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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Fair Work Amendment Bill 2014

No. , 2014

(Employment)

**A Bill for an Act to amend the *Fair Work Act 2009*,
and for other purposes**

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1 **A Bill for an Act to amend the *Fair Work Act 2009*,**
2 **and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Fair Work Amendment Act 2014*.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table
8 commences, or is taken to have commenced, in accordance with
9 column 2 of the table. Any other statement in column 2 has effect
10 according to its terms.

11

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Parts 1, 2 and 3	The day after this Act receives the Royal Assent.	
3. Schedule 1, Part 4, Division 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
4. Schedule 1, Part 4, Divisions 2 and 3	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
5. Schedule 1, Parts 5, 6 and 7	The day after this Act receives the Royal Assent.	
6. Schedule 1, Part 8	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
7. Schedule 1, Part 9	The day after this Act receives the Royal Assent.	
8. Schedule 1, Part 10	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
9. Schedule 2	The day after this Act receives the Royal Assent.	

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

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

1 **Schedule 1—Amendments**

2 **Part 1—Extension of period of unpaid parental leave**

3 *Fair Work Act 2009*

4 **1 After subsection 76(5)**

5 Insert:

6 *Discussion*

7 (5A) The employer must not refuse the request unless the employer has
8 given the employee a reasonable opportunity to discuss the request.

1 **Part 2—Payment for annual leave**

2 *Fair Work Act 2009*

3 **2 Subsection 55(4) (paragraph (b) of note 2)**

4 Omit “99).”, substitute “99); or”.

5 **3 Subsection 55(4) (at the end of note 2)**

6 Add:

- 7 (c) that provide that if, when the employment of an employee ends,
8 the employee has a period of untaken paid annual leave, the
9 employee is to be paid the amount that would have been payable
10 to the employee had the employee taken that period of leave (that
11 amount may be higher than the amount required by
12 subsection 90(2)).

13 **4 Subsection 90(2)**

14 Repeal the subsection, substitute:

- 15 (2) If, at the time (the *termination time*) when the employment of an
16 employee ends, the employee has a period of untaken paid annual
17 leave:
18 (a) the employer must pay the employee a rate for each hour of
19 the employee’s untaken paid annual leave; and
20 (b) that rate must not be less than the rate that, immediately
21 before the termination time, is the employee’s base rate of
22 pay (expressed as an hourly rate).

23 Note: See also section 55 (which deals with the interaction between the
24 National Employment Standards and a modern award or enterprise
25 agreement).

1 **Part 3—Taking or accruing leave while receiving**
2 **workers' compensation**

3 *Fair Work Act 2009*

4 **5 Subsection 130(2)**

5 Repeal the subsection.

1 **Part 4—Individual flexibility arrangements**

2 **Division 1—Modern awards (genuine needs statements)**

3 *Fair Work Act 2009*

4 **6 After paragraph 144(4)(c)**

5 Insert:

6 (ca) require the employer to ensure that any individual flexibility
7 arrangement includes a statement by the employee setting out
8 why the employee believes (at the time of agreeing to the
9 arrangement) that the arrangement:

- 10 (i) meets the genuine needs of the employee; and
11 (ii) results in the employee being better off overall than the
12 employee would have been if no individual flexibility
13 arrangement were agreed to; and

14 **Division 2—Modern awards (other matters)**

15 *Fair Work Act 2009*

16 **7 Paragraph 144(4)(d)**

17 Repeal the paragraph, substitute:

18 (d) require the employer to ensure that any individual flexibility
19 arrangement agreed to under the term must be able to be
20 terminated:

- 21 (i) by either the employee, or the employer, giving 13
22 weeks notice of termination, in writing, to the other
23 party to the arrangement; or
24 (ii) by the employee and the employer at any time if they
25 agree, in writing, to the termination; and

26 **8 At the end of subsection 144(4)**

27 Add:

28 Note: Benefits other than an entitlement to a payment of money may be
29 taken into account for the purposes of paragraph (c).

1 **9 At the end of subsection 145(3)**

2 Add:

3 Note: An employer does not contravene a flexibility term in the
4 circumstances set out in section 145AA.

5 **10 After section 145**

6 Insert:

7 **145AA Contravention of flexibility term by employer**

8 An employer does not contravene a flexibility term of a modern
9 award in relation to a particular individual flexibility arrangement
10 if, at the time when the arrangement is made, the employer
11 reasonably believes that the requirements of the term were
12 complied with, so far as the requirements are applicable to the
13 arrangement.

