006 No. 340
R. 19.6	rs. 2006 No. 340
Division 3	
R. 19.7	rs. 2006 No. 340
R. 19.8	rs. 2006 No. 340
R. 19.9	am. 2006 Nos. 118 and 247 rs. 2006 No. 340
R. 19.10	rs. 2006 No. 340
R. 19.11	rs. 2006 No. 340
R. 19.12	am. 2006 No. 118 rs. 2006 No. 340
R. 19.13	am. 2006 No. 118 rs. 2006 No. 340
R. 19.14	rs. 2006 No. 340

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 4	
R. 19.15	am. 2006 No. 247 rs. 2006 No. 340
Division 5	
R. 19.16	rs. 2006 No. 340
R. 19.17	rs. 2006 No. 340
R. 19.18	rs. 2006 No. 340
R. 19.19	rs. 2006 No. 340
Division 6	
R. 19.20	rs. 2006 No. 340
R. 19.21	am. 2006 No. 247 rs. 2006 No. 340
Division 7	
R. 19.22	rs. 2006 No. 340
R. 19.23	am. 2006 No. 247 rs. 2006 No. 340
R. 19.24	am. 2006 Nos. 118 and 247 rep. 2006 No. 340
R. 19.25	am. 2006 No. 118 rep. 2006 No. 340
R. 19.26	rep. 2006 No. 340
Division 8	
R. 19.27	rep. 2006 No. 340
R. 19.28	am. 2006 No. 118 rep. 2006 No. 340
R. 19.29	rep. 2006 No. 340
Part 19A of Chapt. 2	rep. 2007 No. 24
R. 19.30	rs. 2006 No. 340 rep. 2007 No. 24
R. 19.31	rep. 2007 No. 24
R. 19.32	am. 2006 No. 340 rep. 2007 No. 24
R. 19.33	rep. 2007 No. 24
Note to r. 19.33 (4)	ad. 2006 No. 340 rep. 2007 No. 24
R. 19.34	rep. 2007 No. 24
Note to r. 19.34 (3)	ad. 2006 No. 340 rep. 2007 No. 24
R. 19.35	rep. 2007 No. 24
Note to r. 19.35 (3)	ad. 2006 No. 340 rep. 2007 No. 24

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 19.36	rep. 2007 No. 24
Note to r. 19.36 (7).....	ad. 2006 No. 340 rep. 2007 No. 24
Heading to Div. 4 of Part 19A of Chapt. 2	rs. 2006 No. 340 rep. 2007 No. 24
R. 19.37	rep. 2007 No. 24
Note to r. 19.37 (5).....	ad. 2006 No. 340 rep. 2007 No. 24
R. 19.38	rep. 2007 No. 24
Note to r. 19.38 (3).....	ad. 2006 No. 340 rep. 2007 No. 24
R. 19.39	rep. 2007 No. 24
Note to r. 19.39 (5).....	ad. 2006 No. 340 rep. 2007 No. 24
R. 19.40	am. 2006 No. 247 rep. 2007 No. 24
Note to r. 19.40 (5).....	ad. 2006 No. 340 rep. 2007 No. 24
R. 19.40A.....	ad. 2006 No. 340 rep. 2007 No. 24
Div. 5 of Part 19A of..... Chapt. 2	rep. 2006 No. 340
R. 19.41	am. 2006 No. 118 rep. 2006 No. 340
R. 19.42	am. 2006 No. 118 rep. 2006 No. 340
R. 19.43	rep. 2006 No. 340
Part 19B	
Division 1	
R. 19.45	am. 2007 No. 24
Division 2	
R. 19.47	am. 2006 No. 118
R. 19.48	am. 2006 No. 118
Part 21	
R. 21.3	am. 2006 Nos. 118, 247, 340 and 341
Example to r. 21.3 (12).....	am. 2006 No. 247
R. 21.4	ad. 2007 No. 183 rep. 2008 No. 38
Part 22 of Chapt. 2.....	rep. 2007 No. 24
Rr. 22.1, 22.2	rep. 2007 No. 24

