



Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)¹

Select Legislative Instrument 2006 No. 50

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Workplace Relations Amendment (Work Choices) Act 2005*, the *Bankruptcy Act 1966*, the *Federal Magistrates Act 1999*, the *Public Service Act 1999* and the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

Dated 17 March 2006

P. M. JEFFERY
Governor-General

By His Excellency's Command

KEVIN ANDREWS
Minister for Employment and Workplace Relations
for the Prime Minister and the Attorney-General

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1 Name of Regulations

These Regulations are the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)*.

2 Commencement

These Regulations commence as follows:

- (a) on the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005* — regulations 1 to 3 and Schedule 1;
- (b) on the commencement of Schedule 5 to the *Workplace Relations Amendment (Work Choices) Act 2005* — Schedules 2 to 58.

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

3 Amendments of Acts and Regulations

- (1) These Regulations are made for:
 - (a) item 2 of Schedule 4 to the *Workplace Relations Amendment (Work Choices) Act 2005*; and
 - (b) the *Bankruptcy Act 1966*; and
 - (c) the *Federal Magistrates Act 1999*; and
 - (d) the *Public Service Act 1999*; and
 - (e) the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

Note Under item 2 of Schedule 4, the Governor-General may make regulations amending Acts (including the *Workplace Relations Act 1996*), being amendments that are consequential on, or that otherwise relate to, amendments made by this Act.

For the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of that item are to be treated as if they had been made by an Act.

- (2) Schedule 1 to these Regulations amends the *Workplace Relations Act 1996*.

Regulation 3

Note This Schedule commences on the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*, and immediately before the commencement of Schedule 5 to that Act (which renumbers the *Workplace Relations Act 1996*). Therefore, this Schedule refers to provisions of the Workplace Relations Act by their numbers before the renumbering takes place.

- (3) Schedule 2 to these Regulations amends the *Builders Labourers' Federation (Cancellation of Registration — Consequential Provisions) Act 1986*.
- (4) Schedule 3 to these Regulations amends the *Building and Construction Industry Improvement Act 2005*.
- (5) Schedule 4 to these Regulations amends the *Coal Mining Industry (Long Service Leave Funding) Act 1992*.
- (6) Schedule 5 to these Regulations amends the *Defence Act 1903*.
- (7) Schedule 6 to these Regulations amends the *Long Service Leave (Commonwealth Employees) Act 1976*.
- (8) Schedule 7 to these Regulations amends the *Maternity Leave (Commonwealth Employees) Act 1973*.
- (9) Schedule 8 to these Regulations amends the *Remuneration and Allowances Act 1990*.
- (10) Schedule 9 to these Regulations amends the *Remuneration Tribunal Act 1973*.
- (11) Schedule 10 to these Regulations amends the *Safety, Rehabilitation and Compensation Act 1988*.
- (12) Schedule 11 to these Regulations amends the *Seafarers Rehabilitation and Compensation Act 1992*.
- (13) Schedule 12 to these Regulations amends the *Social Security Act 1991*.
- (14) Schedule 13 to these Regulations amends the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005*.
- (15) Schedule 14 to these Regulations amends the *Tradesmen's Rights Regulation Act 1946*.

- (16) Schedule 15 to these Regulations amends the *Trade Practices Act 1974*.
- (17) Schedule 16 to these Regulations amends the *Superannuation Act 1976*.
- (18) Schedule 17 to these Regulations amends the *Superannuation Guarantee (Administration) Act 1992*.
- (19) Schedule 18 to these Regulations amends the *Military Rehabilitation and Compensation Act 2004*.
- (20) Schedule 19 to these Regulations amends the *Parliamentary Service Act 1999*.
- (21) Schedule 20 to these Regulations amends the *Australian Film Commission Act 1975*.
- (22) Schedule 21 to these Regulations amends the *Telstra (Transition to Full Private Ownership) Act 2005*.
- (23) Schedule 22 to these Regulations amends the *Petroleum (Submerged Lands) Act 1967*.
- (24) Schedule 23 to these Regulations amends the *Snowy Hydro Corporatisation Act 1997*.
- (25) Schedule 24 to these Regulations amends the *Tourism Australia (Repeal and Transitional Provisions) Act 2004*.
- (26) Schedule 25 to these Regulations amends the *Dairy Industry Service Reform Act 2003*.
- (27) Schedule 26 to these Regulations amends the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*.
- (28) Schedule 27 to these Regulations amends the *Public Service Act 1999*.
- (29) Schedule 28 to these Regulations amends the *Life Insurance Act 1995*.
- (30) Schedule 29 to these Regulations amends the *Administrative Decisions (Judicial Review) Act 1977*.