14 **Division 3—Enterprise agreements**

15 ***Fair Work Act 2009***

16 **11 Before paragraph 203(2)(a)**

17 Insert:

18 (aa) if the enterprise agreement includes terms that deal with one
19 or more of the following matters:
20 (i) arrangements about when work is performed;
21 (ii) overtime rates;
22 (iii) penalty rates;
23 (iv) allowances;
24 (v) leave loading;
25 provide that the effect of those terms may be varied by an
26 individual flexibility arrangement agreed to under the
27 flexibility term; and

28 **12 Paragraph 203(2)(a)**

29 Omit “the terms”, substitute “any other terms”.

1 **13 At the end of subsection 203(4)**

2 Add:

3 Note: Benefits other than an entitlement to a payment of money may be
4 taken into account for the purposes of this subsection.

5 **14 After subsection 203(4)**

6 Insert:

7 *Requirement for genuine needs statement*

8 (4A) The flexibility term must require the employer to ensure that any
9 individual flexibility arrangement agreed to under the term
10 includes a statement by the employee setting out why the employee
11 believes (at the time of agreeing to the arrangement) that the
12 arrangement:

- 13 (a) meets the genuine needs of the employee; and
14 (b) results in the employee being better off overall than the
15 employee would have been if no individual flexibility
16 arrangement were agreed to.

17 **15 Paragraph 203(6)(a)**

18 Omit “written notice of not more than 28 days”, substitute “13 weeks
19 notice of termination, in writing, to the other party to the arrangement”.

20 **16 At the end of subsection 204(3)**

21 Add:

22 Note: An employer does not contravene a flexibility term in the
23 circumstances set out in section 204A.

24 **17 Subsection 204(4)**

25 Repeal the subsection, substitute:

26 *Arrangement may be terminated by agreement or notice*

27 (4) The flexibility term is taken to provide (in addition to any other
28 means of termination of the arrangement that the term provides)
29 that the arrangement can be terminated:

- 30 (a) by either the employee, or the employer, giving written
31 notice of not more than 28 days; or

Schedule 1 Amendments

Part 4 Individual flexibility arrangements

1 (b) by the employee and the employer at any time if they agree,
2 in writing, to the termination.

3 **18 After section 204**

4 Insert:

5 **204A Contravention of flexibility term by employer**

6 An employer does not contravene a flexibility term of an enterprise
7 agreement in relation to a particular individual flexibility
8 arrangement if, at the time when the arrangement is made, the
9 employer reasonably believes that the requirements of the term
10 were complied with, so far as the requirements are applicable to the
11 arrangement.

1 **Part 5—Greenfields agreements**

2 *Fair Work Act 2009*

3 **19 Section 12 (at the end of the definition of *appointment*)**

4 Add “or 177(c)”.

5 **20 Section 12 (definition of *bargaining representative*)**

6 Omit “section 176”, substitute “sections 176 and 177”.

7 **21 Section 12**

8 Insert:

9 *notified negotiation period* for a proposed single-enterprise
10 agreement that is a greenfields agreement: see section 178B.

11 **22 Subsection 172(1) (note 2)**

12 After “enterprise agreement”, insert “that is not a greenfields
13 agreement”.

14 **23 After section 176**

15 Insert:

16 **177 Bargaining representatives for proposed enterprise agreements**
17 **that are greenfields agreements**

18 The following paragraphs set out the persons who are *bargaining*
19 *representatives* for a proposed single-enterprise agreement that is a
20 greenfields agreement:

- 21 (a) an employer that will be covered by the agreement;
22 (b) an employee organisation:
23 (i) that is entitled to represent the industrial interests of one
24 or more of the employees who will be covered by the
25 agreement, in relation to work to be performed under
26 the agreement; and
27 (ii) with which the employer agrees to bargain for the
28 agreement;

- 1 (c) a person who is a bargaining representative of an employer
2 that will be covered by the agreement if the employer
3 appoints, in writing, the person as his or her bargaining
4 representative for the agreement.

5 **24 At the end of subsection 178(2)**

- 6 Add:
7 ; and (c) for an appointment made by an employer that will be covered
8 by a proposed single-enterprise agreement that is a
9 greenfields agreement—be given, on request, to an employee
10 organisation that is a bargaining representative for the
11 agreement.

