



# Fair Work Regulations 2009<sup>1</sup>

## Select Legislative Instrument 2009 No. 112

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Fair Work Act 2009*.

Dated 18 June 2009

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

JULIA GILLARD  
Minister for Employment and Workplace Relations

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## Contents

### Chapter 1 Introduction

#### Part 1-1 Introduction

##### Division 1 Preliminary

1.01	Name of Regulations	11
1.02	Commencement	11

#### Part 1-2 Definitions

##### Division 1 Introduction

1.03	Definitions	12
------	-------------	----

##### Division 2 The Dictionary

1.04	Meaning of <i>designated outworker term</i>	12
1.05	Meaning of <i>eligible State or Territory court</i>	12
1.06	Meaning of <i>prescribed State industrial authority</i>	13
1.07	Meaning of <i>serious misconduct</i>	13
1.08	Meaning of <i>TCF award</i>	14

##### Division 4 Other definitions

1.09	Meaning of <i>base rate of pay</i> — pieceworkers (national system employee)	14
1.10	Meaning of <i>base rate of pay</i> — pieceworkers (enterprise agreement)	15
1.11	Meaning of ordinary hours of work for award/agreement free employees	15
1.12	Meaning of <i>pieceworker</i>	16

#### Part 1-3 Application of the Act

##### Division 2 Interaction with State and Territory laws

1.13	State and Territory laws that are not excluded by section 26 of the Act — prescribed laws	17
1.14	Act excludes prescribed State and Territory laws	18
1.15	Interaction of modern awards and enterprise agreements with State and Territory laws	18

		Page
<b>Division 4</b>	<b>Miscellaneous</b>	
1.16	Interaction between fair work instruments and public sector employment laws	19
<b>Chapter 2</b>	<b>Terms and conditions of employment</b>	
<b>Part 2-2</b>	<b>The National Employment Standards</b>	
<b>Division 12</b>	<b>Fair Work Information Statements</b>	
2.01	Fair Work Ombudsman to prepare and publish Fair Work Information Statement — content	21
2.02	Fair Work Ombudsman to prepare and publish Fair Work Information Statement — manner of giving Statement to employees	21
<b>Division 13</b>	<b>Miscellaneous</b>	
2.03	What can be agreed to etc. in relation to award/agreement free employees	22
<b>Part 2-4</b>	<b>Enterprise agreements</b>	
<b>Division 3</b>	<b>Bargaining and representation during bargaining</b>	
2.04	Notice of employee representational rights — how notice is given	23
2.05	Notice of employee representational rights — prescribed form	24
2.06	Appointment of bargaining representatives — independence	24
<b>Division 4</b>	<b>Approval of enterprise agreements</b>	
2.07	FWA may approve an enterprise agreement with undertakings — requirements for signing undertaking	24
2.08	Model flexibility term for enterprise agreement	24
2.09	Model consultation term for enterprise agreement	24
2.10	FWA may approve variation of enterprise agreement with undertaking — requirements for signing undertaking for variation	25
<b>Division 8</b>	<b>FWA's general role in facilitating bargaining</b>	
2.11	What a bargaining order must specify — bargaining order for reinstatement of employee	25

		Page
<b>Part 2-9</b>	<b>Other terms and conditions of employment</b>	
<b>Division 2</b>	<b>Payment of wages</b>	
	2.12 Certain terms have no effect — reasonable deductions	26
<b>Division 3</b>	<b>Guarantee of annual earnings</b>	
	2.13 High Income threshold	27
<b>Chapter 3</b>	<b>Rights and responsibilities of employee, employers organisations etc</b>	
<b>Part 3-1</b>	<b>General protections</b>	
<b>Division 5</b>	<b>Other protections</b>	
	3.01 Temporary absence — illness or injury	30
<b>Division 8</b>	<b>Compliance</b>	
<b>Subdivision A</b>	<b>Contraventions involving dismissal</b>	
	3.02 Application fees	31
<b>Subdivision B</b>	<b>Other contraventions</b>	
	3.03 Application fees	33
<b>Subdivision C</b>	<b>Conference costs</b>	
	3.04 Schedule of costs	35
<b>Part 3-2</b>	<b>Unfair dismissal</b>	
<b>Division 2</b>	<b>Protection from unfair dismissal</b>	
	3.05 When a person is protected from unfair dismissal — high income threshold	37
<b>Division 4</b>	<b>Remedies for unfair dismissal</b>	
	3.06 Remedy — compensation (amount taken to have been received by the employee)	39
<b>Division 5</b>	<b>Procedural matters</b>	
	3.07 Application fees	39
	3.08 Schedule of costs	41

		Page
<b>Part 3-3</b>	<b>Industrial action</b>	
<b>Division 2</b>	<b>Protected industrial action</b>	
3.09	Purposes prescribed for continuity of employment when employer response action occurs	43
<b>Division 6</b>	<b>Suspension or termination of protected industrial action by FWA</b>	
3.10	Persons prescribed for order to suspend or terminate protected industrial action	43
<b>Division 8</b>	<b>Protected action ballots</b>	
3.11	FWA may decide on ballot agent other than the Australian Electoral Commission — requirements for protected action ballot agent	44
3.12	Requirements for independent advisor	45
3.13	Notice of protected action ballot order — notifying employees	45
3.14	Protected action ballot to be conducted by Australian Electoral Commission or other specified ballot agent — directions about ballot paper	47
3.15	Compilation of roll of voters	48
3.16	Protected action ballot papers — form	48
3.17	Report about conduct of protected action ballot — independent advisor	48
<b>Subdivision G</b>	<b>Miscellaneous</b>	
3.18	Conduct of protected action ballot — ballot papers	49
3.19	Conduct of protected action ballot — scrutiny of ballot	51
3.20	Conduct of protected action ballot — scrutineers	53
<b>Division 9</b>	<b>Payments relating to periods of industrial action</b>	
3.21	Payments relating to partial work bans — working out proportion of reduction of employee's payments	55
3.22	Payments relating to partial work bans — form of partial work ban notice	56
3.23	Payments relating to partial work bans — content of partial work ban notice	56
3.24	Manner of giving notice about partial work ban	57

		Page
<b>Part 3-4</b>	<b>Right of entry</b>	
<b>Division 3</b>	<b>State or Territory OHS rights</b>	
3.25	Meaning of <i>State or Territory OHS law</i>	58
<b>Division 6</b>	<b>Entry permits, entry notices and certificates</b>	
3.26	Form of entry permit	58
3.27	Form of entry notice	59
3.28	Form of exemption certificate	59
3.29	Form of affected member certificate	59
<b>Part 3-6</b>	<b>Other rights and responsibilities</b>	
<b>Division 2</b>	<b>Notification and consultation relating to certain dismissals</b>	
<b>Subdivision A</b>	<b>Requirement to notify Centrelink</b>	
3.30	Employer to notify Centrelink of certain proposed dismissals — form of notice	60
<b>Division 3</b>	<b>Employer obligations in relation to employee records and pay slips</b>	
<b>Subdivision 1</b>	<b>Employee records</b>	
3.31	Records — administration	61
3.32	Records — general matters	61
3.33	Records — pay	62
3.34	Records — overtime	63
3.35	Records — averaging of hours	63
3.36	Records — leave	63
3.37	Records — superannuation contributions	64
3.38	Records — individual flexibility arrangement	65
3.39	Records — guarantee of annual earnings	65
3.40	Records — termination of employment	65
3.41	Records — transfer of business	66
3.42	Records — inspection and copying of a record	67
3.43	Records — information concerning a record	68
3.44	Records — accuracy	68
<b>Subdivision 2</b>	<b>Pay slips</b>	
3.45	Pay slips — form	69
3.46	Pay slips — content	69

---

		Page
<b>Chapter 4</b>	<b>Compliance and enforcement</b>	
<b>Part 4-1</b>	<b>Civil remedies</b>	
<b>Division 3</b>	<b>Small claims procedure</b>	
4.01	Plaintiffs may choose small claims procedure	71
<b>Division 4</b>	<b>General provisions relating to civil remedies and infringement notices</b>	
4.02	General	72
4.03	Definitions for Division 4	72
4.04	When an infringement notice can be given	73
4.05	Content of infringement notice	73
4.06	Time for payment of penalty	74
4.07	Extension of time to pay penalty	75
4.08	Withdrawal of infringement notice	75
4.09	Effect of payment of penalty	76
4.10	Refund of penalty	76
<b>Division 5</b>	<b>Unclaimed money</b>	
4.11	Unclaimed money	76
<b>Chapter 5</b>	<b>Administration</b>	
<b>Part 5-1</b>	<b>Fair Work Australia</b>	
<b>Division 5</b>	<b>FWA members</b>	
5.01	Delegation by the President of functions and powers of FWA	77
5.02	Dual federal and Territory appointments of Deputy Presidents or Commissioners	77
5.03	Oath and affirmation of office	77
<b>Division 7</b>	<b>Seals and additional powers of the President and the General Manager</b>	
5.04	President must provide certain information etc. to the Minister and Fair Work Ombudsman	78

		Page
<b>Part 5-2</b>	<b>Office of the Fair Work Ombudsman</b>	
<b>Division 3</b>	<b>Office of the Fair Work Ombudsman</b>	
5.05	Powers and functions of inspectors — notification of failure to observe requirements	81
5.06	Powers of inspectors while on premises — taking samples of goods and substances	81
<b>Chapter 6</b>	<b>Miscellaneous</b>	
<b>Part 6-2</b>	<b>Dealing with disputes</b>	
<b>Division 2</b>	<b>Dealing with disputes</b>	
<b>Subdivision A</b>	<b>Model term about dealing with disputes</b>	
6.01	Model term about dealing with disputes	82
<b>Part 6-3</b>	<b>Extension of National Employment Standards entitlements</b>	
<b>Division 2</b>	<b>Extension of entitlement to unpaid parental leave and related entitlements</b>	
6.02	Modification of meaning of <i>base rate of pay</i> for pieceworkers (non-national system employees)	83
6.03	Meaning of <i>pieceworker</i>	84
<b>Part 6-4</b>	<b>Additional provisions relating to termination of employment</b>	
<b>Division 2</b>	<b>Termination of employment</b>	
6.04	Temporary absence — illness or injury	85
6.05	Application fees	86
6.06	Schedule of costs	88
<b>Division 3</b>	<b>Notification and consultation requirements relating to certain terminations of employment</b>	
Subdivision B	Requirement to notify Centrelink	89
6.07	Employer to notify Centrelink of certain proposed terminations — form of notice	89



		Page
<b>Part 6-5</b>	<b>Miscellaneous</b>	
<b>Division 2</b>	<b>Miscellaneous</b>	
<b>Subdivision 1</b>	<b>Employment matters</b>	
6.08	Public sector employer to act through employing authority — meaning of <i>public sector employment</i>	90
6.09	Public sector employer to act through employing authority — meaning of <i>employing authority</i>	91
6.10	No action for defamation in certain cases	91
<b>Schedule 2.1</b>	<b>Notice of employee representational rights</b>	92
<b>Schedule 2.2</b>	<b>Model flexibility term</b>	94
<b>Schedule 2.3</b>	<b>Model consultation term</b>	96
<b>Schedule 3.1</b>	<b>Schedule of costs</b>	98
Part 1	Instructions	98
Part 2	Documents	99
Part 3	Drawing	99
Part 4	Writing or typing legal letters	100
Part 5	Copies	100
Part 6	Perusal and scanning	100
Part 7	Examination	101
Part 8	Letters	101
Part 9	Service	102
Part 10	Preparation of appeal books	103
Part 11	Attendances	103
Part 12	General care and conduct	105
Part 13	Fees for Counsel for solicitor appearing as Counsel	106
Part 14	Witnesses' expenses	106
Part 15	Disbursements	107
<b>Schedule 3.2</b>	<b>Ballot papers</b>	108
Form 1	Ballot paper under Part 3 of Chapter 3	108
<b>Schedule 3.3</b>	<b>Forms relating to entry to premises</b>	110
Form 1	Entry permit to enter premises	110
Form 2	Entry notice	111
Form 3	Exemption certificates	113
Form 4	Affected member certificate	114

---

		Page
<b>Schedule 3.4</b>	<b>Forms for certain dismissals</b>	115
Form 1	Notice to Centrelink of proposed dismissals	115
<b>Schedule 4.1</b>	<b>Form of claim for unclaimed money</b>	116
<b>Schedule 5.1</b>	<b>Oath and affirmation of office</b>	118
<b>Schedule 5.2</b>	<b>Information and copies of documents to be provided to the Minister and the Fair Work Ombudsman</b>	119
Part 1	Information and copies of documents to be provided to the Minister	119
Part 2	Information and copies of documents to be provided to the Fair Work Ombudsman	131
<b>Schedule 6.1</b>	<b>Model term for dealing with disputes for enterprise agreements</b>	135
<b>Schedule 6.2</b>	<b>Forms for certain terminations</b>	137
Form 1	Notice to Centrelink of proposed terminations	137
<b>Schedule 6.3</b>	<b>Public sector employment — employing authorities</b>	138

# **Chapter 1 Introduction**

## **Part 1-1 Introduction**

### **Division 1 Preliminary**

#### **1.01 Name of Regulations**

These Regulations are the *Fair Work Regulations 2009*.

#### **1.02 Commencement**

These Regulations commence as follows:

- (a) on 1 July 2009 — these Regulations, other than Parts 2-2 and 6-3;
- (b) on 1 January 2010 — Parts 2-2 and 6-3.

**Regulation 1.03**

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**Part 1-2 Definitions**

**Division 1 Introduction**

**1.03 Definitions**

In these Regulations:

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

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

**Division 2 The Dictionary**

**1.04 Meaning of *designated outworker term***

For paragraph (f) of the definition of *designated outworker term* in section 12 of the Act, each of the following terms is prescribed:

- (a) a term that deals with the filing of records about work to which outworker terms of a modern award apply;
- (b) a term that deals with the provision of materials;
- (c) a term that is incidental to a designated outworker term, including a term dealing with the observance of the award.

**1.05 Meaning of *eligible State or Territory court***

For paragraph (d) of the definition of *eligible State or Territory court* in section 12 of the Act, each of the courts mentioned in the following table is prescribed.

<b>Item</b>	<b>Court</b>
1	Industrial Court of New South Wales

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**1.06 Meaning of *prescribed State industrial authority***

For the definition of *prescribed State industrial authority* in section 12 of the Act, the following State tribunals are 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.

**1.07 Meaning of *serious misconduct***

- (1) For the definition of *serious misconduct* in section 12 of the Act, serious misconduct has its ordinary meaning.
- (2) For subregulation (1), conduct that is serious misconduct includes both of the following:
  - (a) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;
  - (b) conduct that causes serious and imminent risk to:
    - (i) the health or safety of a person; or
    - (ii) the reputation, viability or profitability of the employer's business.
- (3) For subregulation (1), conduct that is serious misconduct includes each of the following:
  - (a) the employee, in the course of the employee's employment, engaging in:
    - (i) theft; or
    - (ii) fraud; or
    - (iii) assault;
  - (b) the employee being intoxicated at work;
  - (c) the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.

## Regulation 1.08

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- (4) Subregulation (3) 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.
- (5) For paragraph (3) (b), 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 duties or with any duty that the employee may be called upon to perform.

### 1.08 Meaning of *TCF award*

For the definition of *TCF award* in section 12 of the Act, each award mentioned in the following table is prescribed.

Item	Award
1	Textile Industry Award 2000
2	Textile, Clothing, Footwear and Associated Industries Award 2010

## Division 4 Other definitions

### 1.09 Meaning of *base rate of pay* — pieceworkers (national system employee)

- (1) For paragraph 16 (2) (c) of the Act, this regulation provides for the determination of the base rate of pay for the purposes of the National Employment Standards for a national system employee who is an award/agreement free employee and a pieceworker.

*Note* The Act defines *award/ agreement free employee* in section 12 and *pieceworker* in section 21.

- (2) The base rate of pay, expressed as an hourly rate of pay, is worked out using the formula:

$$\frac{TA}{TH}$$

where:

**TA** is the total amount earned by the employee 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 base 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 of less than 12 months immediately before the base rate of pay is to be worked out — that period.

#### **1.10 Meaning of *base rate of pay* — pieceworkers (enterprise agreement)**

- (1) For subsection 16 (3) of the Act, this regulation provides for the determination of the base rate of pay for the purpose of section 206 of the Act for a pieceworker who is covered by a modern award.

*Note* Section 206 of the Act deals with an employee's base rate of pay under an enterprise agreement

- (2) The base rate of pay is the rate in the modern award identified as the base rate of pay for the purposes of the National Employment Standards.

#### **1.11 Meaning of ordinary hours of work for award/agreement free employees**

- (1) For subsection 20 (4) of the Act, this regulation provides for the determination of hours that are taken to be the usual weekly hours of work of an award/agreement free employee who:
  - (a) is not a full-time employee; and

## Regulation 1.12

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- (b) does not have usual weekly hours of work.

*Note* Under section 20 of the Act, the usual weekly hours of work of an award/agreement free employee are relevant to establishing the employee's ordinary hours of work.