Regulation 3

- (31) Schedule 30 to these Regulations amends the *Age Discrimination Act 2004*.
- (32) Schedule 31 to these Regulations amends the *Australian Federal Police Act 1979*.
- (33) Schedule 32 to these Regulations amends the *Bankruptcy Act 1966*.
- (34) Schedule 33 to these Regulations amends the *Crimes Act 1914*.
- (35) Schedule 34 to these Regulations amends the *Criminal Code Act 1995*.
- (36) Schedule 35 to these Regulations amends the *Disability Discrimination Act 1992*.
- (37) Schedule 36 to these Regulations amends the *Freedom of Information Act 1982*.
- (38) Schedule 37 to these Regulations amends the *Human Rights and Equal Opportunity Commission Act 1986*.
- (39) Schedule 38 to these Regulations amends the *Jury Exemption Act 1965*.
- (40) Schedule 39 to these Regulations amends the *Legislative Instruments Act 2003*.
- (41) Schedule 40 to these Regulations amends the *Sex Discrimination Act 1984*.
- (42) Schedule 41 to these Regulations amends the *Skilling Australia's Workforce Act 2005*.
- (43) Schedule 42 to these Regulations amends the *Commonwealth Serum Laboratories Act 1961*.
- (44) Schedule 43 to these Regulations amends the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*.
- (45) Schedule 44 to these Regulations amends the *National Health Act 1953*.
- (46) Schedule 45 to these Regulations amends the *Christmas Island Act 1958*.

- (47) Schedule 46 to these Regulations amends the *Cocos (Keeling) Islands Act 1955*.
- (48) Schedule 47 to these Regulations amends the *Navigation Act 1912*.
- (49) Schedule 48 to these Regulations amends the *Australian Capital Territory (Self-Government) Act 1988*.
- (50) Schedule 49 to these Regulations amends the *Seat of Government (Administration) Act 1910*.
- (51) Schedule 50 to these Regulations amends the *Fringe Benefits Tax Assessment Act 1986*.
- (52) Schedule 51 to these Regulations amends the *Income Tax Assessment Act 1997*.
- (53) Schedule 52 to these Regulations amends the *Northern Territory (Self-Government) Act 1978*.
- (54) Schedule 53 to these Regulations amends the *Workplace Relations Act 1996*.
Note This Schedule commences on the commencement of Schedule 5 to the *Workplace Relations Amendment (Work Choices) Act 2005*, which renumbers the *Workplace Relations Act 1996*. Therefore, this Schedule refers to provisions of the Workplace Relations Act by their numbers after the renumbering takes place.
- (55) Schedule 54 to these Regulations amends the *Naval Defence Act 1910*.
- (56) Schedule 55 to these Regulations amends the *Bankruptcy Regulations 1996*.
- (57) Schedule 56 to these Regulations amends the *Federal Magistrates Regulations 2000*.
- (58) Schedule 57 to these Regulations amends the *Public Service Regulations 1999*.
- (59) Schedule 58 to these Regulations amends the *Public Employment (Consequential and Transitional) Regulations 1999*.

Schedule 1 Amendments of *Workplace Relations Act 1996*

(regulation 3)

Note This Schedule commences on the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*, and immediately before the commencement of Schedule 5 to that Act (which renumbers the *Workplace Relations Act 1996*). Therefore, this Schedule refers to provisions of the Workplace Relations Act by their numbers before the renumbering takes place.

