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Volume 1: sections 1–536H

Volume 2: sections 537–800
Schedules
Endnotes

Each volume has its own contents

This compilation includes a commenced amendment made by Act No. 93, 2017

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Fair Work Act 2009* that shows the text of the law as amended and in force on 20 September 2017 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Chapter 4—Compliance and enforcement

Part 4-1—Civil remedies

Division 1—Introduction

537 Guide to this Part

This Part is about civil remedies. Certain provisions in this Act impose obligations on certain persons. Civil remedies may be sought in relation to contraventions of these civil remedy provisions.

Subdivision A of Division 2 deals with applications for orders in relation to contraventions of civil remedy provisions and safety net contractual entitlements, and applications for orders to enforce entitlements arising under subsection 542(1).

Subdivision B of Division 2 sets out the orders that can be made by the Federal Court, the Federal Circuit Court or an eligible State or Territory Court in relation to a contravention of a civil remedy provision.

Division 3 sets out when proceedings relating to a contravention of a civil remedy provision may be dealt with as small claims proceedings.

Division 4 deals with general provisions relating to civil remedies, including rules about evidence and procedure.

Division 4A imposes obligations on responsible franchisor entities in relation to certain contraventions of civil remedy provisions by franchisee entities and on holding companies in relation to certain contraventions of civil remedy provisions by subsidiaries.

Division 5 deals with unclaimed money.

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 1 Introduction

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538 Meanings of *employee* and *employer*

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

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

Division 2—Orders

Subdivision A—Applications for orders

539 Applications for orders in relation to contraventions of civil remedy provisions

- (1) A provision referred to in column 1 of an item in the table in subsection (2) is a *civil remedy provision*.
- (2) For each civil remedy provision, the persons referred to in column 2 of the item may, subject to sections 540 and 544 and Subdivision B, apply to the courts referred to in column 3 of the item for orders in relation to a contravention or proposed contravention of the provision, including the maximum penalty referred to in column 4 of the item.

Note 1: Civil remedy provisions within a single Part may be grouped together in a single item of the table.

Note 2: Applications cannot be made by an inspector in relation to a contravention of a civil remedy provision by a person in certain cases where an undertaking or compliance notice has been given (see subsections 715(4) and 716(4A)).

Note 3: The regulations may also prescribe persons for the purposes of an item in column 2 of the table (see subsection 540(8)).

Note 4: See section 557A in relation to a serious contravention of a civil remedy provision.

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

Section 539

Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
Part 2-1—Core provisions				
1	44(1)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units
2	45 (other than in relation to a contravention or proposed contravention of an outworker term)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an employer organisation; (e) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units
3	45 (in relation to a contravention or proposed contravention of an outworker term)	(a) an outworker; (b) an employer; (c) an outworker entity; (d) an employee organisation; (e) an employer organisation; (f) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units

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Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
4	50 (other than in relation to a contravention or proposed contravention of a term that would be an outworker term if it were included in a modern award)	(a) an employee; (b) an employer; (c) an employee organisation to which the enterprise agreement concerned applies; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units
5	50 (in relation to a contravention or proposed contravention of a term that would be an outworker term if it were included in a modern award)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

Section 539

Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
Part 2-4—Enterprise agreements				
5A	179(1) 179(5)	(a) an employee; (b) a bargaining representative for the proposed enterprise agreement; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
5B	180(4A) 180(4B) 180(4C)	(a) an employee; (b) a bargaining representative for the proposed enterprise agreement; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
6	233	(a) an employee who the proposed enterprise agreement will cover; (b) a bargaining representative for the proposed enterprise agreement; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units

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Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
Part 2-5—Workplace determinations				
7	280	(a) an employee; (b) an employer; (c) an employee organisation to which the workplace determination concerned applies; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units
Part 2-6—Minimum wages				
8	293	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units
Part 2-7—Equal remuneration				
9	305	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

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Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
Part 2-9—Other terms and conditions of employment				
10	323(1) 323(3) 325(1) 328(1) 328(2) 328(3)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention —600 penalty units; or otherwise—60 penalty units
10A	325(1A)	(a) a prospective employee; (b) an employee; (c) an employee organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention —600 penalty units; or otherwise—60 penalty units

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Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
Part 3-1—General protections				
11	340(1) 340(2) 343(1) 344 345(1) 346 348 349(1) 350(1) 350(2) 351(1) 352 353(1) 354(1) 355 357(1) 358 359 369(3)	(a) a person affected by the contravention; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units
12	378	(a) a person to whom the costs are payable; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

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Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
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Part 3-2—Unfair dismissal

13	405	(a) a person affected by the contravention; (b) an employee organisation; (c) an employer organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
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Part 3-3—Industrial action

14	417(1)	(a) an employee; (b) an employer; (c) an employee organisation covered by the enterprise agreement or workplace determination concerned; (d) a person affected by the industrial action; (e) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units
15	421(1)	(a) a person affected by the contravention; (b) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units
16	434	an inspector	the Federal Court	60 penalty units

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Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
17	458(2)	(a) an employee; (b) an employer; (c) an applicant for the protected action ballot order; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	30 penalty units
18	462(1) 462(3)	(a) an employee; (b) an employer; (c) an applicant for the protected action ballot order; (d) the protected action ballot agent; (e) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	30 penalty units
19	463(1) 463(2)	(a) an employee; (b) an employer; (c) an applicant for the protected action ballot order; (d) the protected action ballot agent; (e) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

Section 539

Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
20	467(1)	(a) an employee; (b) an employer; (c) an applicant for the protected action ballot order; (d) the protected action ballot agent; (e) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	30 penalty units
21	470(1)	an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units
22	473(1) 473(2)	(a) an employer; (b) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units
23	474(1)	an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units
24	475(1) 475(2)	(a) an employer; (b) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units

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Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
Part 3-4—Right of entry				
25	482(3) 483(4) 483B(4) 483C(5) 483D(4) 483E(5) 494(1) 495(1) 496 497 498 499 500 501 502(1) 503(1) 504 506 509 521C(3) 521D(3)	(a) a person affected by the contravention; (b) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units
26	517(1)	an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

Section 539

Standing, jurisdiction and maximum penalties

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
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Part 3-5—Stand down

27	527	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
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Part 3-6—Other rights and responsibilities

28	530(4)	(a) an employee; (b) a registered employee association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	30 penalty units
29	535(1) 535(2) 535(4) 536(1) 536(2) 536(3)	(a) an employee; (b) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention —600 penalty units; or otherwise—60 penalty units

Part 4-1—Civil remedies

29A	558B(1) 558B(2)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units
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Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
Part 5-1—The Fair Work Commission				
30	611(3)	(a) a person to whom the costs are payable; (b) an employee organisation; (c) an employer organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
Part 5-2—Office of the Fair Work Ombudsman				
30A	707A(1)	an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
31	711(3)	an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	30 penalty units
32	712(3)	an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units

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Part 4-1 Civil remedies

Division 2 Orders

Section 539

Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
32A	712B(1)	an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	600 penalty units
33	716(5)	an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	30 penalty units
33A	718A(1)	an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
Part 6-3—Extension of National Employment Standards entitlements				
34	745(1) 760	(a) an employee; (b) a registered employee association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units

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Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
Part 6-3A—Transfer of business from a State public sector employer				
34A	768AG	(a) the transferring employee; (b) an employer; (c) an employee organisation; (d) an employer organisation; (e) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
34B	768BT	(a) the transferring employee; (b) an employer; (c) an employee organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
Part 6-4—Additional provisions relating to termination of employment				
35	772(1) 777(3)	(a) a person affected by the contravention; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units
36	782	(a) a person to whom the costs are payable; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	60 penalty units

Chapter 4 Compliance and enforcement

Part 4-1 Civil remedies

Division 2 Orders

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Standing, jurisdiction and maximum penalties				
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Courts	Column 4 Maximum penalty
37	785(4)	(a) an employee; (b) a registered employee association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court	30 penalty units
Part 6-4B—Workers bullied at work				
38	789FG	(a) a person affected by the contravention; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units

- (3) The regulations may provide that a provision set out in the regulations is a *civil remedy provision*.
- (4) If the regulations make provision as mentioned in subsection (3):
- (a) the regulations must set out:
 - (i) the persons who would be referred to in column 2; and
 - (ii) the courts that would be referred to in column 3; and
 - (iii) the maximum penalty that would be referred to in column 4;of the table in subsection (2) if there were an item for the civil remedy provision in the table; and
 - (b) this Part has effect as if the matters referred to subparagraphs (a)(i) to (iii) were set out in such an item in the table.

Note: See section 798 for limits on the penalties that may be set out in the regulations.

540 Limitations on who may apply for orders etc.*Employees, employers, outworkers and outworker entities*

- (1) The following persons may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the person is affected by the contravention, or will be affected by the proposed contravention:
- (a) an employee;
 - (aa) a prospective employee;
 - (b) an employer;
 - (c) an outworker;
 - (d) an outworker entity.

Employee organisations and registered employee associations

- (2) An employee organisation or a registered employee association may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision in relation to an employee, only if:
- (a) the employee is affected by the contravention, or will be affected by the proposed contravention; and
 - (b) the organisation or association is entitled to represent the industrial interests of the employee.
- (3) However, subsection (2) does not apply in relation to:
- (a) items 4, 7 and 14 in the table in subsection 539(2); or
 - (b) a contravention or proposed contravention of:
 - (i) an outworker term in a modern award; or
 - (ii) a term in an enterprise agreement that would be an outworker term if it were included in a modern award.
- (4) An employee organisation may apply for an order under this Division, in relation to a contravention or proposed contravention of:
- (a) an outworker term in a modern award; or

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(b) a term in an enterprise agreement that would be an outworker term if it were included in a modern award;
only if the employee organisation is entitled to represent the industrial interests of an outworker to whom the term relates.

Employer organisations

- (5) An employer organisation may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the organisation has a member who is affected by the contravention, or who will be affected by the proposed contravention.

Industrial associations

- (6) An industrial association may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if:
- (a) the industrial association is affected by the contravention, or will be affected by the proposed contravention; or
 - (b) if the contravention is in relation to a person:
 - (i) the person is affected by the contravention, or will be affected by the proposed contravention; and
 - (ii) the industrial association is entitled to represent the industrial interests of the person.
- (7) If an item in column 2 of the table in subsection 539(2) refers to an industrial association then, to avoid doubt, an employee organisation, a registered employee association or an employer organisation may apply for an order, in relation to a contravention or proposed contravention of a civil remedy provision, only if the organisation or association is entitled to apply for the order under subsection (6).

Regulations

- (8) The regulations may prescribe a person for the purposes of an item in column 2 of the table in subsection 539(2). The regulations may

provide that the person is prescribed only in relation to circumstances specified in the regulations.

541 Applications for orders in relation to safety net contractual entitlements

- (1) This section applies if an inspector applies to a court for an order under this Division, in relation to an employer's contravention or proposed contravention of a provision or term referred to in subsection (3) in relation to an employee.
- (2) The inspector may also apply to the court, on behalf of the employee, for an order in relation to the employer's contravention, or proposed contravention, of a safety net contractual entitlement of the employee.
- (3) The provisions and terms are the following:
 - (a) a provision of the National Employment Standards;
 - (b) a term of a modern award;
 - (c) a term of an enterprise agreement;
 - (d) a term of a workplace determination;
 - (e) a term of a national minimum wage order;
 - (f) a term of an equal remuneration order.

542 Entitlements under contracts

- (1) For the purposes of this Part, a safety net contractual entitlement of a national system employer or a national system employee, as in force from time to time, also has effect as an entitlement of the employer or employee under this Act.
- (2) The entitlement has effect under this Act subject to any modifications, by a law of the Commonwealth (including this Act or a fair work instrument), a State or a Territory, of the safety net contractual entitlement.

543 Applications for orders in relation to statutory entitlements derived from contracts

A national system employer or a national system employee may apply to the Federal Court or the Federal Circuit Court to enforce an entitlement of the employer or employee arising under subsection 542(1).

544 Time limit on applications

A person may apply for an order under this Division in relation to a contravention of one of the following only if the application is made within 6 years after the day on which the contravention occurred:

- (a) a civil remedy provision;
- (b) a safety net contractual entitlement;
- (c) an entitlement arising under subsection 542(1).

Note 1: This section does not apply in relation to general protections court applications or unlawful termination court applications (see subparagraphs 370(a)(ii) and 778(a)(ii)).

Note 2: For time limits on orders relating to underpayments, see subsection 545(5).

Subdivision B—Orders

545 Orders that can be made by particular courts

Federal Court and Federal Circuit Court

- (1) The Federal Court or the Federal Circuit Court may make any order the court considers appropriate if the court is satisfied that a person has contravened, or proposes to contravene, a civil remedy provision.

Note 1: For the court's power to make pecuniary penalty orders, see section 546.

Note 2: For limitations on orders in relation to costs, see section 570.

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Note 3: The Federal Court and the Federal Circuit Court may grant injunctions in relation to industrial action under subsections 417(3) and 421(3).

Note 4: There are limitations on orders that can be made in relation to contraventions of subsection 65(5), 76(4), 463(1) or 463(2) (which deal with reasonable business grounds and protected action ballot orders) (see subsections 44(2), 463(3) and 745(2)).

- (2) Without limiting subsection (1), orders the Federal Court or Federal Circuit Court may make include the following:
- (a) an order granting an injunction, or interim injunction, to prevent, stop or remedy the effects of a contravention;
 - (b) an order awarding compensation for loss that a person has suffered because of the contravention;
 - (c) an order for reinstatement of a person.

Eligible State or Territory courts

- (3) An eligible State or Territory court may order an employer to pay an amount to, or on behalf of, an employee of the employer if the court is satisfied that:
- (a) the employer was required to pay the amount under this Act or a fair work instrument; and
 - (b) the employer has contravened a civil remedy provision by failing to pay the amount.

Note 1: For the court's power to make pecuniary penalty orders, see section 546.

Note 2: For limitations on orders in relation to costs, see section 570.

- (3A) An eligible State or Territory court may order an outworker entity to pay an amount to, or on behalf of, an outworker if the court is satisfied that:
- (a) the outworker entity was required to pay the amount under a modern award; and
 - (b) the outworker entity has contravened a civil remedy provision by failing to pay the amount.

Note 1: For the court's power to make pecuniary penalty orders, see section 546.

Note 2: For limitations on orders in relation to costs, see section 570.

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When orders may be made

- (4) A court may make an order under this section:
- (a) on its own initiative, during proceedings before the court; or
 - (b) on application.

Time limit for orders in relation to underpayments

- (5) A court must not make an order under this section in relation to an underpayment that relates to a period that is more than 6 years before the proceedings concerned commenced.

546 Pecuniary penalty orders

- (1) The Federal Court, the Federal Circuit Court or an eligible State or Territory court may, on application, order a person to pay a pecuniary penalty that the court considers is appropriate if the court is satisfied that the person has contravened a civil remedy provision.

Note: Pecuniary penalty orders cannot be made in relation to conduct that contravenes a term of a modern award, a national minimum wage order or an enterprise agreement only because of the retrospective effect of a determination (see subsections 167(3) and 298(2)).

Determining amount of pecuniary penalty

- (2) The pecuniary penalty must not be more than:
- (a) if the person is an individual—the maximum number of penalty units referred to in the relevant item in column 4 of the table in subsection 539(2); or
 - (b) if the person is a body corporate—5 times the maximum number of penalty units referred to in the relevant item in column 4 of the table in subsection 539(2).

Payment of penalty

- (3) The court may order that the pecuniary penalty, or a part of the penalty, be paid to:
- (a) the Commonwealth; or

- (b) a particular organisation; or
- (c) a particular person.

Recovery of penalty

- (4) The pecuniary penalty may be recovered as a debt due to the person to whom the penalty is payable.

No limitation on orders

- (5) To avoid doubt, a court may make a pecuniary penalty order in addition to one or more orders under section 545.

547 Interest up to judgment

- (1) This section applies to an order (other than a pecuniary penalty order) under this Division in relation to an amount that a person was required to pay to, or on behalf of, another person under this Act or a fair work instrument.
- (2) In making the order the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.
- (3) Without limiting subsection (2), in determining the amount of interest, the court must take into account the period between the day the relevant cause of action arose and the day the order is made.

Division 3—Small claims procedure

548 Plaintiffs may choose small claims procedure

- (1) Proceedings are to be dealt with as small claims proceedings under this section if:
 - (a) a person applies for an order (other than a pecuniary penalty order) under Division 2 from a magistrates court or the Federal Circuit Court; and
 - (b) the order relates to an amount referred to in subsection (1A); and
 - (c) the person indicates, in a manner prescribed by the regulations or by the rules of the court, that he or she wants the small claims procedure to apply to the proceedings.
- (1A) The amounts are as follows:
 - (a) an amount that an employer was required to pay to, or on behalf of, an employee:
 - (i) under this Act or a fair work instrument; or
 - (ii) because of a safety net contractual entitlement; or
 - (iii) because of an entitlement of the employee arising under subsection 542(1);
 - (b) an amount that an outworker entity was required to pay to, or on behalf of, an outworker under a modern award.

Limits on award

- (2) In small claims proceedings, the court may not award more than:
 - (a) \$20,000; or
 - (b) if a higher amount is prescribed by the regulations—that higher amount.

Procedure

- (3) In small claims proceedings, the court is not bound by any rules of evidence and procedure and may act:

- (a) in an informal manner; and
 - (b) without regard to legal forms and technicalities.
- (4) At any stage of the small claims proceedings, the court may amend the papers commencing the proceedings if sufficient notice is given to any party adversely affected by the amendment.

Legal representation

- (5) A party to small claims proceedings may be represented in the proceedings by a lawyer only with the leave of the court.
- (6) If the court grants leave for a party to the proceedings to be represented by a lawyer, the court may, if it considers appropriate, do so subject to conditions designed to ensure that no other party is unfairly disadvantaged.
- (7) For the purposes of this section, a person is taken not to be represented by a lawyer if the lawyer is an employee or officer of the person.

Representation by an industrial association

- (8) The regulations may provide for a party to small claims proceedings to be represented in the proceedings, in specified circumstances, by an official of an industrial association.
- (9) However, if small claims proceedings are heard in a court of a State, the regulations may so provide only if the law of the State allows a party to be represented in that court in those circumstances by officials of bodies representing interests related to the matters in dispute.

Division 4—General provisions relating to civil remedies

549 Contravening a civil remedy provision is not an offence

A contravention of a civil remedy provision is not an offence.

550 Involvement in contravention treated in same way as actual contravention

- (1) A person who is involved in a contravention of a civil remedy provision is taken to have contravened that provision.

Note: If a person (the *involved person*) is taken under this subsection to have contravened a civil remedy provision, the involved person's contravention may be a serious contravention (see subsection 557A(5A)). Serious contraventions attract higher maximum penalties (see subsection 539(2)).

- (2) A person is *involved in* a contravention of a civil remedy provision if, and only if, the person:
- (a) has aided, abetted, counselled or procured the contravention;
or
 - (b) has induced the contravention, whether by threats or promises or otherwise; or
 - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
 - (d) has conspired with others to effect the contravention.

551 Civil evidence and procedure rules for proceedings relating to civil remedy provisions

A court must apply the rules of evidence and procedure for civil matters when hearing proceedings relating to a contravention, or proposed contravention, of a civil remedy provision.

552 Civil proceedings after criminal proceedings

A court must not make a pecuniary penalty order against a person for a contravention of a civil remedy provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

553 Criminal proceedings during civil proceedings

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil remedy provision are stayed if:
 - (a) criminal proceedings are commenced or have already commenced against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct in relation to which the order would be made.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

554 Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct constituting a contravention of a civil remedy provision regardless of whether an order has been made against the person under Division 2.

555 Evidence given in proceedings for pecuniary penalty not admissible in criminal proceedings

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
 - (a) the individual previously gave the information or produced the documents in proceedings for a pecuniary penalty order

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against the individual for a contravention of a civil remedy provision (whether or not the order was made); and

- (b) the conduct alleged to constitute the offence is substantially the same as the conduct in relation to which the order was sought.
- (2) However, this does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

556 Civil double jeopardy

If a person is ordered to pay a pecuniary penalty under a civil remedy provision in relation to particular conduct, the person is not liable to be ordered to pay a pecuniary penalty under some other provision of a law of the Commonwealth in relation to that conduct.

Note: A court may make other orders, such as an order for compensation, in relation to particular conduct even if the court has made a pecuniary penalty order in relation to that conduct (see subsection 546(5)).