- (2) To work out the usual weekly hours of work for an employee who has been employed by the employer for at least 4 weeks:
- (a) identify the total number of hours that the employee has worked during the previous 4 completed weeks; and
- (b) divide the result by 4.
- (3) To work out the usual weekly hours of work for an employee who has been employed by the employer for less than 4 weeks:
- (a) identify the total number of hours that the employee has worked during the period; and
- (b) divide the result by the number of completed weeks for which the employee has been employed by the employer.

### 1.12 Meaning of *piecemaker*

- (1) For paragraph 21 (1) (c) of the Act, this regulation prescribes a class of award/agreement free employees as pieceworkers.

*Note* Under paragraph 21 (1) (c) of the Act, a pieceworker is an award/agreement free employee who is in a class of employees prescribed by the regulations as pieceworkers.

- (2) The class is award/agreement free employees who:
- (a) are paid a rate set by reference to a quantifiable output or task; and
- (b) are not paid a rate set by reference to a period of time worked.

*Examples of rates set by reference to a quantifiable output or task*

- 1 A rate of pay calculated by reference to the number of articles produced.
- 2 A rate of pay calculated by reference to the number of kilometres travelled.
- 3 A rate of pay calculated by reference to the number of articles delivered.
- 4 A rate of pay calculated by reference to the number of articles sold.
- 5 A rate of pay calculated by reference to the number of tasks performed.



## **Part 1-3 Application of the Act**

### **Division 2 Interaction with State and Territory laws**

#### **1.13 State and Territory laws that are not excluded by section 26 of the Act — prescribed laws**

For paragraph 27 (1) (b) of the Act, each of the following laws of a State or Territory is a law to which section 26 of the Act does not apply:

- (a) a law dealing with the suspension, cancellation or termination of a training contract that is entered into as part of a training arrangement;
- (b) a law dealing with a period of probation of an employee that:
  - (i) is part of a training arrangement; but
  - (ii) is not a period of probationary employment;
- (c) a law that provides protection for an employee who discloses information or makes a complaint under a law that deals with any of the following:
  - (i) whistleblowers;
  - (ii) environmental protection;
  - (iii) health services;
  - (iv) transport safety or operations;
  - (v) the supply of essential services.

*Note* Under subsection 27 (1) of the Act, section 26 of the Act 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 section 26 does not apply.

**Regulation 1.14**

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**1.14 Act excludes prescribed State and Territory laws**

For subsection 28 (1) of the Act, each of the following laws of a State or Territory is prescribed:

- (a) a law relating to child labour, to the extent to which it deals with terms and conditions of employment that:
  - (i) are provided for by the National Employment Standards; or
  - (ii) may be included in a modern award; or
  - (iii) may be included in an enterprise agreement under section 55 of the Act;but not to the extent to which it deals with the times at which, or the periods during which, a child may be employed;
- (b) a law relating to training arrangements, to the extent to which it deals with terms and conditions of employment that:
  - (i) are provided for by the National Employment Standards; or
  - (ii) may be included in a modern award; or
  - (iii) may be included in an enterprise agreement under section 55 of the Act;
- (c) the *Contracts Review Act 1980* of New South Wales, to the extent to which it relates to contracts of employment.

*Note* Under subsection 28 (1) of the Act, the Act is intended to apply to the exclusion of a law of a State or Territory that is prescribed by the regulations.

**1.15 Interaction of modern awards and enterprise agreements with State and Territory laws**

For subsection 29 (3) of the Act, each of the following laws of a State or Territory is prescribed:

- (a) a law relating to child labour, to the extent to which it deals with terms and conditions of employment that:
  - (i) are provided for by the National Employment Standards; or
  - (ii) may be included in a modern award; or

**Regulation 1.16**

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- (iii) may be included in an enterprise agreement under section 55 of the Act;  
but not to the extent to which it deals with the times at which, or the periods during which, a child may be employed;
- (b) a law relating to training arrangements, to the extent to which it deals with terms and conditions of employment that:
  - (i) are provided for by the National Employment Standards; or
  - (ii) may be included in a modern award; or
  - (iii) may be included in an enterprise agreement under section 55 of the Act;
- (c) the *Contracts Review Act 1980* of New South Wales, to the extent that it relates to contracts of employment.

*Note* Under subsection 29 (3) of the Act, a term of a modern award or enterprise agreement does not apply subject to a law of a State or Territory that is prescribed by the regulations as a law to which modern awards and enterprise agreements are not subject.

## **Division 4                      Miscellaneous**

### **1.16      Interaction between fair work instruments and public sector employment laws**

For paragraph 40 (2) (b) of the Act, each of the following classes of instruments is prescribed:

- (a) Ordinances made under the *Seat of Government (Administration) Act 1910* that:
  - (i) deal with public sector employment; and
  - (ii) were, immediately before the repeal of the *Workplace Relations Act 1996*, inconsistent with that Act or any agreement, award order or determination made under that Act;
- (b) enactments, within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*, that:
  - (i) deal with public sector employment; and

**Regulation 1.16**

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- (ii) were, immediately before the repeal of the *Workplace Relations Act 1996*, inconsistent with that Act or any agreement, award order or determination made under that Act;
- (c) determinations mentioned in paragraph 6(b) of the *Northern Territory (Self-Government) Act 1978* that were, immediately before the repeal of the *Workplace Relations Act 1996*, inconsistent with an award or workplace agreement (within the meaning of the *Workplace Relations Act*).

*Note* Under subsection 40 (2) of the Act, fair work instruments, or terms of fair work instruments, that deal with public sector employment prevail over the public sector employment laws as described in that subsection.

## **Chapter 2      Terms and conditions of employment**

### **Part 2-2        The National Employment Standards**

#### **Division 12     Fair Work Information Statements**

##### **2.01      Fair Work Ombudsman to prepare and publish Fair Work Information Statement — content**

For subsection 124 (4) of the Act, a Fair Work Information Statement must contain an explanation of the effect on an employee's entitlements under the National Employment Standards if:

- (a) the transfer of a business occurs as described in section 311 of the Act; and
- (b) the employee becomes a transferring employee.

*Note* Section 311 of the Act identifies the participants in the transfer of the business as including a "transferring employee".

##### **2.02      Fair Work Ombudsman to prepare and publish Fair Work Information Statement — manner of giving Statement to employees**

- (1) For subsection 124 (4) of the Act, each of the following is a manner in which an employer may give the Fair Work Information Statement to an employee.
- (2) The employer may give the Statement to the employee personally.
- (3) The employer may send the Statement by pre-paid post to:
  - (a) the employee's residential address; or
  - (b) a postal address nominated by the employee.

**Regulation 2.03**

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- (4) The employer may send the Statement to:
  - (a) the employee's email address at work; or
  - (b) another email address nominated by the employee.
- (5) The employer may send to the employee's email address at work (or to another email address nominated by the employee):
  - (a) an electronic link to the page of the Fair Work Ombudsman's website on which the Statement is located; or
  - (b) an electronic link that takes the employee directly to a copy of the Statement on the employer's intranet.
- (6) The employer may fax the Statement to:
  - (a) the employee's fax number at work; or
  - (b) the employee's fax number at home; or
  - (c) another fax number nominated by the employee.
- (7) Subregulations (2) to (6) do not prevent the employer from using another manner of giving the Statement to the employee.

**Division 13 Miscellaneous**

**2.03 What can be agreed to etc. in relation to award/agreement free employees**

For paragraph 129(a) of the Act, employers and award/agreement free employees may agree to the provision of either or both of:

- (a) extra annual leave in exchange for foregoing an equivalent amount of pay; and
- (b) extra personal/carer's leave in exchange for foregoing an equivalent amount of pay.

## **Part 2-4 Enterprise agreements**

### **Division 3 Bargaining and representation during bargaining**

#### **2.04 Notice of employee representational rights — how notice is given**

- (1) For subsection 173 (5) of the Act, each of the following is a manner in which the employer for a proposed enterprise agreement may give employees who will be covered by the agreement notice of the right to be represented by a bargaining representative for the agreement.
- (2) The employer may give the notice to the employee personally.
- (3) The employer may send the notice by pre-paid post to:
  - (a) the employee's residential address; or
  - (b) a postal address nominated by the employee.
- (4) The employer may send the notice to:
  - (a) the employee's email address at work; or
  - (b) another email address nominated by the employee.
- (5) The employer may send to the employee's email address at work (or to another email address nominated by the employee) an electronic link that takes the employee directly to a copy of the notice on the employer's intranet.
- (6) The employer may fax the notice to:
  - (a) the employee's fax number at work; or
  - (b) the employee's fax number at home; or
  - (c) another fax number nominated by the employee.
- (7) The employer may display the notice in a conspicuous location at the workplace that is known by and readily accessible to the employee.
- (8) Subregulations (2) to (7) do not prevent the employer from using another manner of giving the notice to the employee.

**Regulation 2.05**

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**2.05 Notice of employee representational rights — prescribed form**

For subsection 174 (6) of the Act, the notice of employee representational rights in Schedule 2.1 is prescribed.

**2.06 Appointment of bargaining representatives — independence**

A bargaining representative of an employee must be:

- (a) free from control by the employee's employer or another bargaining representative; and
- (b) free from improper influence from the employee's employer or another bargaining representative.

**Division 4 Approval of enterprise agreements**

**2.07 FWA may approve an enterprise agreement with undertakings — requirements for signing undertaking**

For subsection 190 (5) of the Act, an undertaking relating to a an enterprise agreement must be signed by each employer who gives the undertaking.

**2.08 Model flexibility term for enterprise agreement**

For subsection 202 (5) of the Act, the model flexibility term for enterprise agreements is set out in Schedule 2.2.

**2.09 Model consultation term for enterprise agreement**

For subsection 205 (3) of the Act, the model consultation term is set out in Schedule 2.3.



**2.10 FWA may approve variation of enterprise agreement with undertaking — requirements for signing undertaking for variation**

For subsection 212 (4) of the Act, an undertaking relating to the variation of an enterprise agreement must be signed by each employer who gives the undertaking.

**Division 8 FWA's general role in facilitating bargaining**

**2.11 What a bargaining order must specify — bargaining order for reinstatement of employee**

- (1) For paragraph 231 (3) (b) of the Act, this regulation provides for FWA to take action and make orders in connection with, and to deal with matters relating to, a bargaining order for reinstatement of an employee under paragraph 231 (2) (d) of the Act.
- (2) FWA may make any of the following orders:
  - (a) an order to reappoint the employee to the position in which he or she was employed immediately before the termination of his or her employment;
  - (b) an order to appoint the employee to another position for which the terms and conditions of employment are no less favourable than those under which he or she was employed immediately before the termination of his or her employment;
  - (c) any order that FWA thinks appropriate to maintain continuity of the employee's employment;
  - (d) an order that the employer who terminated the employment of the employee pay the employee an amount for remuneration lost, or likely to have been lost, because of the termination.

**Regulation 2.12**

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**Part 2-9 Other terms and conditions of employment**

**Division 2 Payment of wages**

**2.12 Certain terms have no effect — reasonable deductions**

- (1) For subsection 326 (2) of the Act, a circumstance in which a deduction mentioned in subsection 326 (1) of the Act is reasonable is that:
- (a) the deduction is made in respect of the provision of goods or services:
    - (i) by an employer, or a party related to the employer; and
    - (ii) to an employee; and
  - (b) the goods or services are provided in the ordinary course of the business of the employer or related party; and
  - (c) the goods or services are provided to members of the general public on:
    - (i) the same terms and conditions as those on which the goods or services were provided to the employee; or
    - (ii) on terms and conditions that are not more favourable to the members of the general public.

*Examples*

- 1 A deduction of health insurance fees made by an employer that is a health fund.
- 2 A deduction for a loan repayment made by an employer that is a financial institution.

- (2) For subsection 326 (2) of the Act, a circumstance in which a deduction mentioned in subsection 326 (1) of the Act is reasonable is that the deduction is for the purpose of recovering costs directly incurred by the employer as a result of the voluntary private use of particular property of the employer by an employee (whether authorised or not).

*Examples of costs*

- 1 The cost of items purchased on a corporate credit card for personal use by the employee.
- 2 The cost of personal calls on a company mobile phone.
- 3 The cost of petrol purchased for the private use of a company vehicle by the employee.

## **Division 3                      Guarantee of annual earnings**

### **2.13      High Income threshold**

- (1) For subsection 333 (1) of the Act, this regulation sets out the manner in which the high income threshold is to be worked out.
- (2) The high income threshold for the period starting on 1 July 2009 and ending at the end of 30 June 2010 is worked out using the following steps.

*First indexation*

**Step 1**      Identify the assessment of current average weekly ordinary time earnings published by the Australian Statistician for February 2008 and in effect on 1 July 2008.

*Note*      This is the amount of the average weekly ordinary time earnings, seasonally adjusted, for full-time adult employees of all employees in Australia for that day.

**Step 2**      Divide it by the assessment of current average weekly ordinary time earnings published by the Australian Statistician for May 2007 and in effect on 27 August 2007.

*Note*      This is the amount of the average weekly ordinary time earnings, seasonally adjusted, for full-time adult employees of all employees in Australia for that day.

**Regulation 2.13**

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- Step 3** Round the result to 3 decimal places. If the fourth decimal place is 5 or above, round it up.
- If the rounded result is less than 1, the rounded result becomes 1.
- Multiply \$100 000 by the rounded result.
- If the result is not a multiple of \$100, round the result to the nearest multiple of \$100. If the result is a multiple of \$50, round it up to the next multiple of \$100.
- This result will be indexed again in step 6.

*Second indexation*

- Step 4** Identify the assessment of current average weekly ordinary time earnings published by the Australian Statistician for February 2009 and in effect on 1 July 2009.

*Note* This is the amount of the average weekly ordinary time earnings, seasonally adjusted, for full-time adult employees of all employees in Australia for that day.

- Step 5** Divide it by the assessment of current average weekly ordinary time earnings published by the Australian Statistician for February 2008 and in effect on 1 July 2008.

*Note* This is the amount of the average weekly ordinary time earnings, seasonally adjusted, for full-time adult employees of all employees in Australia for that day.

- Step 6** Round the result to 3 decimal places. If the fourth decimal place is 5 or above, round it up.
- If the rounded result is less than 1, the rounded result becomes 1.
- Multiply the amount worked out in step 3 by the rounded result.
- If the result is not a multiple of \$100, round the result to the nearest multiple of \$100. If the result is a multiple of \$50, round it up to the next multiple of \$100.
- The result is the high income threshold for the period starting on 1 July 2009 and ending at the end of 30 June 2010.

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**Regulation 2.13**

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- (3) The high income threshold for the year starting on 1 July 2010, or a later year starting on 1 July, is the threshold for the previous year, indexed using the following steps.

**Step 1** Identify the assessment of current average weekly ordinary time earnings published by the Australian Statistician and in effect on 1 July in the current year.

*Note* This is the amount of the average weekly ordinary time earnings, seasonally adjusted, for full-time adult employees of all employees in Australia for that day.

**Step 2** Divide it by the assessment of current average weekly ordinary time earnings published by the Australian Statistician and in effect on 1 July of the previous year.

*Note* This is the amount of the average weekly ordinary time earnings, seasonally adjusted, for full-time adult employees of all employees in Australia for that day.

**Step 3** Round the result to 3 decimal places. If the fourth decimal place is 5 or above, round it up.

If the rounded result is less than 1, the rounded result becomes 1.

Multiply the high income threshold for the previous year by the rounded result.

If the result is not a multiple of \$100, round the result to the nearest multiple of \$100. If the result is a multiple of \$50, round it up to the next multiple of \$100.

The result is the high income threshold for the year starting on 1 July.

**Regulation 3.01**

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# **Chapter 3 Rights and responsibilities of employees, employers, organisations etc.**

## **Part 3-1 General protections**

### **Division 5 Other protections**

#### **3.01 Temporary absence — illness or injury**

- (1) For section 352 of the Act, this regulation prescribes kinds of illness or injury.

*Note* Under section 352 of the Act, an employer must not dismiss an employee because the employee is temporarily absent from work because of illness or injury of a kind prescribed by the regulations.

- (2) A prescribed kind of illness or injury exists if the employee provides a medical certificate for the illness or injury, or a statutory declaration about the illness or injury, within:
- (a) 24 hours after the commencement of the absence; or
  - (b) such longer period as is reasonable in the circumstances.

*Note* The Act defines *medical certificate* in section 12.

- (3) A prescribed kind of illness or injury exists if the employee:
- (a) is required by the terms of a workplace instrument:
    - (i) to notify the employer of an absence from work; and
    - (ii) to substantiate the reason for the absence; and
  - (b) complies with those terms.

**Regulation 3.02**

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- (4) A prescribed kind of illness or injury exists if the employee has provided the employer with evidence, in accordance with paragraph 107 (3) (a) of the Act, for taking paid personal/carer's leave for a personal illness or personal injury, as mentioned in paragraph 97 (a) of the Act.

*Note* Paragraph 97 (a) of the Act provides that an employee may take paid personal/carer's leave if the leave is taken because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee.