12 **25 Paragraph 178A(3)(b)**

- 13 After “a proposed enterprise agreement”, insert “, other than a
14 single-enterprise agreement that is a greenfields agreement”.

15 **26 After subsection 178A(3)**

- 16 Insert:
17 (3A) A copy of an instrument under subsection (1) made by an employer
18 that will be covered by a proposed single-enterprise agreement that
19 is a greenfields agreement must be given to the bargaining
20 representative and, on request, to an employee organisation that is
21 a bargaining representative for the agreement.

22 **27 At the end of Division 3 of Part 2-4**

- 23 Add:
24 **178B Notified negotiation period for a proposed single-enterprise**
25 **agreement that is a greenfields agreement**
26 (1) If a proposed single-enterprise agreement is a greenfields
27 agreement, an employer that is a bargaining representative for the
28 agreement may give written notice:
29 (a) to each employee organisation that is a bargaining
30 representative for the agreement; and
31 (b) stating that the period of 3 months beginning on a specified
32 day is the *notified negotiation period* for the agreement.
33 (2) The specified day must be later than:
-

- 1 (a) if only one employee organisation is a bargaining
2 representative for the agreement—the day on which the
3 employer gave the notice to the organisation; or
4 (b) if 2 or more employee organisations are bargaining
5 representatives for the agreement—the last day on which the
6 employer gave the notice to any of those organisations.

7 *Multiple employers—agreement to giving of notice*

- 8 (3) If 2 or more employers are bargaining representatives for the
9 agreement, the notice has no effect unless the other employer or
10 employers agree to the giving of the notice.

11 **28 At the end of section 182**

12 Add:

- 13 (4) If:
- 14 (a) a proposed single-enterprise agreement is a greenfields
15 agreement that has not been made under subsection (3); and
16 (b) there has been a notified negotiation period for the
17 agreement; and
18 (c) the notified negotiation period has ended; and
19 (d) the employer or employers that were bargaining
20 representatives for the agreement (the *relevant employer or*
21 *employers*) gave each of the employee organisations that
22 were bargaining representatives for the agreement a
23 reasonable opportunity to sign the agreement; and
24 (e) the relevant employer or employers apply to the FWC for
25 approval of the agreement;
26 the agreement is taken to have been *made*:
27 (f) by the relevant employer or employers with each of the
28 employee organisations that were bargaining representatives
29 for the agreement; and
30 (g) when the application is made to the FWC for approval of the
31 agreement.

32 Note: See also section 185A (material that must accompany an application).

33 **29 Subsection 185(1A)**

34 After “the agreement is a”, insert “multi-enterprise agreement that is a”.

1 **30 At the end of section 185**

2 Add:

3 *Single-enterprise agreements that are greenfields agreements*

4 (6) This section does not apply to an agreement made under
5 subsection 182(4).

6 **31 At the end of Subdivision A of Division 4 of Part 2-4**

7 Add:

8 **185A Material that must accompany an application under**
9 **subsection 182(4) for approval of a greenfields agreement**

10 An application under subsection 182(4) for approval of an
11 agreement must be accompanied by:

- 12 (a) a copy of the agreement; and
13 (b) any declarations that are required by the procedural rules to
14 accompany the application.

15 **32 Subsection 186(1)**

16 After “made under”, insert “subsection 182(4) or”.

17 **33 At the end of section 187**

18 Add:

19 (6) If an agreement is made under subsection 182(4) (which deals with
20 a single-enterprise agreement that is a greenfields agreement), the
21 FWC must be satisfied that the agreement, considered on an
22 overall basis, provides for pay and conditions that are consistent
23 with the prevailing pay and conditions within the relevant industry
24 for equivalent work.

25 Note: In considering the prevailing pay and conditions within the relevant
26 industry for equivalent work, the FWC may have regard to the
27 prevailing pay and conditions in the relevant geographical area.

28 **34 Paragraph 190(1)(a)**

29 After “made under”, insert “subsection 182(4) or”.

1 **35 Subsection 192(1)**

2 After “made under”, insert “subsection 182(4) or”.

3 **36 Subsection 193(6)**

4 After “made under”, insert “subsection 182(4) or”.

5 **37 After subsection 201(2)**

6 Insert:

7 (2A) If:

8 (a) an agreement is made under subsection 182(4) (which deals
9 with a single-enterprise agreement that is a greenfields
10 agreement); and

11 (b) the FWC approves the agreement;
12 the FWC must note in its decision to approve the agreement that
13 the agreement covers each employee organisation that was a
14 bargaining representative for the agreement.