557 Course of conduct

- (1) For the purposes of this Part, 2 or more contraventions of a civil remedy provision referred to in subsection (2) are, subject to subsection (3), taken to constitute a single contravention if:
- (a) the contraventions are committed by the same person; and
 - (b) the contraventions arose out of a course of conduct by the person.
- (2) The civil remedy provisions are the following:
- (a) subsection 44(1) (which deals with contraventions of the National Employment Standards);
 - (b) section 45 (which deals with contraventions of modern awards);
 - (c) section 50 (which deals with contraventions of enterprise agreements);

- (d) section 280 (which deals with contraventions of workplace determinations);
- (e) section 293 (which deals with contraventions of national minimum wage orders);
- (f) section 305 (which deals with contraventions of equal remuneration orders);
- (g) subsection 323(1) (which deals with methods and frequency of payment);
- (h) subsection 323(3) (which deals with methods of payment specified in modern awards or enterprise agreements);
- (i) subsection 325(1) (which deals with unreasonable requirements on employees to spend or pay amounts);
- (ia) subsection 325(1A) (which deals with unreasonable requirements on prospective employees to spend or pay amounts);
- (j) subsection 417(1) (which deals with industrial action before the nominal expiry date of an enterprise agreement etc.);
- (k) subsection 421(1) (which deals with contraventions of orders in relation to industrial action);
- (l) section 434 (which deals with contraventions of Ministerial directions in relation to industrial action);
- (m) subsection 530(4) (which deals with notifying Centrelink of certain proposed dismissals);
- (n) subsections 535(1), (2) and (4) (which deal with employer obligations in relation to employee records);
- (o) subsections 536(1), (2) and (3) (which deal with employer obligations in relation to pay slips);
- (p) subsection 745(1) (which deals with contraventions of the extended parental leave provisions);
- (q) section 760 (which deals with contraventions of the extended notice of termination provisions);
- (r) subsection 785(4) (which deals with notifying Centrelink of certain proposed terminations);
- (s) any other civil remedy provisions prescribed by the regulations.

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- (3) Subsection (1) does not apply to a contravention of a civil remedy provision that is committed by a person after a court has imposed a pecuniary penalty on the person for an earlier contravention of the provision.

557A Serious contravention of civil remedy provisions

- (1) A contravention of a civil remedy provision by a person is a *serious contravention* if:
- (a) the person knowingly contravened the provision; and
 - (b) the person's conduct constituting the contravention was part of a systematic pattern of conduct relating to one or more other persons.

Note: For the liability of bodies corporate for serious contraventions, see section 557B.

Example: Generally, subsection 323(1) requires an employer to pay an employee the full amount payable to the employee in relation to the performance of work.

A contravention of subsection 323(1) is a serious contravention if the employer knowingly does not pay the employee in full (even if the employer does not know the exact amount of the underpayment) and that contravention is part of a systematic pattern of conduct by the employer. The systematic pattern of conduct of the employer may relate to more than one employee and may consist of different contraventions.

Systematic pattern of conduct

- (2) In determining whether the person's conduct constituting the contravention of the provision was part of a systematic pattern of conduct, a court may have regard to:
- (a) the number of contraventions (the *relevant contraventions*) of this Act committed by the person; and
 - (b) the period over which the relevant contraventions occurred; and
 - (c) the number of other persons affected by the relevant contraventions; and

- (ca) the person's response, or failure to respond, to any complaints made about the relevant contraventions; and
 - (d) except if the provision contravened is section 535—whether the person also contravened subsection 535(1), (2) or (4) by failing to make or keep, in accordance with that section, an employee record relating to the conduct constituting the relevant contraventions; and
 - (e) except if the provision contravened is section 536—whether the person also contravened subsection 536(1), (2) or (3) by failing to give, in accordance with that section, a pay slip relating to the conduct constituting the relevant contraventions.
- (3) Subsection (2) does not limit the matters that a court may have regard to.
- (4) Subsection 557(1) does not apply for the purposes of determining whether the person's conduct was part of a systematic pattern of conduct.
- (5) Subsection (4) does not otherwise affect the operation of subsection 557(1) in relation to serious contraventions of civil remedy provisions.

Involvement in a serious contravention

- (5A) A person (the **involved person**) who is involved in a contravention of a civil remedy provision by another person (the **principal**) commits a **serious contravention** of the provision only if:
- (a) the principal's contravention was a serious contravention; and
 - (b) the involved person knew that the principal's contravention was a serious contravention.

Application for a serious contravention order and alternative orders

- (6) If a person is applying for an order in relation to a serious contravention of a civil remedy provision, the person's application

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under subsection 539(2) must specify the relevant serious contravention.

- (7) If, in proceedings for an order in relation to a serious contravention of a civil remedy provision, the court:
- (a) is not satisfied that the person has committed a serious contravention against that provision; and
 - (b) is satisfied that the person has contravened that provision;
- the court may make a pecuniary penalty order against the person not for the serious contravention but for the contravention of that provision.

557B Liability of bodies corporate for serious contravention

- (1) For the purposes of subsection 557A(1), a body corporate knowingly contravenes a civil remedy provision if the body corporate expressly, tacitly or impliedly authorised the contravention.
- (2) This section does not limit section 793.

557C Presumption where records not provided

- (1) If:
- (a) in proceedings relating to a contravention by an employer of a civil remedy provision referred to in subsection (3), an applicant makes an allegation in relation to a matter; and
 - (b) the employer was required:
 - (i) by subsection 535(1) or (2) to make and keep a record; or
 - (ii) by regulations made for the purposes of subsection 535(3) to make available for inspection a record; or
 - (iii) by subsection 536(1) or (2) to give a pay slip; in relation to the matter; and
 - (c) the employer failed to comply with the requirement; the employer has the burden of disproving the allegation.

- (2) Subsection (1) does not apply if the employer provides a reasonable excuse as to why there has not been compliance with subsection 557C(1)(b).
- (3) The civil remedy provisions are the following:
- (a) subsection 44(1) (which deals with contraventions of the National Employment Standards);
 - (b) section 45 (which deals with contraventions of modern awards);
 - (c) section 50 (which deals with contraventions of enterprise agreements);
 - (d) section 280 (which deals with contraventions of workplace determinations);
 - (e) section 293 (which deals with contraventions of national minimum wage orders);
 - (f) section 305 (which deals with contraventions of equal remuneration orders);
 - (g) subsection 323(1) (which deals with methods and frequency of payment);
 - (h) subsection 323(3) (which deals with methods of payment specified in modern awards or enterprise agreements);
 - (i) subsection 325(1) (which deals with unreasonable requirements to spend or pay amounts);
 - (j) any other civil remedy provisions prescribed by the regulations.

558 Regulations dealing with infringement notices

- (1) The regulations may provide 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) The penalty must not exceed one-tenth of the maximum penalty that a court could have ordered the person to pay under section 546 if the court was satisfied that the person had contravened that provision.

Division 4A—Responsibility of responsible franchisor entities and holding companies for certain contraventions

558A Meaning of *franchisee entity* and *responsible franchisor entity*

- (1) A person is a *franchisee entity* of a franchise if:
 - (a) the person is a franchisee (including a subfranchisee) in relation to the franchise; and
 - (b) the business conducted by the person under the franchise is substantially or materially associated with intellectual property relating to the franchise.
- (2) A person is a *responsible franchisor entity* for a franchisee entity of a franchise if:
 - (a) the person is a franchisor (including a subfranchisor) in relation to the franchise; and
 - (b) the person has a significant degree of influence or control over the franchisee entity's affairs.

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Responsible franchisor entities

- (1) A person contravenes this subsection if:
 - (a) an employer who is a franchisee entity of a franchise contravenes a civil remedy provision referred to in subsection (7); and
 - (b) the person is a responsible franchisor entity for the franchisee entity; and
 - (c) the contravention by the franchisee entity occurs in the franchisee entity's capacity as a franchisee entity; and
 - (d) either:

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- (i) the responsible franchisor entity or an officer (within the meaning of the *Corporations Act 2001*) of the responsible franchisor entity knew or could reasonably be expected to have known that the contravention by the franchisee entity would occur; or
- (ii) at the time of the contravention by the franchisee entity, the responsible franchisor entity or an officer (within the meaning of the *Corporations Act 2001*) of the responsible franchisor entity knew or could reasonably be expected to have known that a contravention by the franchisee entity of the same or a similar character was likely to occur.

Note: This subsection is a civil remedy provision (see this Part).

Holding companies

- (2) A person contravenes this subsection if:
- (a) the person is a body corporate; and
 - (b) a subsidiary (within the meaning of the *Corporations Act 2001*) of the body corporate who is an employer contravenes a civil remedy provision referred to in subsection (7); and
 - (c) either:
 - (i) the body corporate or an officer (within the meaning of the *Corporations Act 2001*) of the body corporate knew or could reasonably be expected to have known that the contravention by the subsidiary would occur; or
 - (ii) at the time of the contravention by the subsidiary, the body corporate or an officer (within the meaning of the *Corporations Act 2001*) of the body corporate knew or could reasonably be expected to have known that a contravention by the subsidiary of the same or a similar character was likely to occur.

Note: This subsection is a civil remedy provision (see this Part).

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Reasonable steps to prevent a contravention of the same or a similar character

- (3) A person does not contravene subsection (1) or (2) if, as at the time of the contravention referred to in paragraph (1)(a) or (2)(b), the person had taken reasonable steps to prevent a contravention by the franchisee entity or subsidiary of the same or a similar character.
- (4) For the purposes of subsection (3), in determining whether a person took reasonable steps to prevent a contravention by a franchisee entity or subsidiary (the **contravening employer**) of the same or a similar character, a court may have regard to all relevant matters, including the following:
- (a) the size and resources of the franchise or body corporate (as the case may be);
 - (b) the extent to which the person had the ability to influence or control the contravening employer's conduct in relation to the contravention referred to in paragraph (1)(a) or (2)(b) or a contravention of the same or a similar character;
 - (c) any action the person took directed towards ensuring that the contravening employer had a reasonable knowledge and understanding of the requirements under the applicable provisions referred to in subsection (7);
 - (d) the person's arrangements (if any) for assessing the contravening employer's compliance with the applicable provisions referred to in subsection (7);
 - (e) the person's arrangements (if any) for receiving and addressing possible complaints about alleged underpayments or other alleged contraventions of this Act within:
 - (i) the franchise; or
 - (ii) the body corporate or any subsidiary (within the meaning of the *Corporations Act 2001*) of the body corporate;as the case may be;
 - (f) the extent to which the person's arrangements (whether legal or otherwise) with the contravening employer encourage or

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require the contravening employer to comply with this Act or any other workplace law.

- (5) Subsection (4) does not limit subsection (3).

Civil proceedings in relation to contravention by franchisee entity or subsidiary not required

- (6) To avoid doubt, a reference in paragraph (1)(a) or (2)(b) to a contravention by a franchisee entity or subsidiary includes any contravention whether or not an order has been sought or made against the franchisee entity or subsidiary under Division 2 for the contravention.

Relevant civil remedy provisions

- (7) The civil remedy provisions are the following:
- (a) subsection 44(1) (which deals with contraventions of the National Employment Standards);
 - (b) section 45 (which deals with contraventions of modern awards);
 - (c) section 50 (which deals with contraventions of enterprise agreements);
 - (d) section 280 (which deals with contraventions of workplace determinations);
 - (e) section 293 (which deals with contraventions of national minimum wage orders);
 - (f) section 305 (which deals with contraventions of equal remuneration orders);
 - (g) subsection 323(1) (which deals with methods and frequency of payment);
 - (h) subsection 323(3) (which deals with methods of payment specified in modern awards or enterprise agreements);
 - (i) subsection 325(1) (which deals with unreasonable requirements on employees to spend or pay amounts);

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- (ia) subsection 325(1A) (which deals with unreasonable requirements on prospective employees to spend or pay amounts);
- (j) subsection 328(1), (2) or (3) (which deal with employer obligations in relation to guarantees of annual earnings);
- (k) subsection 357(1) (which deals with misrepresenting employment as an independent contracting arrangement);
- (l) section 358 (which deals with dismissing an employee to engage as an independent contractor);
- (m) section 359 (which deals with misrepresentations to engage an individual as an independent contractor);
- (n) subsection 535(1), (2) or (4) (which deal with employer obligations in relation to employee records);
- (o) subsection 536(1), (2) or (3) (which deal with employer obligations in relation to pay slips).

558C Right of responsible franchisor entity or holding company to recover

- (1) This section applies if:
 - (a) a person pays an amount to, or on behalf of, an employee pursuant to an order under subsection 545(1) relating to a contravention by the person of subsection 558B(1) or (2) in relation to a franchisee entity or subsidiary (the **contravening employer**); and
 - (b) the person has not otherwise recovered from the contravening employer an amount (the **recoverable amount**) equal to the amount paid by the person.
- (2) The person may commence proceedings against the contravening employer for payment to the person of so much of the recoverable amount as has not been recovered.
- (3) The proceedings may be commenced in:
 - (a) the Federal Court; or
 - (b) the Federal Circuit Court; or
 - (c) an eligible State or Territory court.

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- (4) The court may make an order requiring the contravening employer to pay the person the recoverable amount (or so much of it as has not been recovered from the contravening employer), if the court is satisfied that this section applies as referred to in subsection (1).
- (5) In making the order, the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.
- (6) Without limiting subsection (5), in determining the amount of interest, the court must take into account the period between the day when the amount referred to in paragraph (1)(a) was paid by the person and the day when the order is made.
- (7) Proceedings cannot be commenced under this section more than 6 years after the time when the person paid the amount referred to in paragraph (1)(a).

Division 5—Unclaimed money

559 Unclaimed money

Payment to the Commonwealth

- (1) An employer may pay an amount to the Commonwealth if:
 - (a) the employer was required to pay the amount to an employee under this Act or a fair work instrument; and
 - (b) the employee has left the employment of the employer without having been paid the amount; and
 - (c) the employer is unable to pay the amount to the employee because the employer does not know the employee's whereabouts.

Discharge of employer

- (2) Payment of the amount to the Commonwealth is a sufficient discharge to the employer, as against the employee, for the amount paid.

Payment where money later claimed

- (3) The Fair Work Ombudsman, on behalf of the Commonwealth, must pay an amount to a person if:
 - (a) the amount has been paid to the Commonwealth under this section; and
 - (b) the person has made a claim for the amount in accordance with the form prescribed by the regulations; and
 - (c) the Fair Work Ombudsman is satisfied that the person is entitled to the amount.

Interest

- (3A) If:
 - (a) an amount is paid to a person under subsection (3) at a particular time; and

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- (b) the amount is at least \$100; and
- (c) the amount is attributable to an amount that was paid to the Commonwealth under subsection (1) more than 6 months before that time;

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

- (3B) The Minister may make an instrument for the purposes of subsection (3A).
- (3C) An instrument under subsection (3B) may involve different rates of interest for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.
- (3D) An instrument made under subsection (3B) is a legislative instrument.

Appropriation of Consolidated Revenue Fund

- (4) The Consolidated Revenue Fund is appropriated for the purposes of subsection (3).

Part 4-2—Jurisdiction and powers of courts

Division 1—Introduction

560 Guide to this Part

This Part is about the jurisdiction and powers of the courts in relation to matters arising under this Act.

Divisions 2 and 3 confer jurisdiction on the Federal Court and the Federal Circuit Court. That jurisdiction is generally required to be exercised in the Fair Work Divisions of those courts.

Division 4 deals with intervention, costs, limitation on imprisonment, and regulations, in relation to proceedings in the Federal Court, the Federal Circuit Court and, in some cases, a court of a State or Territory.

561 Meanings of *employee* and *employer*

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

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

Division 2—Jurisdiction and powers of the Federal Court

562 Conferring jurisdiction on the Federal Court

Jurisdiction is conferred on the Federal Court in relation to any matter (whether civil or criminal) arising under this Act.

563 Exercising jurisdiction in the Fair Work Division of the Federal Court

The jurisdiction conferred on the Federal Court under section 562 is to be exercised in the Fair Work Division of the Federal Court if:

- (a) an application is made to the Federal Court under this Act; or
- (b) a writ of mandamus or prohibition or an injunction is sought in the Federal Court against a person holding office under this Act; or
- (c) a declaration is sought under section 21 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or
- (d) an injunction is sought under section 23 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or
- (e) a prosecution is instituted in the Federal Court under this Act; or
- (f) an appeal is instituted in the Federal Court from a judgment of the Federal Circuit Court or a court of a State or Territory in a matter arising under this Act; or
- (g) proceedings in relation to a matter arising under this Act are transferred to the Federal Court from the Federal Circuit Court; or
- (h) the Federal Circuit Court or a court of a State or Territory states a case or reserves a question for the consideration of the Federal Court in a matter arising under this Act; or
- (i) the President refers, under section 608 of this Act, a question of law to the Federal Court; or

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- (j) the High Court remits a matter arising under this Act to the Federal Court.

564 No limitation on Federal Court's powers

To avoid doubt, nothing in this Act limits the Federal Court's powers under section 21, 22 or 23 of the *Federal Court of Australia Act 1976*.

565 Appeals from eligible State or Territory courts

Appeals from original decisions of eligible State or Territory courts

- (1) An appeal lies to the Federal Court from a decision of an eligible State or Territory court exercising jurisdiction under this Act.
- (1A) No appeal lies from a decision of an eligible State or Territory court exercising jurisdiction under this Act, except:
- (a) if the court was exercising summary jurisdiction—an appeal, to that court or another eligible State or Territory court of the same State or Territory, as provided for by a law of that State or Territory; or
 - (b) in any case—an appeal as provided for by subsection (1).

Appeals from appellate decisions of eligible State or Territory courts

- (1B) An appeal lies to the Federal Court from a decision of an eligible State or Territory court made on appeal from a decision that:
- (a) was a decision of that court or another eligible State or Territory court of the same State or Territory; and
 - (b) was made in the exercise of jurisdiction under this Act.
- (1C) No appeal lies from a decision to which subsection (1B) applies, except an appeal as provided for by that subsection.

Leave to appeal not required

- (2) It is not necessary to obtain the leave of the Federal Court, or the court appealed from, in relation to an appeal under subsection (1) or (1B).

Division 3—Jurisdiction and powers of the Federal Circuit Court

566 Conferring jurisdiction on the Federal Circuit Court

Jurisdiction is conferred on the Federal Circuit Court in relation to any civil matter arising under this Act.

567 Exercising jurisdiction in the Fair Work Division of the Federal Circuit Court

Jurisdiction conferred on the Federal Circuit Court under section 566 is to be exercised in the Fair Work Division of the Federal Circuit Court if:

- (a) an application is made to the Federal Circuit Court under this Act; or
- (b) an injunction is sought under section 15 of the *Federal Circuit Court of Australia Act 1999* in relation to a matter arising under this Act; or
- (c) a declaration is sought under section 16 of the *Federal Circuit Court of Australia Act 1999* in relation to a matter arising under this Act; or
- (d) proceedings in relation to a matter arising under this Act are transferred to the Federal Circuit Court from the Federal Court; or
- (e) the High Court remits a matter arising under this Act to the Federal Circuit Court.

568 No limitation on Federal Circuit Court's powers

To avoid doubt, nothing in this Act limits the Federal Circuit Court's powers under section 14, 15 or 16 of the *Federal Circuit Court of Australia Act 1999*.

Division 4—Miscellaneous

569 Minister's entitlement to intervene

- (1) The Minister may intervene on behalf of the Commonwealth in proceedings before a court (including a court of a State or Territory) in relation to a matter arising under this Act if the Minister believes it is in the public interest to do so.
- (2) If the Minister intervenes, the Minister is taken to be a party to the proceedings for the purposes of instituting an appeal from a judgment given in the proceedings.
- (3) Despite section 570, a court may make an order as to costs against the Commonwealth if:
 - (a) the Minister intervenes under subsection (1); or
 - (b) the Minister institutes an appeal from a judgment as referred to in subsection (2).

569A State or Territory Minister's entitlement to intervene

- (1) The Minister of a State or Territory who has responsibility for workplace relations matters may intervene on behalf of the State or Territory in proceedings before a court (including a court of a State or Territory) in relation to a matter arising under this Act if he or she believes it is in the public interest of the State or Territory to do so.
- (2) If the Minister of a State or Territory who has responsibility for workplace relations matters intervenes, he or she is taken to be a party to the proceedings for the purposes of instituting an appeal from a judgment given in the proceedings.
- (3) Despite section 570, a court may make an order as to costs against a State or Territory if:
 - (a) the Minister of a State or Territory who has responsibility for workplace relations matters intervenes under subsection (1);
or

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- (b) he or she institutes an appeal from a judgment as referred to in subsection (2).

570 Costs only if proceedings instituted vexatiously etc.

- (1) A party to proceedings (including an appeal) in a court (including a court of a State or Territory) in relation to a matter arising under this Act may be ordered by the court to pay costs incurred by another party to the proceedings only in accordance with subsection (2) or section 569 or 569A.

Note: The Commonwealth might be ordered to pay costs under section 569.
A State or Territory might be ordered to pay costs under section 569A.