- (5) An illness or injury is not a prescribed kind of illness or injury if:
- (a) either:
- (i) the employee's absence extends for more than 3 months; or
  - (ii) the total absences of the employee, within a 12 month period, have been more than 3 months (whether based on a single illness or injury or separate illnesses or injuries); and
- (b) the employee is not on personal/carer's leave (however described) for a purpose mentioned in paragraph 97 (a) of the Act for the duration of the absence.
- (6) In this regulation, a period of paid personal/carer's leave (however described) for a purpose mentioned in paragraph 97 (a) of the Act does not include a period when the employee is absent from work while receiving compensation under a law of the Commonwealth, a State or a Territory that is about workers' compensation.

## **Division 8 Compliance**

### **Subdivision A Contraventions involving dismissal**

#### **3.02 Application fees**

- (1) For subsection 367 (2) of the Act, this regulation sets out matters relating to a fee for making an application to FWA under section 365 of the Act.

**Regulation 3.02**

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*Fee at commencement of Regulations*

- (2) If the application is made in the financial year starting on 1 July 2009, the fee is \$59.50.

*Method for indexing the fee*

- (3) If the application is made in a financial year starting on 1 July 2010, or 1 July in a later year (the **application year**), the amount of the fee is to be worked out as follows:
- (a) identify the amount of the fee for an application made in the previous financial year;
  - (b) multiply it by the indexation factor for the application year (see subregulation (4));
  - (c) round the result to the nearest multiple of 10 cents, rounding up if the result ends in 5 cents.
- (4) The indexation factor for the application year is worked out using the following formula, and then rounded under subregulation (5):

$$\frac{\text{Sum of index numbers for quarters in most recent March year}}{\text{Sum of index numbers for quarters in previous March year}}$$

where:

**index number**, for a quarter, means the All Groups Consumer Price Index Number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

**most recent March year** means the period of 12 months ending on 31 March in the financial year that occurred immediately before the application year.

**previous March year** means the period of 12 months immediately preceding the most recent March year.

**quarter** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

- (5) The result under subregulation (4) must be rounded up or down to 3 decimal places, rounding up if the result ends in 0.0005.



**Regulation 3.03**

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- (6) A calculation under subregulation (4):
- (a) is to be made using the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and
  - (b) is to be made disregarding index numbers that are published in substitution for previously published index numbers (unless the substituted numbers are published to take account of changes in the reference base).

*No fee — hardship*

- (7) If FWA is satisfied that the person making an application will suffer serious hardship if the person is required to pay the fee, no fee is payable for making the application.

*Refund of fee — discontinuing application*

- (8) FWA must repay to the person an amount equal to the fee if:
- (a) the fee has been paid; and
  - (b) the application is subsequently discontinued as mentioned in section 588 of the Act; and
  - (c) either:
    - (i) at the time the application is discontinued, the application has not yet been listed for conducting a conference; or
    - (ii) if the application has, at or before that time, been listed for conducting a conference on a specified date or dates — the discontinuance occurs at least 2 days before that date or the earlier of those dates.

**Subdivision B Other contraventions**

**3.03 Application fees**

- (1) For subsection 373 (2) of the Act, this regulation sets out matters relating to a fee for making an application to FWA under section 372 of the Act.

**Regulation 3.03**

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*Fee at commencement of Regulations*

- (2) If the application is made in the financial year starting on 1 July 2009, the fee is \$59.50.

*Method for indexing the fee*

- (3) If the application is made in a financial year starting on 1 July 2010, or 1 July in a later year (the **application year**), the amount of the fee is to be worked out as follows:
- (a) identify the amount of the fee for an application made in the previous financial year;
  - (b) multiply it by the indexation factor for the application year (see subregulation (4));
  - (c) round the result to the nearest multiple of 10 cents, rounding up if the result ends in 5 cents.
- (4) The indexation factor for the application year is worked out using the following formula, and then rounded under subregulation (5):

$$\frac{\text{Sum of index numbers for quarters in most recent March year}}{\text{Sum of index numbers for quarters in previous March year}}$$

where:

**index number**, for a quarter, means the All Groups Consumer Price Index Number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

**most recent March year** means the period of 12 months ending on 31 March in the financial year that occurred immediately before the application year.

**previous March year** means the period of 12 months immediately preceding the most recent March year.

**quarter** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

- (5) The result under subregulation (4) must be rounded up or down to 3 decimal places, rounding up if the result ends in 0.0005.

**Regulation 3.04**

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- (6) A calculation under subregulation (4):
- (a) is to be made using the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and
  - (b) is to be made disregarding index numbers that are published in substitution for previously published index numbers (unless the substituted numbers are published to take account of changes in the reference base).

*No fee — hardship*

- (7) If FWA is satisfied that the person making an application will suffer serious hardship if the person is required to pay the fee, no fee is payable for making the application.

*Refund of fee — discontinuing application*

- (8) FWA must repay to the person an amount equal to the fee if:
- (a) the fee has been paid; and
  - (b) the application is subsequently discontinued as mentioned in section 588 of the Act; and
  - (c) either:
    - (i) at the time the application is discontinued, the application has not yet been listed for conducting a conference; or
    - (ii) if the application has, at or before that time, been listed for conducting a conference on a specified date or dates — the discontinuance occurs at least 2 days before that date or the earlier of those dates.

**Subdivision C Conference costs**

**3.04 Schedule of costs**

- (1) For section 376 of the Act, the schedule of costs set out in Schedule 3.1 is prescribed.

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-1	General protections
Division 8	Compliance

#### **Regulation 3.04**

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- (2) In awarding costs:
- (a) FWA is not limited to the items of expenditure mentioned in Schedule 3.1; but
  - (b) if an item of expenditure is mentioned in Schedule 3.1, FWA must not award costs for that item at a rate or of an amount in excess of the rate or amount mentioned in Schedule 3.1 for that item.

*Note* An application for an order for costs must be made in accordance with the procedural rules.

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

- (4) In Schedule 3.1:

***folio*** means 72 words.

*Note* There are generally 3 folios to a page.

## **Part 3-2 Unfair dismissal**

### **Division 2 Protection from unfair dismissal**

#### **3.05 When a person is protected from unfair dismissal — high income threshold**

- (1) For subparagraph 382 (b) (iii) of the Act, this regulation explains how to work out amounts for the purpose of assessing whether the high income threshold applies in relation to the dismissal of a person at a particular time.

*Note* Under section 382 of the Act, a person is protected from unfair dismissal if specified circumstances apply. One of the circumstances is that the sum of the person's annual rate of earnings, and such other amounts (if any) worked out in relation to the person in accordance with the regulations, is less than the high income threshold.

#### *Piece rates*

- (2) Subregulations (3), (4) and (5) apply if part or all of the person's income at the time of the dismissal is paid as piece rates that are:
- (a) set by reference to a quantifiable output or task; and
  - (b) not paid as a rate set by reference to a period of time worked.
- (3) If the person 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 the dismissal, the total amount of piece rates paid or payable to the person in respect of the period of 12 months ending immediately before the dismissal is an amount for subparagraph 382 (b) (iii) of the Act.

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-2	Unfair dismissal
Division 2	Protection from unfair dismissal

### Regulation 3.05

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- (4) If the person was continuously employed by the employer and was on leave without full pay at any time during the period of 12 months immediately before the dismissal, the total of:
- for the days during that period that the employee was not on leave without full pay — the actual piece rates received by the employee; and
  - for the days that the employee was on leave without full pay — an amount worked out using the formula:

$$\frac{\text{Piece rates mentioned in paragraph (a)} \times \text{Days on leave without full pay}}{\text{Days not on leave without full pay}}$$

is an amount for subparagraph 382 (b) (iii) of the Act.

- (5) If the person was continuously employed by the employer for a period of less than 12 months immediately before the dismissal, the total amount of piece rates worked out using the formula:

$$\frac{\text{Piece rates} \times 365}{\text{Days employed}}$$

is an amount for subparagraph 382 (b) (iii) of the Act.

#### *Benefits other than payment of money*

- (6) If:
- the person is entitled to receive, or has received, a benefit in accordance with an agreement between the person and the person's employer; and
  - the benefit is not an entitlement to a payment of money and is not a non-monetary benefit within the meaning of subsection 332 (3) of the Act; and
  - FWA is satisfied, having regard to the circumstances, that:
    - it should consider the benefit for the purpose of assessing whether the high income threshold applies to a person at the time of the dismissal; and
    - a reasonable money value of the benefit has not been agreed by the person and the employer; and

**Regulation 3.07**

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- (iii) FWA can estimate a real or notional money value of the benefit;

the real or notional money value of the benefit estimated by FWA is an amount for subparagraph 382 (b) (iii) of the Act.

## **Division 4 Remedies for unfair dismissal**

### **3.06 Remedy — compensation (amount taken to have been received by the employee)**

For paragraph 392 (6) (b) of the Act:

- (a) an employee who was on leave without pay for any part of a period 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; and
- (b) an employee who was on leave without full pay for any part of a period 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 full pay.

## **Division 5 Procedural matters**

### **3.07 Application fees**

- (1) For subsection 395 (2) of the Act, this regulation sets out matters relating to a fee for making an application to FWA under Division 5 of Part 3-2 of the Act.

#### *Fee at commencement of Regulations*

- (2) If the application is made in the financial year starting on 1 July 2009, the fee is \$59.50.

**Regulation 3.07**

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*Method for indexing the fee*

- (3) If the application is made in a financial year starting on 1 July 2010, or 1 July in a later year (the **application year**), the amount of the fee is to be worked out as follows:
- (a) identify the amount of the fee for an application made in the previous financial year;
  - (b) multiply it by the indexation factor for the application year (see subregulation (4));
  - (c) round the result to the nearest multiple of 10 cents, rounding up if the result ends in 5 cents.
- (4) The indexation factor for the application year is worked out using the following formula, and then rounded under subregulation (5):

$$\frac{\text{Sum of index numbers for quarters in most recent March year}}{\text{Sum of index numbers for quarters in previous March year}}$$

where:

**index number**, for a quarter, means the All Groups Consumer Price Index Number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

**most recent March year** means the period of 12 months ending on 31 March in the financial year that occurred immediately before the application year.

**previous March year** means the period of 12 months immediately preceding the most recent March year.

**quarter** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

- (5) The result under subregulation (4) must be rounded up or down to 3 decimal places, rounding up if the result ends in 0.0005.
- (6) A calculation under subregulation (4):
- (a) is to be made using the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and



### Regulation 3.08

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- (b) is to be made disregarding index numbers that are published in substitution for previously published index numbers (unless the substituted numbers are published to take account of changes in the reference base).

#### *No fee — hardship*

- (7) If FWA is satisfied that the person making an application will suffer serious hardship if the person is required to pay the fee, no fee is payable for making the application.

#### *Refund of fee — discontinuing application*

- (8) FWA must repay to the person an amount equal to the fee if:
- the fee has been paid; and
  - the application is subsequently discontinued as mentioned in section 588 of the Act; and
  - FWA is satisfied that FWA did not deal with the application in a substantial way before the application was discontinued.

### **3.08 Schedule of costs**

- (1) For subsection 403 (1) of the Act, the schedule of costs set out in Schedule 3.1 is prescribed.

*Note 1* Under subsection 403 (2) of the Act, in awarding costs, FWA is not limited to the items of expenditure mentioned in Schedule 3.1. However, if an item of expenditure is mentioned in Schedule 3.1, FWA must not award costs for that item at a rate or of an amount in excess of the rate or amount mentioned in Schedule 3.1 for that item.

*Note 2* An application for an order for costs must be made in accordance with the procedural rules.

- (2) FWA may allow the costs of briefing more than 1 counsel only if FWA certifies that the 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 FWA considers it appropriate, a charge in Schedule 3.1 that is applicable to a solicitor is applicable to a person who:
- is not a solicitor; but

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-2	Unfair dismissal
Division 5	Procedural matters

### **Regulation 3.08**

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(b) is mentioned in section 596 of the Act.

*Note* Section 596 of the Act sets out who may represent a party to a proceeding before FWA.

- (4) A bill of costs must identify, by an item number, each cost and disbursement claimed.
- (5) In exercising its discretion under item 1002 of Schedule 3.1, FWA 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 3.1:

***folio*** means 72 words.

*Note* There are generally 3 folios to a page.

## **Part 3-3 Industrial action**

### **Division 2 Protected industrial action**

#### **3.09 Purposes prescribed for continuity of employment when employer response action occurs**

For section 416A of the Act, the following purposes are prescribed:

- (a) superannuation;
- (b) remuneration and promotion, as affected by seniority;
- (c) any entitlements under the National Employment Standards.

*Note* Section 416A of the Act deals with employer response action. Under the section, employer response action for a proposed enterprise agreement does not affect the continuity of employment of the employees who will be covered by the agreement for such purposes as are prescribed by the regulations.

### **Division 6 Suspension or termination of protected industrial action by FWA**

#### **3.10 Persons prescribed for order to suspend or terminate protected industrial action**

- (1) For subparagraphs 423 (7) (b) (iii) and 424 (2) (b) (iii) and paragraph 426 (6) (c) of the Act, a Minister of a referring State or of a Territory is prescribed if the industrial action is:
  - (a) being engaged in in the State or Territory; or
  - (b) threatened, impending or probable in the State or Territory.

- (2) In subregulation (1):  
*referring State* has the same meaning as it has in the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*.

**Regulation 3.11**

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**Division 8 Protected action ballots**

**3.11 FWA may decide on ballot agent other than the Australian Electoral Commission — requirements for protected action ballot agent**

- (1) For subparagraph 444 (1) (b) (ii) of the Act, this regulation sets out requirements that FWA must be satisfied have been met before a person other than the Australian Electoral Commission becomes the protected action ballot agent for a protected action ballot.

*Note* The person must also be a fit and proper person to conduct the ballot.

- (2) The person must be capable of ensuring the secrecy and security of votes cast in the ballot.
- (3) The person must be capable of ensuring that the ballot will be fair and democratic.
- (4) The person must be capable of conducting the ballot expeditiously.
- (5) The person must have agreed to be a protected action ballot agent.
- (6) The person must be bound to comply with the *Privacy Act 1988* in respect to the handling of information relating to the protected action ballot.
- (7) If the person is an industrial association or a body corporate, FWA must be satisfied that:
- (a) each individual who will carry out the functions of the protected action ballot agent for the industrial association or body corporate is a fit and proper person to conduct the ballot; and
- (b) the requirements in subregulations (2) to (6) are met for the individual.

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**Regulation 3.13****3.12 Requirements for independent advisor**

- (1) For subparagraph 444 (3) (c) (ii) of the Act, this regulation sets out requirements that FWA must be satisfied have been met before a person becomes the independent advisor for a protected action ballot.

*Note* The person must also be sufficiently independent of each applicant for the protected action ballot order.

- (2) The person must be capable of giving the protected action ballot agent:
  - (a) advice that is directed towards ensuring that the ballot will be fair and democratic; and
  - (b) recommendations that are directed towards ensuring that the ballot will be fair and democratic.
- (3) The person must have agreed to be the independent advisor.

**3.13 Notice of protected action ballot order — notifying employees**

- (1) For section 445 and paragraph 469 (b) of the Act, this regulation sets out procedures to be followed for notifying employees in relation to the conduct of a protected action ballot.

*Content of notice*

- (2) The protected action ballot agent for the ballot must, as soon as practicable after FWA makes the protected action ballot order, take all reasonable steps to notify each employee who is eligible to be included on the roll of voters that FWA has made the order.
- (3) The notice must include:
  - (a) any matter specified by FWA in the ballot order; and
  - (b) the voting method or methods to be used; and
  - (c) each location (if any) at which the ballot will be conducted; and

**Regulation 3.13**

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- (d) either:
    - (i) the date or dates on which the ballot will be conducted; or
    - (ii) the period during which the ballot will be conducted; and
  - (e) contact details for the protected action ballot agent; and
  - (f) contact details for the independent advisor (if any).
- (4) The notice must also include:
- (a) a statement that the employee may contact the protected action ballot agent to find out whether the employee is on the roll of voters; and
  - (b) a statement that the employee may ask the protected action ballot agent to add or remove the employee's name from the roll of voters; and
  - (c) a statement that the employee may raise any concerns or complaints about the conduct of the ballot (including any alleged irregularity) with:
    - (i) the protected action ballot agent; or
    - (ii) if the protected action ballot agent is not the Australian Electoral Commission — FWA; or
    - (iii) the independent advisor (if any).

*Note* Section 453 of the Act sets out the circumstances in which an employee is eligible to be included on the roll of voters for the protected action ballot.

*Manner of notification*

- (5) The protected action ballot agent may give the notice to an employee by doing any of the following:
- (a) giving the notice to the employee personally;
  - (b) sending the notice by pre-paid post to:
    - (i) the employee's residential address; or
    - (ii) a postal address nominated by the employee;
  - (c) sending the notice to:
    - (i) the employee's email address at work; or
    - (ii) another email address nominated by the employee;

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**Regulation 3.14**

- (d) sending to the employee's email address at work (or to another email address nominated by the employee) an electronic link that takes the employee directly to a copy of the notice on the employer's intranet;
  - (e) faxing the notice to:
    - (i) the employee's fax number at work; or
    - (ii) the employee's fax number at home; or
    - (iii) another fax number nominated by the employee;
  - (f) displaying the notice in a conspicuous location at the workplace that is known by and readily accessible to the employee.
- (6) Subregulation (5) does not prevent a protected action ballot agent from giving notice to an employee by another means.