15 **38 Paragraph 211(1)(a)**

16 After “made under”, insert “subsection 182(4) or”.

17 **39 Paragraph 211(4)(d)**

18 After “(6) to”, insert “subsection 182(4) or”.

19 **40 At the end of subsection 228(1)**

20 Add:

21 Note: See also section 255A (limitations relating to greenfields agreements).

22 **41 At the end of subsection 229(1)**

23 Add:

24 Note: See also section 255A (limitations relating to greenfields agreements).

25 **42 At the end of subsection 230(1)**

26 Add:

27 Note: See also section 255A (limitations relating to greenfields agreements).

28 **43 At the end of section 232**

29 Add:

1 Note: See also section 255A (limitations relating to greenfields agreements).

2 **44 Section 234 (note)**

3 After “Note”, insert “1”.

4 **45 At the end of section 234**

5 Add:

6 Note 2: See also section 255A (limitations relating to greenfields agreements).

7 **46 At the end of subsection 235(1)**

8 Add:

9 Note: See also section 255A (limitations relating to greenfields agreements).

10 **47 Subsection 238(1)**

11 After “a proposed single-enterprise agreement”, insert “(other than a
12 greenfields agreement)”.

13 **48 At the end of subsection 240(1)**

14 Add:

15 Note: See also section 255A (limitations relating to greenfields agreements).

16 **49 At the end of subsection 255(1)**

17 Add:

18 ; or (d) an employer to give a notice under section 178B; or

19 (e) an employer to specify a particular day in a notice under
20 section 178B; or

21 (f) an employer to agree to the giving of a notice under
22 section 178B.

23 **50 After section 255**

24 Insert:

25 **255A Limitations relating to greenfields agreements**

26 (1) If:

27 (a) a proposed single-enterprise agreement is a greenfields
28 agreement; and

- 1 (b) there has been a notified negotiation period for the
2 agreement; and
3 (c) the notified negotiation period has ended;
4 then:
5 (d) the following provisions do not apply in relation to the
6 agreement at any time after the end of the notified
7 negotiation period:
8 (i) section 228 (which deals with good faith bargaining
9 requirements);
10 (ii) sections 229 and 230 (which deal with bargaining
11 orders);
12 (iii) sections 234 and 235 (which deal with serious breach
13 declarations);
14 (iv) section 240 (which deals with bargaining disputes); and
15 (e) a bargaining order that relates to the agreement ceases to
16 have effect at the end of the notified negotiation period.
- 17 (2) Paragraph (1)(e) has effect despite anything in section 232 (which
18 deals with the operation of bargaining orders).

19 **51 At the end of subsection 269(1)**

20 Add:

21 Note 3: See also section 271A (limitations relating to greenfields agreements).

22 **52 At the end of Division 4 of Part 2-5**

23 Add:

24 **271A Limitations relating to greenfields agreements**

25 If:

- 26 (a) a proposed single-enterprise agreement is a greenfields
27 agreement; and
28 (b) there has been a notified negotiation period for the
29 agreement; and
30 (c) the notified negotiation period has ended;
31 section 269 (which deals with bargaining related workplace
32 determinations) does not apply in relation to the agreement at any
33 time after the end of the notified negotiation period.

1 **Part 6—Transfer of business**

2 *Fair Work Act 2009*

3 **53 Section 12 (paragraph (a) of the definition of *transfer of***
4 ***business*)**

5 Omit “subsection 311(1)”, substitute “subsections 311(1) and (1A)”.

6 **54 After subsection 311(1)**

7 Insert:

8 (1A) However, there is not a *transfer of business* if:

- 9 (a) the new employer is an associated entity of the old employer
10 when the employee becomes employed by the new employer;
11 and
12 (b) before the termination of the employee’s employment with
13 the old employer, the employee sought to become employed
14 by the new employer at the employee’s initiative.

15 **55 At the end of section 768AD**

16 Add:

17 *Exception*

18 (5) Subsections (2), (3) and (4) do not apply if:

- 19 (a) the new employer is an associated entity of the old State
20 employer when the person becomes employed by the new
21 employer as mentioned in paragraph (1)(b); and
22 (b) before the termination of the person’s employment with the
23 old State employer, the person sought to become employed
24 by the new employer at the person’s initiative.

25 (6) For the purposes of sections 768BL, 768BM and 768BN, assume
26 that subsection (5) of this section had not been enacted.