- (2) The party may be ordered to pay the costs only if:
- (a) the court is satisfied that the party instituted the proceedings vexatiously or without reasonable cause; or
 - (b) the court is satisfied that the party's unreasonable act or omission caused the other party to incur the costs; or
 - (c) the court is satisfied of both of the following:
 - (i) the party unreasonably refused to participate in a matter before the FWC;
 - (ii) the matter arose from the same facts as the proceedings.

571 No imprisonment for failure to pay pecuniary penalty

- (1) A court (including a court of a State or Territory) may not order a person to serve a sentence of imprisonment if the person fails to pay a pecuniary penalty imposed under this Act.
- (2) This section applies despite any other law of the Commonwealth, a State or a Territory.

572 Regulations dealing with matters relating to court proceedings

The regulations may provide for the fees to be charged in relation to proceedings in a court (including a court of a State or Territory) under this Act.

Chapter 5—Administration

Part 5-1—The Fair Work Commission

Division 1—Introduction

573 Guide to this Part

This Part is about the Fair Work Commission.

Division 2 establishes and confers functions on the FWC. The FWC consists of the President, Vice Presidents, Deputy Presidents, Commissioners and Expert Panel Members. Division 2 also confers functions on the President.

Division 3 deals with the conduct of matters before the FWC (such as applications, representation by lawyers, the FWC's decisions and appeals).

Division 4 deals with the organisation of the FWC, who may perform functions of the FWC and delegation of the FWC's functions and powers. Certain functions must be performed by a Full Bench or an Expert Panel.

Division 5 deals with the appointment, terms and conditions of FWC Members.

Division 6 deals with cooperation with the States.

Division 7 deals with the FWC's seal. It also deals with other powers and functions of the President and the General Manager (including in relation to annual reports, reports on making enterprise agreements, arrangements with certain courts, and disclosing information obtained by the FWC).

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Division 8 is about the General Manager of the FWC (whose function is to assist the President), staff of the FWC and others assisting the FWC.

Division 9 contains offences in relation to the FWC.

574 Meanings of *employee* and *employer*

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

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

Division 2—Establishment and functions of the Fair Work Commission

Subdivision A—Establishment and functions of the Fair Work Commission

575 Establishment of the Fair Work Commission

- (1) The body known immediately before the commencement of this subsection as Fair Work Australia is continued in existence as the Fair Work Commission.

Note: See also subsection 25B(1) of the *Acts Interpretation Act 1901*.

- (2) The Fair Work Commission consists of:
 - (a) the President; and
 - (aa) 2 Vice Presidents; and
 - (b) such number of Deputy Presidents as, from time to time, hold office under this Act; and
 - (c) such number of Commissioners as, from time to time, hold office under this Act; and
 - (d) 6 Expert Panel Members.

Note: The Fair Work Commission also has a General Manager and staff (see Division 8).

576 Functions of the FWC

- (1) The FWC has the functions conferred by this Act in relation to the following subject matters:
 - (a) the National Employment Standards (Part 2-2);
 - (b) modern awards (Part 2-3);
 - (c) enterprise agreements (Part 2-4);
 - (d) workplace determinations (Part 2-5);
 - (e) minimum wages (Part 2-6);
 - (f) equal remuneration (Part 2-7);

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Division 2 Establishment and functions of the Fair Work Commission

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- (g) transfer of business (Part 2-8);
 - (h) general protections (Part 3-1);
 - (i) unfair dismissal (Part 3-2);
 - (j) industrial action (Part 3-3);
 - (k) right of entry (Part 3-4);
 - (l) stand down (Part 3-5);
 - (m) other rights and responsibilities (Part 3-6);
 - (n) the extension of the National Employment Standards entitlements (Part 6-3);
 - (na) transfer of business from a State public sector employer (Part 6-3A);
 - (o) unlawful termination protections (Part 6-4);
 - (p) special provisions about TCF outworkers (Part 6-4A);
 - (q) workers bullied at work (Part 6-4B).
- (2) The FWC also has the following functions:
- (aa) promoting cooperative and productive workplace relations and preventing disputes;
 - (a) dealing with disputes as referred to in section 595;
 - (b) providing assistance and advice about its functions and activities;
 - (c) providing administrative support in accordance with an arrangement under section 650 or 653A;
 - (ca) mediating any proceedings, part of proceedings or matter arising out of any proceedings that, under section 53A of the *Federal Court of Australia Act 1976* or section 34 of the *Federal Circuit Court of Australia Act 1999*, have been referred by the Fair Work Division of the Federal Court or Federal Circuit Court to the FWC for mediation;
 - (d) any other function conferred on the FWC by a law of the Commonwealth.

Note: Section 13 of the Registered Organisations Act confers an additional function on the FWC.

577 Performance of functions etc. by the FWC

The FWC must perform its functions and exercise its powers in a manner that:

- (a) is fair and just; and
- (b) is quick, informal and avoids unnecessary technicalities; and
- (c) is open and transparent; and
- (d) promotes harmonious and cooperative workplace relations.

Note: The President also is responsible for ensuring that the FWC performs its functions and exercises its powers efficiently etc. (see section 581).

578 Matters the FWC must take into account in performing functions etc.

In performing functions or exercising powers, in relation to a matter, under a part of this Act (including this Part), the FWC must take into account:

- (a) the objects of this Act, and any objects of the part of this Act; and
- (b) equity, good conscience and the merits of the matter; and
- (c) the need to respect and value the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

579 FWC has privileges and immunities of the Crown

The FWC has the privileges and immunities of the Crown in right of the Commonwealth.

580 Protection of FWC Members

An FWC Member has, in performing his or her functions or exercising his or her powers as an FWC Member, the same protection and immunity as a Justice of the High Court.

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Note: See also section 584B (which deals with protection of persons involved in handling etc. complaints about FWC Members).

Subdivision B—Functions and powers of the President

581 Functions of the President

The President is responsible for ensuring that the FWC performs its functions and exercises its powers in a manner that:

- (a) is efficient; and
- (b) adequately serves the needs of employers and employees throughout Australia.

Note: The President must perform his or her own functions and exercise his or her own powers in a manner that facilitates cooperation with prescribed State industrial authorities (see section 649).

581A Dealing with a complaint about an FWC Member

- (1) Without limiting section 581 (which deals with the functions of the President), the President may:
 - (a) deal, in accordance with subsection (2) of this section, with a complaint about the performance by another FWC Member of his or her duties; and
 - (b) take any measures that the President believes are reasonably necessary to maintain public confidence in the FWC, including (but not limited to) temporarily restricting the duties of the FWC Member.

Note 1: The complaint is a *complaint about an FWC Member* (see section 12).

Note 2: The Minister may also handle complaints about FWC Members (see section 641A).

- (2) The President may deal with a complaint about an FWC Member referred to in paragraph (1)(a) by doing either or both of the following:
 - (a) deciding whether or not to handle the complaint and then doing one of the following:
 - (i) dismissing the complaint;

- (ii) handling the complaint if the President has a relevant belief in relation to the complaint;
- (iii) arranging for any other person to assist the President to handle the complaint if the President has a relevant belief in relation to the complaint;
- (b) arranging for any other complaint handlers to decide whether or not to handle the complaint and then to do one of the following:
 - (i) dismiss the complaint;
 - (ii) handle the complaint if each of the complaint handlers has a relevant belief in relation to the complaint.

Note 1: A complaint handler (other than the President) may handle a complaint by referring it to the President. The President may then do either or both of the things referred to in paragraph (2)(a) or (b) in respect of the complaint.

Note 2: For protections for persons involved in relation to handling a complaint about an FWC Member, see section 584B.

Authorisation of persons or bodies

- (3) The President may authorise, in writing, a person or a body to do one or more of the following in relation to a complaint about an FWC Member referred to in paragraph (1)(a) (whether in relation to a specific complaint or generally):
 - (a) assist the President to handle the complaint or complaints;
 - (b) decide whether or not to handle the complaint or complaints;
 - (c) dismiss the complaint or complaints;
 - (d) handle the complaint or complaints.

Referral to Minister

- (4) The President must refer a complaint about an FWC Member referred to in paragraph (1)(a) to the Minister if, after the complaint has been handled in accordance with subsection (2), the President is satisfied that:
 - (a) one or more of the circumstances that gave rise to the complaint have been substantiated; and

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- (b) each House of the Parliament should consider whether to present to the Governor-General an address praying for the termination of the appointment of the FWC Member.

Note: The appointment of an FWC Member may be terminated under section 641 if each House of the Parliament presents such an address to the Governor-General.

- (5) The Minister must consider whether each House of the Parliament should consider the matter referred to in paragraph (4)(b).

581B Code of Conduct

- (1) After consulting the other FWC Members, the President may determine a Code of Conduct for FWC Members.
- (2) Subsection (1) does not limit section 582 (which deals with directions by the President).
- (3) The Code of Conduct must be published on the FWC's website or by any other means that the President considers appropriate.
- (4) A determination under subsection (1) is not a legislative instrument.

582 Directions by the President

The President may give directions

- (1) The President may give directions under subsection (2) as to the manner in which the FWC is to perform its functions, exercise its powers or deal with matters.
- (2) The President may give a direction that is of a general nature, or that relates to a particular matter, to one or more of the following persons:
 - (a) an FWC Member;
 - (b) a Full Bench;
 - (c) an Expert Panel;
 - (d) the General Manager.

- (3) The direction must not relate to a decision by the FWC.
- (4) Without limiting subsection (2), the direction may be a direction of the following kind:
 - (a) a direction about the conduct of 4 yearly reviews of modern awards under Division 4 of Part 2-3;
 - (aa) a direction about the conduct of 4 yearly reviews of default fund terms of modern awards under Division 4A of Part 2-3;
 - (b) a direction about the conduct of annual wage reviews;
 - (c) a direction that 2 or more matters be dealt with jointly by one or more single FWC Members or one or more Full Benches;
 - (d) a direction about the transfer between FWC Members (including a transfer between Full Benches) of one or more matters being dealt with by the FWC.

Persons must comply with the President's directions

- (5) A person to whom a direction is given must comply with the direction.

Note: For directions to the General Manager, see section 658.

Direction is not a legislative instrument

- (6) If a direction is in writing, the direction is not a legislative instrument.

583 President not subject to direction

The President is not subject to direction by or on behalf of the Commonwealth.

584 Delegation of functions and powers of the President

- (1) The President may, in writing, delegate to a Vice President or a Deputy President all or any of the President's functions or powers, other than under:
 - (aa) paragraph 581A(1)(b) (which deals with taking measures to maintain public confidence in the FWC); or

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- (a) section 620 (which deals with the constitution and decision-making of an Expert Panel); or
 - (b) section 625 (which deals with the delegation of functions and powers of the FWC).
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the President.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

Subdivision C—Protection of persons involved in handling etc. complaints about FWC Members

584B Protection of persons involved in handling etc. complaints about FWC Members

- (1) A person who is exercising powers or performing functions under or for the purposes of paragraph 581A(1)(a), subsections 581A(2) to (5), or section 641A, in relation to a complaint about an FWC Member, or assisting in exercising those powers or performing those functions, has the same protection and immunity as a Justice of the High Court.
- (2) A witness requested to attend, or appearing, before a complaint handler or any other person, in relation to a complaint about an FWC Member, has the same protection, and is subject to the same liabilities in proceedings, as a witness in a case tried by the High Court.
- (3) A lawyer assisting, or appearing on behalf of a person before, a complaint handler or any other person, in relation to a complaint about an FWC Member, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

Division 3—Conduct of matters before the FWC

Subdivision A—Applications to the FWC

585 Applications in accordance with procedural rules

An application to the FWC must be in accordance with the procedural rules (if any) relating to applications of that kind.

Note 1: Certain provisions might impose additional requirements in relation to particular kinds of applications (see for example subsection 185(2)).

Note 2: The FWC may, under section 587, dismiss an application that is not made in accordance with the procedural rules.

586 Correcting and amending applications and documents etc.

The FWC may:

- (a) allow a correction or amendment of any application, or other document relating to a matter before the FWC, on any terms that it considers appropriate; or
- (b) waive an irregularity in the form or manner in which an application is made to the FWC.

587 Dismissing applications

- (1) Without limiting when the FWC may dismiss an application, the FWC may dismiss an application if:
 - (a) the application is not made in accordance with this Act; or
 - (b) the application is frivolous or vexatious; or
 - (c) the application has no reasonable prospects of success.

Note: For another power of the FWC to dismiss an application for a remedy for unfair dismissal made under Division 5 of Part 3-2, see section 399A.

- (2) Despite paragraphs (1)(b) and (c), the FWC must not dismiss an application under section 365 or 773 on the ground that the application:

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- (a) is frivolous or vexatious; or
 - (b) has no reasonable prospects of success.
- (3) The FWC may dismiss an application:
- (a) on its own initiative; or
 - (b) on application.

588 Discontinuing applications

A person who has applied to the FWC may discontinue the application:

- (a) in accordance with the procedural rules (if any); and
- (b) whether or not the matter has been settled.

Subdivision B—Conduct of matters before the FWC

589 Procedural and interim decisions

- (1) The FWC may make decisions as to how, when and where a matter is to be dealt with.
- (2) The FWC may make an interim decision in relation to a matter before it.
- (3) The FWC may make a decision under this section:
 - (a) on its own initiative; or
 - (b) on application.
- (4) This section does not limit the FWC's power to make decisions.

590 Powers of the FWC to inform itself

- (1) The FWC may, except as provided by this Act, inform itself in relation to any matter before it in such manner as it considers appropriate.
- (2) Without limiting subsection (1), the FWC may inform itself in the following ways:

- (a) by requiring a person to attend before the FWC;
- (b) by inviting, subject to any terms and conditions determined by the FWC, oral or written submissions;
- (c) by requiring a person to provide copies of documents or records, or to provide any other information to the FWC;
- (d) by taking evidence under oath or affirmation in accordance with the regulations (if any);
- (e) by requiring an FWC Member, a Full Bench or an Expert Panel to prepare a report;
- (f) by conducting inquiries;
- (g) by undertaking or commissioning research;
- (h) by conducting a conference (see section 592);
- (i) by holding a hearing (see section 593).

591 FWC not bound by rules of evidence and procedure

The FWC is not bound by the rules of evidence and procedure in relation to a matter before it (whether or not the FWC holds a hearing in relation to the matter).

592 Conferences

- (1) For the purpose of performing a function or exercising a power of the FWC (other than a function or power under Part 2-6), the FWC may direct a person to attend a conference at a specified time and place.

Note: Part 2-6 deals with minimum wages. For the conduct of annual wage reviews, see Subdivision B of Division 3 of Part 2-6.

- (2) An FWC Member (other than an Expert Panel Member), or a delegate of the FWC, is responsible for conducting the conference.
- (3) The conference must be conducted in private, unless the person responsible for conducting the conference directs that it be conducted in public.

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Note: This subsection does not apply in relation to conferences conducted in relation to unfair dismissal or general protection matters (see sections 368, 374, 398 and 776).

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

593 Hearings

- (1) The FWC is not required to hold a hearing in performing functions or exercising powers, except as provided by this Act.
- (2) If the FWC holds a hearing in relation to a matter, the hearing must be held in public, except as provided by subsection (3).

Confidential evidence in hearings

- (3) The FWC may make the following orders in relation to a hearing that the FWC holds if the FWC is satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reason:
 - (a) orders that all or part of the hearing is to be held in private;
 - (b) orders about who may be present at the hearing;
 - (c) orders prohibiting or restricting the publication of the names and addresses of persons appearing at the hearing;
 - (d) orders prohibiting or restricting the publication of, or the disclosure to some or all of the persons present at the hearing of, the following:
 - (i) evidence given in the hearing;
 - (ii) matters contained in documents before the FWC in relation to the hearing.
- (4) Subsection (3) does not apply to the publication of a submission made to the FWC for consideration in an annual wage review (see subsection 289(2)).

594 Confidential evidence

- (1) The FWC may make an order prohibiting or restricting the publication of the following in relation to a matter before the FWC (whether or not the FWC holds a hearing in relation to the matter) if the FWC is satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reason:
 - (a) evidence given to the FWC in relation to the matter;
 - (b) the names and addresses of persons making submissions to the FWC in relation to the matter;
 - (c) matters contained in documents lodged with the FWC or received in evidence by the FWC in relation to the matter;
 - (d) the whole or any part of its decisions or reasons in relation to the matter.
- (2) Subsection (1) does not apply to the publication of a submission made to the FWC for consideration in an annual wage review (see subsection 289(2)).

595 FWC's power to deal with disputes

- (1) The FWC may deal with a dispute only if the FWC is expressly authorised to do so under or in accordance with another provision of this Act.
- (2) The FWC may deal with a dispute (other than by arbitration) as it considers appropriate, including in the following ways:
 - (a) by mediation or conciliation;
 - (b) by making a recommendation or expressing an opinion.
- (3) The FWC may deal with a dispute by arbitration (including by making any orders it considers appropriate) only if the FWC is expressly authorised to do so under or in accordance with another provision of this Act.

Example: Parties may consent to the FWC arbitrating a bargaining dispute (see subsection 240(4)).

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- (4) In dealing with a dispute, the FWC may exercise any powers it has under this Subdivision.

Example: The FWC could direct a person to attend a conference under section 592.

- (5) To avoid doubt, the FWC must not exercise the power referred to in subsection (3) in relation to a matter before the FWC except as authorised by this section.

Subdivision C—Representation by lawyers and paid agents and Minister’s entitlement to make submissions

596 Representation by lawyers and paid agents

- (1) Except as provided by subsection (3) or the procedural rules, a person may be represented in a matter before the FWC (including by making an application or submission to the FWC on behalf of the person) by a lawyer or paid agent only with the permission of the FWC.
- (2) The FWC may grant permission for a person to be represented by a lawyer or paid agent in a matter before the FWC only if:
- (a) it would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter; or
 - (b) it would be unfair not to allow the person to be represented because the person is unable to represent himself, herself or itself effectively; or
 - (c) it would be unfair not to allow the person to be represented taking into account fairness between the person and other persons in the same matter.

Note: Circumstances in which the FWC might grant permission for a person to be represented by a lawyer or paid agent include the following:

- (a) where a person is from a non-English speaking background or has difficulty reading or writing;
- (b) where a small business is a party to a matter and has no specialist human resources staff while the other party is represented by an officer or employee of an industrial association or another person with experience in workplace relations advocacy.

- (3) The FWC's permission is not required for a person to be represented by a lawyer or paid agent in making a written submission under Part 2-3 or 2-6 (which deal with modern awards and minimum wages).
- (4) For the purposes of this section, a person is taken not to be represented by a lawyer or paid agent if the lawyer or paid agent:
 - (a) is an employee or officer of the person; or
 - (b) is an employee or officer of:
 - (i) an organisation; or
 - (ii) an association of employers that is not registered under the Registered Organisations Act; or
 - (iii) a peak council; or
 - (iv) a bargaining representative; that is representing the person; or
 - (c) is a bargaining representative.

597 Minister's entitlement to make submissions

- (1) The Minister is entitled to make a submission for consideration in relation to a matter before the FWC if:
 - (a) the matter is before a Full Bench and it is in the public interest for the Minister to make a submission; or
 - (b) the matter involves public sector employment.
- (2) Subsection (1) applies whether or not the FWC holds a hearing in relation to the matter.

597A State or Territory Minister's entitlement to make submissions

- (1) The Minister of a State or Territory who has responsibility for workplace relations matters is entitled to make a submission for consideration in relation to a matter before the FWC if:
 - (a) the matter is before a Full Bench; and
 - (b) it is in the public interest of the State or Territory for the Minister of the State or Territory to make a submission.

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- (2) Subsection (1) applies whether or not the FWC holds a hearing in relation to the matter.

Subdivision D—Decisions of the FWC

598 Decisions of the FWC

- (1) A reference in this Part to a decision of the FWC includes any decision of the FWC however described. However, to avoid doubt, a reference to a decision of the FWC does not include an outcome of a process carried out in accordance with subsection 595(2) (which deals with the FWC's power to deal with disputes).

Note: Examples of decisions that the FWC makes include making modern awards, approving or refusing to approve enterprise agreements, decisions as to how, when and where a matter is to be dealt with, deciding whether to grant permission to hear an appeal, and decisions in relation to appeals.

- (2) If the FWC makes a decision that makes or varies an instrument, a reference in this Part to a decision of the FWC includes the FWC's decision to make or vary the instrument in the particular terms decided.
- (3) A decision of the FWC that is described as an order must be made by order.
- Note: An example of a decision that is described as an order is a bargaining order.
- (4) A decision of the FWC that is not described as an order may be made by order.

599 FWC not required to decide an application in terms applied for

Except as provided by this Act, the FWC is not required to make a decision in relation to an application in the terms applied for.

600 Determining matters in the absence of a person

The FWC may determine a matter before it in the absence of a person who has been required to attend before it.