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 3	
Part 7	
Division 1	
Subdivision D	
R. 7.3	am. 2006 No. 341
R. 7.4	am. 2006 No. 118
Division 2	
Subdivision B	
R. 7.10	am. 2006 No. 341
R. 7.11	am. 2006 No. 118
Part 8	
Part 8 of Chapt. 3.....	ad. 2006 No. 118
R. 8.1	ad. 2006 No. 118
Chapter 5	
Part 2	
Part 2 of Chapt. 5.....	ad. 2006 No. 118
R. 2.1	ad. 2006 No. 118
Heading to r. 2.2	rs. 2008 No. 38
R. 2.2	ad. 2006 No. 340 am. 2008 No. 38
R. 2.3	ad. 2008 No. 38
Part 3	
Division 2	
Div. 2 of Part 3 of	ad. 2008 No. 38
Chapt. 5	
R. 3.1A.....	ad. 2008 No. 38
Division 5	
R. 3.2	am. 2006 No. 118
R. 3.5	ad. 2006 No. 118
Chapter 6	
Part 4	
Heading to r. 4.3	rs. 2008 No. 39
R. 4.4	ad. 2008 No. 39
R. 4.5	ad. 2008 No. 243
Chapter 7	
Part 2	
Division 2A	
Div. 2A of Part 2 of.....	ad. 2006 No. 118
Chapt. 7	

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 2.2A	ad. 2006 No. 118
Division 4A	
Div. 4A of Part 2 of Chapt. 7	ad. 2006 No. 118
R. 2.4A	ad. 2006 No. 118
Division 11	
R. 2.13	am. 2007 No. 183
Division 12	
R. 2.14	am. 2006 No. 118
Note to r. 2.14	ad. 2006 No. 118
Division 13	
R. 2.19	am. 2006 No. 118
Division 17	
Div. 17 of Part 2 of Chapt. 7	ad. 2006 No. 247
R. 2.23A	ad. 2006 No. 247 am. 2006 No. 341
Division 18	
Div. 18 of Part 2 of Chapt. 7	ad. 2006 No. 118
R. 2.24	ad. 2006 No. 118
Part 4	
Division 4	
R. 4.29	am. 2009 No. 185
R. 4.30	am. 2009 No. 185
Chapter 8	
R. 1.1	am. 2006 No. 340
R. 1.3	rs. 2006 Nos. 68 and 340
Schedule 1	
Schedule 1	am. 2006 No. 118
Schedule 4	
Schedule 4	am. 2006 No. 118
Schedule 5	rep. 2007 No. 183
Schedule 6	rep. 2007 No. 183
Schedule 8	
Heading to Sch. 8	rs. 2006 No. 68
Schedule 8	am. 2006 No. 68; 2008 No. 38

Table A

Table A Application, saving or transitional provisions

Select Legislative Instrument 2006 No. 247

5 Application of amendments — Schedule 1

The amendments made by Schedule 1 are taken not to authorise:

- (a) the imposition on any person of a penalty under Part 14 of the *Workplace Relations Act 1996* in respect of conduct, to which a provision specified in Schedule 1 relates, that occurred in the period:
 - (i) starting on 27 March 2006; and
 - (ii) ending immediately before the commencement of these Regulations; or
- (b) the institution of proceedings relating to the imposition on any person of a penalty of that kind in respect of conduct of that kind that occurred in that period.

Select Legislative Instrument 2007 No. 24

4 Transitional

- (1) Despite the repeal of Part 19A of Chapter 2 of the *Workplace Relations Regulations 2006*, those Regulations, as in force immediately before 1 March 2007, continue to apply in relation to an investigation or proceeding in relation to a breach, or suspected breach, of any regulations in that Part that:
 - (a) was commenced before 1 March 2007; and
 - (b) was not completed or finally determined before 1 March 2007.

Table A

- (2) Despite the repeal of Part 22 of Chapter 2 of the *Workplace Relations Regulations 2006*, those Regulations, as in force immediately before 1 March 2007, continue to apply in relation to an investigation or proceeding in relation to a breach, or suspected breach, of subsection 905 (1) of the *Workplace Relations Act 1996* as in force before 1 March 2007 that:
- (a) was commenced before 1 March 2007 under Part 22 of the *Workplace Relations Act 1996*; and
 - (b) was not completed or finally determined before 1 March 2007.
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