1 **Part 7—Protected action ballot orders**

2 ***Fair Work Act 2009***

3 **56 After subsection 437(2)**

4 Insert:

5 (2A) Subsection (1) does not apply unless there has been a notification
6 time in relation to the proposed enterprise agreement.

7 Note: For ***notification time***, see subsection 173(2). Protected industrial
8 action cannot be taken until after bargaining has commenced
9 (including where the scope of the proposed enterprise agreement is the
10 only matter in dispute).

1 **Part 8—Right of entry**

2 *Fair Work Act 2009*

3 **57 Section 12 (definition of *accommodation arrangement*)**

4 Repeal the definition.

5 **58 Section 12**

6 Insert:

7 *invitation certificate*: see subsection 520A(1).

8 **59 Section 12 (definition of *transport arrangement*)**

9 Repeal the definition.

10 **60 Section 478**

11 Omit:

12

Division 7 deals with accommodation and transport arrangements in remote areas.
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14 **61 Section 484**

15 Repeal the section, substitute:

16 **484 Entry to hold discussions**

17 *Permit holder's organisation is covered by an enterprise*
18 *agreement*

- 19 (1) A permit holder may enter premises for the purposes of holding
20 discussions with one or more employees or TCF award workers:
21 (a) who perform work on the premises; and
22 (b) whose industrial interests the permit holder's organisation is
23 entitled to represent; and
24 (c) who wish to participate in those discussions;
25 if:

- 1 (d) an enterprise agreement applies to work performed on the
2 premises; and
3 (e) the permit holder's organisation is covered by the enterprise
4 agreement.

5 Note 1: A permit holder, or the organisation to which the permit holder
6 belongs, may be subject to an order by the FWC under section 508 if
7 rights under this Subdivision are misused.

8 Note 2: A person must not refuse or unduly delay entry by a permit holder, or
9 intentionally hinder or obstruct a permit holder, exercising rights
10 under this Subdivision (see sections 501 and 502).

11 Note 3: Under paragraph 487(1)(b), the permit holder must give the occupier
12 of the premises notice for the entry. Having given that notice, the
13 permit holder may hold the relevant discussions on the premises.

14 *Permit holder's organisation is not covered by an enterprise*
15 *agreement*

- 16 (2) A permit holder may enter premises for the purposes of holding
17 discussions with one or more employees or TCF award workers:
18 (a) who perform work on the premises; and
19 (b) whose industrial interests the permit holder's organisation is
20 entitled to represent; and
21 (c) who wish to participate in those discussions;
22 if:
23 (d) either:
24 (i) an enterprise agreement applies to work performed on
25 the premises, but the enterprise agreement does not
26 cover the permit holder's organisation; or
27 (ii) no enterprise agreement applies to work performed on
28 the premises; and
29 (e) a member, or prospective member, of the permit holder's
30 organisation:
31 (i) who performs work on the premises; and
32 (ii) whose industrial interests the organisation is entitled to
33 represent;
34 has invited the organisation to send a representative to the
35 premises for the purposes of holding those discussions.

36 Note 1: The FWC may issue an invitation certificate under section 520A. The
37 certificate will state that the FWC is satisfied that the organisation has
38 been invited.

- 1 Note 2: A permit holder, or the organisation to which the permit holder
2 belongs, may be subject to an order by the FWC under section 508 if
3 rights under this Subdivision are misused.
- 4 Note 3: A person must not refuse or unduly delay entry by a permit holder, or
5 intentionally hinder or obstruct a permit holder, exercising rights
6 under this Subdivision (see sections 501 and 502).
- 7 Note 4: Under paragraph 487(1)(b), the permit holder must give the occupier
8 of the premises notice for the entry. Having given that notice, the
9 permit holder may hold the relevant discussions on the premises.

10 **62 Sections 492 and 492A**

11 Repeal the sections, substitute:

12 **492 Conduct of interviews in particular room etc.**

- 13 (1) The permit holder must comply with any reasonable request by the
14 occupier of the premises to:
- 15 (a) conduct interviews or hold discussions in a particular room or
16 area of the premises; or
- 17 (b) take a particular route to reach a particular room or area of
18 the premises.
- 19 Note: The FWC may deal with a dispute about whether the request is
20 reasonable (see subsection 505(1)).
- 21 (2) Without limiting when a request under subsection (1) might
22 otherwise be unreasonable, a request under paragraph (1)(a) is
23 unreasonable if:
- 24 (a) the room or area is not fit for the purpose of conducting the
25 interviews or holding the discussions; or
- 26 (b) the request is made with the intention of:
- 27 (i) intimidating persons who might participate in the
28 interviews or discussions; or
- 29 (ii) discouraging persons from participating in the
30 interviews or discussions; or
- 31 (iii) making it difficult for persons to participate in the
32 interviews or discussions, whether because the room or
33 area is not easily accessible during mealtimes or other
34 breaks, or for some other reason.