601 Writing and publication requirements for the FWC's decisions

- (1) The following decisions of the FWC must be in writing:
 - (a) a decision of the FWC made under a Part of this Act other than this Part;
 - (b) an interim decision that relates to a decision to be made under a Part of this Act other than this Part;
 - (c) a decision in relation to an appeal or review.
- (2) The FWC may give written reasons for any decision that it makes.
- (3) A decision, and reasons, that are in writing must be expressed in plain English and be easy to understand in structure and content.
- (4) The FWC must publish the following, on its website or by any other means that the FWC considers appropriate:
 - (a) a decision that is required to be in writing and any written reasons that the FWC gives in relation to such a decision;
 - (b) an enterprise agreement that has been approved by the FWC under Part 2-4.

Note: For appeals and reviews, see sections 604 and 605.

The FWC must do so as soon as practicable after making the decision or approving the agreement.

- (5) Subsection (4) does not apply to any of the following decisions or reasons in relation to such decisions:
 - (a) a decision to issue, or refuse to issue, a certificate under paragraph 368(3)(a);
 - (c) a decision to issue an entry permit under section 512;
 - (d) a decision to impose conditions on an entry permit under section 515;
 - (e) a decision to issue, or refuse to issue, an exemption certificate under section 519;

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- (f) a decision to issue, or refuse to issue, an affected member certificate under section 520;
 - (g) a decision or reasons in relation to which an order is in operation under paragraph 594(1)(d).
- (6) Subsections (1) and (4) do not limit the FWC's power to put decisions in writing or publish decisions.

602 Correcting obvious errors etc. in relation to the FWC's decisions

- (1) The FWC may correct or amend any obvious error, defect or irregularity (whether in substance or form) in relation to a decision of the FWC (other than an error, defect or irregularity in a modern award or national minimum wage order).

Note 1: If the FWC makes a decision to make an instrument, the FWC may correct etc. the instrument under this section (see subsection 598(2)).

Note 2: The FWC corrects modern awards and national minimum wage orders under sections 160 and 296.

- (2) The FWC may correct or amend the error, defect or irregularity:
- (a) on its own initiative; or
 - (b) on application.

603 Varying and revoking the FWC's decisions

- (1) The FWC may vary or revoke a decision of the FWC that is made under this Act (other than a decision referred to in subsection (3)).

Note: If the FWC makes a decision to make an instrument, the FWC may vary or revoke the instrument under this subsection (see subsection 598(2)).

- (2) The FWC may vary or revoke a decision under this section:
- (a) on its own initiative; or
 - (b) on application by:
 - (i) a person who is affected by the decision; or

- (ii) if the kind of decision is prescribed by the regulations—
a person prescribed by the regulations in relation to that
kind of decision.
- (3) The FWC must not vary or revoke any of the following decisions
of the FWC under this section:
 - (a) a decision under Part 2-3 (which deals with modern awards);
 - (b) a decision under section 235 or Division 4, 7, 9 or 10 of
Part 2-4 (which deal with enterprise agreements);
 - (c) a decision under Part 2-5 (which deals with workplace
determinations);
 - (d) a decision under Part 2-6 (which deals with minimum
wages);
 - (e) a decision under Division 3 of Part 2-8 (which deals with
transfer of business);
 - (f) a decision under Division 8 of Part 3-3 (which deals with
protected action ballots);
 - (g) a decision under section 472 (which deals with partial work
bans);
 - (h) a decision that is prescribed by the regulations.

Note: The FWC can vary or revoke decisions, and instruments made by
decisions, under other provisions of this Act (see, for example,
sections 447 and 448).

Subdivision E—Appeals, reviews and referring questions of law

604 Appeal of decisions

- (1) A person who is aggrieved by a decision:
 - (a) made by the FWC (other than a decision of a Full Bench or
an Expert Panel); or
 - (b) made under the Registered Organisations Act by:
 - (i) the General Manager (including a delegate of the
General Manager); or
 - (ii) the Registered Organisations Commissioner (including
a delegate of the Commissioner);

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may appeal the decision, with the permission of the FWC.

- (2) Without limiting when the FWC may grant permission, the FWC must grant permission if the FWC is satisfied that it is in the public interest to do so.

Note: Subsection (2) does not apply in relation to an application for an unfair dismissal (see section 400).

- (3) A person may appeal the decision by applying to the FWC.

605 Minister's entitlement to apply for review of a decision

- (1) The Minister may apply to the FWC for a review to be conducted by the FWC of a decision made by the FWC (other than a decision of a Full Bench or an Expert Panel) if the Minister believes that the decision is contrary to the public interest.

- (2) Without limiting when the FWC may conduct a review, the FWC must conduct a review of the decision if the FWC is satisfied that it is in the public interest to conduct the review.

Note: The FWC must be constituted by a Full Bench to decide whether to conduct a review, and to conduct the review (see section 614).

- (3) In conducting a review:
 - (a) the FWC must take such steps as it considers appropriate to ensure that each person with an interest in the review is made aware of the review; and
 - (b) the Minister is entitled to make submissions for consideration in the review.
- (4) Nothing in this section affects any right of appeal or any power of the FWC under section 604 or 607. A review of a decision and an appeal of the decision may be dealt with together if the FWC considers it appropriate.

606 Staying decisions that are appealed or reviewed

- (1) If, under section 604 or 605, the FWC hears an appeal from, or conducts a review of, a decision, the FWC may (except as provided

by subsection (3)) order that the operation of the whole or part of the decision be stayed, on any terms and conditions that the FWC considers appropriate, until a decision in relation to the appeal or review is made or the FWC makes a further order.

- (2) If a Full Bench is hearing the appeal or conducting the review, an order under subsection (1) in relation to the appeal or review may be made by:
 - (a) the Full Bench; or
 - (b) the President; or
 - (c) a Vice President; or
 - (d) a Deputy President.
- (3) This section does not apply in relation to a decision to make a protected action ballot order.

607 Process for appealing or reviewing decisions

- (1) An appeal from, or a review of, a decision of the FWC, the General Manager or the Registered Organisations Commissioner may be heard or conducted without holding a hearing only if:
 - (a) it appears to the FWC that the appeal or review can be adequately determined without persons making oral submissions for consideration in the appeal or review; and
 - (b) the persons who would otherwise, or who will, make submissions (whether oral or written) for consideration in the appeal or review consent to the appeal or review being heard or conducted without a hearing.
- (2) The FWC may:
 - (a) admit further evidence; and
 - (b) take into account any other information or evidence.
- (3) The FWC may do any of the following in relation to the appeal or review:
 - (a) confirm, quash or vary the decision;
 - (b) make a further decision in relation to the matter that is the subject of the appeal or review;

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- (c) refer the matter that is the subject of the appeal or review to an FWC Member (other than an Expert Panel Member) and:
 - (i) require the FWC Member to deal with the subject matter of the decision; or
 - (ii) require the FWC Member to act in accordance with the directions of the FWC.

608 Referring questions of law to the Federal Court

- (1) The President may refer a question of law arising in a matter before the FWC for the opinion of the Federal Court.
- (2) A question of law referred under subsection (1) must be determined by the Full Court of the Federal Court.
- (3) The FWC may make a decision in relation to the matter even if the Federal Court is determining the question of law, except if the question is whether the FWC may exercise powers in relation to the matter.
- (4) Once the Federal Court has determined the question, the FWC may only make a decision in relation to the matter that is not inconsistent with the opinion of the Federal Court (if the FWC has not already done so).
- (5) However, if the FWC has made a decision in relation to the matter that is inconsistent with the opinion of the Federal Court, the FWC must vary the decision in such a way as to make it consistent with the opinion of the Federal Court.

Subdivision F—Miscellaneous

609 Procedural rules

- (1) After consulting the other FWC Members, the President may, by legislative instrument, make procedural rules in relation to:
 - (a) the practice and procedure to be followed by the FWC; or
 - (b) the conduct of business in relation to matters allowed or required to be dealt with by the FWC.

- (2) Without limiting subsection (1), the procedural rules may provide for the following:
- (a) the requirements for making an application to the FWC;
 - (b) the circumstances in which a lawyer or paid agent may make an application or submission to the FWC on behalf of a person who is entitled to make the application or submission;
 - (c) the form and manner in which, and the time within which, submissions may or must be made to the FWC;
 - (d) the procedural requirements for making decisions of the FWC;
 - (e) the form and manner in which the FWC gives directions and notifies persons of things;
 - (ea) the requirements for making a notification to the FWC;
 - (f) who is notified by the FWC of things;
 - (g) the manner in which conferences are to be conducted in relation to applications made under Part 3-1, 3-2 or Part 6-4 (which deal with general protections, unfair dismissal and unlawful termination).
- (3) To avoid doubt, subsection (1) includes the power to make procedural rules in relation to any functions conferred on the FWC by any other law of the Commonwealth.

610 Regulations dealing with any FWC matters

The regulations may provide for any matter that the procedural rules may provide for.

Note: Regulations made under this section prevail over procedural rules (see subsection 796(2)).

611 Costs

- (1) A person must bear the person's own costs in relation to a matter before the FWC.

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- (2) However, the FWC may order a person (the *first person*) to bear some or all of the costs of another person in relation to an application to the FWC if:
- (a) the FWC is satisfied that the first person made the application, or the first person responded to the application, vexatiously or without reasonable cause; or
 - (b) the FWC is satisfied that it should have been reasonably apparent to the first person that the first person's application, or the first person's response to the application, had no reasonable prospect of success.

Note: The FWC can also order costs under sections 376, 400A, 401 and 780.

- (3) A person to whom an order for costs applies must not contravene a term of the order.

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

Division 4—Organisation of the FWC

Subdivision A—Functions etc. to be performed by a single FWC Member, a Full Bench or an Expert Panel

612 FWC’s functions etc. may generally be performed by single FWC Member

- (1) A function or power of the FWC may be performed or exercised by a single FWC Member (other than an Expert Panel Member), as directed by the President, except as provided by this Subdivision.

Note: The President gives directions under section 582.

- (2) Action taken under subsection 508(1) (which deals with misuse of rights under Part 3-4) must be taken by a Vice President or a Deputy President, except as provided by section 615.
- (3) This section does not limit the power of the President to delegate a function or power of the FWC under section 625.

613 Appeal of decisions

- (1) A Full Bench must (except as provided by subsection (2)):
 - (a) decide under section 604 whether to grant permission to appeal a decision; and
 - (b) if the Full Bench decides to grant the permission—hear the appeal in accordance with section 607.

Note: For the constitution of a Full Bench, see section 618.

- (2) The President, a Vice President or a Deputy President directed by the President, may:
 - (a) decide under section 604 whether to grant permission to appeal:
 - (i) a decision of a delegate under subsection 625(2); or

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- (ii) a decision of the General Manager (including a delegate of the General Manager) under the Registered Organisations Act; or
 - (iii) a decision of the Registered Organisations Commissioner (including a delegate of the Commissioner) under the Registered Organisations Act; and
- (b) if the President, the Vice President or the Deputy President (as the case may be) grants the permission—hear the appeal in accordance with section 607.

Note: The President gives directions under section 582.

614 Review of decisions by a Full Bench

A Full Bench must:

- (a) decide under section 605 whether to conduct a review of a decision; and
- (b) if the Full Bench decides to conduct the review—conduct the review in accordance with section 607.

Note: For the constitution of a Full Bench, see section 618.

615 The President may direct a Full Bench to perform function etc.

- (1) A function or power of the FWC may be performed or exercised by a Full Bench if the President so directs.

Note: The President gives directions under section 582.

- (2) The President may direct that the function or power be exercised by a Full Bench generally, or in relation to a particular matter or class of matters.
- (3) To avoid doubt, a reference in this section to a Full Bench includes a reference to more than one Full Bench.

Note: For the constitution of a Full Bench, see section 618.

615A When the President must direct a Full Bench to perform function etc.

- (1) The President must direct a Full Bench to perform a function or exercise a power in relation to a matter if:
 - (a) an application is made under subsection (2); and
 - (b) the President is satisfied that it is in the public interest to do so.

Note: The President gives directions under section 582.

- (2) The following persons may apply to the FWC to have a Full Bench perform a function or exercise a power in relation to a matter:
 - (a) a person who has made, or will make, submissions for consideration in the matter;
 - (b) the Minister.

615B Transfer to a Full Bench from an FWC Member

- (1) This section applies if:
 - (a) the President gives a direction referred to in section 615 or 615A that a function be performed or a power be exercised by a Full Bench; and
 - (b) before the President gave the direction, the President had given a direction (the *earlier direction*) to an FWC Member to perform the function or exercise the power.
- (2) The President is taken to have revoked the earlier direction.
- (3) The Full Bench must, when performing the function or exercising the power, take into account:
 - (a) everything that occurred before the FWC; and
 - (b) everything that the FWC did;in relation to the matter before the Full Bench began to perform the function or exercise the power.

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615C Transfer to the President from an FWC Member or a Full Bench

- (1) This section applies if:
 - (a) the President decides to perform a function or exercise a power; and
 - (b) before the President made that decision, the President had given a direction (the *earlier direction*) that the function be performed or the power be exercised by a Full Bench or an FWC Member.
- (2) The President is taken to have revoked the earlier direction.
- (3) The President must, when performing the function or exercising the power, take into account:
 - (a) everything that occurred before the FWC; and
 - (b) everything that the FWC did;in relation to the matter before the President began to perform the function or exercise the power.

616 FWC's functions etc. that must be performed by a Full Bench

Modern awards

- (1) A modern award must be made under Part 2-3 by a Full Bench.
- (2) A 4 yearly review of modern awards must be conducted under Division 4 of Part 2-3 by a Full Bench.
- (2A) A 4 yearly review of default fund terms of modern awards must be conducted under Division 4A of Part 2-3 by a Full Bench.
- (3) A determination that varies or revokes a modern award made in a 4 yearly review of modern awards conducted under Division 4 of Part 2-3 must be made by a Full Bench.

Note: A determination that varies or revokes a modern award may be made by a single FWC Member under Division 5 of Part 2-3.

- (3A) A determination that varies a default fund term of a modern award made in a 4 yearly review conducted under Division 4A of Part 2-3 must be made by a Full Bench.

Note: A determination that varies a default fund term of a modern award may be made by a single FWC Member under Division 5 of Part 2-3.

Workplace determinations

- (4) A workplace determination must be made under Part 2-5 by a Full Bench.

Full Benches

- (5) To avoid doubt, a reference in this section to a Full Bench includes a reference to more than one Full Bench.

Note: For the constitution of a Full Bench, see section 618.

617 FWC's functions etc. that must be performed by an Expert Panel

Expert Panel for annual wage reviews

- (1) An annual wage review must be conducted under Part 2-6 by an Expert Panel constituted for the purposes of the review.

Note: For the constitution of an Expert Panel for the purposes of an annual wage review, see section 620.

- (2) A national minimum wage order, or a determination, made in an annual wage review must be made by an Expert Panel constituted for the purposes of the review.

- (3) A determination that varies a national minimum wage order must be made under Part 2-6 by an Expert Panel constituted for the purposes of the review.

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Expert Panel for 4 yearly review of default fund terms

- (4) In a 4 yearly review of default fund terms of modern awards, the following must be made by an Expert Panel constituted for the purposes of the review:
- (a) the Default Superannuation List;
 - (b) a determination under section 156E on an application to have a standard MySuper product included on the Default Superannuation List;
 - (c) the Schedule of Approved Employer MySuper Products;
 - (d) a determination under section 156P on an application made in the standard application period to have an employer MySuper product included on the Schedule of Approved Employer MySuper Products.

Note: For the constitution of an Expert Panel for those purposes, see subsection 620(1A).

Expert Panel for amending the Schedule of Approved Employer MySuper Products

- (5) If an application is made in the interim application period to have an employer MySuper product included on the Schedule of Approved Employer MySuper Products, the following must be made by an Expert Panel constituted for the purposes of determining the application:
- (a) a determination under section 156P on the application;
 - (b) if the determination is to include the product on the schedule—an amendment of the schedule to specify the product.

Note: For the constitution of an Expert Panel for those purposes, see subsection 620(1A).

Subdivision B—Constitution of the FWC by a single FWC Member, a Full Bench or an Expert Panel

618 Constitution and decision-making of a Full Bench

Constitution of a Full Bench

- (1) A Full Bench constituted under this section consists of at least 3 FWC Members, including at least one FWC Member who is the President, a Vice President or a Deputy President.

Note: An Expert Panel Member might form part of a Full Bench.

- (2) The President may determine which FWC Members form part of a Full Bench.

Making decisions

- (3) A decision of a majority of the FWC Members on the Full Bench prevails.
- (4) However, if there is no majority, the decision of the FWC Member who has seniority under section 619 prevails.

619 Seniority of FWC Members

- (1) While the FWC is constituted by a Full Bench, the FWC Members on the Full Bench have seniority according to the following order:
 - (a) the President;
 - (aa) the Vice Presidents, according to the days on which their appointments as Vice Presidents took effect;
 - (ab) if 2 appointments as Vice Presidents took effect on the same day—the Vice Presidents, according to the precedence assigned to them in their instruments of appointment;
 - (b) the Deputy Presidents, according to the days on which their appointments as Deputy Presidents took effect;
 - (c) if 2 or more appointments as Deputy Presidents took effect on the same day—the Deputy Presidents, according to the

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precedence assigned to them in their instruments of appointment.

- (2) The FWC Member on a Full Bench who has seniority under this section is responsible for managing the Full Bench in performing functions and exercising powers of the FWC.

Note: The FWC Member who has seniority also has a deciding vote if there is no majority (see subsection 618(4)).

620 Constitution and decision-making of an Expert Panel

Constitution of an Expert Panel for annual wage reviews

- (1) An Expert Panel constituted under this section for the purpose of an annual wage review conducted under Part 2-6 consists of 7 FWC Members (except as provided by section 622), and must include:

- (a) the President; and
- (b) 3 Expert Panel Members who have knowledge of, or experience in, one or more of the following fields:
 - (i) workplace relations;
 - (ii) economics;
 - (iii) social policy;
 - (iv) business, industry or commerce.

Constitution of an Expert Panel for 4 yearly reviews of default fund terms etc.

- (1A) An Expert Panel constituted under this section for a purpose referred to in subsection 617(4) or (5) consists of 7 FWC Members (except as provided by section 622), and must include:
- (a) the President, or a Vice President or Deputy President appointed by the President to be the Chair of the Panel; and
 - (b) 3 Expert Panel Members who have knowledge of, or experience in, one or more of the following fields:
 - (i) finance;
 - (ii) investment management;

- (iii) superannuation.
- (2) The President may determine which FWC Members form part of an Expert Panel.
- (3) The following person is responsible for managing an Expert Panel in performing the functions and exercising the powers referred to in section 617:
 - (a) if paragraph (b) does not apply—the President;
 - (b) if the President has appointed a person to be the Chair of the Expert Panel under paragraph 620(1A)(a)—the Chair.

Making decisions

- (4) A decision of the majority of the FWC Members of an Expert Panel prevails.
- (5) However, if there is no majority, the decision of:
 - (a) if paragraph (b) does not apply—the President; or
 - (b) if the President has appointed a person to be the Chair of the Expert Panel under paragraph 620(1A)(a)—the Chair;prevails.

621 Reconstitution of the FWC when single FWC Member becomes unavailable

- (1) This section applies if:
 - (a) an FWC Member is dealing with a matter (other than by forming part of a Full Bench or an Expert Panel in relation to a matter); and
 - (b) the FWC Member becomes unavailable to continue dealing with the matter before the matter is completely dealt with.
- (2) The President must direct another FWC Member to constitute the FWC for the purposes of dealing with the matter.

Note: The new FWC Member must take into account everything that happened before the FWC Member began to deal with the matter (see section 623).

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622 Reconstitution of the FWC when FWC Member of a Full Bench or an Expert Panel becomes unavailable

- (1) This section applies if:
 - (a) an FWC Member (the *unavailable member*) forms part of a Full Bench or an Expert Panel in relation to a matter; and
 - (b) the FWC Member becomes unavailable to continue dealing with the matter before the matter is completely dealt with.
- (2) The Full Bench or the Expert Panel may continue to deal with the matter without the unavailable member if the Full Bench or the Expert Panel consists of the following:
 - (a) for the Expert Panel—the President and at least 2 Expert Panel Members;
 - (b) for a Full Bench—at least 3 FWC Members, including at least one FWC Member who is the President, a Vice President or a Deputy President.
- (3) Otherwise, the President must direct another FWC Member to form part of the Full Bench or the Expert Panel. After the President does so, the Full Bench or the Expert Panel may continue to deal with the matter without the unavailable member.

Note: The new FWC Member must take into account everything that happened before the FWC Member began to deal with the matter (see section 623).

623 When new FWC Members begin to deal with matters

If an FWC Member begins to deal with a matter under section 621 or 622, the FWC Member must take into account everything that occurred before the FWC, and everything that the FWC did, in relation to the matter before the FWC Member began to deal with the matter.