*Protected action ballot agent — access to workplace*

- (7) An employer must allow the protected action ballot agent access to the workplace for the purpose of notifying employees of the information about the protected action ballot.
- (8) An employer must allow the protected action ballot agent access to the workplace for the purpose of preparing for, or conducting the protected action ballot.

**3.14 Protected action ballot to be conducted by Australian Electoral Commission or other specified ballot agent — directions about ballot paper**

For paragraphs 449 (2) (e) and 469 (b) of the Act, the protected action ballot agent for a protected action 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 the Act and 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

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-3	Industrial action
Division 8	Protected action ballots

### **Regulation 3.15**

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- (c) notes to assist an employee who is entitled to vote in the ballot by informing him or her of matters relating to conduct of the ballot.

### **3.15 Compilation of roll of voters**

- (1) For section 452 and paragraph 469 (b) of the Act, this regulation applies if:
- (a) an applicant for a protected action ballot order; or
  - (b) the employer of an employee who is to be balloted;
- provides information under subsection 450 (4) or 452 (3) of the Act.

*Note* Subsection 450 (4) of the Act allows FWA to direct the provision of information required to assist in compiling a roll of voters. Subsection 452 (3) allows the protected action ballot agent to make a similar direction.

- (2) The applicant or employer must include with the information a declaration in writing that the applicant or employer reasonably believes that the information is complete, up-to-date and accurate.

### **3.16 Protected action ballot papers — form**

For paragraph 455 (a) of the Act, the form of a ballot paper for a protected action ballot is set out in Form 1 of Schedule 3.2.

### **3.17 Report about conduct of protected action ballot — independent advisor**

- (1) For section 458 and paragraphs 469 (b) and (e) of the Act, this regulation sets out requirements for the preparation of a report under subsection 458 (2) or (3) of the Act by the independent advisor for a protected action ballot agent.

*Note* Subsection 458 (2) of the Act requires a protected action ballot agent or independent advisor to prepare a report about the conduct of the ballot. Subsection 458 (3) of the Act requires the agent or advisor to prepare a report at the direction of FWA.



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**Regulation 3.18**

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- (2) For the purpose of preparing the report, the independent advisor may:
- (a) be present at the conduct of any part of a protected action ballot (including the scrutiny of the roll of voters); and
  - (b) request information held by the protected action ballot agent for the ballot; and
  - (c) make a recommendation to the ballot agent for the purpose of ensuring the conduct of the protected action ballot will be fair and democratic; and
  - (d) set out in his or her report:
    - (i) a description of any recommendation made under paragraph (c); and
    - (ii) whether the protected action ballot agent complied with the recommendation.

## **Subdivision G            Miscellaneous**

### **3.18      Conduct of protected action ballot — ballot papers**

- (1) For paragraph 469 (b) of the Act, this regulation sets out procedures to be followed in relation to the conduct of a protected action ballot.

#### *Ballot paper*

- (2) The protected action ballot agent for the ballot must issue to each employee who is to be balloted a ballot paper that bears:
- (a) the agent's initials; or
  - (b) a facsimile of the agent's initials.
- (3) If the ballot is conducted by postal voting, the agent must, as soon as practicable, post to each employee who is to be balloted a sealed envelope that contains:
- (a) the ballot paper; and
  - (b) information about:
    - (i) the closing date of the ballot; and
    - (ii) the time, on the closing date, by which the agent must receive the employee's vote; and

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-3	Industrial action
Division 8	Protected action ballots

### **Regulation 3.18**

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- (c) an envelope in which the employee must place his or her ballot paper; and
  - (d) a prepaid envelope addressed to the protected action ballot agent and that may be posted without cost to the employee; and
  - (e) any other material that the protected action ballot agent considers to be relevant to the ballot.
- (4) The envelope mentioned in paragraph (3) (c) must:
- (a) set out a form of declaration that the employee has not voted before in the ballot; and
  - (b) have a place on which the employee can sign the envelope; and
  - (c) be able to fit into the prepaid envelope mentioned in paragraph (3) (d).

#### *Replacement ballot paper — postal voting*

- (5) An employee who is to be balloted by postal voting may ask the protected action ballot agent for a replacement ballot paper because:
- (a) the employee did not receive the documents mentioned in subregulation 3.13 (3); or
  - (b) the employee did not receive a ballot paper in those documents; or
  - (c) the ballot paper has been lost or destroyed; or
  - (d) the ballot paper has been spoilt.
- (6) The request must:
- (a) be received by the protected action ballot agent on or before the closing day of the ballot; and
  - (b) state the reason for the request; and
  - (c) if practicable, be accompanied by evidence that verifies, or tends to verify, the reason; and
  - (d) include a declaration by the employee that the employee has not voted at the ballot.

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**Regulation 3.19**

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- (7) The protected action ballot agent must give the employee a replacement ballot paper if the agent is satisfied that:
- (a) the reason for the request is a reason mentioned in subregulation (5); and
  - (b) the request is in accordance with the requirements mentioned in subregulation (6); and
  - (c) the employee has not voted at the ballot.

*Replacement ballot paper — other voting*

- (8) If:
- (a) an employee is to be balloted otherwise than by postal voting; and
  - (b) the employee satisfies the protected action ballot agent, before depositing the ballot paper in the ballot box, that the employee has accidentally spoiled the paper;
- the protected action ballot agent must give the employee a replacement ballot paper.
- (9) The protected ballot agent must also:
- (a) mark “spoilt” on the ballot paper and initial the marking; and
  - (b) keep the ballot paper.

**3.19 Conduct of protected action ballot — scrutiny of ballot**

- (1) For paragraph 469 (b) of the Act, this regulation sets out procedures to be followed in relation to the conduct of a protected action ballot.

*Counting votes*

- (2) The protected action ballot agent for the ballot must determine the result of the ballot by conducting a scrutiny in accordance with this regulation.

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-3	Industrial action
Division 8	Protected action ballots

### **Regulation 3.19**

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- (3) As soon as practicable after the close of the ballot, the protected action ballot agent must:
- (a) admit the valid ballot papers and reject the informal ballot papers; and
  - (b) count the valid ballot papers; and
  - (c) record the number of votes:
    - (i) in favour of the question or questions; and
    - (ii) against the question or questions; and
  - (d) count the informal ballot papers.

#### *Informal votes*

- (4) A vote is informal only if:
- (a) the ballot paper does not bear:
    - (i) the initials of the protected action ballot agent; or
    - (ii) a facsimile of the agent's initials; or
  - (b) the ballot paper is marked in a way that allows 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 direction under regulation 3.14 that was to be followed by an employee entitled to vote in the ballot has not been complied with.
- (5) However, a vote is not informal because of paragraph (4) (a) if the protected action ballot agent is satisfied that the ballot paper is authentic.
- (6) If the protected action ballot agent 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 the decision on the ballot paper and initial the endorsement.

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**Regulation 3.20**

- (7) If the protected action 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:
- (a) decide whether an error has been made; and,
  - (b) if appropriate, direct what action is to be taken to correct or mitigate the error.
- (8) To preserve the secrecy of a postal vote, the protected action ballot agent must ensure that the independent advisor or a scrutineer does not have access to any evidence that may allow the ballot paper to be identified as having been completed by a particular employee.

*Control of scrutiny process*

- (9) 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 subregulation (3);
- the protected action ballot agent conducting the ballot may direct the person to leave the place where the scrutiny is being conducted.
- (10) A person to whom a direction is given under subregulation (9) must comply with the direction.

### **3.20 Conduct of protected action ballot — scrutineers**

- (1) For paragraph 469 (d) of the Act, this regulation sets out matters relating to the qualifications, appointment, powers and duties of scrutineers for a protected action ballot.

*Appointment*

- (2) The employer may appoint 1 or more scrutineers to perform the functions set out in this regulation.

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-3	Industrial action
Division 8	Protected action ballots

### **Regulation 3.20**

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- (3) The applicant for a protected action ballot may appoint 1 or more scrutineers to perform the functions set out in this regulation.
- (4) An appointment under subregulation (2) or (3) must be made by an instrument signed on behalf of the employer or applicant.
- (5) A person who does not have a current appointment under subregulation (2) or (3):
  - (a) is not a scrutineer; and
  - (b) is not permitted to attend the scrutiny of ballot material as a scrutineer; and
  - (c) is not permitted to perform the functions set out in this regulation.

#### *Functions*

- (6) A scrutineer may be present at the scrutiny of ballot material as follows:
  - (a) if the ballot is conducted by postal voting, the scrutineer may be present after the protected action ballot agent has acted under subregulation 3.20 (8) to remove evidence of an employee's identity;
  - (b) if the ballot is not conducted by postal voting, the scrutineer may be present when the protected action ballot agent is ready to conduct the scrutiny of the ballot material.
- (7) However:
  - (a) the total number of scrutineers in attendance at a particular time at the scrutiny of the ballot material must not exceed the total number of people who are:
    - (i) performing functions and duties as, or on behalf of, the protected action ballot agent; and
    - (ii) engaged on the scrutiny of the ballot material at that time; and

**Regulation 3.21**

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- (b) if a person fails to produce the person's instrument of appointment as a scrutineer for inspection by the protected action ballot agent for 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.
- (8) At the scrutiny of the ballot material:
  - (a) if the scrutineer objects to a decision that a vote is formal or informal, the scrutineer may inform the protected action ballot agent of the objection; and
  - (b) if the scrutineer considers that an error has been made in the conduct of the scrutiny, the scrutineer may inform the protected action ballot agent of the scrutineer's opinion.

**Division 9                      Payments relating to periods of industrial action**

**3.21                      Payments relating to partial work bans — working out proportion of reduction of employee's payments**

For subsection 471 (3) of the Act, the proportion mentioned in paragraph 471 (2) (a) of the Act is worked out for an employee or a class of employees by carrying out the following steps.

- Step 1**      Identify the work that an employee or a class of employees is failing or refusing to perform, or is proposing to fail or refuse to perform.
- Step 2**      Estimate the usual time that the employee or the class of employees would spend performing the work during a day.
- Step 3**      Work out the time estimated in Step 2 as a percentage of an employee's usual hours of work for a day.

The solution is the proportion by which the employee's payment will be reduced for a day.

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-3	Industrial action
Division 9	Payments relating to periods of industrial action

## **Regulation 3.22**

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### **3.22 Payments relating to partial work bans — form of partial work ban notice**

For paragraph 471 (6) (a) of the Act, a notice given under paragraph 471 (1) (c) or (4) (c) of the Act about the reduction of an employee's payments due to a partial work ban must be in a legible form and in English.

### **3.23 Payments relating to partial work bans — content of partial work ban notice**

- (1) For paragraph 471 (6) (b) of the Act, a notice about a partial work ban given to an employee under paragraph 471 (1) (c) or (4) (c) of the Act must:
  - (a) specify the day on which the notice is issued; and
  - (b) specify the industrial action engaged in, or proposed to be engaged in, that constitutes the partial work ban; and
  - (c) state that the notice will take effect from the later of:
    - (i) the start of the first day of the partial work ban; and
    - (ii) the start of the first day after the day on which the notice is given to the employee, if the employee performs work on that day; and
  - (d) state that the notice will cease to have effect at the end of the day on which the partial work ban ceases.
- (2) If the notice is given under paragraph 471 (1) (c) of the Act, it must also:
  - (a) state that the employee's payments will be reduced by an amount specified in the notice for each day the employee engages in the partial work ban; and
  - (b) specify an estimate of the usual time the employer considers an employee would spend during a day performing the work that is the subject of the work ban; and
  - (c) specify the amount by which the employee's payments will be reduced for each day the employee engages in the work ban.



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**Regulation 3.24**

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- (3) If the notice is given under paragraph 471 (4) (c) of the Act, it must also state that the employee will not be entitled to any payment for a day on which the employee engages in the partial work ban.

**3.24 Manner of giving notice about partial work ban**

- (1) For paragraph 471 (7) (b) of the Act, this regulation prescribes how the employer may give employees notice for paragraph 471 (1) (c) or (4) (c) of the Act.
- (2) The employer may give the notice to the employee personally.
- (3) The employer may send the notice by pre-paid post to:
- (a) the employee's residential address; or
  - (b) a postal address nominated by the employee.
- (4) The employer may send the notice to:
- (a) the employee's email address at work; or
  - (b) another email address nominated by the employee.
- (5) The employer may fax the notice to:
- (a) the employee's fax number at work; or
  - (b) the employee's fax number at home; or
  - (c) another fax number nominated by the employee.

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-4	Right of entry
Division 3	State or Territory OHS rights

### Regulation 3.25

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## Part 3-4 Right of entry

### Division 3 State or Territory OHS rights

#### 3.25 Meaning of *State or Territory OHS law*

For subsection 494 (3) of the Act, each law mentioned in the following table is prescribed.

Item	Law
1	<i>Occupational Health and Safety Act 2000</i> of New South Wales
2	<b>Occupational Health and Safety Act 2004</b> of Victoria
3	<i>Workplace Health and Safety Act 1995</i> of Queensland
4	Sections 49G and 49I to 49O of the <i>Industrial Relations Act 1979</i> of Western Australia, but only to the extent to which those provisions provide for, or relate to, a right of entry to investigate a suspected contravention of: <ul style="list-style-type: none"> <li>(a) the <i>Occupational Safety and Health Act 1984</i> of that State; or</li> <li>(b) the <i>Mines Safety and Inspection Act 1994</i> of that State</li> </ul>
5	<i>Occupational Health and Safety Act 1989</i> of the Australian Capital Territory
6	<i>Workplace Health and Safety Act 2007</i> of the Northern Territory

### Division 6 Entry permits, entry notices and certificates

#### 3.26 Form of entry permit

For paragraph 521 (a) of the Act, the form of an entry permit issued to an official of an organisation is set out in Form 1 in Schedule 3.3.

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**Regulation 3.29****3.27 Form of entry notice**

For paragraph 521 (a) of the Act, the form of an entry notice is set out in Form 2 in Schedule 3.3.

**3.28 Form of exemption certificate**

For paragraph 521 (a) of the Act, the form of an exemption certificate issued to an organisation is set out in Form 3 in Schedule 3.3.

**3.29 Form of affected member certificate**

For paragraph 521 (a) of the Act, the form of an affected member certificate issued to an organisation is set out in Form 4 in Schedule 3.3.

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-6	Other rights and responsibilities
Division 2	Notification and consultation relating to certain dismissals

### **Regulation 3.30**

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## **Part 3-6 Other rights and responsibilities**

### **Division 2 Notification and consultation relating to certain dismissals**

#### **Subdivision A Requirement to notify Centrelink**

#### **3.30 Employer to notify Centrelink of certain proposed dismissals — form of notice**

For subsection 530 (2) of the Act, the form of a notice to Centrelink of a proposed dismissal under subsection 530 (1) is set out in Form 1 of Schedule 3.4.

### **Division 3 Employer obligations in relation to employee records and pay slips**

#### *Note about Subdivision 1*

The regulations in Subdivision 1 set out the kinds of records that must be made and kept for the purposes of sections 535 and 796 of the Act. These records are required to be kept by employers for 7 years.

An employer must keep a record in respect of each employee about:

- (a) basic employment details such as the name of the employer and the employee and the nature of their employment (e.g. part-time, full-time, permanent, temporary or casual); and
- (b) pay; and
- (c) overtime hours; and
- (d) averaging arrangements; and
- (e) leave entitlements; and
- (f) superannuation contributions; and
- (g) termination of employment (where applicable); and
- (h) individual flexibility arrangements and guarantees of annual earnings.

There are also obligations on old employers and new employers in transfer of business situations.

Rights and responsibilities of employees, employers, organisations etc.	Chapter 3
Other rights and responsibilities	Part 3-6
Employer obligations in relation to employee records and pay slips	Division 3

## Regulation 3.32

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Records must be properly maintained. For example, regulation 3.31 sets out form requirements to make sure that records are legible and readily accessible to an inspector. Regulation 3.44 sets out requirements to ensure that records are accurate at all times.

This subdivision also deals with obligations for employers in relation to facilitate the inspection and copying of records by employees (see also the inspector powers set out at Part 5-2 of the Act).

Most of the obligations in this Part are civil remedy provisions. This means that Part 4-1 of the FW Act will apply (including the course of conduct rule in section 550).

### *Note about Subdivision 2*

The regulations in Subdivision 2 deal with the form and content of pay slips for the purposes of section 536 of the Act.

Pay slips must include all of the information set out in regulation 3.46.

## **Subdivision 1 Employee records**

### **3.31 Records — form**

For subsection 535 (1) and section 796 of the Act, an employee record made and kept by an employer for this Subdivision must be of the following kind:

- (a) a record in a legible form and in the English language;
- (b) a record in a form that is readily accessible to an inspector.

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

### **3.32 Records — content**

For subsection 535 (1) of the Act, a kind of employee record that an employer must make and keep is a record that specifies:

- (a) the employer's name; and
- (b) the employee's name; and
- (c) whether the employee's employment is full-time or part-time; and
- (d) whether the employee's employment is permanent, temporary or casual; and
- (e) the date on which the employee's employment began; and

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-6	Other rights and responsibilities
Division 3	Employer obligations in relation to employee records and pay slips

### **Regulation 3.33**

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- (f) on and after 1 January 2010 — the Australian Business Number (if any) of the employer.