[1] Part XVII, Division 2, heading

omit

[2] Subsection 469(10), definition of *relevant proceeding*

omit

, 153

Schedule 2 **Amendments of *Builders
Labourers' Federation
(Cancellation of
Registration — Consequential
Provisions) Act 1986***

(regulation 3)

[1] Subsection 4(4)

substitute

- (4) Subject to subsection (5), the Commission does not have any powers under the Workplace Relations Act or the Registration and Accountability of Organisations Schedule in relation to an industrial dispute in so far as that industrial dispute resulted from:
- (a) an act done by a non-registered association or by persons who are members of a non-registered association; or
 - (b) an act done by an employer as defined by subsection 6 (2) of the Workplace Relations Act in relation to a non-registered association or in relation to persons who are members of a non-registered association.

[2] Paragraph 4(3A)(a)

omit

subparagraphs 111(1)(g)(i), (ii) and (iii)

insert

paragraph 44I(1)(e)

[3] Subsection 4(6)

omit

[4] Subparagraph 5(1)(b)(ii)*substitute*

- (ii) the registration of the non-registered association under that section would not prevent or seriously hinder the achievement of:
 - (A) an object of the Workplace Relations Act; or
 - (B) Parliament's intention in enacting the Registration and Accountability of Organisations Schedule; and

Schedule 3 **Amendments of *Building and
Construction Industry
Improvement Act 2005***
(regulation 3)

[1] Section 4

omit

In this Act,

insert

(1) In this Act,

[2] Section 4, after definition of *AIRC*

insert

Australian Fair Pay and Conditions Standard has the meaning given by the Workplace Relations Act.

[3] Section 4, definition of *AWA*, note

omit

[4] Section 4, definition of *award*

omit

section 4 of

[5] Section 4, definition of *building certified agreement*

substitute

building collective agreement means a collective agreement that applies to building work (whether or not it also applies to other work).

[6] Section 4, definition of *certified agreement*, including the note

substitute

collective agreement has the meaning given by the Workplace Relations Act.

[7] Section 4, definition of *Commonwealth industrial instrument*

substitute

Commonwealth industrial instrument means any of the following:

- (a) an award or transitional award;
- (b) a collective agreement or pre-reform certified agreement;
- (c) an order of the AIRC;
- (d) the Australian Fair Pay and Conditions Standard.

[8] Section 4, definition of *employee*

omit

[9] Section 4, definition of *employer*

omit

[10] Section 4, definition of *industrial dispute*

omit

section 4 of the Workplace Relations Act (as affected by Part XV of that Act).

insert

Schedule 6 to the Workplace Relations Act.

[11] Section 4, definition of *negotiating party*

omit

Division 8 of Part VIB of the Workplace Relations Act.

insert

Part 9 of the Workplace Relations Act.

[12] Section 4, definition of *organisation*

omit

section 4 of

[13] Section 4, after definition of *premises*

insert

pre-reform certified agreement has the meaning given by the Workplace Relations Act.

[14] Section 4, after definition of *Secretary*

insert

transitional award has the meaning given by the Workplace Relations Act.

[15] Section 4, after definition of *unlawful industrial action*

insert

workplace agreement has the meaning given by the Workplace Relations Act.

[16] Section 4

insert

- (2) In this Act, unless the contrary intention appears:
- (a) a reference to *employee* has its ordinary meaning; and

- (b) a reference to *employee* with its ordinary meaning includes a reference to an individual who is usually an employee with that meaning; and
- (c) a reference to *employee* with its ordinary meaning does not include a reference to an individual on a vocational placement; and
- (d) a reference to *employer* has its ordinary meaning; and
- (e) a reference to *employer* with its ordinary meaning includes a reference to a person or entity that is usually an employer with that meaning.