624 FWC's decisions not invalid when improperly constituted

A decision of the FWC is not invalid merely because it was made by a Full Bench, or an Expert Panel, constituted otherwise than as provided by this Division.

Note: If the FWC makes a decision to make an instrument while constituted otherwise than as provided by this Division, the instrument is not invalid (see subsection 598(2)).

Subdivision C—Delegation of the FWC's functions and powers

625 Delegation by the President of functions and powers of the FWC

- (1) The President may, in writing, delegate all or any of the following powers of the FWC to the General Manager or a member of the staff of the FWC:
 - (a) correcting or amending applications and documents, or waiving irregularities, under section 586;
 - (b) informing itself as it considers appropriate under section 590 (other than the FWC's power to hold a hearing);
 - (c) conducting a conference in accordance with section 592;
 - (d) correcting or amending obvious errors, defects or irregularities under section 602.
- (2) The President may, in writing, delegate all or any of the following functions or powers of the FWC to a person referred to in subsection (3):
 - (a) publishing varied modern awards under section 168;
 - (b) publishing submissions under section 289;
 - (c) publishing research under section 291;
 - (d) publishing varied wage rates under section 292;
 - (da) publishing the results of a protected action ballot under section 457;
 - (f) imposing conditions on entry permits, revoking or suspending entry permits, or banning the issue of any further entry permits, under section 507 or 510;

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- (g) the functions and powers of the FWC under Division 6 of Part 3-4 (which deals with entry permits, entry notices and certificates);
 - (h) publishing enterprise agreements under paragraph 601(4)(b);
 - (i) any function or power prescribed by the regulations.
- (3) The people to whom a delegation may be given under subsection (2) are any of the following:
- (a) the General Manager;
 - (b) a member of the staff of the FWC who is an SES employee or acting SES employee;
 - (c) a member of the staff of the FWC who is in a class of employees prescribed by the regulations.
- (4) In performing functions or exercising powers under a delegation under subsection (1) or (2), the delegate must comply with any directions of the President.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

Division 5—FWC Members

Subdivision A—Appointment of FWC Members

626 Appointment of FWC Members

- (1) An FWC Member is to be appointed by the Governor-General by written instrument.
 - (2) The instrument of appointment must specify whether the FWC Member is the President, a Vice President, a Deputy President, a Commissioner or an Expert Panel Member.
 - (3) The instrument of appointment must assign a precedence to the FWC Member if:
 - (a) the FWC Member and one other FWC Member are appointed as Vice Presidents on the same day; or
 - (b) the FWC Member and one or more other FWC Members are appointed as Deputy Presidents on the same day.
- Note: Precedence is relevant to the seniority of Vice Presidents and Deputy Presidents (see paragraphs 619(1)(ab) and (c)).
- (4) The same person must not hold, at the same time, an appointment as both:
 - (a) an Expert Panel Member; and
 - (b) the President, a Vice President, a Deputy President or a Commissioner.

627 Qualifications for appointment of FWC Members

President and Vice Presidents

- (1) Before the Governor-General appoints a person as the President or a Vice President, the Minister must be satisfied that the person:
 - (a) is or has been a Judge of a court created by the Parliament; or

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- (b) is qualified for appointment because the person has knowledge of, or experience in, one or more of the following fields:
 - (i) workplace relations;
 - (ii) law;
 - (iii) business, industry or commerce.
- (1A) Paragraph (1)(a) does not apply to a person who is a Judge of the Federal Circuit Court.

Deputy Presidents

- (2) Before the Governor-General appoints a person as a Deputy President, the Minister must be satisfied that the person:
 - (a) either:
 - (i) is or has been a Judge of a court created by the Parliament; or
 - (ii) has been a Judge of a court of a State or Territory; or
 - (b) has a high level of experience in the field of workplace relations, including a high level of experience that has been acquired:
 - (i) through legal practice; or
 - (ii) in the service of a peak council or another association representing the interests of employers or employees; or
 - (iii) in the service of government or an authority of government; or
 - (iv) in academia.
- (2A) Subparagraph (2)(a)(i) does not apply to a person who is a Judge of the Federal Circuit Court.

Commissioners

- (3) Before the Governor-General appoints a person as a Commissioner, the Minister must be satisfied that the person is qualified for appointment because the person has knowledge of, or experience in, one or more of the following fields:

- (a) workplace relations;
- (b) law;
- (c) business, industry or commerce.

Expert Panel Members

- (4) Before the Governor-General appoints a person as an Expert Panel Member, the Minister must be satisfied that the person is qualified for appointment because the person has knowledge of, or experience in, one or more of the following fields:
 - (a) workplace relations;
 - (b) economics;
 - (c) social policy;
 - (d) business, industry or commerce;
 - (e) finance;
 - (f) investment management;
 - (g) superannuation.

628 Basis of appointment of FWC Members

President, Vice Presidents, Deputy Presidents and Commissioners

- (1) The President, a Vice President, a Deputy President or a Commissioner holds office on a full-time basis.
- (2) A Deputy President or a Commissioner may perform his or her duties on a part-time basis, with the President's approval.

Expert Panel Members

- (3) An Expert Panel Member holds office on a part-time basis.

629 Period of appointment of FWC Members

President, Vice Presidents, Deputy Presidents and Commissioners

- (1) The President, a Vice President, a Deputy President or a Commissioner holds office until the earliest of the following:

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- (a) he or she attains the age of 65 years;
- (b) he or she resigns or the appointment is terminated under this Part.

Members of a prescribed State industrial authority

- (2) Despite subsection (1), a person who is a member of a prescribed State industrial authority may be appointed as a Deputy President or Commissioner for a period specified in the instrument of appointment.

Note: A member of a prescribed State industrial authority may hold office as a Deputy President or Commissioner (see section 631).

- (3) If a person is so appointed, the person holds office as Deputy President or Commissioner until the earliest of the following:
 - (a) the specified period ends;
 - (b) the person ceases to be a member of the prescribed State industrial authority;
 - (c) the person resigns or the appointment is terminated under this Part.

Expert Panel Members

- (4) An Expert Panel Member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: An Expert Panel Member is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

Subdivision B—Terms and conditions of FWC Members

629A Status of the President

The President has the same status as a Judge of the Federal Court.

630 Appointment of a Judge not to affect tenure etc.

- (1) The appointment of a Judge of a court created by the Parliament as an FWC Member, or service by such a Judge as an FWC Member, does not affect:
 - (a) the Judge's tenure of office as a Judge; or
 - (b) the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his or her office as a Judge.
- (2) For all purposes, the Judge's service as the FWC Member is taken to be service as a Judge.

631 Dual federal and State appointments of Deputy Presidents or Commissioners

- (1) Nothing in this Act prevents a Deputy President or Commissioner from being appointed to, and holding at the same time, an office as a member of a prescribed State industrial authority, with the President's approval.
- (2) Nothing in this Act prevents a member of a prescribed State industrial authority from being appointed to, and holding at the same time, an office as a Deputy President or Commissioner.
 - Note 1: A member of a prescribed State industrial authority may hold office as a Deputy President or Commissioner only if he or she is qualified for appointment (see section 627).
 - Note 2: For the period of appointment, and remuneration and allowances, of a Deputy President or Commissioner who is a member of a prescribed State industrial authority, see sections 629 and 637.
- (3) Subsections (1) and (2) have effect subject to any law of the relevant State.

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632 Dual federal and Territory appointments of Deputy Presidents or Commissioners

Nothing in this Act prevents a Deputy President or Commissioner from being appointed to, and holding at the same time, one of the following offices, with the President's approval:

- (a) an office as a member of a Commonwealth or Territory tribunal prescribed by the regulations (other than a court);
- (b) an office under a Commonwealth or Territory law.

633 Outside work of FWC Members

Vice Presidents, Deputy Presidents and Commissioners

- (1) A Vice President, Deputy President or Commissioner (whether performing duties on a full-time or part-time basis) must not engage in paid work outside the duties of his or her office without the President's approval.
- (2) However, the President's approval is not required if the paid work is an office or appointment in the Defence Force.

Expert Panel Members

- (3) An Expert Panel Member must not engage in any paid work that, in the President's opinion, conflicts or may conflict with the proper performance of his or her duties.

634 Oath or affirmation of office

Before beginning to discharge the duties of his or her office, an FWC Member must take an oath or affirmation in accordance with the regulations.

635 Remuneration of the President

Remuneration if the President is not a Judge

- (1) The President (other than a President who is a Judge of a court created by the Parliament) is to be paid:
 - (a) salary at an annual rate equal to the annual rate of salary payable to the Chief Justice of the Federal Court; and
 - (b) such travelling allowances as are determined from time to time by the Remuneration Tribunal; and
 - (c) such other allowances as are prescribed by the regulations.

Remuneration if the President is a Judge

- (2) A President who is a Judge of a court created by the Parliament must be paid an additional allowance, in accordance with subsection (3), if the salary payable to the person as a Judge is less than the salary that would be payable to the person as President under subsection (1).
- (3) The amount of the allowance is the difference between the Judge's salary and the salary that is payable to the President under subsection (1).

Additional amount

- (4) The President or a former President must be paid an amount in accordance with subsection 7(5E) of the *Remuneration Tribunal Act 1973* if the President, or former President, would be entitled to that amount had the President or former President held the office of Chief Justice of the Federal Court instead of the office of President.

636 Application of Judges' Pensions Act to the President

- (1) The *Judges' Pensions Act 1968* does not apply to the President if:
 - (a) immediately before being appointed as the President, he or she was one of the following (a **public sector superannuation scheme member**):

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- (i) an eligible employee for the purposes of the *Superannuation Act 1976*;
 - (ii) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;
 - (iii) an ordinary employer-sponsored member of PSSAP (within the meaning of the *Superannuation Act 2005*); and
- (b) he or she does not make an election under subsection (2).
- (2) The President may elect to cease to be a public sector superannuation scheme member.
- (3) The election must be made:
- (a) within 3 months of the President's appointment; and
 - (b) by written notice to the Minister.
- (4) If the President makes the election:
- (a) he or she is taken to have ceased to be a public sector superannuation scheme member immediately before being appointed as the President; and
 - (b) the *Judges' Pensions Act 1968* applies to him or her, and is taken to have so applied, immediately after he or she was appointed as the President.

637 Remuneration of FWC Members other than the President

Remuneration if an FWC Member is not a Judge

- (1) An FWC Member (other than an FWC Member who is a Judge of a court created by the Parliament) is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the FWC Member is to be paid the remuneration that is prescribed by the regulations.
- (2) An FWC Member is to be paid the allowances that are prescribed by the regulations.

- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973* and to section 638 (which deals with remuneration of part-time Deputy Presidents and Commissioners).
- (4) Despite subsections (1) to (3), if a person who is a member of a prescribed State industrial authority is appointed as a Deputy President or Commissioner, the person is not to be paid any remuneration or allowances in relation to the office of Deputy President or Commissioner other than any travel allowance prescribed under subsection (2).

Remuneration if an FWC Member is a Judge

- (5) An FWC Member who is a Judge (other than the Chief Justice of the Federal Court) of a court created by the Parliament is to be paid an additional allowance, in accordance with subsection (6), if the salary payable to the person as a Judge is less than the salary that would be payable to the person as an FWC Member under subsection (1).
- (6) The amount of the allowance is the difference between the Judge's salary and the salary that is payable to the FWC Member under subsection (1).

Section does not apply to the President

- (7) This section does not apply to the President.

638 Remuneration of Deputy Presidents or Commissioners performing duties on a part-time basis

- (1) If the President approves a Deputy President or Commissioner (the ***part-time member***) performing his or her duties on a part-time basis, the President and the part-time member are to enter into a written agreement specifying the proportion (the ***agreed proportion***) of full-time duties to be worked by the part-time member.
- (2) The agreed proportion may be varied by a written agreement between the President and the part-time member.

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- (3) The part-time member's annual rate of salary at a particular time is equal to the agreed proportion at that time of the annual rate of salary that would be payable to the part-time member if he or she were performing his or her duties on a full-time basis.
- (4) The allowances that are to be paid to the part-time member under section 637 are not affected by this section.

639 Leave of absence of FWC Members other than the President

- (1) An FWC Member has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The President may grant an FWC Member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise as the President determines.
- (3) In making a determination in accordance with this section, the Remuneration Tribunal and the President must take into account:
 - (a) any past employment of the FWC Member in the service of a State or an authority of a State; or
 - (b) any past service of the FWC Member as a member of an authority of a State.
- (4) This section does not apply to the President.

640 Disclosure of interests by FWC Members other than the President

- (1) This section applies if:
 - (a) an FWC Member (other than the President) is dealing, or will deal, with a matter; and
 - (b) the FWC Member has or acquires any interest (the *potential conflict*), pecuniary or otherwise, that conflicts or could conflict with the proper performance of the FWC Member's functions in relation to the matter.
- (2) The FWC Member must disclose the potential conflict to:

- (a) a person who has made, or will make, a submission for consideration in the matter; and
 - (b) a person who the FWC Member considers is likely to make a submission for consideration in the matter; and
 - (c) the President.
- (4) The President must give a direction to the FWC Member not to deal, or to no longer deal, with the matter if:
- (a) the President becomes aware that an FWC Member has a potential conflict in relation to a matter (whether or not because of a disclosure under subsection (2)); and
 - (b) the President considers that the FWC Member should not deal, or should no longer deal, with the matter.

641 Termination of appointment on grounds of misbehaviour or incapacity

The Governor-General may terminate the appointment of an FWC Member if an address praying for the termination, on one of the following grounds, is presented to the Governor-General by each House of the Parliament in the same session:

- (a) proved misbehaviour;
- (b) the FWC Member is unable to perform the duties of his or her office because of physical or mental incapacity.

641A Minister may handle complaints about FWC Members

The Minister may handle a complaint about the performance by an FWC Member of his or her duties:

- (a) for the purpose of considering whether each House of the Parliament should consider whether to present to the Governor-General an address praying for the termination of the appointment of the FWC Member; and
- (b) for the purpose of considering whether to advise the Governor-General to suspend the FWC Member.

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- Note 1: The appointment of an FWC Member may be terminated under section 641 if each House of the Parliament presents such an address to the Governor-General.
- Note 2: The FWC Member may be suspended under section 642.
- Note 3: The complaint is a *complaint about an FWC Member* (see section 12).
- Note 4: For protections for persons involved in relation to handling a complaint about an FWC Member, see section 584B.

642 Suspension on grounds of misbehaviour or incapacity

Governor-General may suspend an FWC Member

- (1) The Governor-General may suspend an FWC Member (other than the President) from office:
- (a) for misbehaviour; or
 - (b) if the FWC Member is unable to perform the duties of his or her office because of physical or mental incapacity.

Statement of grounds

- (2) The Minister must cause to be tabled in each House of Parliament, within 7 sitting days of that House after the suspension, a statement identifying the FWC Member and setting out the ground of the suspension.

Resolution by a House of Parliament

- (3) A House of the Parliament may, within 15 sitting days of that House after the day on which the statement has been tabled in it, declare by resolution that the appointment of the FWC Member should be terminated.

Suspension terminates

- (4) If a House does not pass a resolution in that way, the suspension terminates.

Appointment to be terminated

- (5) If each House of the Parliament passes a resolution in that way, the Governor-General must terminate the appointment of the FWC Member.

Suspension not to affect entitlements

- (6) The suspension of an FWC Member under this section does not affect any entitlement of the FWC Member to be paid remuneration, and allowances, in accordance with this Act.

643 Termination of appointment for bankruptcy, etc.

The Governor-General must terminate the appointment of an FWC Member (other than the President) if:

- (a) the FWC Member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the FWC Member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

644 Termination of appointment for outside work

Vice Presidents, Deputy Presidents and Commissioners

- (1) The Governor-General must terminate the appointment of a Vice President, Deputy President or Commissioner if the Vice President, Deputy President or Commissioner engages, except with the President's approval, in paid work outside the duties of his or her office (see subsection 633(1)).

Expert Panel Members

- (2) The Governor-General must terminate the appointment of an Expert Panel Member if the Expert Panel Member engages in paid

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work that, in the President's opinion, conflicts or may conflict with the proper performance of his or her duties (see subsection 633(3)).

645 Resignation of FWC Members

- (1) An FWC Member may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

646 Other terms and conditions of FWC Members

An FWC Member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

647 Appointment of acting President and Vice President

Appointment by Governor-General

- (1) The Governor-General may, by written instrument, appoint a Vice President to act as the President:
 - (a) during a vacancy in the office of the President (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the President is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (1A) The Governor-General may, by written instrument, appoint a Deputy President to act as a Vice President:
 - (a) during a vacancy in the office of a Vice President (whether or not an appointment has previously been made to the office); or

- (b) during any period, or during all periods, when a Vice President is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

No invalidity

- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

Not disqualified

- (3) A person is not disqualified from being appointed under subsection (1) or (1A) merely because the person is over 65.

648 Appointment of acting Deputy Presidents and Commissioners

Appointment by Governor-General

- (1) The Governor-General may, by written instrument, appoint a person who is qualified for appointment as a Deputy President to act as a Deputy President for a specified period (including a period that exceeds 12 months).

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (1A) The Governor-General may, by written instrument, appoint a person who is qualified for appointment as a Commissioner to act as a Commissioner for a specified period (including a period that exceeds 12 months).

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Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (2) Before the Governor-General appoints a person under subsection (1) or (1A), the Minister must be satisfied that the appointment is necessary to enable the FWC to perform its functions effectively.

No invalidity

- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

Not disqualified

- (4) A person is not disqualified from being appointed under subsection (1) or (1A) merely because the person is over 65.

Division 6—Cooperation with the States

649 President to cooperate with prescribed State industrial authorities

- (1) The President must perform his or her functions, and exercise his or her powers, in a manner that facilitates and encourages cooperation between the FWC and prescribed State industrial authorities.
- (2) Without limiting subsection (1), the President may invite the heads of prescribed State industrial authorities, or the principal registrars of prescribed State industrial authorities, to meet with the President to exchange information and discuss matters of mutual interest in relation to workplace relations.

650 Provision of administrative support

The President may make a written arrangement with a prescribed State industrial authority for:

- (a) the FWC to provide administrative support to the authority;
or
- (b) the authority to provide administrative support to the FWC.

Division 7—Seals and additional powers and functions of the President and the General Manager

651 Seals

Seal of the FWC

- (1) The FWC must have a seal on which are inscribed the words “The Seal of the Fair Work Commission”.

Duplicate seals

- (2) There are to be such duplicates of the seal of the FWC as the President directs.

Note: The President gives directions under section 582.

- (3) A document to which a duplicate seal of the FWC is affixed is taken to have the seal of the FWC affixed to it.

Custody and use of the seal of the FWC and duplicate seals

- (4) The seal of the FWC, and the duplicates of that seal, are to be kept in such custody as the President directs and must not be used except as authorised by the President.

Note: The President gives directions under section 582.

Judicial notice of the seal of the FWC

- (5) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the FWC appearing on a document; and
 - (b) presume that the document was duly sealed.

652 Annual report

- (1) The President must, as soon as practicable after the end of each financial year, prepare a report on the operations of the FWC during that year.

Note 1: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

Note 2: The report prepared by the General Manager and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* may be included in the report prepared under this section.

- (1A) A report prepared after the end of a financial year must be given to the Minister by 15 October in the next financial year for presentation to the Parliament.
- (2) To avoid doubt, subsection (1) does not require or authorise the disclosure of information for the purposes of the *Privacy Act 1988*.

653 Reports about making enterprise agreements, individual flexibility arrangements etc.

Review and research

- (1) The General Manager must:
- (a) review the developments, in Australia, in making enterprise agreements; and
 - (b) conduct research into the extent to which individual flexibility arrangements under modern awards and enterprise agreements are being agreed to, and the content of those arrangements; and
 - (c) conduct research into the operation of the provisions of the National Employment Standards relating to:
 - (i) requests for flexible working arrangements under subsection 65(1); and
 - (ii) requests for extensions of unpaid parental leave under subsection 76(1); and
 - (d) conduct research into:

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- (i) the circumstances in which employees make such requests; and
 - (ii) the outcome of such requests; and
 - (iii) the circumstances in which such requests are refused.
- (1A) The review and research must be conducted in relation to each of the following periods:
- (a) the 3 year period that starts when this section commences;
 - (b) each later 3 year period.
- (2) Without limiting subsection (1), the General Manager must, in conducting the review and research, consider the effect that the matters referred to in paragraphs (1)(a) to (d) have had, during the period, on the employment (including wages and conditions of employment) of the following persons:
- (a) women;
 - (b) part-time employees;
 - (c) persons from a non-English speaking background;
 - (d) mature age persons;
 - (e) young persons;
 - (f) any other persons prescribed by the regulations.