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

### **3.33 Records — pay**

- (1) For subsection 535 (1) of the Act, a kind of employee record that an employer must make and keep is a record that specifies:
- (a) the rate of remuneration paid to the employee; and
  - (b) the gross and net amounts paid to the employee; and
  - (c) any deductions made from the gross amount paid to the employee.
- (2) If the employee is a casual or irregular part-time employee who is guaranteed a rate of pay set by reference to a period of time worked, the record must set out 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
  - (e) another monetary allowance or separately identifiable entitlement;

the record must set out details of the payment, bonus, loading, rate, allowance or entitlement.

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

### **3.34 Records — overtime**

For subsection 535 (1) of the Act, if a penalty rate or loading (however described) must be paid for overtime hours actually worked by an employee, a kind of employee record that the employer must make and keep is a record that specifies:

- (a) the number of overtime hours worked by the employee during each day; or
- (b) when the employee started and ceased working overtime hours.

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

### **3.35 Records — averaging of hours**

For subsection 535 (1) of the Act, if an employer and employee agree in writing to an averaging of the employee's hours of work, a copy of the agreement is a kind of employee record that the employer must make and keep.

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

### **3.36 Records — leave**

- (1) For subsection 535 (1) of the Act, if an employee is entitled to leave, a kind of employee record that the employer must make and keep is a record that sets out:
  - (a) any leave that the employee takes; and
  - (b) the balance (if any) of the employee's entitlement to that leave from time to time.
- (2) If an employer and employee agree to cash out an accrued amount of leave:
  - (a) a copy of the agreement is a kind of employee record that the employer must make and keep; and

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-6	Other rights and responsibilities
Division 3	Employer obligations in relation to employee records and pay slips

### Regulation 3.37

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- (b) a kind of employee record that the employer must make and keep is a record that sets out:
  - (i) the rate of payment for the amount of leave that was cashed out; and
  - (ii) when the payment was made

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

### 3.37 Records — superannuation contributions

- (1) For subsection 535 (1) of the Act, if an employer is required to make superannuation contributions for the benefit of an employee, a kind of employee record that the employer must make and keep is a record that specifies:
  - (a) the amount of the contributions made; and
  - (b) the period over which the contributions were made; and
  - (c) the date on which each contribution was made; and
  - (d) the name of any fund to which a contribution was made; and
  - (e) the basis on which the employer became liable to make the contribution, including:
    - (i) 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) 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*).

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.



### **3.38 Records — individual flexibility arrangement**

For subsection 535 (1) of the Act, if an employer and employee agree in writing on an individual flexibility arrangement under the Act:

- (a) a copy of the agreement is a kind of employee record that the employer must make and keep; and
- (b) a copy of a notice or agreement that terminates the agreement is a kind of employee record that the employer must make and keep.

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

### **3.39 Records — guarantee of annual earnings**

- (1) For subsection 535 (1) of the Act, if an employer gives a guarantee of annual earnings under section 330 of the Act, the guarantee is a kind of employee record that the employer must make and keep.

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

- (2) For subsection 535 (1) of the Act, if an employer revokes a guarantee of annual earnings under section 330 of the Act, a kind of employee record that the employer must make and keep is a record of the date of the revocation.

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

### **3.40 Records — termination of employment**

For subsection 535 (1) of the Act, if an employee's employment is terminated, a kind of employee record that the employer must make and keep is a record that sets out:

- (a) whether the employment was terminated:
  - (i) by consent; or
  - (ii) by notice; or

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-6	Other rights and responsibilities
Division 3	Employer obligations in relation to employee records and pay slips

### **Regulation 3.41**

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- (iii) summarily; or
- (iv) in some other manner (specifying the manner); and
- (b) the name of the person who acted to terminate the employment.

*Note* Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

### **3.41 Records — transfer of business**

- (1) For section 796 of the Act, this regulation applies if a transfer of business occurs as described in section 311 of the Act.

*Note* Section 311 identifies the participants in the transfer of the business as:

- (a) the old employer; and
  - (b) the new employer; and
  - (c) a transferring employee.
- (2) The old employer must transfer to the new employer each employee record concerning a transferring employee that the old employer was required to keep for subsection 535 (1) of the Act at the time at which the connection between the old employer and the new employer mentioned in paragraph 311 (1) (d) of the Act occurs.
  - (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 at which the connection between the old employer and the new employer mentioned in paragraph 311 (1) (d) of the Act occurs, the new employer must ask the old employer to give the new employer the employee records concerning the transferring employee.
  - (5) If the old employer receives a request under subregulation (4), the old employer must give the employee records to the new employer.

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**Regulation 3.42**

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- (6) The new employer who receives transferred employee records must keep the records, as if they had been made by the new employer at the time at which they were made by the old employer.
- (7) The new employer is not required to make employee records relating to the transferring employee's employment with the old employer.

### **3.42 Records — inspection and copying of a record**

- (1) For subsection 535 (3) of the Act, an employer must make a copy of an employee record available for inspection and copying on request by the employee or former employee to whom the record relates.
- (2) The employer must make the copy available in a legible form to the employee or former employee for inspection and copying.
- (3) If the employee record is kept at the premises at which the employee works or the former employee worked, the employer must:
  - (a) make the copy available at the premises within 3 business days after receiving the request; or
  - (b) post a copy of the employee record to the employee or former employee within 14 days after receiving the request.
- (4) If the employee record is not kept at the premises at which the employee works or the former employee worked, the employer must, as soon as practicable after receiving the request:
  - (a) make the copy available at the premises; or
  - (b) post a copy of the employee record to the employee or former employee.

*Note* Under the Act, an inspector is also permitted to inspect and copy an employee record for the purposes of the Act. The inspector may also require the production of the employee record.

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-6	Other rights and responsibilities
Division 3	Employer obligations in relation to employee records and pay slips

### **Regulation 3.43**

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#### **3.43 Records — information concerning a record**

- (1) An employer who has been asked by an employee or former employee to make a copy of an employee record available for inspection must tell the employee or former employee, on request, where employee records relating to the employee or former employee are kept.
- (2) The employee or former employee may interview the employer, or a representative of the employer, at any time during ordinary working hours, about an employee record that the employer has made or will make.

*Note* Part 5-2 of Chapter 5 of the Act sets out the circumstances in which an inspector can inspect employee records and require the production of employee records.

#### **3.44 Records — accuracy**

- (1) An employer must ensure that a record that the employer is required to keep under the Act or these Regulations is not false or misleading to the employer's knowledge.
- (2) An employer must correct a record that the employer is required to keep under the Act or these Regulations as soon as the employer becomes aware that it contains an error.
- (3) An employer must ensure that a record that the employer is required:
  - (a) to keep under the Act or these Regulations; and
  - (b) to correct in accordance with subregulation (2);
 contains a notation of the nature of the corrected error with the correction.
- (4) An employer must not alter a record that the employer is required to keep under the Act or these Regulations except:
  - (a) in compliance with subregulation (2) or (3); or
  - (b) to any extent otherwise permitted by the Act or these Regulations.

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**Regulation 3.46**

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- (5) An employer must ensure that a record that the employer is required to keep under the Act or these Regulations is not altered by other person except:
  - (a) in compliance with subregulation (2) or (3); or
  - (b) to any extent otherwise permitted by the Act or these Regulations.
- (6) A person must not make use of an entry in an employee record made and kept by an employer for this Subdivision if the person does so knowing that the entry is false or misleading.

## **Subdivision 2            Pay slips**

### **3.45            Pay slips — form**

For paragraph 536 (2) (b) of the Act, a pay slip must be:

- (a) in electronic form; or
- (b) a hard copy.

*Note* Subsection 536 (2) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

### **3.46            Pay slips — content**

- (1) For paragraph 536 (2) (b) of the Act, a pay slip must specify:
  - (a) the employer's name; and
  - (b) the employee's name; and
  - (c) the period to which the pay slip relates; and
  - (d) the date on which the payment to which the pay slip relates was made; and
  - (e) the gross amount of the payment; and
  - (f) the net amount of the payment; and
  - (g) any amount paid to the employee that is a bonus, loading, allowance, penalty rate, incentive-based payment or other separately identifiable entitlement; and
  - (h) on and after 1 January 2010 — the Australian Business Number (if any) of the employer.

Chapter 3	Rights and responsibilities of employees, employers, organisations etc.
Part 3-6	Other rights and responsibilities
Division 3	Employer obligations in relation to employee records and pay slips

### Regulation 3.46

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- (2) If an amount is deducted from the gross amount of the payment, the pay slip must also include the name, or the name and number, of the fund or account into which the deduction was paid.
- (3) If the employee is paid at an hourly rate of pay, the pay slip must also include:
  - (a) the rate of pay for the employee's ordinary hours (however described); and
  - (b) the number of hours in that period for which the employee was employed at that rate; and
  - (c) the amount of the payment made at that rate.
- (4) If the employee is paid at an annual rate of pay, the pay slip must also include the rate as at the latest date to which the payment relates.
- (5) If the employer is required to make superannuation contributions for the benefit of the employee, the pay slip must also include:
  - (a) the amount of each contribution that the employer made during the period to which the pay slip relates, and the name, or the name and number, of any fund to which the contribution was made; or
  - (b) 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, or the name and number, of any fund to which the contributions will be made.
- (6) In subregulation (5):

*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*).

*Note* Subsection 536 (2) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

## **Chapter 4 Compliance and enforcement**

### **Part 4-1 Civil remedies**

#### **Division 3 Small claims procedure**

##### **4.01 Plaintiffs may choose small claims procedure**

- (1) For paragraph 548 (1) (c) of the Act, the manner in which a person must indicate that he or she wants a small claims procedure to apply to an action that the person has commenced 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 magistrates court or the Federal Magistrates 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 magistrates court or the Federal Magistrates 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.

**Regulation 4.02**

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**Division 4 General provisions relating to civil remedies and infringement notices**

**4.02 General**

- (1) For subsection 558 (1) of the Act, this Division provides for a person who is alleged to have contravened a civil remedy provision to pay a penalty to the Commonwealth as an alternative to civil proceedings
- (2) This Division does not:
  - (a) require an infringement notice to be issued to a person for an alleged contravention of a civil remedy provision; or
  - (b) affect the liability of a person to proceedings for contravention of a civil remedy provision if an infringement notice is not issued to the person for the alleged contravention; or
  - (c) affect the liability of a person to proceedings for contravention of a civil remedy provision if the person does not comply with an infringement notice for the alleged contravention; or
  - (d) limit or otherwise affect the penalty that may be imposed by a court on a person for a contravention other than the contravention of the civil remedy provision for which the infringement notice was issued.

**4.03 Definitions for Division 4**

In this Division:

***civil remedy provision*** means a civil remedy provision in item 29 of the table in subsection 539 (2) of the Act.

***contravention*** means a contravention of a civil remedy provision.

***infringement notice*** means an infringement notice under regulation 4.04.



## Regulation 4.05

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***nominated person*** means the person to whom a recipient can apply:

- (a) to have an infringement notice withdrawn; or
- (b) to be allowed more time to pay a penalty.

***recipient*** means a person to whom an infringement notice is given under subregulation 4.04 (1).

### 4.04 When an infringement notice can be given

- (1) If an inspector reasonably believes that a person has committed 1 or more contraventions of a particular civil remedy provision, the inspector may give to the person an infringement notice relating to the alleged contravention or contraventions.
- (2) An infringement notice must be given within 12 months after the day on which the contravention or 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 civil remedy provision that:
  - (a) allegedly took place on the same day; and
  - (b) allegedly relate to the same action or conduct by the person.
- (4) An inspector must not give an infringement notice in respect of a contravention if the Fair Work Ombudsman has accepted an enforceable undertaking from the person under section 715 of the Act in relation to the relevant civil remedy provision.

### 4.05 Content of infringement notice

- (1) An infringement notice must:
  - (a) specify the recipient's full name; and
  - (b) specify the recipient's address; and
  - (c) specify the name of the inspector who issued it; and
  - (d) specify its date of issue; and

#### **Regulation 4.06**

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- (e) set out brief details of the alleged contravention, including the civil remedy provision that has been allegedly contravened; and
  - (f) specify the penalty for the alleged contravention that is payable under the notice; and
  - (g) state where and how the penalty can be paid; and
  - (h) specify the maximum penalty that a court could impose on the recipient for the alleged contravention; and
  - (i) identify the nominated person; and
  - (j) explain how the recipient can apply to the nominated person:
    - (i) to have the infringement notice withdrawn; or
    - (ii) to be allowed more time to pay the penalty; and
  - (k) state the effect of the recipient paying the penalty within the required time, as explained in regulation 4.09; and
  - (l) be signed by the inspector who issued it.
- (2) The infringement notice may contain any other information that the inspector who issues it thinks necessary.

*Note* The maximum penalty payable under the infringement notice for an alleged contravention is one-tenth of the penalty that a court could impose.

#### **4.06 Time for payment of penalty**

- (1) The penalty stated in an infringement notice must be paid within 28 days after the day on which the notice is served on the recipient unless subregulation (2), (3) or (4) applies.
- (2) If the recipient applies for a further period of time in which to pay the penalty, and the application is granted, the penalty must be paid within the further period allowed.
- (3) If the recipient applies for a further period of time in which to pay the penalty, and the application is refused, the penalty must be paid within 7 days after the notice of the refusal is served on the recipient.

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**Regulation 4.08**

- (4) If the recipient applies for the notice to be withdrawn, and the application is refused, the penalty must be paid within 28 days after the notice of the refusal is served on the person.

**4.07 Extension of time to pay penalty**

- (1) Before the end of 28 days after receiving an 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.

**4.08 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 infringement 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 infringement notice within the period allowed by subregulation (2), the application is taken to have been refused.
- (4) An inspector may also withdraw an infringement notice issued by him or her by serving a notice of withdrawal on the recipient without an application having been made.

**Regulation 4.09**

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- (5) A notice of the withdrawal of an infringement notice must:
- (a) specify the recipient's full name; and
  - (b) specify the recipient's address; and
  - (c) specify its date of issue; and
  - (d) state that the infringement notice is withdrawn.

**4.09 Effect of payment of penalty**

If an 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, by any person, for the alleged contravention; and
- (c) the recipient is not taken to have admitted to having contravened the civil remedy provision; and
- (d) the recipient is not taken to have been convicted of a contravention.

**4.10 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.

**Division 5 Unclaimed money**

**4.11 Unclaimed money**

For paragraph 559 (3) (b) of the Act, the form of a claim for the payment of unclaimed money is set out in Schedule 4.1.

## **Chapter 5 Administration**

### **Part 5-1 Fair Work Australia**

#### **Division 5 FWA members**

##### **5.01 Delegation by the President of functions and powers of FWA**

For subparagraph 625 (2) (i) of the Act, the requirement to give a copy of a protected action ballot order under section 445 of the Act is a prescribed function.

##### **5.02 Dual federal and Territory appointments of Deputy Presidents or Commissioners**

- (1) For paragraph 632 (a) of the Act, the following Commonwealth tribunals are prescribed:
  - (a) the Defence Force Remuneration Tribunal;
  - (b) the Pharmaceutical Benefits Remuneration Tribunal.
- (2) For paragraph 632 (a) of the Act, the following Territory tribunals are prescribed:
  - (a) the Prison Officers Arbitral Tribunal of the Northern Territory;
  - (b) the Police Officers Arbitral Tribunal of the Northern Territory.

##### **5.03 Oath and affirmation of office**

- (1) For section 634 of the Act, the oath and affirmation for an FWA Member are set out in Schedule 5.1.
- (2) An oath or affirmation to be taken by the President must be taken before:
  - (a) the Governor-General; or

**Regulation 5.04**

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- (b) a Justice of the High Court; or
  - (c) a Judge of the Federal Court; or
  - (d) a Judge of the Supreme Court of a State or a Territory.
- (3) An oath or affirmation to be taken by an FWA Member other than the President must be taken before:
- (a) the Governor-General; or
  - (b) a Justice of the High Court; or
  - (c) a Judge of the Federal Court; or
  - (d) a Judge of the Supreme Court of a State or a Territory; or
  - (e) the President.

**Division 7                      Seals and additional powers of the  
President and the General  
Manager**

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

- (1) For subsection 654 (1) of the Act:
- (a) the information and copies of documents which the President must provide to the Minister are set out in Part 1 of Schedule 5.2; and
  - (b) the information and copies of documents which the President must provide to the Fair Work Ombudsman are set out in Part 2 Schedule 5.2.

*Note* Information prescribed in Schedule 5.2 is minimum information only.

- (2) Schedule 5.2 also sets out the time by which the information and documents must be provided.
- (3) In addition to the matters in Schedule 5.2, the Minister may request from the President a copy of:
- (a) an order or interim order made by FWA; or
  - (b) an instrument made under section 262, 266, 269, 320 or 458 of the Act.