1 (3) However, a request under subsection (1) is not unreasonable only
2 because the room, area or route is not that which the permit holder
3 would have chosen.

4 (4) The regulations may prescribe circumstances in which a request
5 under subsection (1) is or is not reasonable.

6 **63 Subsection 505(1)**

7 Repeal the subsection, substitute:

8 (1) The FWC may deal with a dispute about the operation of this Part
9 (including a dispute about whether a request under section 491,
10 492 or 499 is reasonable).

11 Note: Sections 491, 492 and 499 deal with requests for permit holders to use
12 particular rooms or areas, and comply with occupational health and
13 safety requirements.

14 **64 Subsection 505(5)**

15 Repeal the subsection, substitute:

16 (5) In dealing with the dispute, the FWC must not confer rights on a
17 permit holder that are additional to, or inconsistent with, rights
18 exercisable in accordance with Division 2 or 3 of this Part, unless
19 the dispute is about whether a request under section 491, 492 or
20 499 is reasonable.

21 **65 Subsection 505A(4)**

22 Repeal the subsection.

23 **66 Subsection 505A(6)**

24 Repeal the subsection, substitute:

25 (6) In dealing with the dispute, the FWC must take into account:
26 (a) fairness between the parties concerned; and
27 (b) if the dispute relates to an employer—the combined impact
28 on the employer’s operations of entries onto the premises by
29 permit holders of organisations; and
30 (c) if the dispute relates to an occupier of premises—the
31 combined impact on the occupier’s operations of entries onto
32 the premises by permit holders of organisations.

- 1 (7) For the purposes of paragraphs (6)(b) and (c), it is immaterial
2 whether the organisations, or their permit holders, are parties to the
3 dispute.

4 **67 After Subdivision D of Division 6 of Part 3-4**

5 Insert:

6 **Subdivision DA—Invitation certificates**

7 **520A Invitation certificates**

- 8 (1) The FWC must, on application by an organisation, issue a
9 certificate (an *invitation certificate*) to the organisation if the FWC
10 is satisfied that:
11 (a) a member, or prospective member, of the organisation
12 performs work on particular premises; and
13 (b) the organisation is entitled to represent the industrial interests
14 of the member or prospective member; and
15 (c) the member or prospective member has invited the
16 organisation to send a representative to the premises for the
17 purposes of holding discussions with one or more employees
18 or TCF award workers.
- 19 (2) An invitation certificate must state the following:
20 (a) the premises to which it relates;
21 (b) the organisation to which it relates;
22 (c) that the FWC is satisfied of the matters referred to in
23 paragraphs (1)(a), (b) and (c).
- 24 (3) The FWC must specify an expiry date in an invitation certificate.
25 The certificate ceases to have effect at the end of that date.
- 26 (4) In specifying an expiry date in an invitation certificate, the FWC
27 must comply with any limitations, restrictions or requirements
28 prescribed by the regulations.
- 29 (5) An invitation certificate must not reveal the identity of the member
30 or prospective member to whom it relates.

1 **68 Paragraphs 521(a), (b), (c) and (d)**

2 Omit “and affected member certificates”, substitute “, affected member
3 certificates and invitation certificates”.

4 **69 Division 7 of Part 3-4**

5 Repeal the Division.

6 **70 Subsection 539(2) (cell at table item 25, column headed**
7 **“Civil remedy provision”)**

8 Omit:

9 521C(3)

10 521D(3)

11 **71 After paragraph 601(5)(f)**

12 Insert:

13 (fa) a decision to issue, or to refuse to issue, an invitation
14 certificate under section 520A;

1 **Part 9—FWC hearings and conferences**

2 *Fair Work Act 2009*

3 **72 Section 12**

4 Insert:

5 *designated application-dismissal power* means:

- 6 (a) the power conferred by section 399A (which deals with
7 dismissing applications for orders under Division 4 of
8 Part 3-2); or
9 (b) the power conferred by section 587 to dismiss an application
10 for an order under Division 4 of Part 3-2.