Report

- (3) The General Manager must give the Minister a written report of the review and research as soon as practicable, and in any event within 6 months, after the end of the period to which it relates.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (5) Subsections 34C(4) to (7) of the *Acts Interpretation Act 1901* apply to the report as if it were a periodic report as defined in subsection 34C(1) of that Act.

653A Arrangements with the Federal Court and the Federal Circuit Court

The General Manager may make a written arrangement with the Federal Court or the Federal Circuit Court for the FWC to provide administrative support to the Fair Work Division of the Court.

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

- (1) The President must provide to the Minister and the Fair Work Ombudsman information and copies of documents prescribed by the regulations by the time, and in the form, prescribed.
- (2) The regulations may prescribe:
 - (a) information that is publicly available, or derived from information that is publicly available, relating to:
 - (i) a decision of the FWC; or
 - (ii) a notice, notification or application given or made to the FWC; and
 - (b) a decision of the FWC that is publicly available.

655 Disclosure of information by the FWC

Information to which this section applies

- (1) This section applies to the following information:
 - (a) information acquired by the FWC, or a member of the staff of the FWC, in the course of performing functions or exercising powers as the FWC;
 - (b) information acquired by a person in the course of assisting the FWC under section 672, or in the course of performing functions, or exercising powers, as a consultant under section 673.

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Disclosure that is necessary or appropriate, or likely to assist administration or enforcement

- (2) The President may disclose, or authorise the disclosure of, the information if the President reasonably believes:
- (a) that it is necessary or appropriate to do so in the course of performing functions, or exercising powers, of the FWC; or
 - (b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

Division 8—General Manager, staff and consultants

Subdivision A—Functions of the General Manager

656 Establishment

There is to be a General Manager of the Fair Work Commission.

657 Functions and powers of the General Manager

- (1) The General Manager is to assist the President in ensuring that the FWC performs its functions and exercises its powers.
- (1A) The General Manager also has the following functions:
 - (a) any function conferred on him or her by a fair work instrument;
 - (b) any function conferred on him or her by a law of the Commonwealth.

Note: Sections 653 and 653A confer additional functions and powers on the General Manager.

- (2) The General Manager has power to do all things necessary or convenient to be done for the purpose of performing his or her functions.

658 Directions from the President

Despite the President's power of direction under section 582, the General Manager is not required to comply with a direction by the President to the extent that:

- (a) compliance with the direction would be inconsistent with the General Manager's performance of functions or exercise of powers under the *Public Governance, Performance and Accountability Act 2013* in relation to the FWC; or
- (b) the direction relates to the General Manager's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the FWC; or

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- (c) the direction relates to the conduct by the General Manager of the review and research, and the preparation of the report, under section 653.

659 General Manager not otherwise subject to direction

Except as provided by this or any other Act, the General Manager is not subject to direction by or on behalf of the Commonwealth.

Subdivision B—Appointment and terms and conditions of the General Manager

660 Appointment of the General Manager

- (1) The General Manager is to be appointed by the Governor-General by written instrument on the nomination of the President.
- (2) The General Manager holds office on a full-time basis.
- (3) The General Manager holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The General Manager is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

661 Remuneration of the General Manager

- (1) The General Manager is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the General Manager is to be paid the remuneration that is prescribed by the regulations.
- (2) The General Manager is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

662 Leave of absence of the General Manager

- (1) The General Manager has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the General Manager leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

663 Outside work of the General Manager

The General Manager must not engage in paid work outside the duties of his or her office without the President's approval.

664 Disclosure of interests to the President

- (1) The General Manager must give written notice to the President of all material personal interests that the General Manager has or acquires that relate to the affairs of the FWC.
- (2) Section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) does not apply to the General Manager.

665 Resignation of the General Manager

- (1) The General Manager may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

666 Termination of appointment of the General Manager

- (1) The Governor-General may terminate the appointment of the General Manager:
 - (a) for misbehaviour; or

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- (b) if the General Manager is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the General Manager if:
 - (a) the General Manager becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the General Manager is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the General Manager engages, except with the President's approval, in paid work outside the duties of his or her office (see section 663); or
 - (d) the General Manager fails, without reasonable excuse, to comply with section 664 (which deals with disclosure of interests to the President).

667 Other terms and conditions of the General Manager

The General Manager holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

668 Appointment of acting General Manager

- (1) The Minister may, by written instrument, appoint a person who is nominated by the President to act as the General Manager:
 - (a) during a vacancy in the office of the General Manager (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the General Manager is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

669 Minister to consult the President

The Minister must consult the President before terms and conditions are determined under section 667.

Subdivision C—Staff and consultants

670 Staff

- (1) The staff of the FWC must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
- (a) the General Manager and the staff of the FWC together constitute a Statutory Agency; and
 - (b) the General Manager is the Head of that Statutory Agency.

671 Delegation by General Manager to staff

- (1) The General Manager may, in writing, delegate all or any of his or her functions or powers to:
- (a) a member of the staff of the FWC who is an SES employee or acting SES employee; or
 - (b) a member of the staff of the FWC who is in a class of employees prescribed by the regulations.
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the General Manager.

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Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

672 Persons assisting the FWC

The FWC may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State or Territory; or
- (c) by officers and employees of authorities of the Commonwealth, a State or a Territory;

whose services are made available to the FWC in connection with the performance of any of its functions.

673 Consultants

The General Manager may engage persons having suitable qualifications and experience as consultants to the FWC.

Subdivision D—Application of the finance law

673A Application of the finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the following group of persons is a listed entity:
 - (i) the General Manager;
 - (ii) the staff of the FWC referred to in section 670;
 - (iii) persons whose services are made available to the FWC under section 672;
 - (iv) consultants engaged under section 673; and
- (b) the listed entity is to be known as the Fair Work Commission; and
- (c) the General Manager is the accountable authority of the listed entity; and
- (d) the persons referred to in paragraph (a) are officials of the listed entity; and

- (e) the purposes of the listed entity include the functions of the General Manager referred to in section 657.

Division 9—Offences relating to the Fair Work Commission

674 Offences in relation to the FWC

Insulting or disturbing an FWC Member

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct insults or disturbs an FWC Member in the performance of functions, or the exercise of powers, as an FWC Member.

Penalty: Imprisonment for 12 months.

Using insulting language

- (2) A person commits an offence if:
- (a) the person uses insulting language towards another person; and
 - (b) the person is reckless as to whether the language is insulting; and
 - (c) the other person is an FWC Member performing functions, or exercising powers, as an FWC Member.

Penalty: Imprisonment for 12 months.

Interrupting matters before the FWC

- (3) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct interrupts a matter before the FWC.

Penalty: Imprisonment for 12 months.

Creating or continuing a disturbance

- (4) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct creates, or contributes to creating or continuing, a disturbance; and
 - (c) the disturbance is in or near a place where the FWC is dealing with a matter.

Penalty: Imprisonment for 12 months.

Improper influence of FWC Members etc.

- (5) A person commits an offence if:
- (a) the person uses words (whether by writing or speech) that are intended to improperly influence another person; and
 - (b) the other person is an FWC Member or a person attending before the FWC.

Penalty: Imprisonment for 12 months.

Delegates of the FWC

- (6) A reference in subsections (1) to (5) to the FWC or an FWC Member includes a delegate of the FWC.

Adversely affecting public confidence in the FWC

- (7) A person commits an offence if:
- (a) the person publishes a statement; and
 - (b) the statement implies or states that an FWC Member (whether identified or not) has engaged in misconduct in relation to the performance of functions, or the exercise of powers, as an FWC Member; and
 - (c) the FWC Member has not engaged in that misconduct; and
 - (d) the publication is likely to have a significant adverse effect on public confidence that the FWC is properly performing its functions and exercising its powers.

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Penalty: 12 months imprisonment.

Note 1: Sections 135.1, 135.4, 139.1, 141.1 and 142.1 of the *Criminal Code* create offences of using various dishonest means to influence a Commonwealth public official.

Note 2: Sections 676 and 678 of this Act and sections 36A, 37, 38 and 40 of the *Crimes Act 1914* create offences relating to interference with a witness. Section 39 of that Act makes it an offence to destroy anything that may be required in evidence.

675 Contravening an FWC order

- (1) A person commits an offence if:
 - (a) the FWC has made an order under this Act; and
 - (b) either of the following applies:
 - (i) the order applies to the person;
 - (ii) a term of the order applies to the person; and
 - (c) the person engages in conduct; and
 - (d) the conduct contravenes:
 - (i) a term of the order referred to in subparagraph (b)(i); or
 - (ii) the term referred to in subparagraph (b)(ii).
- (2) However, subsection (1) does not apply to the following orders:
 - (a) an order under Part 2-3 (which deals with modern awards);
 - (b) a bargaining order;
 - (c) a scope order;
 - (d) an order under Part 2-6 (which deals with minimum wages);
 - (e) an equal remuneration order;
 - (f) an order under Part 2-8 (which deals with transfer of business);
 - (g) an order under Division 6 of Part 3-3 (which deals with the suspension or termination of protected industrial action);
 - (h) a protected action ballot order, or an order in relation to a protected action ballot order or a protected action ballot;
 - (i) an order under Part 3-5 (which deals with stand down);
 - (j) an order under Part 6-4B (which deals with workers bullied at work).

Penalty: Imprisonment for 12 months.

- (3) Strict liability applies to paragraphs (1)(a) and (b).

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

676 Intimidation etc.

A person commits an offence if:

- (a) the person threatens, intimidates, coerces or prejudices another person; and
- (b) the person does so because the other person has given, or proposes to give, information or documents to the FWC.

Penalty: Imprisonment for 12 months.

Note: A person may also contravene a civil remedy provision by threatening etc. a person who has given, or proposes to give, information or documents to the FWC (see section 343).

677 Offences in relation to attending before the FWC

Required to attend

- (1) A person commits an offence if:
- (a) the person has been required to attend before the FWC; and
 - (b) the person fails to attend as required.

Penalty: Imprisonment for 6 months.

Oath or affirmation

- (2) A person commits an offence if:
- (a) the person attends before the FWC; and
 - (b) the FWC requires the person to take an oath or make an affirmation; and
 - (c) the person refuses or fails to be sworn or to make an affirmation as required.

Penalty: Imprisonment for 6 months.

Section 678

Questions or documents

- (3) A person commits an offence if:
- (a) the person attends before the FWC; and
 - (b) the FWC requires the person to answer a question or produce a document; and
 - (c) the person refuses or fails to answer the question or produce the document.

Penalty: Imprisonment for 6 months.

Reasonable excuse

- (4) Subsection (1), (2) or (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) A reference in this section to the FWC or an FWC Member includes a delegate of the FWC.

678 False or misleading evidence

Giving false or misleading evidence

- (1) A person (the **witness**) commits an offence if:
- (a) the witness gives sworn or affirmed evidence; and
 - (b) the witness gives the evidence as a witness:
 - (i) in a matter before the FWC; or
 - (ii) before a person taking evidence on behalf of the FWC for use in a matter that the witness will start by application to the FWC; and
 - (c) the evidence is false or misleading.

Penalty: Imprisonment for 12 months.

Note: A person will not commit an offence if the person carries out the conduct constituting the offence under duress (see section 10.2 of the *Criminal Code*).

Inducing or coercing another person to give false or misleading evidence

- (2) A person (the **offender**) commits an offence if:
- (a) another person (the **witness**) has been, or will be, required to appear as a witness in a matter before the FWC (whether the person is to appear before the FWC or a delegate of the FWC); and
 - (b) the offender induces, threatens or intimidates the witness to give false or misleading evidence in the matter.

Penalty: Imprisonment for 12 months.

Part 5-2—Office of the Fair Work Ombudsman

Division 1—Introduction

679 Guide to this Part

This Part is about the Office of the Fair Work Ombudsman.

Division 2 is about the Fair Work Ombudsman. The Fair Work Ombudsman's functions include promoting and monitoring compliance with this Act, and providing education, assistance and advice to employees, employers, outworkers, outworker entities and organisations.

Division 3 is about the Office of the Fair Work Ombudsman. The Office of the Fair Work Ombudsman consists of the Fair Work Ombudsman, Fair Work Inspectors and staff.

The inspectors exercise compliance powers for purposes including determining whether this Act is being complied with. The compliance powers include the power to enter certain premises, and to inspect and make copies of documents on the premises.

680 Meanings of *employee* and *employer*

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

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

Division 2—Fair Work Ombudsman

Subdivision A—Establishment and functions and powers of the Fair Work Ombudsman

681 Establishment

There is to be a Fair Work Ombudsman.

682 Functions of the Fair Work Ombudsman

- (1) The Fair Work Ombudsman has the following functions:
 - (a) to promote:
 - (i) harmonious, productive and cooperative workplace relations; and
 - (ii) compliance with this Act and fair work instruments; including by providing education, assistance and advice to employees, employers, outworkers, outworker entities and organisations and producing best practice guides to workplace relations or workplace practices;
 - (b) to monitor compliance with this Act and fair work instruments;
 - (c) to inquire into, and investigate, any act or practice that may be contrary to this Act, a fair work instrument or a safety net contractual entitlement;
 - (d) to commence proceedings in a court, or to make applications to the FWC, to enforce this Act, fair work instruments and safety net contractual entitlements;
 - (e) to refer matters to relevant authorities;
 - (f) to represent employees or outworkers who are, or may become, a party to proceedings in a court, or a party to a matter before the FWC, under this Act or a fair work instrument, if the Fair Work Ombudsman considers that representing the employees or outworkers will promote compliance with this Act or the fair work instrument;

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(g) any other functions conferred on the Fair Work Ombudsman by any Act.

Note 1: The Fair Work Ombudsman also has the functions of an inspector (see section 701).

Note 2: In performing functions under paragraph (a), the Fair Work Ombudsman might, for example, produce a best practice guide to achieving productivity through bargaining.

(2) The Fair Work Ombudsman must consult with the FWC in producing guidance material that relates to the functions of the FWC.

683 Delegation by the Fair Work Ombudsman

(1) The Fair Work Ombudsman may, in writing, delegate to a member of the staff of the Office of the Fair Work Ombudsman or to an inspector all or any of the Fair Work Ombudsman's functions or powers under any Act (subject to subsections (1A) and (1B)).

(1A) The Fair Work Ombudsman must not delegate his or her functions or powers as an inspector.

(1B) The Fair Work Ombudsman may delegate to a member of the staff of the Office of the Fair Work Ombudsman who is an SES employee or an acting SES employee:

- (a) the power under subsection 712AA(1) to apply for the issue of an FWO notice; and
- (b) the power under subsection 712AD(1) to give an FWO notice; and
- (c) the power under subsections 712AD(3) and (4) to give notice of a later time.

Note: *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

(2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Fair Work Ombudsman.

684 Directions from the Minister

- (1) The Minister may, by legislative instrument, give written directions to the Fair Work Ombudsman about the performance of his or her functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) The direction must be of a general nature only.
- (3) The Fair Work Ombudsman must comply with the direction.
- (4) The Fair Work Ombudsman is not required to comply with the direction to the extent that it relates to the Fair Work Ombudsman's performance of functions, or exercise of powers, under the *Public Service Act 1999* in relation to the Office of the Fair Work Ombudsman.

685 Minister may require reports

- (1) The Minister may, in writing, direct the Fair Work Ombudsman to give the Minister specified reports relating to the Fair Work Ombudsman's functions.

Note: A report must not include information relating to an individual's affairs (see section 714A).

- (2) The Fair Work Ombudsman must comply with the direction.
- (3) The direction, or the report (if made in writing), is not a legislative instrument.

686 Annual report

To avoid doubt, the requirement on the Fair Work Ombudsman to give an annual report to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* does not require or authorise the disclosure of information for the purposes of the *Privacy Act 1988*.

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Note: An annual report must not include information relating to an individual's affairs (see section 714A).

Subdivision B—Appointment and terms and conditions of the Fair Work Ombudsman

687 Appointment of the Fair Work Ombudsman

- (1) The Fair Work Ombudsman is to be appointed by the Governor-General by written instrument.
- (2) Before the Governor-General appoints a person as the Fair Work Ombudsman, the Minister must be satisfied that the person:
 - (a) has suitable qualifications or experience; and
 - (b) is of good character.
- (3) The Fair Work Ombudsman holds office on a full-time basis.
- (4) The Fair Work Ombudsman holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Fair Work Ombudsman is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

688 Remuneration of the Fair Work Ombudsman

- (1) The Fair Work Ombudsman is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Fair Work Ombudsman is to be paid the remuneration that is prescribed by the regulations.
- (2) The Fair Work Ombudsman is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

689 Leave of absence of the Fair Work Ombudsman

- (1) The Fair Work Ombudsman has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Fair Work Ombudsman leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

690 Outside work of the Fair Work Ombudsman

The Fair Work Ombudsman must not engage in paid work outside the duties of his or her office without the Minister's approval.

692 Resignation of the Fair Work Ombudsman

- (1) The Fair Work Ombudsman may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

693 Termination of appointment of the Fair Work Ombudsman

- (1) The Governor-General may terminate the appointment of the Fair Work Ombudsman:
 - (a) for misbehaviour; or
 - (b) if the Fair Work Ombudsman is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the Fair Work Ombudsman if:
 - (a) the Fair Work Ombudsman becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or

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- (b) the Fair Work Ombudsman is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) the Fair Work Ombudsman engages, except with the Minister's approval, in paid work outside the duties of his or her office (see section 690); or
- (d) the Fair Work Ombudsman fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

694 Other terms and conditions of the Fair Work Ombudsman

The Fair Work Ombudsman holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

695 Appointment of acting Fair Work Ombudsman

- (1) The Minister may, by written instrument, appoint a person who is qualified for appointment as the Fair Work Ombudsman to act as the Fair Work Ombudsman:
 - (a) during a vacancy in the office of Fair Work Ombudsman (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Fair Work Ombudsman is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.
- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or

- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Division 3—Office of the Fair Work Ombudsman

Subdivision A—Establishment of the Office of the Fair Work Ombudsman

696 Establishment of the Office of the Fair Work Ombudsman

- (1) The Office of the Fair Work Ombudsman is established by this section.
- (2) The Office of the Fair Work Ombudsman consists of:
 - (a) the Fair Work Ombudsman; and
 - (b) the staff of the Office of the Fair Work Ombudsman; and
 - (c) the inspectors appointed under section 700.

Subdivision B—Staff and consultants etc.

697 Staff

- (1) The staff of the Office of the Fair Work Ombudsman must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Fair Work Ombudsman and the staff of the Office of the Fair Work Ombudsman together constitute a Statutory Agency; and
 - (b) the Fair Work Ombudsman is the Head of that Statutory Agency.

698 Persons assisting the Fair Work Ombudsman

The Fair Work Ombudsman may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State or Territory; or

(c) by officers and employees of authorities of the Commonwealth, a State or a Territory; whose services are made available to the Fair Work Ombudsman in connection with the performance of any of his or her functions.

Note: For example, State or Territory employees could be made available to assist the Fair Work Ombudsman in providing education in a particular region.

699 Consultants

The Fair Work Ombudsman may engage persons having suitable qualifications and experience as consultants to the Office of the Fair Work Ombudsman.

Subdivision C—Appointment of Fair Work Inspectors

700 Appointment of Fair Work Inspectors

- (1) The Fair Work Ombudsman may, in writing, appoint as a Fair Work Inspector:
 - (a) a person who has been appointed, or who is employed, by the Commonwealth; or
 - (b) a person who is employed by a State or Territory.
- (2) The Fair Work Ombudsman may appoint a person as a Fair Work Inspector only if the Fair Work Ombudsman is satisfied that the person is of good character.
- (3) A Fair Work Inspector is appointed for the period specified in the instrument of appointment. The period must not exceed 4 years.

Note: A Fair Work Inspector is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

701 Fair Work Ombudsman is a Fair Work Inspector

The Fair Work Ombudsman is a Fair Work Inspector by force of this section.

Section 702

702 Identity cards

- (1) The Fair Work Ombudsman must issue an identity card to an inspector appointed under section 700.
- (2) The Minister must issue an identity card to the Fair Work Ombudsman.

Form of identity card

- (3) The identity card must:
 - (a) be in the form approved by the Fair Work Ombudsman; and
 - (b) contain a recent photograph of the inspector.

Inspector must carry card

- (4) An inspector must carry the identity card at all times when performing functions or exercising powers as an inspector.

Offence

- (5) A person commits an offence if:
 - (a) the person ceases to be an inspector; and
 - (b) the person does not, within 14 days of so ceasing, return the person's identity card to the Fair Work Ombudsman or the Minister (as the case may be).

Penalty: 1 penalty unit.

- (6) Subsection (5) is an offence of strict liability.