**Regulation 5.04**

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- (4) If the Minister requests a copy of an instrument or order, the President must provide the copy:
  - (a) within 24 hours after the request; or
  - (b) if the instrument, order or interim order has not been written within that period — as soon as practicable.
- (5) For the Minister:
  - (a) information, or a copy of a document, may be provided:
    - (i) in paper form; or
    - (ii) in electronic form, in accordance with any particular information technology requirements notified to the President by the Secretary; and
  - (b) subparagraph (a) (ii) does not prevent the President from including other relevant information with information provided to the Minister in electronic form; and
  - (c) a copy of a document that is provided to the Minister in paper form must be posted to the address notified to the President by the Secretary; and
  - (d) information, or a copy of a document, that is provided to the Minister in electronic form must be sent to the e-mail address notified to the President by the Secretary; and
  - (e) the President must ensure that:
    - (i) all copies of documents that are to be provided 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 provided to the Minister in electronic form during a week are provided at the same time in that week.
- (6) The President may provide information mentioned in subitem 15.1 of Schedule 5.2:
  - (a) by providing the Minister with a copy of a relevant statutory declaration provided by an employer in accordance with paragraph 185 (2) (b) of the Act and the procedural rules; or
  - (b) by other means.

**Regulation 5.04**

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- (7) For the Fair Work Ombudsman:
- (a) information, or a copy of a document, may be provided:
    - (i) in paper form; or
    - (ii) in electronic form, in accordance with any particular information technology requirements notified to the President by the Fair Work Ombudsman; and
  - (b) subparagraph (a) (ii) does not prevent the President from including other relevant information with information provided to the Fair Work Ombudsman in electronic form; and
  - (c) a copy of a document that is provided to the Fair Work Ombudsman in paper form must be posted to the address notified to the President by the Fair Work Ombudsman; and
  - (d) information, or a copy of a document, that is provided to the Fair Work Ombudsman in electronic form must be sent to the e-mail address notified to the President by the Fair Work Ombudsman; and
  - (e) the President must ensure that:
    - (i) all copies of documents that are to be provided to the Fair Work Ombudsman 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 provided to the Fair Work Ombudsman in electronic form during a week are provided at the same time in that week.



## **Part 5-2 Office of the Fair Work Ombudsman**

### **Division 3 Office of the Fair Work Ombudsman**

#### **5.05 Powers and functions of inspectors — notification of failure to observe requirements**

If an inspector is satisfied that a person has failed to observe a requirement imposed by or for the Act, these Regulations or a fair work instrument, the inspector may, by notice in writing:

- (a) inform the person of the failure; and
- (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 inspector in accordance with the notice of any action taken to comply with the notice; and
- (d) advise the person of the actions the inspector may take if the person fails to comply with the notice.

#### **5.06 Powers of inspectors while on premises — taking samples of goods and substances**

For paragraph 709 (f) of the Act, an inspector must not take a sample of goods or a substance until the inspector has informed:

- (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 take the sample.

**Regulation 6.01**

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## **Chapter 6      Miscellaneous**

### **Part 6-2        Dealing with disputes**

#### **Division 2      Dealing with disputes**

##### **Subdivision A    Model term about dealing with disputes**

###### **6.01      Model term about dealing with disputes**

For section 737 of the Act, the model term for dealing with disputes for enterprise agreements is set out in Schedule 6.1.

## Part 6-3                      Extension of National Employment Standards entitlements

### Division 2                      Extension of entitlement to unpaid parental leave and related entitlements

#### 6.02                      Modification of meaning of *base rate of pay* for pieceworkers (non-national system employees)

- (1) For section 16 of the Act, as modified by section 749 of the Act, this regulation provides for the determination of the base rate of pay for the purposes of the extended parental leave provisions for a non-national system employee who is a pieceworker.

*Note 1* Section 749 of the Act modifies section 16 of the Act by giving it effect as if a paragraph 16 (2) (d) were added.

*Note 2* The Act defines *pieceworker* in section 21. The effect of section 21 is modified for a non-national system employees by section 754 of the Act.

- (2) The base rate of pay, expressed as an hourly rate of pay, is the rate provided in, or calculated in accordance with, a State industrial instrument that applies to the employee.
- (3) If there is no rate provided in, or calculated in accordance with, a State industrial instrument that applies to the employee, the base rate of pay, expressed as an hourly rate of pay, is worked out using the formula:

$$\frac{TA}{TH}$$

where:

*TA* is the total amount earned by the employee during the relevant period.



## **Part 6-4 Additional provisions relating to termination of employment**

### **Division 2 Termination of employment**

#### **6.04 Temporary absence — illness or injury**

- (1) For paragraph 772 (1) (a) of the Act, this regulation prescribes kinds of illness or injury.

*Note* Under section 772 of the Act, an employer must not terminate an employee's employment because the employee is temporarily absent from work because of illness or injury of a kind prescribed by the regulations.

- (2) A prescribed kind of illness or injury exists if the employee provides a medical certificate for the illness or injury, or a statutory declaration about the illness or injury, within:
- (a) 24 hours after the commencement of the absence; or
  - (b) such longer period as is reasonable in the circumstances.

*Note* The Act defines *medical certificate* in section 12.

- (3) A prescribed kind of illness or injury exists if the employee:
- (a) is required by the terms of a workplace instrument:
    - (i) to notify the employer of an absence from work; and
    - (ii) to substantiate the reason for the absence; and
  - (b) complies with those terms.
- (4) An illness or injury is not a prescribed kind of illness or injury if:
- (a) either:
    - (i) the employee's absence extends for more than 3 months; or
    - (ii) the total absences of the employee, within a 12 month period, have been more than 3 months (whether based on a single illness or injury or separate illnesses or injuries); and

**Regulation 6.05**

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- (b) the employee is not on personal/carer's leave (however described) for a purpose mentioned in paragraph 97 (a) of the Act for the duration of the absence.
- (5) In this regulation, a period of paid personal/carer's leave (however described) for a purpose mentioned in paragraph 97 (a) of the Act does not include a period when the employee is absent from work while receiving compensation under a law of the Commonwealth, a State or a Territory that is about workers' compensation.

**6.05    Application fees**

- (1) For subsection 775 (2) of the Act, this regulation sets out matters relating to a fee for making an application to FWA under section 773 of the Act.

*Fee at commencement of Regulations*

- (2) If the application is made in the financial year starting on 1 July 2009, the fee is \$59.50.

*Method for indexing the fee*

- (3) If the application is made in a financial year starting on 1 July 2010, or 1 July in a later year (the **application year**), the amount of the fee is to be worked out as follows:
  - (a) identify the amount of the fee for an application made in the previous financial year;
  - (b) multiply it by the indexation factor for the application year (see subregulation (4));
  - (c) round the result to the nearest multiple of 10 cents, rounding up if the result is 5 cents.
- (4) The indexation factor for the application year is worked out using the following formula, and then rounded under subregulation (5):

$$\frac{\text{Sum of index numbers for quarters in most recent March year}}{\text{Sum of index numbers for quarters in previous March year}}$$

**Regulation 6.05**

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where:

***index number***, for a quarter, means the All Groups Consumer Price Index Number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

***most recent March year*** means the period of 12 months ending on 31 March in the financial year that occurred immediately before the application year.

***previous March year*** means the period of 12 months immediately preceding the most recent March year.

***quarter*** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

- (5) The result under subregulation (4) must be rounded up or down to 3 decimal places, rounding up if the result is 0.0005.
- (6) A calculation under subregulation (4):
  - (a) is to be made using the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and
  - (b) is to be made disregarding index numbers that are published in substitution for previously published index numbers (unless the substituted numbers are published to take account of changes in the reference base).

***No fee — hardship***

- (7) If FWA is satisfied that the person making an application will suffer serious hardship if the person is required to pay the fee, no fee is payable for making the application.

***Refund of fee — discontinuing application***

- (8) FWA must repay to the person an amount equal to the fee if:
  - (a) the fee has been paid; and
  - (b) the application is subsequently discontinued as mentioned in section 588 of the Act; and

**Regulation 6.06**

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- (c) either:
- (i) at the time the application is discontinued, the application has not yet been listed for conducting a conference; or
  - (ii) if the application has, at or before that time, been listed for conducting a conference on a specified date or dates — the discontinuance occurs at least 2 days before that date or the earlier of those dates.

**6.06      Schedule of costs**

- (1) For section 780 of the Act, the schedule of costs set out in Schedule 3.1 is prescribed.
- (2) In awarding costs:
  - (a) FWA is not limited to the items of expenditure mentioned in Schedule 3.1; but
  - (b) if an item of expenditure is mentioned in Schedule 3.1, FWA must not award costs for that item at a rate or of an amount in excess of the rate or amount mentioned in Schedule 3.1 for that item.

*Note* An application for an order for costs must be made in accordance with the procedural rules.

- (3) A bill of costs must identify, by an item number, each cost and disbursement claimed.
- (4) In Schedule 3.1:

*folio* means 72 words.

*Note* There are generally 3 folios to a page.



**Division 3                      Notification and consultation  
   requirements relating to certain  
   terminations of employment**

**Subdivision B              Requirement to notify Centrelink**

**6.07              Employer to notify Centrelink of certain proposed  
terminations — form of notice**

For subsection 785 (2) of the Act, the form of a notice to Centrelink of a proposed termination under subsection 785 (1) is set out in Form 1 of Schedule 6.2.

**Regulation 6.08**

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**Part 6-5            Miscellaneous**

**Division 2            Miscellaneous**

**Subdivision 1        Employment matters**

**6.08        Public sector employer to act through employing  
              authority — meaning of *public sector employment***

*Employment or service that is public sector employment*

- (1) For paragraph 795 (4) (h) of the Act, each of the following laws is prescribed:
- (a) the *Australian Federal Police Act 1979*;
  - (b) the *Governor-General Act 1974*;
  - (c) the *Naval Defence Act 1910*.

*Employment or service that is not public sector  
employment*

- (2) For paragraph 795 (5) (a) of the Act, a member of the Defence Force is prescribed.
- (3) For paragraph 795 (5) (a) of the Act, a member of the Police Force of the Northern Territory is prescribed.
- (4) For paragraph 795 (5) (a) of the Act, a person who:
- (a) holds an office established under a law of the Commonwealth or of a Territory; but
  - (b) is not a person who, otherwise than in his or her capacity as the holder of that office, is employed or serves in a capacity described in paragraphs 795 (4) (a) to (h) of the Act;
- is prescribed.

**Regulation 6.10**

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*Example*

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.

- (5) For paragraph 795 (5) (b) of the Act, the *Prisons (Correctional Services) Act* of the Northern Territory is prescribed.

**6.09 Public sector employer to act through employing authority — meaning of *employing authority***

For subsection 795 (6) of the Act, the employing authority of a person mentioned in an item of Schedule 6.3 is:

- (a) the person or body mentioned in the item as the employing authority; or  
(b) each person or body mentioned in the item as the employing authority.

**6.10 No action for defamation in certain cases**

- (1) No action or proceeding, civil or criminal, for defamation lies against the Commonwealth or an electoral official conducting, on behalf of the Australian Electoral Commission, a protected action ballot under the Act in relation to the printing or issuing of a document or other material by the electoral official.
- (2) If the document or other material mentioned in subregulation (1) is printed by another person, no action or proceeding, civil or criminal, for defamation lies against that person in relation to the printing.

## **Schedule 2.1 Notice of employee representational rights**

(regulation 2.05)

*Fair Work Act 2009*, subsection 174 (6)

*[Name of employer]* gives notice that it is bargaining in relation to an enterprise agreement (*[name of the proposed enterprise agreement]*) which is proposed to cover employees that *[proposed coverage]*.

### **What is an enterprise agreement?**

An enterprise agreement is an agreement between an employer and its employees that will be covered by the agreement that sets the wages and conditions of those employees for a period of up to 4 years. To come into operation, the agreement must be supported by a majority of the employees who cast a vote to approve the agreement and it must be approved by an independent authority, Fair Work Australia.

### **If you are an employee who would be covered by the proposed agreement:**

You have the right to appoint a bargaining representative to represent you in bargaining for the agreement or in a matter before Fair Work Australia about bargaining for the agreement.

You can do this by notifying the person in writing that you appoint that person as your bargaining representative. You can also appoint yourself as a bargaining representative. In either case you must give a copy of the appointment to your employer.

*[If the agreement is not an agreement for which a low-paid authorisation applies — include:]*

If you are a member of a union that is entitled to represent your industrial interests in relation to the work to be performed under the agreement, your union will be your bargaining representative for the agreement unless you appoint another person as your representative or you revoke the union's status as your representative.

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*[If a low-paid authorisation applies to the agreement — include:]*

Fair Work Australia has granted a low-paid bargaining authorisation in relation to this agreement. This means the union that applied for the authorisation will be your bargaining representative for the agreement unless you appoint another person as your representative, or you revoke the union's status as your representative, or you are a member of another union that also applied for the authorisation.

*[if the employee is covered by an individual agreement-based transitional instrument — include:]*

**If you are an employee covered by an individual agreement:**

If you are currently covered by an Australian Workplace Agreement (AWA), individual transitional employment agreement (ITEA) or a preserved individual State agreement, you may appoint a bargaining representative for the enterprise agreement if:

- the nominal expiry date of your existing agreement has passed; or
- a conditional termination of your existing agreement has been made (this is an agreement made between you and your employer providing that if the enterprise agreement is approved, it will apply to you and your individual agreement will terminate).

**Questions?**

If you have any questions about this notice or about enterprise bargaining, please speak to either your employer, bargaining representative, go to [www.fairwork.gov.au](http://www.fairwork.gov.au), or contact the Fair Work Australia Infoline on *[insert number]*.

## Schedule 2.2 Model flexibility term

(regulation 2.08)

### Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
  - (a) the agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
  - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
  - (a) is in writing; and
  - (b) includes the name of the employer and employee; and

- 
- (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) includes details of:
    - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the employer and employee agree in writing — at any time.

## **Schedule 2.3 Model consultation term**

(regulation 2.09)

### **Model consultation term**

- (1) This term applies if:
  - (a) the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
  - (b) the change is likely to have a significant effect on employees of the enterprise.
- (2) The employer must notify the relevant employees of the decision to introduce the major change.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
  - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;  
the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
  - (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
    - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and



- 
- (b) for the purposes of the discussion — provide, in writing, to the relevant employees:
- (i) all relevant information about the change including the nature of the change proposed; and
  - (ii) information about the expected effects of the change on the employees; and
  - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in subclauses (2), (3) and (5) are taken not to apply.
- (9) In this term, a major change is *likely to have a significant effect on employees* if it results in:
- (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.
- (10) In this term, *relevant employees* means the employees who may be affected by the major change.

## Schedule 3.1      Schedule of costs

(subregulations 3.04 (1), 3.08 (1) and 6.06 (1))

### Part 1              Instructions

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
101	Instructing to make or oppose an application under sections 365 and 372 of Part 3-1, section 394 of Part 3-2 and section 773 of Part 6-4 of the Act	Either: (a) \$210; or (b) at the discretion of FWA
102	Instructing to make or oppose any other proceeding relating to an application under sections 365 and 372 of Part 3-1, section 394 of Part 3-2 and section 773 of Part 6-4 of the Act	Either: (a) \$210; or (b) at the discretion of FWA
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 FWA
104	Instructing for a necessary document in response to directions given by FWA	Either: (a) \$125; or (b) at the discretion of FWA
105	Instructing for brief to counsel or brief notes for solicitor (if necessary)	An amount that FWA 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 FWA considers appropriate having regard to all the circumstances of the case

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## 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 FWA, 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

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## 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

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## **Part 4              Writing or typing legal letters**

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
401	Writing or typing a legal letter	\$4 per folio

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## **Part 5              Copies**

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
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 FWA

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## **Part 6              Perusal and scanning**

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
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 FWA

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<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
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 FWA

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## **Part 7 Examination**

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
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

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## **Part 8 Letters**

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
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)

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
804	Special letter (for example, a letter from counsel that includes an opinion)	Either: (a) \$50; or (b) an amount that FWA considers reasonable having regard to the length of the letter, the questions involved and appropriate items and charges in this Schedule
805	Fax copy including attendance to dispatch	Either: (a) \$63; or (b) an amount that FWA considers reasonable in the circumstances
806	Receiving and filing an incoming letter	\$7

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## **Part 9      Service**

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
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 FWA 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

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## 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 FWA is satisfied that the work or general oversight has been done efficiently:	
	(a) for work done or overseen by a solicitor	\$135 per hour
	(b) for work done or overseen by a clerk	\$34 per hour
1002	Preparation of appeal books, if the work is done entirely within the solicitor's office	An amount that FWA 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 FWA 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):	
	(a) by a solicitor	\$60 per quarter hour
	(b) by a managing clerk or other equally suitably qualified person	\$13 per quarter hour

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
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 FWA, an FWA conference or chambers for hearing with counsel (where FWA considers such attendance is necessary):	
	(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



Item	Matter for which charge may be made	Charge
	(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 FWA or chambers for the hearing of an application or appeal, or In 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	FWA may allow an amount that FWA 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	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:	FWA may allow an amount FWA considers reasonable in the circumstances of the case
	(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

**Part 13      Fees for Counsel for solicitor appearing as Counsel**

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
1301	For counsel's fees incurred by a solicitor  <i>Note</i> The fees incurred may be claimed as a disbursement.	An amount that FWA 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 FWA considers to be fair and reasonable according to the circumstances of the case and the seniority of the solicitor

**Part 14      Witnesses' expenses**

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
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 FWA

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1403	For travel expenses for a witness who lives more than 50 kilometres from FWA (in addition to a charge under item 1401 or 1402)	An amount that FWA considers reasonable for the actual cost of travel, plus a reasonable amount for meals and accommodation
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## **Part 15 Disbursements**

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge</b>
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 FWA or chambers, or on conference with counsel, in the circumstances mentioned in item 1109	An amount that FWA 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

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## Schedule 3.2 Ballot papers

(regulation 3.16)

### Form 1 Ballot paper under Part 3 of Chapter 3

(regulation 3.16)

*Fair Work Act 2009*, Chapter 3, Part 3.3, Division 8

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 protected industrial action to which this ballot applies is  
*[description]*.