[17] Subparagraph 10(b)(i)

substitute

- (i) this Act, the Workplace Relations Act or a Commonwealth industrial instrument; and

[18] Subsection 36(1), definition of *constitutionally-connected action*, paragraphs (d) and (e)

substitute

- (d) the action relates to work that is regulated by a Commonwealth industrial instrument;
- (e) the action relates to the negotiation, proposed negotiation, or making or proposed making, (as relevant), of a collective agreement under Division 2 of Part 8 of the Workplace Relations Act;

[19] Subsection 36(1), definition of *excluded action*

substitute

excluded action means building industrial action that is protected action for the purposes of the Workplace Relations Act (as affected by Part 3 of this Chapter).

[20] After subparagraph 45(1)(a)(ii)

insert

- (iii) a particular preserved Australian Pay and Classification Scale; or
- (iv) the Australian Fair Pay and Conditions Standard; or

[21] Subparagraph 45(1)(b)(ii)

omit

particular person.

insert

particular person; or

[22] After subparagraph 45(1)(b)(ii)

insert

- (iii) a particular preserved Australian Pay and Classification Scale; or
- (iv) the Australian Fair Pay and Conditions Standard.

[23] Subsection 45(1), after the note

insert

Example for subparagraphs (1)(a)(ii) and (1)(b)(ii)

A person contravenes the subparagraph if he or she discriminates against another person on the basis that the other person is, or is not, regulated by the Australian Fair Pay and Conditions Standard only under the WR Act, and not under any workplace agreement or award.

[24] Paragraph 45(4)(a)

substitute

- (a) the industrial instrument referred to in that section is an award, transitional award, workplace agreement, pre-reform certified agreement or pre-reform AWA; or

[25] Section 47

substitute

47 Unfair contracts with building contractors

Sections 832, 833 and 834 of the Workplace Relations Act apply in relation to a contract for the performance of building work as if references in sections 832 and 833 of that Act to the Federal Court included references to the Federal Magistrates Court.

[26] Paragraph 64(1)(d)

after

is not certified

insert

or is not lodged in accordance with Division 5 of Part 8 of the Workplace Relations Act

[27] Subsection 73(4), including the subheading, and subsection 73(5)

substitute

Power to apply under subsection 744(1), 769(1), 770(2) or 771(4) or section 807 of the Workplace Relations Act

- (4) The ABC Commissioner or an ABC Inspector may make an application under subsection 744(1), 769(1), 770(2) or 771(4), or section 807, of the Workplace Relations Act in any case where the application relates to a matter that involves:
- (a) a building industry participant; or
 - (b) building work.
- (5) Subsection (4) does not, by implication, limit the persons who may make an application under subsection 744(1), 769(1), 770(2) or 771(4), or section 807, of the Workplace Relations Act.

[28] Further amendments

The Act is amended as set out in the Table.

<i>Provision</i>	<i>omit</i>	<i>insert</i>
Paragraph 41(a)	building certified agreement; and	building collective agreement; and
Subsection 42(1)	Part VIIIA	Division 9 of Part 9
Paragraph 42(1)(a)	that Part	that Division
Paragraph 42(1)(b)	paragraph 187AD(1)(a)	subsection 507(4)
Subsection 42(2)	Part VIIIA	Division 9 of Part 9
Section 44, heading	certified agreements	collective agreements
Paragraph 44(1)(c)	Division 2 or 3 of Part VIB	Part 8
Paragraph 44(3)(a)	subsection 170LK(4)	subsections 335(1) and (2)
Paragraph 44(4)(a)	subsection 170LK(4)	subsections 335(1) and (2)
Subsection 44(5)	170NC	400
Subsection 50(4)	170MN	495
Paragraph 50(4)(b)	170NF	495
Subsection 64(2)	section 170LB	section 322, and subsection 643(11),
Subsection 73(1), subheading	inspectors	workplace inspectors
Subsection 73(1)	an inspector	a workplace inspector
Subsection 73(2)	an inspector	a workplace inspector

Schedule 4 **Amendments of *Coal Mining Industry (Long Service Leave Funding) Act 1992***

(regulation 3)

[1] Subsection 4(1), before definition of *bank*

insert

Australian Fair Pay and Conditions Standard has the meaning given by the *Workplace Relations Act 1996*.