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

Defence—card lost or destroyed

- (7) Subsection (5) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Subdivision D—Functions and powers of Fair Work Inspectors—general

703 Conditions and restrictions on functions and powers

- (1) The functions, and powers (*compliance powers*), conferred on an inspector are subject to such conditions and restrictions as are specified in his or her instrument of appointment.
- (2) To avoid doubt, the power to apply for the issue of an FWO notice under section 712AA and the power to give an FWO notice under section 712AD are not compliance powers.

704 General directions by the Fair Work Ombudsman

- (1) The Fair Work Ombudsman may, by legislative instrument, give a written direction to inspectors relating to the performance of their functions or the exercise of their powers as inspectors.
- (2) The direction must be of a general nature only, and cannot relate to a particular case.
- (3) An inspector must comply with the direction.

705 Particular directions by the Fair Work Ombudsman

- (1) The Fair Work Ombudsman may give a direction to an inspector relating to the performance of the inspector's functions or the exercise of the inspector's powers as an inspector.
- (2) The inspector must comply with the direction.
- (3) If a direction is in writing, the direction is not a legislative instrument.

Section 706

706 Purpose for which powers of inspectors may be exercised

- (1) An inspector may exercise compliance powers (other than a power under section 715 or 716) for one or more of the following purposes (*compliance purposes*):
- (a) determining whether this Act or a fair work instrument is being, or has been, complied with;
 - (b) subject to subsection (2), determining whether a safety net contractual entitlement is being, or has been, contravened by a person;
 - (c) the purposes of a provision of the regulations that confers functions or powers on inspectors;
 - (d) the purposes of a provision of another Act that confers functions or powers on inspectors.

Note: The powers in sections 715 (which deals with enforceable undertakings) and 716 (which deals with compliance notices) may be exercised for the purpose of remedying the effects of certain contraventions.

- (2) An inspector may exercise compliance powers for the purpose referred to in paragraph (1)(b) only if the inspector reasonably believes that the person has contravened one or more of the following:
- (a) a provision of the National Employment Standards;
 - (b) a term of a modern award;
 - (c) a term of an enterprise agreement;
 - (d) a term of a workplace determination;
 - (e) a term of a national minimum wage order;
 - (f) a term of an equal remuneration order.

707 When powers of inspectors may be exercised

An inspector may exercise compliance powers:

- (a) at any time during working hours; or
- (b) at any other time, if the inspector reasonably believes that it is necessary to do so for compliance purposes.

707A Hindering or obstructing the Fair Work Ombudsman and inspectors etc.

- (1) A person must not intentionally hinder or obstruct:
- (a) the Fair Work Ombudsman or an inspector in the performance of his or her functions or the exercise of his or her powers as the Fair Work Ombudsman or an inspector; or
 - (b) an assistant referred to in section 710 assisting an inspector on premises; or
 - (c) a member of the staff of the Office of the Fair Work Ombudsman in the performance of his or her functions or the exercise of his or her powers in relation to an FWO notice.

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

- (2) Subsection (1) does not apply if:
- (a) the person has a reasonable excuse; or
 - (b) if the Fair Work Ombudsman or inspector referred to in paragraph (1)(a) or (b) (as the case requires) was required to show his or her identity card to the person under subsection 708(3) or paragraph 711(3)(b)—the Fair Work Ombudsman or inspector:
 - (i) failed to do so; or
 - (ii) failed to tell the person of the effect of this section.
- (3) A reference in subsection (1) to the Fair Work Ombudsman includes a reference to a delegate of the Fair Work Ombudsman.

Subdivision DA—Power to enter premises

708 Power of inspectors to enter premises

- (1) An inspector may, without force:
- (a) enter premises, if the inspector reasonably believes that this Act or a fair work instrument applies to work that is being, or applied to work that has been, performed on the premises; or
 - (b) enter business premises, if the inspector reasonably believes that there are records or documents relevant to compliance

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purposes on the premises, or accessible from a computer on the premises.

- (2) Despite paragraph (1)(a), an inspector must not enter a part of premises that is used for residential purposes unless the inspector reasonably believes that the work referred to in that paragraph is being performed on that part of the premises.
- (3) The inspector must, either before or as soon as practicable after entering premises, show his or her identity card to the occupier, or another person who apparently represents the occupier, if the occupier or other person is present at the premises.

709 Powers of inspectors while on premises

The inspector may exercise one or more of the following powers while on the premises:

- (a) inspect any work, process or object;
- (b) interview any person;
- (c) require a person to tell the inspector who has custody of, or access to, a record or document;
- (d) require a person who has the custody of, or access to, a record or document to produce the record or document to the inspector either while the inspector is on the premises, or within a specified period;
- (e) inspect, and make copies of, any record or document that:
 - (i) is kept on the premises; or
 - (ii) is accessible from a computer that is kept on the premises;
- (f) take samples of any goods or substances in accordance with any procedures prescribed by the regulations.

Note: See also sections 713, 713A and 714 (which deal with self-incrimination and produced documents etc.).

710 Persons assisting inspectors

- (1) A person (the *assistant*) may accompany the inspector onto the premises to assist the inspector if the Fair Work Ombudsman is satisfied that:
 - (a) the assistance is necessary and reasonable; and
 - (b) the assistant has suitable qualifications and experience to properly assist the inspector.
- (2) The assistant:
 - (a) may do such things on the premises as the inspector requires to assist the inspector to exercise compliance powers; but
 - (b) must not do anything that the inspector does not have power to do.
- (3) Anything done by the assistant is taken for all purposes to have been done by the inspector.

Subdivision DB—Powers to ask questions and require records and documents

711 Power to ask for person's name and address

- (1) An inspector may require a person to tell the inspector the person's name and address if the inspector reasonably believes that the person has contravened a civil remedy provision.
- (2) If the inspector reasonably believes that the name or address is false, the inspector may require the person to give evidence of its correctness.
- (3) A person must comply with a requirement under subsection (1) or (2) if:
 - (a) the inspector advises the person that he or she may contravene a civil remedy provision if he or she fails to comply with the requirement; and
 - (b) the inspector shows his or her identity card to the person.

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

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- (4) Subsection (3) does not apply if the person has a reasonable excuse.

712 Power to require persons to produce records or documents

- (1) An inspector may require a person, by notice, to produce a record or document to the inspector.
- (2) The notice must:
- (a) be in writing; and
 - (b) be served on the person; and
 - (c) require the person to produce the record or document at a specified place within a specified period of at least 14 days.
- The notice may be served by sending the notice to the person's fax number.
- (3) A person who is served with a notice to produce must not fail to comply with the notice.

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

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

712A Minister may nominate AAT presidential members to issue FWO notices

- (1) The Minister may, by writing, nominate an AAT presidential member to issue written notices (***FWO notices***) under section 712AB.
- (2) The Minister may nominate an AAT presidential member who is a Judge to issue FWO notices under section 712AB only if the Judge has consented, by writing, to the nomination.
- (3) A nomination ceases to have effect if:
- (a) the nominated AAT presidential member ceases to be an AAT presidential member; or
 - (b) the Minister, by writing, withdraws the nomination.

- (4) A nominated AAT presidential member has, in performing a function of or connected with issuing an FWO notice under this Subdivision, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

712AA Fair Work Ombudsman may apply to nominated AAT presidential member for FWO notice

General requirements

- (1) The Fair Work Ombudsman may apply, in writing, to a nominated AAT presidential member for the issue of an FWO notice referred to in subsection (2) if the Fair Work Ombudsman believes on reasonable grounds that a person:
- (a) has information or documents relevant to an investigation by an inspector into a suspected contravention of a provision of this Act, a fair work instrument or a safety net contractual entitlement that relates, directly or indirectly, to:
 - (i) the underpayment of wages, or other monetary entitlements, of employees; or
 - (ii) the unreasonable deduction of amounts from amounts owed to employees; or
 - (iii) the placing of unreasonable requirements on employees to spend or pay amounts paid, or payable, to employees; or
 - (iv) the unfair dismissal of an employee; or
 - (v) the bullying of a worker at work; or
 - (vi) the unlawful discrimination of a person in relation to employment; or
 - (vii) a contravention of a provision of the National Employment Standards; or
 - (viii) the coercion of an employee by an employer; and
 - (b) is capable of giving evidence that is relevant to such an investigation.
- (2) The FWO notice may require the person:

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- (a) to give information to the Fair Work Ombudsman, or a specified member of the staff of the Office of the Fair Work Ombudsman; or
- (b) to produce documents to the Fair Work Ombudsman, or a specified member of the staff of the Office of the Fair Work Ombudsman; or
- (c) to attend before the Fair Work Ombudsman, or a specified member of the staff of the Office of the Fair Work Ombudsman who is an SES employee or an acting SES employee, and answer questions relevant to the investigation.

Form and content of application

- (3) An application for an FWO notice must:
 - (a) if a form is prescribed by the regulations—be in that form; and
 - (b) include any information prescribed by the regulations.
- (4) An application for an FWO notice must not relate to more than one person, but may relate to more than one investigation.

Application must be accompanied by affidavit

- (5) An application for an FWO notice must be accompanied by an affidavit by the Fair Work Ombudsman including the following:
 - (a) the name of the person to whom the application relates;
 - (b) details of the investigation (or investigations) to which the application relates;
 - (c) the grounds on which the Fair Work Ombudsman believes the person has information or documents, or is capable of giving evidence, relevant to the investigation (or investigations) referred to in paragraph (b);
 - (d) details of other methods used to attempt to obtain the information, documents or evidence;
 - (e) the number (if any) of previous applications for an FWO notice that the Fair Work Ombudsman has made in relation to the person in respect of the investigation (or investigations) referred to in paragraph (b);

- (f) information about whether the Fair Work Ombudsman has made, or expects to make, any other applications for an FWO notice in relation to the investigation (or investigations) referred to in paragraph (b) and, if so, the persons to whom those applications relate.

Further information

- (6) A nominated AAT presidential member to whom an application for an FWO notice is made may request the Fair Work Ombudsman to give the presidential member further information in relation to the application.
- (7) If a request for further information is made under subsection (6), the Fair Work Ombudsman must give the further information in writing as soon as practicable after receiving the request.

712AB Issue of FWO notice

- (1) A nominated AAT presidential member to whom an application for an FWO notice has been made must issue the FWO notice if the presidential member is satisfied of the following:
 - (a) that an inspector has commenced the investigation (or investigations) to which the application relates;
 - (b) that there are reasonable grounds to believe that the person to whom the application relates has information or documents, or is capable of giving evidence, relevant to the investigation (or investigations);
 - (c) that any other method of obtaining the information, documents or evidence:
 - (i) has been attempted and has been unsuccessful; or
 - (ii) is not appropriate;
 - (d) that the information, documents or evidence would be likely to be of assistance in the investigation (or investigations);
 - (e) that, having regard to all the circumstances, it would be appropriate to issue the FWO notice;
 - (f) any other matter prescribed by the regulations.

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- (2) A nominated AAT presidential member must not issue an FWO notice except in the circumstances referred to in subsection (1).
- (3) An FWO notice must not be issued in relation to more than one person, but may be issued in relation to more than one investigation.
- (4) If:
 - (a) an application for an FWO notice is made in relation to more than one investigation; and
 - (b) the nominated AAT presidential member to whom the application is made is not satisfied of the matters referred to in subsection (1) in relation to each of those investigations;the nominated AAT presidential member must issue the FWO notice in relation to the investigation (or investigations) in relation to which the nominated AAT presidential member is satisfied of the matters referred to in subsection (1).

712AC Form and content of FWO notice

An FWO notice must:

- (a) if a form is prescribed by the regulations—be in that form; and
- (b) if the notice requires a person to give information under paragraph 712AA(2)(a)—specify the time by which, and the manner and form in which, the information is to be given; and
- (c) if the notice requires a person to produce documents under paragraph 712AA(2)(b)—specify the time by which, and the manner in which, the documents are to be produced; and
- (d) if the notice requires a person to attend to answer questions relevant to an investigation—specify the time and place for the attendance; and
- (e) be signed by the nominated AAT presidential member who issued it; and
- (f) include any other information prescribed by the regulations.

712AD Fair Work Ombudsman may give FWO notice to person in relation to whom it is issued and vary time for compliance

Fair Work Ombudsman may give FWO notice to person in relation to whom it is issued

- (1) If a nominated AAT presidential member issues an FWO notice, the Fair Work Ombudsman may give the notice to the person in relation to whom it is issued.
- (2) If an FWO notice is not given to the person in relation to whom it is issued within 3 months after the day on which it was issued, the notice ceases to have effect at the end of that period.

Variation of time for compliance with FWO notice

- (3) If:
 - (a) the Fair Work Ombudsman gives an FWO notice to a person under subsection (1); and
 - (b) the time specified in the notice under paragraph 712AC(b), (c) or (d) is not at least 14 days after the notice is given to the person;the Fair Work Ombudsman must, at the same time as the FWO notice is given to the person, also give notice to the person of a time later than the time specified in the notice.
- (4) The Fair Work Ombudsman may, at any time after giving an FWO notice to the person in relation to whom it is issued, give notice to the person of a time later than the time:
 - (a) specified in the notice under paragraph 712AC(b), (c) or (d);
or
 - (b) notified under subsection (3).
- (5) A later time notified under subsection (3) or (4) must be at least 14 days after the FWO notice is given to the person.
- (6) If the person is notified of a later time under subsection (3) or (4), the FWO notice has effect as if the later time (or the latest of those times) were the time specified in the FWO notice.

Section 712AE

712AE Conduct of examination

Legal representation

- (1) A person attending before the Fair Work Ombudsman, or a member of the staff mentioned in paragraph 712AA(2)(c), may be represented by a lawyer if the person chooses.

Oath or affirmation

- (2) The Fair Work Ombudsman, or a member of the staff mentioned in paragraph 712AA(2)(c), may require the information or answers to be verified by, or given on, oath or affirmation, and either orally or in writing. For that purpose, the Fair Work Ombudsman, or any member of the staff of the Office of the Fair Work Ombudsman, may administer the oath or affirmation.
- (3) The oath or affirmation is an oath or affirmation that the information or answers are or will be true.

712B Requirement to comply with FWO notice

- (1) A person who has been given an FWO notice must do the following (as applicable):
 - (a) give information or produce a document in accordance with the notice;
 - (b) attend to answer questions in accordance with the notice;
 - (c) take an oath or make an affirmation when required to do so under subsection 712AE(2);
 - (d) answer questions relevant to the investigation while attending as required by the FWO notice.

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

- (2) Subsection (1) does not apply to the extent that the person is not capable of complying with the requirement.

712C Payment for expenses incurred in attending as required by an FWO notice

- (1) A person who attends as required by an FWO notice is (subject to subsection (2)) entitled to be paid fees and allowances, fixed by or calculated in accordance with the regulations, for reasonable expenses (including legal expenses) incurred by the person in so attending.
- (2) The person is not entitled to be paid for expenses under this section unless the person:
 - (a) applies, in writing, to the Fair Work Ombudsman for payment of the expenses within 3 months after the attendance; and
 - (b) provides to the Fair Work Ombudsman sufficient evidence to establish that the person incurred the expenses.
- (3) An application under paragraph (2)(a) must:
 - (a) if a form is prescribed by the regulations—be in that form; and
 - (b) include any information prescribed by the regulations.

712D Protection from liability relating to FWO notices

A person who, in good faith, gives information, produces a record or document, or answers a question, when required to do so under an FWO notice is not liable to:

- (a) any proceedings for contravening any other law because of that conduct; or
- (b) civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

712E Fair Work Ombudsman must notify Commonwealth Ombudsman of issue of FWO notice

- (1) As soon as practicable after an FWO notice has been issued, the Fair Work Ombudsman must:

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- (a) notify the Commonwealth Ombudsman that the FWO notice has been issued; and
 - (b) give the Commonwealth Ombudsman a copy of:
 - (i) the FWO notice; and
 - (ii) the affidavit that accompanied the application for the FWO notice; and
 - (iii) any other information in relation to the FWO notice that was given to the nominated AAT presidential member who issued the notice.
- (2) If notice under subsection 712AD(3) or (4) is given to a person, the Fair Work Ombudsman must notify the Commonwealth Ombudsman as soon as practicable after giving notice.

712F Review and report by Commonwealth Ombudsman

Fair Work Ombudsman to give report etc. to Commonwealth Ombudsman

- (1) As soon as practicable after an examination of a person under paragraph 712AA(2)(c) is completed, the Fair Work Ombudsman must give the Commonwealth Ombudsman:
 - (a) a report about the examination; and
 - (b) a video recording of the examination; and
 - (c) a transcript of the examination.
- (2) The report under paragraph (1)(a) must include:
 - (a) a copy of the FWO notice under which the examination was conducted; and
 - (b) the following information:
 - (i) the time and place at which the examination was conducted;
 - (ii) the name of each person who was present at the examination;
 - (iii) any other information prescribed by the rules.

Review of exercise of powers under this Subdivision

- (3) The Commonwealth Ombudsman:
 - (a) must review the exercise of powers under this Subdivision by the Fair Work Ombudsman and any member of the staff of the Office of the Fair Work Ombudsman; and
 - (b) may do anything incidental or conducive to the performance of that function.
- (4) The Commonwealth Ombudsman's powers under the *Ombudsman Act 1976* extend to a review by the Ombudsman under this section as if the review were an investigation by the Ombudsman under that Act.
- (5) The exercise of those powers in relation to a review by the Ombudsman under this section is taken, for all purposes, to be an exercise of powers under the *Ombudsman Act 1976*.

Commonwealth Ombudsman to report to Parliament

- (6) As soon as practicable after the end of each quarter of each financial year, the Commonwealth Ombudsman must prepare and present to the Parliament a report about examinations conducted during that quarter. The report must include the results of reviews conducted under this section during that quarter.
- (7) The Commonwealth Ombudsman may prepare and present to the Parliament any other reports about the results of reviews conducted under this section the Commonwealth Ombudsman considers appropriate.

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Subdivision DC—Other rules relating to answers, records and documents

713 Self-incrimination etc.

Excuses that are not available

- (1) A person is not excused from giving information, producing a record or document, or answering a question, under paragraph 709(d) or subsection 712(1), or under an FWO notice, on the ground that to do so might tend to incriminate the person or otherwise expose the person to a penalty or other liability.

Use/derivative use indemnity in relation to requirement under paragraph 709(d) or subsection 712(1)

- (2) In the case of an individual who produces a record or document, under paragraph 709(d) or subsection 712(1), none of the following:
- (a) the record or document produced;
 - (b) producing the record or document;
 - (c) any information, document or thing obtained as a direct or indirect consequence of producing the record or document; is admissible in evidence against the individual in criminal proceedings, other than:
 - (d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act (false or misleading information or documents); and
 - (e) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act (obstruction of Commonwealth officials).

Use indemnity in relation to FWO notices

- (3) In the case of an individual who gives information, produces a record or document, or answers a question, under an FWO notice, any information or answer given, or record or document produced,

is not admissible in evidence against the individual in proceedings, other than:

- (a) proceedings for a contravention of section 712B or 718A (requirement to comply with FWO notice and false or misleading information or documents); and
- (b) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act (false or misleading information or documents); and
- (c) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act (obstruction of Commonwealth officials).

713A Certain records and documents are inadmissible

The following are not admissible in evidence in criminal proceedings against an individual:

- (a) any record or document inspected or copied under paragraph 709(e) of which the individual had custody, or to which the individual had access, when it was inspected or copied;
- (b) any information, document or thing obtained as a direct or indirect consequence of inspecting or copying a record or document of which the individual had custody, or to which the individual had access, when it was inspected or copied under paragraph 709(e).

713AA Legal professional privilege

Nothing in this Part requires a person to produce a document that would disclose information that is the subject of legal professional privilege.

714 Power to keep records or documents

- (1) If a record or document is produced to the Fair Work Ombudsman, an inspector or any other person in accordance with this Subdivision, he or she may:

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- (a) inspect, and make copies of, the record or document; and
 - (b) keep the record or document for such period as is necessary.
- (2) While the Fair Work Ombudsman, an inspector or any other person keeps a record or document, he or she must allow the following persons to inspect, or make copies of, the record or document at all reasonable times:
- (a) the person who produced the record or document;
 - (b) any person otherwise entitled to possession of the record or document;
 - (c) a person authorised by the person referred to in paragraph (b).

714A Reports not to include information relating to an individual's affairs

- (1) Information relating to the affairs of an individual must not be included in a report under section 685 (which allows the Minister to require reports) or in a report referred to in section 686 (which deals with annual reports) if:
- (a) the individual is named, or otherwise specifically identified, in the report as the individual to whom the information relates; or
 - (b) it is reasonably likely that people generally (other than people to whom the individual has disclosed information relating to the individual's affairs) would be able to work out the identity of the individual to whom the information relates.
- (2) For the purposes of applying paragraph (1)(b) to information relating to a particular individual's affairs, the context in which the information appears, and information that is otherwise publicly available, must be taken into account (as well as any other relevant matter).