#### DIRECTIONS TO VOTERS

- Record your vote on the ballot paper as follows:
  - if you approve the proposed protected industrial action, mark the **YES** box opposite the question;
  - if you do not approve the proposed protected industrial action, mark the **NO** box opposite the question.
- 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 Fair Work Australia)

**YES**

**NO**

**INFORMATION FOR VOTERS**

1. The applicant(s) for the protected action ballot order is or are *[name(s)]*.  
<sup>1</sup>
1. The agent of the applicant(s) for the protected action ballot order is *[name]*.<sup>1</sup>  
<sup>1</sup> *omit if inapplicable*
2. The employees who are to be balloted are *[description]*.
3. The protected action 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.

## **Schedule 3.3 Forms relating to entry to premises**

(regulation 3.26)

### **Form 1 Entry permit to enter premises**

(regulation 3.26)

*Fair Work Regulations 2009*, regulation 3.26

#### **ENTRY PERMIT TO ENTER PREMISES**

This entry permit is issued to [name], of [name of organisation] under section 512 of the *Fair Work Act 2009*.

The permit holder is entitled, while the permit is in force, to exercise the powers and functions given to the permit holder by Part 3-4 of the *Fair Work Act 2009*.

This permit expires at the end of 3 years beginning on the day it is issued, unless the period is extended under subsection 516 (2) of the *Fair Work Act 2009*, or the permit holder ceases to be an official of the organisation, or the permit is revoked.

Dated 20

Delegate of Fair Work Australia

*Note* This permit must be returned to Fair Work Australia within 7 days after it is revoked or suspended, conditions are imposed on it after it was issued, or it expires.

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## Form 2      Entry notice

(regulation 3.27)

*Fair Work Regulations 2009*, regulation 3.27

### ENTRY NOTICE

I, [full name], of [name of organisation], and having been issued an entry permit under section 512 of the *Fair Work Act 2009*, give notice that I propose to enter [name and address of premises] on [date of proposed entry].

***Delete each block of text below which is not appropriate***

The suspected contravention, or contraventions, to which this notice relates are:

- [particulars of the suspected contravention or contraventions].

As the entry is authorised by section 481 of the *Fair Work Act 2009* (which deals with entry to investigate suspected contraventions), I declare that:

- [name of organisation], under [provision in organisation's rules], is entitled to represent the industrial interests of a member who performs work at the premises mentioned above; and
- the suspected contravention or contraventions relate to or affect that member.

The suspected contravention, or contraventions, to which this notice relates are:

- [particulars of the suspected contravention or contraventions].

As the entry is authorised by paragraph 483A (1) (a) of the *Fair Work Act 2009* (which deals with entry to investigate suspected contraventions relating to TCF outworkers), I declare that:

- [name of organisation], under [provision in organisation's rules], is entitled to represent the industrial interests of a TCF outworker who performs work at the premises mentioned above; and
- the suspected contravention or contraventions relate to or affect that TCF outworker.

As the entry is authorised by paragraph 483A (1) (b) of the *Fair Work Act 2009* (which deals with entry to investigate suspected contraventions of a designated outworker term), I declare that [*name of organisation*], under [*provision in organisation's rules*], is entitled to represent the industrial interests of TCF outworkers.

The suspected contravention, or contraventions, to which this notice relates are:

- [*particulars of the suspected contravention or contraventions*].

As the entry is authorised by section 483D of the *Fair Work Act 2009* (which deals with entry to other premises to investigate suspected contraventions relating to TCF outworkers), I declare that:

- [*name of organisation*], under [*provision in organisation's rules*], is entitled to represent the industrial interests of a TCF outworker who performs work at the premises mentioned above; and
- the suspected contravention or contraventions relate to or affect that TCF outworker.

As the entry is authorised by section 484 of the *Fair Work Act 2009* (which deals with entry to hold discussions), I declare that [*name of organisation*], under [*provision in organisation's rules*], is entitled to represent the industrial interests of an employee or TCF outworker who performs work on the premises mentioned above.

Given at [*time*]

Dated 20

Signature of permit holder



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**Form 3 Exemption certificates**  
(regulation 3.28)

*Fair Work Regulations 2009*, regulation 3.28

**EXEMPTION CERTIFICATE**

This certificate is issued to [*name of organisation*].

Section 481 of the *Fair Work Act 2009* authorises entry to premises for the purpose of investigating contraventions, or suspected contraventions, of the *Fair Work Act 2009*, or a term of a fair work instrument. The organisation issued with this certificate is exempted from the obligation to comply with the notice requirements for entry to premises under section 487 of that Act.

For this certificate:

- (a) The premises to which it relates are:  
[*name and address of premises*]
- (b) The day or days on which the entry may occur are:  
[*day or days*]
- (c) The suspected contravention or contraventions to which the entry relates are:  
[*particulars of suspected contravention or contraventions*]

Dated 20

Delegate of Fair Work Australia

*Note* Entry to the premises must be on a day specified in this certificate.

## **Form 4 Affected member certificate**

(regulation 3.29)

*Fair Work Regulations 2009*, regulation 3.29

### **AFFECTED MEMBER CERTIFICATE**

This certificate is issued to [*name of organisation*].

Section 520 of the *Fair Work Act 2009* authorises Fair Work Australia to issue an affected member certificate if a permit holder seeks to enter premises for the purpose of investigating contraventions, or suspected contraventions, of the *Fair Work Act 2009*, or a term of a fair work instrument.

For section 520 of the *Fair Work Act 2009*, Fair Work Australia is satisfied that:

- a member of the organisation performs work on the premises below; and
- the organisation is entitled to represent the industrial interests of the member; and
- a suspected contravention of the *Fair Work Act 2009*, or a term of a fair work instrument, relates to, or affects, that member.

For this certificate:

(a) The premises to which it relates are:

[*name and address of premises*]

(b) The suspected contravention or contraventions to which it relates are:

[*particulars of suspected contravention or contraventions*]

Dated 20

Delegate of Fair Work Australia

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## Schedule 3.4 Forms for certain dismissals

(regulation 3.30)

### Form 1 Notice to Centrelink of proposed dismissals

(regulation 3.30)

*Fair Work Act 2009*, section 530

#### NOTICE TO CENTRELINK OF PROPOSED DISMISSALS

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 subsection 530 (1) of the *Fair Work Act 2009*, that [name of employer] proposes to dismiss the employment of 15 or more of its employees, for the following reasons:

*[Set out reasons for proposed dismissals. 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 dismissals at the following time/s, or over the following period/s of time:

*[Provide specific dates if known, or approximate period of time]*

Dated 20

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position

\* *Omit section reference as appropriate*

## Schedule 4.1 Form of claim for unclaimed money

(regulation 4.11)

*Fair Work Regulations 2009*, regulation 4.11

### CLAIM FOR UNCLAIMED MONEY

#### Claimant's Details

Claimant's name	
Residential address	
	Postcode
Postal address (if different from above):	
	Postcode
Daytime phone no. ( )	Mobile no. (if any):
Email address (if any):	

#### Details of the Claim

Please provide the following details regarding your former employment and the amount the employer was required to pay to you.

Name of former employer
Address of former employer
Date of commencing former employment
Date of leaving former employment
Amount claimed

Please attach evidence showing that you were employed by the former employer (for example, a pay slip).

**Please provide any further information about the circumstances of your claim that you would like to be considered.**


### Payment Details

Please indicate how you would like to be paid the unclaimed money (mark the appropriate box).

- direct debit to a particular account; or
- a cheque posted to the residential or postal address you provided in this form

If you have selected direct debit, please provide the following:

Account name (eg. Jan and John Citizen)										
Name of financial institution					Branch:					
BSB number								-		
Account number										

### Declaration/Authority

I declare that

- the information provided in this claim form is true and correct to the best of my knowledge.
- I understand that making a false declaration is an offence.

I authorise and direct the Fair Work Ombudsman to pay the money claimed, and any additional money the Fair Work Ombudsman may identify as belonging to me, in the way I have directed in this form (by direct deposit or cheque).

Claimant's name:	
Claimant's signature:	Date / /

## **Schedule 5.1 Oath and affirmation of office**

(subregulation 5.03 (1))

*Oath*

I, *[name]*, do swear that I will bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of *[name of office]* and that I will faithfully and impartially perform the duties of the office. So help me God!

I, *[name]*, do solemnly and sincerely promise and declare that I will bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of *[name of office]* and that I will faithfully and impartially perform the duties of the office.

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## **Schedule 5.2 Information and copies of documents to be provided to the Minister and the Fair Work Ombudsman**

(regulation 5.04)

### **Part 1 Information and copies of documents to be provided to the Minister**

<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
<b>1</b>	<b><i>Awards</i></b>	
1.1	The number of: (a) determinations varying modern awards; and (b) modern awards; and (c) determinations revoking modern awards; made in a quarter under section 157 of the Act	as soon as practicable after the end of the quarter
1.2	The number of applications made in a quarter under section 158 of the Act for: (a) the making of a determination varying or revoking a modern award under section 157 of the Act; or (b) the making of a modern award, under section 157 of the Act	as soon as practicable after the end of the quarter
1.3	The number of determinations made in a quarter under section 161 of the Act varying modern awards	as soon as practicable after the end of the quarter

<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
<b>2</b>	<b><i>Enterprise agreements</i></b>	
2.1	The number of applications for the approval of enterprise agreements made in a quarter under section 185 of the Act	as soon as practicable after the end of the quarter
2.2	The number of applications for variations of an enterprise agreement made in a quarter under section 210 of the Act	as soon as practicable after the end of the quarter
2.3	The number of applications for variations of an enterprise agreement made in a quarter under section 217 of the Act	as soon as practicable after the end of the quarter
2.4	The number of enterprise agreements approved in a quarter under section 186 of the Act	as soon as practicable after the end of the quarter
2.5	The number of enterprise agreements approved in a quarter under section 189 of the Act	as soon as practicable after the end of the quarter
2.6	The number of enterprise agreements approved in a quarter under section 211 of the Act	as soon as practicable after the end of the quarter
2.7	The number of variations of enterprise agreements approved in a quarter under section 211 of the Act	as soon as practicable after the end of the quarter
<b>3</b>	<b><i>Bargaining orders</i></b>	
3.1	The number of applications for bargaining orders made in a quarter under section 229 of the Act	as soon as practicable after the end of the quarter
3.2	The number of applications for serious breach declarations made in a quarter under section 234 of the Act	as soon as practicable after the end of the quarter
3.3	The number of applications for majority support determinations made in a quarter under section 236 of the Act	as soon as practicable after the end of the quarter
3.4	The number of applications for scope orders made in a quarter under section 238 of the Act	as soon as practicable after the end of the quarter



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<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
3.5	The number of applications for FWA to deal with disputes made in a quarter under section 240 of the Act	as soon as practicable after the end of the quarter
3.6	The number of bargaining orders made in a quarter under section 230 of the Act	as soon as practicable after the end of the quarter
3.7	The number of serious breach declarations made in a quarter under section 235 of the Act	as soon as practicable after the end of the quarter
3.8	The number of majority support determinations made in a quarter under section 237 of the Act	as soon as practicable after the end of the quarter
3.9	The number of scope orders made in a quarter under section 238 of the Act	as soon as practicable after the end of the quarter
3.10	The number of decisions to deal with a dispute made in a quarter under section 240 of the Act	as soon as practicable after the end of the quarter
<b>4</b>	<b><i>Low-paid bargaining</i></b>	
4.1	The number of applications made for low-paid authorisations in a quarter under section 242 of the Act	as soon as practicable after the end of the quarter
4.2	The number of low-paid authorisations made in a quarter under section 243 of the Act	as soon as practicable after the end of the quarter
4.3	The number of low-paid authorisations varied in a quarter under section 244 of the Act	as soon as practicable after the end of the quarter
<b>5</b>	<b><i>Single interest employer authorisations</i></b>	
5.1	The number of applications for single interest employer authorisations made in a quarter under section 248 of the Act	as soon as practicable after the end of the quarter
5.2	The number of applications for variations of single interest employer authorisations to remove the employer's name from the authorisation made in a quarter under section 251 of the Act	as soon as practicable after the end of the quarter

<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
5.3	The number of applications for variations of single interest employer authorisations to extend the period for which the authorisation is in operation made in a quarter under section 252 of the Act	as soon as practicable after the end of the quarter
5.4	The number of single interest employer authorisations made in a quarter under section 249 of the Act	as soon as practicable after the end of the quarter
5.5	The number of single interest employer authorisations varied to remove the employer's name from the authorisation in a quarter under section 251 of the Act	as soon as practicable after the end of the quarter
5.6	The number of single interest employer authorisations varied to extend the period for which the authorisation is in operation in a quarter under section 252 of the Act	as soon as practicable after the end of the quarter
<b>6</b>	<b><i>Workplace determinations</i></b>	
6.1	The number of applications for consent low-paid determinations made in a quarter under section 260 of the Act	as soon as practicable after the end of the quarter
6.2	The number of applications made for special low-paid workplace determinations in a quarter under section 260 of the Act	as soon as practicable after the end of the quarter
6.3	The number of consent low-paid determinations made in a quarter under section 261 of the Act	as soon as practicable after the end of the quarter
6.4	The number of special low-paid workplace determinations made in a quarter under section 262 of the Act	as soon as practicable after the end of the quarter
6.5	The number of industrial action related workplace determinations made in a quarter under section 266 of the Act	as soon as practicable after the end of the quarter
6.6	The number of bargaining related workplace determinations made in a quarter under section 269 of the Act	as soon as practicable after the end of the quarter

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<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
<b>7</b>	<b><i>Equal remuneration orders</i></b>	
7.1	The number of equal remuneration orders made in a quarter under section 302 of the Act	as soon as practicable after the end of the quarter
<b>8</b>	<b><i>Transfer of business</i></b>	
8.1	The number of applications for orders relating to instruments covering a new employer and transferring employees made in a quarter under section 318 of the Act	as soon as practicable after the end of the quarter
8.2	The number of applications for orders relating to instruments covering a new employer and transferring employees made in a quarter under section 319 of the Act	as soon as practicable after the end of the quarter
8.3	The number of applications for variations of a transferable instrument made in a quarter under section 320 of the Act	as soon as practicable after the end of the quarter
8.4	The number of orders made in a quarter under section 318 of the Act relating to instruments covering a new employer and transferring employees	as soon as practicable after the end of the quarter
8.5	The number of orders made in a quarter under section 319 of the Act relating to instruments covering a new employer and transferring employees	as soon as practicable after the end of the quarter
8.6	The number of variations of transferable instruments made in a quarter under section 320 of the Act	as soon as practicable after the end of the quarter
<b>9</b>	<b><i>General protections — compliance</i></b>	
9.1	The number of applications for FWA to deal with disputes made in a quarter under section 365 of the Act	as soon as practicable after the end of the quarter
9.2	The number of applications for FWA to deal with disputes made in a quarter under section 372 of the Act	as soon as practicable after the end of the quarter

<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
9.3	The number of certificates issued in a quarter under section 369 of the Act to the effect that FWA is satisfied that all reasonable attempts to resolve a dispute have been, or are likely to be, unsuccessful	as soon as practicable after the end of the quarter
<b>10</b>	<b><i>Unfair dismissal</i></b>	
10.1	The number of applications for orders granting a remedy made in a quarter under section 394 of the Act	as soon as practicable after the end of the quarter
10.2	For applications for an order granting a remedy dealt with in a quarter under section 394 of the Act: <ul style="list-style-type: none"><li>(a) the number of applications in relation to which the dismissal was found to be unfair, including:<ul style="list-style-type: none"><li>(i) the number of orders made in the quarter under section 391 of the Act for a person's reinstatement; and</li><li>(ii) the number of orders made in the quarter under section 392 of the Act for the payment of compensation to a person; and</li></ul></li><li>(b) the number of applications that related to a small business employer; and</li><li>(c) the number of applications dismissed because dismissal was found to be fair; and</li><li>(d) the number of claims dismissed because the dismissal was consistent with the Small Business Fair Dismissal Code; and</li><li>(e) the number of claims dismissed because the dismissal was a case of genuine redundancy; and</li></ul>	as soon as practicable after the end of the quarter