[2] Subsection 4(1), definition of *eligible employee*, paragraph (a)

after

relevant industrial instrument

insert

, or the Australian Fair Pay and Conditions Standard,

[3] Subsection 4(1), definition of *industrial authority*

after

the Australian Industrial Relations Commission,

insert

the Employment Advocate,

[4] **Subsection 4(1), definition of *relevant industrial instrument***

substitute

relevant industrial instrument means:

- (a) an award made by, or registered with, an industrial authority, including, without limiting this paragraph:
 - (i) an award or transitional award within the meaning of the *Workplace Relations Act 1996*; and
 - (ii) a variation or order affecting an award or transitional award of that kind; or
- (b) a determination made by, or registered with, an industrial authority; or
- (c) an order given by, or registered with, an industrial authority; or
- (d) an agreement approved by, or registered with, an industrial authority, including, without limiting this paragraph:
 - (i) a workplace agreement within the meaning given by the *Workplace Relations Act 1996*; and
 - (ii) a pre-reform certified agreement within the meaning given by that Act; and
 - (iii) a pre-reform AWA within the meaning given by that Act; or
- (e) a preserved State agreement within the meaning given by the *Workplace Relations Act 1996*; or
- (f) a notional agreement preserving State awards within the meaning given by the *Workplace Relations Act 1996*;
that confers on employees in the black coal mining industry to whom the award, determination, order or agreement applies an entitlement to long service leave in circumstances set out in the award, determination, order or agreement, being an entitlement that continues to exist and accrue so long as the employees continue to be employed by any employer in that industry.

Schedule 5 **Amendment of *Defence Act***
1903
(regulation 3)

[1] **Section 58F, definition of *presidential member of the***
Commission

omit

Industrial Relations Act 1988.

insert

Workplace Relations Act 1996.

Schedule 6 **Amendment of *Long Service
Leave (Commonwealth
Employees) Act 1976***
(regulation 3)

- [1]** **Paragraph 15(1)(c)**
after each mention of
award
insert
or workplace agreement

**Schedule 7 Amendment of *Maternity
Leave (Commonwealth
Employees) Act 1973***
(regulation 3)

[1] Section 8

omit

Clause 12 of Schedule 14 to the *Workplace Relations Act 1996* applies

insert

Sections 280 and 281 of the *Workplace Relations Act 1996* apply

Schedule 8 **Amendments of *Remuneration and Allowances Act 1990***

(regulation 3)

[1] Schedule 1, Part 5, item 6, heading

substitute

Wage Adjustments

[2] Schedule 1, Part 5, item 6

omit

National Wage Case Decisions

insert

safety net review decisions relating to allowances

[3] Schedule 2, Part 3, item 4

substitute

4. The rates of salary specified in clause 3 as applicable from 1 July 1990 are to be adjusted in accordance with:

- (a) wage-setting decisions of the Australian Fair Pay Commission; or
- (b) if the Australian Fair Pay Commission has not yet made its first wage-setting decision—the Statement of Principles enunciated by the Australian Industrial Relations Commission in its 2005 Safety Net Review Decision.

Schedule 9 Amendments of *Remuneration Tribunal Act 1973*

(regulation 3)

[1] Before paragraph 3(4)(j)

insert

(ga) an office of:

- (i) Chair of the Australian Fair Pay Commission; or
- (ii) member of the Australian Fair Pay Commission;

[2] Paragraphs 5(1)(a) and (b)

substitute

- (a) wage-setting decisions of the Australian Fair Pay Commission; or
- (b) if the Australian Fair Pay Commission has not yet made its first wage-setting decision—the Statement of Principles enunciated by the Australian Industrial Relations Commission in its 2005 Safety Net Review Decision.