11 Note: Division 4 of Part 3-2 deals with remedies for unfair dismissal of
12 employees.

13 **73 Section 397**

14 Before “The FWC”, insert “(1)”.

15 **74 At the end of section 397**

16 Add:

- 17 (2) This section does not apply for the purposes of deciding whether to
18 exercise a designated application-dismissal power.

19 **75 At the end of section 399**

20 Add:

21 *Designated application-dismissal power*

- 22 (4) To avoid doubt, a reference in this section to a *hearing in relation*
23 *to a matter arising under this Part* includes a reference to a
24 hearing for the purposes of deciding whether to exercise a
25 designated application-dismissal power.

26 **76 After section 399A**

27 Insert:

1 **399B Hearings and conferences—dismissing applications**

2 (1) If the FWC decides not to hold a hearing, or conduct a conference,
3 for the purposes of deciding whether to exercise a designated
4 application-dismissal power, the FWC must, before deciding
5 whether to exercise the power:

6 (a) invite the parties to the matter concerned to provide further
7 information that relates to whether the power should be
8 exercised; and

9 (b) take account of any such information.

10 (2) If, as a result of information provided as mentioned in
11 subsection (1), the FWC considers that it would be desirable to
12 hold a hearing, or conduct a conference, for the purposes of
13 deciding whether to exercise a designated application-dismissal
14 power, the FWC may do so.

15 (3) An invitation under paragraph (1)(a) must:

16 (a) be given by written notice to the parties to the matter
17 concerned; and

18 (b) specify the time by which the information referred to in the
19 invitation is to be provided.

20 **77 Subsection 587(1) (note)**

21 After “Note”, insert “1”.

22 **78 At the end of subsection 587(1)**

23 Add:

24 Note 2: Section 399 deals with hearings for the purposes of deciding whether
25 to exercise the power conferred by this section to dismiss an
26 application for an order under Division 4 of Part 3-2.

27 Note 3: Section 399B sets out requirements that apply if the FWC decides not
28 to hold a hearing, or conduct a conference, for the purposes of
29 deciding whether to exercise the power conferred by this section to
30 dismiss an application for an order under Division 4 of Part 3-2.

1 **Part 10—Unclaimed money**

2 ***Fair Work Act 2009***

3 **79 Before subsection 559(4)**

4 Insert:

5 *Interest*

6 (3A) If:

- 7 (a) an amount is paid to a person under subsection (3) at a
8 particular time; and
9 (b) the amount is at least \$100; and
10 (c) the amount is attributable to an amount that was paid to the
11 Commonwealth under subsection (1) more than 6 months
12 before that time;

13 the Fair Work Ombudsman, on behalf of the Commonwealth, must
14 also pay to the person the amount of interest (if any) worked out in
15 accordance with an instrument under subsection (3B).

16 (3B) The Minister may make an instrument for the purposes of
17 subsection (3A).

18 (3C) An instrument under subsection (3B) may involve different rates of
19 interest for different periods over which the interest accrues. For
20 this purpose, *rate* includes a nil rate.

21 (3D) An instrument made under subsection (3B) is a legislative
22 instrument.

23 **80 Subsection 559(4)**

24 Omit “this section”, substitute “subsection (3)”.

1 **Schedule 2—Application and transitional**
2 **provisions**
3

4 *Fair Work Act 2009*

5 **1 At the end of the Act**

6 Add:

7 **Schedule 5—Amendments made by the Fair**
8 **Work Amendment Act 2014**

9 Note: See section 795A.
10
11

12 **1 Definition**

13 In this Schedule:

14 *amending Act* means the *Fair Work Amendment Act 2014*.

15 **2 Part 1 of Schedule 1 to the amending Act**

16 The amendment made by Part 1 of Schedule 1 to the amending Act
17 applies in relation to a request made after the commencement of
18 that Part.

19 **3 Part 2 of Schedule 1 to the amending Act**

20 The amendments made by Part 2 of Schedule 1 to the amending
21 Act apply in relation to the end of the employment of an employee,
22 if the end of the employment occurs after the commencement of
23 that Part.

24 **4 Part 3 of Schedule 1 to the amending Act**

25 The amendment made by Part 3 of Schedule 1 to the amending Act
26 applies in relation to a compensation period beginning after the
27 commencement of that Part.