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<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
	(f) the number of cases dismissed for want of jurisdiction; and	
	(g) the number of cases settled without a decision being made; and	
	(h) the time from the date of the application to the date of judgement; and	
	(i) the number of cases settled by the conduct of 1 or more conferences; and	
	(j) the number of cases settled by hearing	
10.3	The number of applications for FWA to deal with disputes for which FWA had allowed a further period for the application to be made that were made in a quarter under section 394 of the Act	as soon as practicable after the end of the quarter
10.4	The number of orders for costs against a lawyer or a paid agent made in a quarter under section 401 of the Act	as soon as practicable after the end of the quarter
<b>11</b>	<b><i>Protected action ballots and industrial action</i></b>	
11.1	The number of applications to vary protected ballot orders made in a quarter under section 447 of the Act	as soon as practicable after the end of the quarter
11.2	The number of applications to revoke protected ballot orders made in a quarter under section 448 of the Act	as soon as practicable after the end of the quarter
11.3	The number of applications to extend periods in which industrial action is authorised made in a quarter under section 459 of the Act	as soon as practicable after the end of the quarter
11.4	The number of applications for orders varying the proportion by which an employee's payments are reduced made in a quarter under section 472 of the Act	as soon as practicable after the end of the quarter

<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
11.5	The number of orders made in a quarter under section 447 of the Act to vary a protected ballot order	as soon as practicable after the end of the quarter
11.6	The number of orders made in a quarter under section 448 of the Act to revoke a protected ballot order	as soon as practicable after the end of the quarter
11.7	The number of extensions made in a quarter under section 459 of the Act to extend a period in which industrial action is authorised	as soon as practicable after the end of the quarter
11.8	The number of orders made in a quarter under section 472 of the Act varying the proportion by which an employee's payments are reduced	as soon as practicable after the end of the quarter
<b>12</b>	<b><i>Right of entry</i></b>	
12.1	The number of applications for orders relating to access to non-member records made in a quarter under section 483AA of the Act	as soon as practicable after the end of the quarter
12.2	The number of applications for orders relating to a dispute about the operation of Part 3-4 of the Act made in a quarter under section 505 of the Act	as soon as practicable after the end of the quarter
12.3	The number of orders relating to access to non-member records made in a quarter under section 483AA of the Act	as soon as practicable after the end of the quarter
12.4	The number of orders relating to a dispute about the operation of Part 3-4 of the Act made in a quarter under section 505 of the Act	as soon as practicable after the end of the quarter
12.5	The number of actions restricting the rights that are exercisable under Part 3-4 of the Act by an organisation, or officials of an organisation taken in a quarter under section 508 of the Act	as soon as practicable after the end of the quarter
12.6	The number of entry permits revoked in a quarter under section 510 of the Act	as soon as practicable after the end of the quarter

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<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
12.7	The number of entry permits suspended in a quarter under section 510 of the Act	as soon as practicable after the end of the quarter
12.8	The number of applications for entry permits made in a quarter under section 512 of the Act	as soon as practicable after the end of the quarter
12.9	The number of applications for exemption certificates made in a quarter under section 519 of the Act	as soon as practicable after the end of the quarter
12.1 0	The number of applications for affected member certificates made in a quarter under section 520 of the Act	as soon as practicable after the end of the quarter
12.1 1	The number of entry permits issued in a quarter under section 512 of the Act	as soon as practicable after the end of the quarter
12.1 2	The number of exemption certificates issued in a quarter under section 519 of the Act	as soon as practicable after the end of the quarter
12.1 3	The number of affected member certificates issued in a quarter under section 520 of the Act	as soon as practicable after the end of the quarter
<b>13</b>	<b><i>Miscellaneous — disputes</i></b>	
13.1	The number of applications for FWA to deal with disputes in relation to a refusal by an employer to a request by an employee for flexible working arrangements made in a quarter under section 739 of the Act	as soon as practicable after the end of the quarter
13.2	The number of applications for FWA to deal with disputes made in a quarter under section 773 of the Act	as soon as practicable after the end of the quarter
13.3	The number of certificates issued in a quarter under section 777 of the Act to the effect that FWA is satisfied that all reasonable attempts to resolve a dispute have been, or are likely to be, unsuccessful	as soon as practicable after the end of the quarter

Schedule 5.2	Information and copies of documents to be provided to the Minister and the Fair Work Ombudsman
Part 1	Information and copies of documents to be provided to the Minister

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<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
<b>14</b>	<b><i>Industrial action</i></b>	
14.1	A list of the applications filed in a week under sections 418, 419 and 420 of the Act for orders relating to stopping industrial action, including: <ul style="list-style-type: none"> <li>(a) a statement that the matter has commenced; and</li> <li>(b) the case numbers of the applications; and</li> </ul>	as soon as practicable after the end of the week
14.2	A list of all applications filed in a week under sections 423, 424, 425 and 426 of the Act for orders suspending or terminating protected industrial action	as soon as practicable after the end of the week
14.3	A list of all applications filed in a week under Division 8 of Part 3-3 of the Act relating to protected action ballots	as soon as practicable after the end of the week
14.4	For a list mentioned in item 14.1, 14.2 or 14.3: <ul style="list-style-type: none"> <li>(a) a statement that the matter has commenced; and</li> <li>(b) the case numbers of the applications; and</li> <li>(c) the type of matter, identified by reference to the relevant section of the Act; and</li> <li>(d) the names of the parties, identifying which of the parties is the applicant and the respondent; and</li> <li>(e) whether the party is an individual or an organisation; and</li> <li>(f) for a party that is an organisation — whether the party is an employee or employer organisation; and</li> <li>(g) a copy of any order made in relation to the matter</li> </ul>	as soon as practicable after the end of the week



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<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
<b>15</b>	<b><i>Enterprise agreements</i></b>	
15.1	For an enterprise agreement that has been approved under section 186, 211 or 217 of the Act: <ul style="list-style-type: none"><li>(a) a copy of the enterprise agreement and any variation of the enterprise agreement; and</li><li>(b) the title of the enterprise agreement; and</li><li>(c) the number assigned to the enterprise agreement by FWA; and</li><li>(d) the date on which the enterprise agreement was approved or varied; and</li><li>(e) the name of each employer; and</li><li>(f) the Australian Business Number (if any) of each employer; and</li><li>(g) a brief description of the work undertaken at each workplace to which the enterprise agreement applies; and</li><li>(h) the name of each employee organisation which the enterprise agreement covers; and</li><li>(i) each State or Territory in relation to which the enterprise agreement applies; and</li><li>(j) the name of each award that covers an employee who is, or will be, covered by the enterprise agreement; and</li></ul>	as soon as practicable, but not later than 21 days after the day on which the relevant decision or order was made

<b>Item</b>	<b>This information or copy of a document ...</b>	<b>is to be provided to the Minister ...</b>
	<ul style="list-style-type: none"><li>(k) if the enterprise agreement replaces another agreement:<ul style="list-style-type: none"><li>(i) the title of the replaced agreement; and</li><li>(ii) the number of the replaced agreement, as assigned by FWA or the Workplace Authority; and</li></ul></li><li>(l) whether the enterprise agreement is:<ul style="list-style-type: none"><li>(i) a single-enterprise agreement; or</li><li>(ii) a multi-enterprise agreement; or</li><li>(iii) a greenfields agreement; and</li></ul></li><li>(m) the number of employees covered by the enterprise agreement; and</li><li>(n) the number of agreements approved under subsection 189 (2) of the Act; and</li><li>(o) whether the enterprise agreement was made as a result of a low-paid bargaining authorisation; and</li><li>(p) whether the enterprise agreement was made as a result of a single-interest employer authorisation</li></ul>	
15.2	For an order made under section 223 or 226 of the Act approving the termination of an enterprise agreement or terminating the enterprise agreement: <ul style="list-style-type: none"><li>(a) a copy of the approval or termination; and</li><li>(b) if the agreement previously had a different number assigned by FWA — each previous number; and</li><li>(c) the date on which the termination took effect or will take effect</li></ul>	as soon as practicable, but not later than 21 days after the day on which the order was made

## Part 2 Information and copies of documents to be provided to the Fair Work Ombudsman

Item	This information or copy of a document ...	is to be provided to the Fair Work Ombudsman ...
<b>1</b>	<b><i>General protections — compliance</i></b>	
1.1	The number of applications for FWA to deal with disputes made in a quarter under section 365 of the Act	as soon as practicable after the end of the quarter
1.2	The number of applications for FWA to deal with disputes made in a quarter under section 372 of the Act	as soon as practicable after the end of the quarter
<b>2</b>	<b><i>Unfair dismissal</i></b>	
2.1	The number of applications for orders granting a remedy made in a quarter under section 394 of the Act	as soon as practicable after the end of the quarter
2.2	For applications for an order granting a remedy dealt with in a quarter under section 394 of the Act: <ul style="list-style-type: none"> <li>(a) the number of applications in relation to which the dismissal was found to be unfair, including: <ul style="list-style-type: none"> <li>(i) the number of orders made in the quarter under section 391 of the Act for a person's reinstatement; and</li> <li>(ii) the number of orders made in the quarter under section 392 of the Act for the payment of compensation to a person; and</li> </ul> </li> <li>(b) the number of applications that related to a small business employer; and</li> <li>(c) the number of applications dismissed because dismissal was found to be fair; and</li> </ul>	as soon as practicable after the end of the quarter

- (d) the number of claims dismissed because the dismissal was consistent with the Small Business Fair Dismissal Code; and
- (e) the number of claims dismissed because the dismissal was a case of genuine redundancy; and
- (f) the number of cases dismissed for want of jurisdiction; and
- (g) the number of cases settled without a decision being made; and
- (h) the time from the date of the application to the date of judgement; and
- (i) the number of cases settled by the conduct of 1 or more conferences; and
- (j) the number of cases settled by hearing

**3 Industrial action**

3.1	The number of applications to vary protected ballot orders made in a quarter under section 447 of the Act	as soon as practicable after the end of the quarter
3.2	The number of applications to revoke protected ballot orders made in a quarter under section 448 of the Act	as soon as practicable after the end of the quarter
3.3	The number of applications to extend periods in which industrial action is authorised made in a quarter under section 459 of the Act	as soon as practicable after the end of the quarter
3.4	The number of applications for orders varying the proportion by which an employee's payments are reduced made in a quarter under section 472 of the Act	as soon as practicable after the end of the quarter
3.5	The number of orders made in a quarter under section 447 of the Act to vary a protected ballot order	as soon as practicable after the end of the quarter
3.6	The number of orders made in a quarter under section 447 of the Act to revoke a protected ballot order	as soon as practicable after the end of the quarter

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- |      |  |   |
|------|--|---|
| 3.7  | The number of extensions made in a quarter under section 459 of the Act to extend a period in which industrial action is authorised  | as soon as practicable after the end of the quarter |
| 3.8  | The number of orders made in a quarter under section 459 of the Act relating to a dispute about the operation of Part 3-4 of the Act, including the number of orders in relation to which FWA dealt with the dispute on its own initiative   | as soon as practicable after the end of the quarter |
| 3.9  | A list of the applications filed in a week under sections 418, 419 and 420 of the Act for orders relating to stopping industrial action, including:<br>(a) a statement that the matter has commenced; and<br>(b) the case numbers of the applications; and   | as soon as practicable after the end of the week    |
| 3.10 | A list of all applications filed in a week under sections 423, 424, 425 and 426 of the Act for orders suspending or terminating protected industrial action  | as soon as practicable after the end of the week    |
| 3.11 | A list of all applications filed in a week under Division 8 of Part 3-3 of the Act relating to protected action ballots  | as soon as practicable after the end of the week    |
| 3.12 | For a list mentioned in item 3.9, 3.10 or 3.11:<br>(a) a statement that the matter has commenced; and<br>(b) the case numbers of the applications; and<br>(c) the type of matter, identified by reference to the relevant section of the Act; and<br>(d) the names of the parties, identifying which of the parties is the applicant and the respondent; and | as soon as practicable after the end of the week    |

Schedule 5.2	Information and copies of documents to be provided to the Minister and the Fair Work Ombudsman
Part 2	Information and copies of documents to be provided to the Fair Work Ombudsman

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- (e) whether the party is an individual or an organisation; and
  - (f) for a party that is an organisation — whether the party is an employee or employer organisation
- 3.13 A copy of a written report about a protected action ballot made under section 458 of the Act within 24 hours after the report is written
- 3.14 A copy of any order made in relation to a matter mentioned in item 3.9, 3.10 or 3.11 either:
- (a) within 24 hours after the order is made; or
  - (b) if the order has not been written within that period — as soon as practicable
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## Schedule 6.1 Model term for dealing with disputes for enterprise agreements

(regulation 6.01)

### Model term

- (1) If a dispute relates to:
  - (a) a matter arising under the agreement; or
  - (b) the National Employment Standards;this term sets out procedures to settle the dispute.
- (2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- (3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Australia.
- (5) Fair Work Australia may deal with the dispute in 2 stages:
  - (a) Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - (b) if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
    - (i) arbitrate the dispute; and
    - (ii) make a determination that is binding on the parties.

*Note* If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

- (6) While the parties are trying to resolve the dispute using the procedures in this term:
- (a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
  - (b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
    - (i) the work is not safe; or
    - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
    - (iii) the work is not appropriate for the employee to perform; or
    - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.
- (7) The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this term.



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## Schedule 6.2 Forms for certain terminations

(regulation 6.07)

### Form 1 Notice to Centrelink of proposed terminations

(regulation 6.07)

*Fair Work Regulations 2009, regulation 6.07*

#### NOTICE TO CENTRELINK 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 subsection 785 (2) of the *Fair Work Act 2009*, 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 20

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Signature

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Position

*\* Omit section reference as appropriate*

## Schedule 6.3 Public sector employment — employing authorities

(regulation 6.09)

Item	Person	Employing authority or authorities
1	A person who is employed in public sector employment by a particular Commonwealth authority	The Minister administering the enactment by or under which the Commonwealth authority employing the persons specified in column 2 of this item was established  The principal executive officer (however called) of the Commonwealth authority employing the persons specified in column 2 of this item
2	An APS employee, 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 Minister
3	A Parliamentary Service employee, 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>
4	A person employed under section 42 of the <i>Naval Defence Act 1910</i>	The Minister administering the <i>Naval Defence Act 1910</i>  The persons empowered under the <i>Naval Defence Act 1910</i> to employ persons
5	A person engaged as a consultant under Part II, or employed under Part III or IV, of the <i>Members of Parliament (Staff) Act 1984</i>	The Minister administering the <i>Members of Parliament (Staff) Act 1984</i>

<b>Item</b>	<b>Person</b>	<b>Employing authority or authorities</b>
6	A person employed as an employee in a particular Agency of the Northern Territory Public Sector	The Minister of the Northern Territory responsible for the Agency in which the person is employed  The Commissioner for Public Employment for the Northern Territory
7	A person: (a) who is employed by the Northern Territory; but (b) is not a person mentioned in item 6	The Commissioner for Public Employment for the Northern Territory
8	A person employed by a particular Northern Territory authority (being a body corporate established for a public purpose by or under a law of the Northern Territory) under terms and conditions determined or approved by the Commissioner for Public Employment for the Northern Territory	The Minister administering the Act of the Northern Territory by or under which the authority employing the person was established  The principal executive officer (however called) of the authority employing the persons specified in column 2 of this item  The Commissioner for Public Employment for the Northern Territory
9	A person employed by either of the following Northern Territory authorities: (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  The Commissioner for Public Employment for the Northern Territory

Item	Person	Employing authority or authorities
10	A person who: <ul style="list-style-type: none"> <li>(a) is employed by a particular Northern Territory authority (being a body corporate established for a public purpose by or under a law of the Northern Territory); but</li> <li>(b) is not a person mentioned in item 8 or 9</li> </ul>	<p>The Minister administering the Act of the Northern Territory by or under which the authority employing the person was established</p> <p>The authority employing the person</p> <p>The Commissioner for Public Employment for the Northern Territory</p>
11	A person employed by a particular Northern Territory authority (being a body corporate incorporated under a law of the Northern Territory in which the Northern Territory has a controlling interest)	<p>The Minister responsible for the authority employing the person</p> <p>The principal executive officer (however called) of the authority employing the person</p> <p>The Commissioner for Public Employment for the Northern Territory</p>
12	A person 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>
13	A person employed under the <i>Legislative Assembly (Members' Staff) Act 1989</i> of the Australian Capital Territory	The Chief Minister for the Australian Capital Territory

Item	Person	Employing authority or authorities
14	An officer or employee (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 <b><i>Self-Government Act</i></b>)) who administers the government agency, or the Act under which the autonomous instrumentality is established</p> <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>
15	A person 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>
16	An officer or employee (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> (the <b><i>Self-Government Act</i></b>), who is responsible for exercising the power of the Australian Capital Territory Executive in relation to public health</p> <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>

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Item	Person	Employing authority or authorities
17	A person who: (a) is 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; but (b) is not mentioned in item 15, 16, 17 or 18	The principal executive officer (however described) of the body corporate or authority  The Minister administering the law of the Australian Capital Territory  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
18	A person who is employed under section 13 of the <i>Governor -General Act 1974</i>	The Official Secretary to the Governor-General

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### Note

- All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.