[3] After subsection 7(4B)

insert

- (4C) The Tribunal may inquire into and determine the travelling allowances to be paid to members of the Australian Fair Pay Commission established under section 20 of the *Workplace Relations Act 1996* for travel within Australia.

Schedule 10 **Amendment of *Safety,
Rehabilitation and
Compensation Act 1988***
(regulation 3)

[1] Paragraph 52(6)(b)

omit

conciliation and arbitration; or

insert

workplace relations; or

**Schedule 11 Amendments of Seafarers
Rehabilitation and
Compensation Act 1992**
(regulation 3)

[1] Section 3, after definition of *attendant care services*

insert

Australian Fair Pay and Conditions Standard has the meaning given by the *Workplace Relations Act 1996*.

[2] Section 3, definition of *certified agreement*

omit

[3] Section 3, after definition of *claimant*

insert

collective agreement has the meaning given by the *Workplace Relations Act 1996*.

[4] Section 3, after definition of *place of work*

insert

pre-reform certified agreement has the meaning given by the *Workplace Relations Act 1996*.

[5] Subsection 13(2)

omit

or certified agreement

insert

, collective agreement, pre-reform certified agreement or the Australian Fair Pay and Conditions Standard

[6] Subsection 13(5)

omit

, certified agreement

insert

, collective agreement, pre-reform certified agreement or the Australian Fair Pay and Conditions Standard

[7] Paragraph 13(6)(b)

omit

or certified agreement,

insert

, collective agreement, pre-reform certified agreement or the Australian Fair Pay and Conditions Standard,

[8] Paragraph 31(14)(a)

omit

or certified agreement

insert

, collective agreement, pre-reform certified agreement or the Australian Fair Pay and Conditions Standard

[9] Subsection 61(6), definition of *award*

omit

conciliation and arbitration.

insert

workplace relations.

[10] Paragraph 78(4)(a)

omit

certified agreement

insert

collective agreement or a pre-reform certified agreement

[11] Subsection 78(7), definition of *industry panel*

omit

certified agreement

insert

collective agreement or a pre-reform certified agreement

[12] Section 137

omit

or certified agreement.

insert

, collective agreement or pre-reform certified agreement.

Schedule 12 Amendments of Social Security Act 1991

(regulation 3)

[1] Subsection 23(1), after definition of *rehabilitation program*

insert

relevant minimum wage, for an employee, means:

- (a) if the employee:
 - (i) is an employee within the meaning of the *Workplace Relations Act 1996*; and
 - (ii) is not a junior employee or a trainee;
the Federal Minimum Wage for the employee; or
- (b) if the employee is:
 - (i) an employee within the meaning of the *Workplace Relations Act 1996*; and
 - (ii) a junior employee;
either:
 - (iii) if the Australian Fair Pay Commission has made a special FMW that applies to the junior employee—that wage; or
 - (iv) in any other case—a rate of pay under an Australian Pay and Classification Scale applying to the junior employee; or
- (c) if the employee is:
 - (i) an employee within the meaning of the *Workplace Relations Act 1996*; and
 - (ii) a trainee;
either:
 - (iii) if the Australian Fair Pay Commission has made a special FMW that applies to the trainee—that wage; or

- (iv) in any other case—a rate of pay under an Australian Pay and Classification Scale applying to the trainee; or
- (d) if the employee is an employee within the meaning of Schedule 6 to the *Workplace Relations Act 1996*—award wages under the relevant transitional award; or
- (e) in any other case—award wages.

[2] Subsection 94(5), definition of *work*, paragraph (a)

substitute

- (a) that is for at least 30 hours per week on wages that are at or above the relevant minimum wage; and

[3] Subsection 542A(3), definition of *work*

substitute

work, in relation to a person, means work (whether full-time, part-time, permanent or casual) that:

- (a) if the person was employed at the time the sickness or accident in question occurred—the person has contracted to perform under a contract of employment that:
 - (i) the person had immediately before the person becomes incapacitated; and
 - (ii) continues after the person becomes incapacitated; and
- (b) if the person was not employed at that time—the person is reasonably capable of performing;
being work that is for at least 8 hours per week on wages that are at or above the relevant minimum wage.