1 **5 Division 1 of Part 4 of Schedule 1 to the amending Act**

2 Paragraph 144(4)(ca) applies in relation to a modern award that is
3 in operation after the commencement of Division 1 of Part 4 of
4 Schedule 1 to the amending Act, whether or not the award was
5 made before the commencement of that Division.

6 **6 FWC to vary certain modern awards—genuine needs statement**

7 *Scope*

- 8 (1) This clause applies in relation to a modern award if:
9 (a) the award is in operation at any time during the period of 6
10 months ending at the commencement of Division 1 of Part 4
11 of Schedule 1 to the amending Act; and
12 (b) at any time during that 6-month period, the award includes a
13 flexibility term that does not comply with
14 paragraph 144(4)(ca) (if it were assumed that
15 paragraph 144(4)(ca) applied in relation to the award).

16 *Variation*

- 17 (2) The FWC must, before the commencement of Division 1 of Part 4
18 of Schedule 1 to the amending Act, make a determination varying
19 the modern award so as to ensure that the flexibility term complies
20 with paragraph 144(4)(ca).
21 (3) A determination made under subclause (2) comes into operation at
22 (and takes effect from) the commencement of Division 1 of Part 4
23 of Schedule 1 to the amending Act.
24 (4) Section 168 applies to a determination made under subclause (2) as
25 if it were a determination made under Part 2-3.

26 **7 Division 2 of Part 4 of Schedule 1 to the amending Act**

27 Section 145AA applies in relation to an individual flexibility
28 arrangement made after the commencement of Division 2 of Part 4
29 of Schedule 1 to the amending Act.

1 **8 Division 3 of Part 4 of Schedule 1 to the amending Act**

- 2 (1) The amendments of subsections 203(2) and (6) made by Division 3
3 of Part 4 of Schedule 1 to the amending Act apply in relation to an
4 enterprise agreement made after the commencement of that
5 Division.
- 6 (2) Subsection 203(4A) applies in relation to an enterprise agreement
7 made after the commencement of Division 3 of Part 4 of
8 Schedule 1 to the amending Act.
- 9 (3) The amendment of section 204 made by Division 3 of Part 4 of
10 Schedule 1 to the amending Act applies in relation to an enterprise
11 agreement made after the commencement of that Division.
- 12 (4) Section 204A applies in relation to an individual flexibility
13 arrangement made after the commencement of Division 3 of Part 4
14 of Schedule 1 to the amending Act.

15 **9 Part 5 of Schedule 1 to the amending Act**

16 The amendments made by Part 5 of Schedule 1 to the amending
17 Act, so far as they concern proposed enterprise agreements, apply
18 in relation to a proposed enterprise agreement if an employer
19 agrees to bargain for the proposed enterprise agreement after the
20 commencement of that Part.

21 **10 Part 6 of Schedule 1 to the amending Act**

- 22 (1) Subsection 311(1A) applies in relation to an employee who
23 becomes employed by a new employer after the commencement of
24 Part 6 of Schedule 1 to the amending Act.
- 25 (2) Subsections 768AD(5) and (6) apply in relation to a person who
26 becomes employed by a new employer after the commencement of
27 Part 6 of Schedule 1 to the amending Act.

28 **11 Part 7 of Schedule 1 to the amending Act**

29 The amendment of section 437 made by Part 7 of Schedule 1 to the
30 amending Act applies in relation to an application made under that
31 section, if the application was made after the commencement of
32 that Part.

1 **12 Part 8 of Schedule 1 to the amending Act**

- 2 (1) The amendments made by item 62 of Schedule 1 to the amending
3 Act apply in relation to interviews conducted, and discussions held,
4 after the commencement of that item.
- 5 (2) The amendments of section 505A made by Part 8 of Schedule 1 to
6 the amending Act apply to a dispute if the FWC commences to
7 deal with the dispute:
8 (a) on its own initiative after the commencement of that Part; or
9 (b) on application made after the commencement of that Part.

10 **13 Part 9 of Schedule 1 to the amending Act**

11 The amendments made by Part 9 of Schedule 1 to the amending
12 Act apply in relation to an application for an order under
13 Division 4 of Part 3-2, if the application was made after the
14 commencement of Part 9 of Schedule 1 to the amending Act.

15 **14 Part 10 of Schedule 1 to the amending Act**

16 Paragraph 559(3A)(c) applies in relation to an amount that was
17 paid to the Commonwealth under subsection 559(1) after the
18 commencement of Part 10 of Schedule 1 to the amending Act.