Subdivision DD—Enforceable undertakings and compliance notices

715 Enforceable undertakings relating to contraventions of civil remedy provisions

Application of this section

- (1) This section applies if the Fair Work Ombudsman reasonably believes that a person has contravened a civil remedy provision.

Accepting an undertaking

- (2) The Fair Work Ombudsman may accept a written undertaking given by the person in relation to the contravention, except as provided by subsection (5).

Withdrawing or varying an undertaking

- (3) The person may withdraw or vary the undertaking at any time, but only with the Fair Work Ombudsman's consent.

Relationship with orders in relation to contraventions of civil remedy provisions

- (4) An inspector must not apply for an order under Division 2 of Part 4-1 in relation to a contravention of a civil remedy provision by a person if an undertaking given by the person under this section in relation to the contravention has not been withdrawn.

Note: A person other than an inspector who is otherwise entitled to apply for an order in relation to the contravention may do so.

Relationship with compliance notices

- (5) The Fair Work Ombudsman must not accept an undertaking in relation to a contravention if the person has been given a notice in relation to the contravention under section 716.

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Enforcement of undertakings

- (6) If the Fair Work Ombudsman considers that the person who gave the undertaking has contravened any of its terms, the Fair Work Ombudsman may apply to the Federal Court, the Federal Circuit Court or an eligible State or Territory Court for an order under subsection (7).
- (7) If the court is satisfied that the person has contravened a term of the undertaking, the court may make one or more of the following orders:
 - (a) an order directing the person to comply with the term of the undertaking;
 - (b) an order awarding compensation for loss that a person has suffered because of the contravention;
 - (c) any other order that the court considers appropriate.

716 Compliance notices

Application of this section

- (1) This section applies if an inspector reasonably believes that a person has contravened one or more of the following:
 - (a) a provision of the National Employment Standards;
 - (b) a term of a modern award;
 - (c) a term of an enterprise agreement;
 - (d) a term of a workplace determination;
 - (e) a term of a national minimum wage order;
 - (f) a term of an equal remuneration order.

Giving a notice

- (2) The inspector may, except as provided by subsection (4), give the person a notice requiring the person to do either or both of the following within such reasonable time as is specified in the notice:
 - (a) take specified action to remedy the direct effects of the contravention referred to in subsection (1);

- (b) produce reasonable evidence of the person's compliance with the notice.
- (3) The notice must also:
 - (a) set out the name of the person to whom the notice is given; and
 - (b) set out the name of the inspector who gave the notice; and
 - (c) set out brief details of the contravention; and
 - (d) explain that a failure to comply with the notice may contravene a civil remedy provision; and
 - (e) explain that the person may apply to the Federal Court, the Federal Circuit Court or an eligible State or Territory Court for a review of the notice on either or both of the following grounds:
 - (i) the person has not committed a contravention set out in the notice;
 - (ii) the notice does not comply with subsection (2) or this subsection; and
 - (f) set out any other matters prescribed by the regulations.

Relationship with enforceable undertakings

- (4) An inspector must not give a person a notice in relation to a contravention if:
 - (a) the person has given an undertaking under section 715 in relation to the contravention; and
 - (b) the undertaking has not been withdrawn.

Relationship with civil remedy provisions

- (4A) An inspector must not apply for an order under Division 2 of Part 4-1 in relation to a contravention of a civil remedy provision by a person if:
 - (a) the inspector has given the person a notice in relation to the contravention; and
 - (b) either of the following subparagraphs applies:

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- (i) the notice has not been withdrawn, and the person has complied with the notice;
- (ii) the person has made an application under section 717 in relation to the notice that has not been completely dealt with.

Note: A person other than an inspector who is otherwise entitled to apply for an order in relation to the contravention may do so.

- (4B) A person who complies with a notice in relation to a contravention of a civil remedy provision is not taken:
- (a) to have admitted to contravening the provision; or
 - (b) to have been found to have contravened the provision.

Person must not fail to comply with notice

- (5) A person must not fail to comply with a notice given under this section.

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

- (6) Subsection (5) does not apply if the person has a reasonable excuse.

717 Review of compliance notices

- (1) A person who has been given a notice under section 716 may apply to the Federal Court, the Federal Circuit Court or an eligible State or Territory Court for a review of the notice on either or both of the following grounds:
 - (a) the person has not committed a contravention set out in the notice;
 - (b) the notice does not comply with subsection 716(2) or (3).
- (2) At any time after the application has been made, the court may stay the operation of the notice on the terms and conditions that the court considers appropriate.
- (3) The court may confirm, cancel or vary the notice after reviewing it.

Subdivision E—Disclosure of information by the Office of the Fair Work Ombudsman

718 Disclosure of information by the Office of the Fair Work Ombudsman

Information to which this section applies

- (1) This section applies to the following information:
 - (a) information acquired by the Fair Work Ombudsman in the course of performing functions, or exercising powers, as the Fair Work Ombudsman;
 - (b) information acquired by an inspector in the course of performing functions, or exercising powers, as an inspector;
 - (c) information acquired by a member of the staff of the Office of the Fair Work Ombudsman in the course of performing functions, or exercising powers, as a member of that staff;
 - (d) information acquired by a person in the course of assisting the Fair Work Ombudsman under section 698, or in the course of performing functions, or exercising powers, as a consultant under section 699;
 - (e) information acquired by a person in the course of assisting an inspector under section 710.

Disclosure that is necessary or appropriate, or likely to assist administration or enforcement

- (2) The Fair Work Ombudsman may disclose, or authorise the disclosure of, the information if the Fair Work Ombudsman reasonably believes:
 - (a) that it is necessary or appropriate to do so in the course of performing functions, or exercising powers, under this Act; or
 - (b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

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Disclosure to the Minister

- (3) The Fair Work Ombudsman may disclose, or authorise the disclosure of, the information to the Minister if the Fair Work Ombudsman reasonably believes that the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act.

Disclosure to the Department

- (4) The Fair Work Ombudsman may disclose, or authorise the disclosure of, the information to:
- (a) the Secretary of the Department; or
 - (b) an SES employee, or an APS employee, in the Department; for the purpose of briefing, or considering briefing, the Minister if the Fair Work Ombudsman reasonably believes the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act.

Subdivision F—False or misleading information or documents

718A False or misleading information or documents

- (1) A person must not give information or produce a document to the Fair Work Ombudsman, an inspector, or a person referred to in subsection 712AA(2), (the *official*) exercising powers or performing functions under, or in connection with, a law of the Commonwealth if the person knows, or is reckless as to whether, the information or the document:
- (a) is false or misleading; or
 - (b) for information—omits any matter or thing without which the information is misleading.

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

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (2) Subsection (1) does not apply as a result of paragraph (1)(a) if the information or the document is not false or misleading in a material particular.
- (3) Subsection (1) does not apply as a result of paragraph (1)(b) if the information did not omit any matter or thing without which the information is misleading in a material particular.
- (4) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
- (a) stating that the document is, to the knowledge of the person, false or misleading in a material particular; and
 - (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the person, false or misleading.
- (5) Subsection (1) does not apply if, before the information was given or the document was produced by a person to the official, the official did not take reasonable steps to inform the person that the person may be liable to a civil remedy for contravening subsection (1).
- (6) For the purposes of subsection (5), it is sufficient if the following form of words is used:
- “You may be liable to a civil remedy for giving false or misleading information or producing false or misleading documents”.

Chapter 6—Miscellaneous

Part 6-1—Multiple actions

Division 1—Introduction

719 Guide to this Part

This Part provides rules relating to applications for remedies under this Act.

Division 2 prevents certain applications where other remedies are available.

Division 3 prevents multiple applications or complaints in relation to the same conduct.

720 Meanings of *employee* and *employer*

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

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

Division 2—Certain actions not permitted if alternative action can be taken

721 Equal remuneration applications

- (1) The FWC must not deal with an application for an equal remuneration order if the FWC is satisfied that there is available to the employees to whom the order will apply, an adequate alternative remedy that:
 - (a) exists under a law of the Commonwealth (other than Part 2-7) or a law of a State or Territory; and
 - (b) will ensure equal remuneration for work of equal or comparable value for those employees.
- (2) A remedy that:
 - (a) exists under a law of the Commonwealth, a State or a Territory relating to discrimination in relation to employment; and
 - (b) consists solely of compensation for past actions;is not an adequate alternative remedy for the purposes of this section.

722 Notification and consultation requirements applications

The FWC must not make an order under subsection 532(1) or 787(1) if the FWC is satisfied that there is available to the applicant, or to the employees represented by the applicant, an alternative remedy that:

- (a) exists under a law of the Commonwealth (other than Division 2 of Part 3-6 or Division 3 of Part 6-4) or a law of a State or Territory; and
- (b) will give effect, in relation to the employees and registered employee associations concerned, to the requirements of Article 13 of the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4).

Chapter 6 Miscellaneous

Part 6-1 Multiple actions

Division 2 Certain actions not permitted if alternative action can be taken

Section 723

Note: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

723 Unlawful termination applications

A person must not make an unlawful termination application in relation to conduct if the person is entitled to make a general protections court application in relation to the conduct.

Division 3—Preventing multiple actions

Subdivision A—Equal remuneration applications

724 Equal remuneration applications

- (1) The FWC must not deal with an application for an equal remuneration order in relation to an employee if proceedings for an alternative remedy:
 - (a) to ensure equal remuneration for work of equal or comparable value for the employee; or
 - (b) against unequal remuneration for work of equal or comparable value for the employee;have commenced under a law of the Commonwealth (other than Part 2-7) or a law of a State or Territory.
- (2) Subsection (1) does not prevent the FWC from dealing with the application if the proceedings for the alternative remedy:
 - (a) have been discontinued by the party who commenced the proceedings; or
 - (b) have failed for want of jurisdiction.
- (3) If an application has been made to the FWC for an equal remuneration order in relation to an employee, a person is not entitled to commence proceedings for an alternative remedy under a law of the Commonwealth (other than Part 2-7) or a law of a State or Territory:
 - (a) to ensure equal remuneration for work of equal or comparable value for the employee; or
 - (b) against unequal remuneration for work of equal or comparable value for the employee.
- (4) Subsection (3) does not prevent a person from commencing proceedings for an alternative remedy if:
 - (a) the applicant has discontinued the application for the equal remuneration order; or

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- (b) the application has failed for want of jurisdiction.
- (5) A remedy that:
 - (a) exists under a law of the Commonwealth, a State or a Territory relating to discrimination in relation to employment; and
 - (b) consists solely of compensation for past actions; is not an alternative remedy for the purposes of this section.

Subdivision B—Applications and complaints relating to dismissal

725 General rule

A person who has been dismissed must not make an application or complaint of a kind referred to in any one of sections 726 to 732 in relation to the dismissal if any other of those sections applies.

726 Dismissal remedy bargaining order applications

- (1) This section applies if:
 - (a) a dismissal remedy bargaining order application has been made by, or on behalf of, the person in relation to the dismissal; and
 - (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.
- (2) A *dismissal remedy bargaining order application* is an application for a bargaining order made on the ground that the person was dismissed in contravention of the good faith bargaining requirement in paragraph 228(1)(e).

727 General protections FWC applications

- (1) This section applies if:

- (a) a general protections FWC application has been made by, or on behalf of, the person in relation to the dismissal; and
 - (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction; or
 - (iii) resulted in the issue of a certificate under paragraph 368(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful).
- (1A) This section also applies if:
- (a) a general protections FWC application has been made by, or on behalf of, the person in relation to the dismissal; and
 - (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction; and
 - (c) a certificate in relation to the dispute has been issued by the FWC under paragraph 368(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful); and
 - (d) a notification of the parties' agreement to the FWC arbitrating the dispute has been made as referred to in paragraphs 369(1)(b) and (c).
- (2) A **general protections FWC application** is an application under section 365 for the FWC to deal with a dispute that relates to dismissal.

728 General protections court applications

This section applies if:

- (a) a general protections court application has been made by, or on behalf of, the person in relation to the dismissal; and
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- (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.

729 Unfair dismissal applications

- (1) This section applies if:
 - (a) an unfair dismissal application has been made by the person in relation to the dismissal; and
 - (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction; or
 - (iii) failed because the FWC was satisfied that the dismissal was a case of genuine redundancy.
- (2) An *unfair dismissal application* is an application under subsection 394(1) for a remedy for unfair dismissal.

730 Unlawful termination FWC applications

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

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- (a) an unlawful termination FWC application has been made by, or on behalf of, the person in relation to the dismissal; and
 - (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction; and
 - (c) a certificate in relation to the dispute has been issued by the FWC under paragraph 776(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful); and
 - (d) a notification of the parties' agreement to the FWC arbitrating the dispute has been made as referred to in paragraphs 777(1)(b) and (c).
- (2) An **unlawful termination FWC application** is an application under section 773 for the FWC to deal with a dispute that relates to dismissal.

731 Unlawful termination court applications

This section applies if:

- (a) an unlawful termination court application has been made by, or on behalf of, the person in relation to the dismissal; and
- (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.

732 Applications and complaints under other laws

- (1) This section applies if:
- (a) an application or complaint under another law has been made by, or on behalf of, the person in relation to the dismissal; and
 - (b) the application or complaint has not:

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- (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.
- (2) An **application or complaint under another law** is an application or complaint made under:
 - (a) a law of the Commonwealth (other than this Act); or
 - (b) a law of a State or Territory.
- (3) For the purposes of this Subdivision, if a complaint under the *Australian Human Rights Commission Act 1986* relates to a dismissal only as a result of an amendment of the complaint, the complaint is taken to be made when the complaint is amended.

733 Dismissal does not include failure to provide benefits

For the purposes of this Subdivision, a reference to an application or complaint made in relation to a dismissal does not include a reference to an application or complaint made only in relation to failure by the employer concerned to provide a benefit to which the dismissed person is entitled as a result of the dismissal.

Subdivision C—General protections applications that do not relate to dismissal

734 General rule

- (1) A person must not make a general protections court application in relation to conduct that does not involve the dismissal of the person if:
 - (a) an application or complaint under an anti-discrimination law has been made by, or on behalf of, the person in relation to the conduct; and
 - (b) the application or complaint has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.

- (2) A person must not make an application or complaint under an anti-discrimination law in relation to conduct that does not involve the dismissal of the person if:
- (a) a general protections court application has been made by, or on behalf of, the person in relation to the conduct; and
 - (b) the application has not:
 - (i) been withdrawn by the person who made the application; or
 - (ii) failed for want of jurisdiction.

Part 6-2—Dealing with disputes

Division 1—Introduction

735 Guide to this Part

This Part is about dealing with disputes between national system employees and their employers.

Division 2 deals with the powers of the FWC and other persons to deal with a dispute if a modern award, enterprise agreement or contract of employment includes a term that provides for the FWC or the person to deal with the dispute.

736 Meanings of *employee* and *employer*

In this Part, *employee* means a national system employee, and *employer* means a national system employer.

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

Division 2—Dealing with disputes

Subdivision A—Model term about dealing with disputes

737 Model term about dealing with disputes

The regulations must prescribe a model term for dealing with disputes for enterprise agreements.

Subdivision B—Dealing with disputes

738 Application of this Division

This Division applies if:

- (a) a modern award includes a term that provides a procedure for dealing with disputes, including a term in accordance with section 146; or
- (b) an enterprise agreement includes a term that provides a procedure for dealing with disputes, including a term referred to in subsection 186(6); or
- (c) a contract of employment or other written agreement includes a term that provides a procedure for dealing with disputes between the employer and the employee, to the extent that the dispute is about any matters in relation to the National Employment Standards or a safety net contractual entitlement; or
- (d) a determination under the *Public Service Act 1999* includes a term that provides a procedure for dealing with disputes arising under the determination or in relation to the National Employment Standards.

739 Disputes dealt with by the FWC

- (1) This section applies if a term referred to in section 738 requires or allows the FWC to deal with a dispute.

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- (2) The FWC must not deal with a dispute to the extent that the dispute is about whether an employer had reasonable business grounds under subsection 65(5) or 76(4), unless:
- (a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to the FWC dealing with the matter; or
 - (b) a determination under the *Public Service Act 1999* authorises the FWC to deal with the matter.

Note: This does not prevent the FWC from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4) (see also subsection 55(5)).

- (3) In dealing with a dispute, the FWC must not exercise any powers limited by the term.
- (4) If, in accordance with the term, the parties have agreed that the FWC may arbitrate (however described) the dispute, the FWC may do so.

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

- (5) Despite subsection (4), the FWC must not make a decision that is inconsistent with this Act, or a fair work instrument that applies to the parties.
- (6) The FWC may deal with a dispute only on application by a party to the dispute.

740 Dispute dealt with by persons other than the FWC

- (1) This section applies if a term referred to in section 738 requires or allows a person other than the FWC to deal with a dispute.
- (2) The person must not deal with a dispute to the extent that the dispute is about whether an employer had reasonable business grounds under subsection 65(5) or 76(4), unless:

- (a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to the person dealing with the matter; or
- (b) a determination under the Public Service Act 1999 authorises the person to deal with the matter.

Note: This does not prevent a person from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4) (see also subsection 55(5)).

- (3) If, in accordance with the term, the parties have agreed that the person may arbitrate (however described) the dispute, the person may do so.
- (4) Despite subsection (3), the person must not make a decision that is inconsistent with this Act, or a fair work instrument that applies to the parties.

Part 6-3—Extension of National Employment Standards entitlements

Division 1—Introduction

741 Guide to this Part

This Part contains Divisions that extend some National Employment Standards entitlements to non-national system employees.

Division 2 extends the entitlements to unpaid parental leave, and related entitlements.

Division 3 extends the entitlements to notice of termination or payment in lieu of notice.

742 Meanings of *employee* and *employer*

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

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

Subdivision A—Main provisions

743 Object of this Division

The object of this Division is to give effect, or further effect, to:

- (a) the ILO Convention (No. 156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, done at Geneva on 23 June 1981 ([1991] ATS 7); and
- (b) the Workers with Family Responsibilities Recommendation, 1981 (Recommendation No. R165) which the General Conference of the ILO adopted on 23 June 1981;

by providing for a system of unpaid parental leave and related entitlements, that will help men and women workers who have responsibilities in relation to their dependent children:

- (c) to prepare for, enter, participate in or advance in economic activity; and
- (d) to reconcile their employment and family responsibilities.

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website (www.ilo.org).

744 Extending the entitlement to unpaid parental leave and related entitlements

Extension of Division 5 of Part 2-2 and related provisions

- (1) The provisions of Division 5 of Part 2-2, and the related provisions identified in subsection (2), apply in relation to a non-national system employee as if:

Chapter 6 Miscellaneous

Part 6-3 Extension of National Employment Standards entitlements

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

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- (a) any reference in the provisions to a national system employee also included a reference to a non-national system employee; and
- (b) any reference in the provisions to a national system employer also included a reference to a non-national system employer.

Note 1: Division 5 of Part 2-2 provides for unpaid parental leave and related entitlements.

Note 2: This subsection applies to express references to national system employees and national system employers, and to references that are to national system employees and national system employers because of section 60 or another similar section.

- (2) The related provisions are the following, so far as they apply in relation to Division 5 of Part 2-2 as it applies because of subsection (1):
 - (a) the provisions of Divisions 2 and 13 of Part 2-2;
 - (b) any other provisions of this Act prescribed by the regulations;
 - (c) any provisions of this Act that define expressions that are used (directly or indirectly) in provisions of Division 5 of Part 2-2, or in provisions referred to in paragraph (a) or (b) of this subsection.

Modifications are set out in Subdivision B

- (3) The extended parental leave provisions have effect subject to the modifications provided for in Subdivision B. The ***extended parental leave provisions*** are the provisions of Division 5 of Part 2-2, and the related provisions identified in subsection (2) of this section, as they apply because of this section.

Regulations made for the purpose of provisions

- (4) Subsection (1) also applies to any regulations made for the purpose of a provision to which that subsection applies, other than a provision that is modified by Subdivision B.

745 Contravening the extended parental leave provisions

- (1) A non-national system employer must not contravene the extended parental leave provisions.

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

Note 2: The extended parental leave provisions also affect national system employers (including as section 44 applies to them) and their national system employees. This is because the provisions may result in a national system employee, and a non-national system employee, being an employee couple.

- (2) However, an order cannot be made under Division 2 of Part 4-1 in relation to a contravention (or alleged contravention) of subsection 76(4).

Note: Subsection 76(4) states that an employer may refuse an application to extend unpaid parental leave only on reasonable business grounds.

746 References to the National Employment Standards include extended parental leave provisions

A reference in this Act, or another law of the Commonwealth, to the National Employment Standards includes a reference to the extended parental leave provisions.

747 State and Territory laws that are not excluded

This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to the birth or adoption of children, to the extent that those laws:

- (a) apply to non-national system employees; and
- (b) provide entitlements for those employees that are more beneficial than the entitlements under the extended parental leave provisions.