[4] Subsection 596(4)

omit

or the Federal Court,

insert

, the Federal Court or the Federal Magistrates Court,

-
- [5] **Paragraph 603C(2), definition of *work*, paragraph (b)**
substitute
(b) is for at least 8 hours per week on wages that are at or above the relevant minimum wage.
- [6] **Subsection 660XBE(4)**
omit
or the Federal Court,
insert
, the Federal Court or the Federal Magistrates Court,
- [7] **Paragraph 729AA(4)(c)**
substitute
(c) the Federal Court; or
(d) the Federal Magistrates Court;
- [8] **Subsection 731K(2), definition of *work*, paragraph (b)**
substitute
(b) is for at least 8 hours per week on wages that are at or above the relevant minimum wage.
- [9] **Paragraph 759(4)(c)**
substitute
(c) the Federal Court; or
(d) the Federal Magistrates Court;
- [10] **Subsection 771HB(4)**
omit
or the Federal Court,
insert
, the Federal Court or the Federal Magistrates Court,

[11] Paragraph 954A(1)(f)

substitute

- (f) the person's work in providing the care and attention is not on wages that are at or above:
- (i) if the employee:
 - (A) is an employee within the meaning of the *Workplace Relations Act 1996*; and
 - (B) is not a junior employee or a trainee; the Federal Minimum Wage for the employee; or
 - (ii) if the employee is:
 - (A) an employee within the meaning of the *Workplace Relations Act 1996*; and
 - (B) a junior employee;either:
 - (C) if the Australian Fair Pay Commission has made a special FMW that applies to the junior employee—that wage; or
 - (D) in any other case—a rate of pay under an Australian Pay and Classification Scale applying to the junior employee; or
 - (iii) if the employee is:
 - (A) an employee within the meaning of the *Workplace Relations Act 1996*; and
 - (B) a trainee;either:
 - (C) if the Australian Fair Pay Commission has made a special FMW that applies to the trainee—that wage; or
 - (D) in any other case—a rate of pay under an Australian Pay and Classification Scale applying to the trainee; or
 - (iv) if the employee is an employee within the meaning of Schedule 6 to the *Workplace Relations Act 1996*—award wages under the relevant transitional award; or
 - (v) in any other case—award wages.

[12] Subparagraph 954A(2)(c)(ii)

omit

is not at award wages or above,

insert

is not on wages that are at or above the wages mentioned in paragraph (1)(f),

[13] Paragraph 1061PB(2)(a)

after

industrial instrument

insert

or the AFPCS,

[14] Subsection 1061PB(6), before definition of *industrial instrument*

insert

AFPCS means the Australian Fair Pay and Conditions Standard within the meaning of the *Workplace Relations Act 1996*.

[15] Paragraph 1067A(10)(c)

substitute

- (c) a period or periods of employment over an 18 month period since the person last left secondary school, earning the person at least the equivalent of 75% of:
- (i) the maximum rate of pay under Wage Level A of the Australian Pay and Classification Scale generally applicable to trainees; or
 - (ii) that maximum rate as varied or replaced from time to time by the Australian Fair Pay Commission;
- that applied at the start of the period of employment.

Schedule 13 **Amendments of *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005***

(regulation 3)

- [1] **Schedule 1, item 6, proposed subsection 16B(5) of the *Social Security Act 1991*, definition of 30 hours per week of work, paragraph (a)**

substitute

- (a) that is for at least 30 hours per week on wages that are at or above the relevant minimum wage; and

- [2] **Schedule 2, item 10, proposed subsection 94A(8) of the *Social Security Act 1991*, definition of work, paragraph (a)**

substitute

- (a) that is for at least 15 hours per week on wages that are at or above the relevant minimum wage; and

- [3] **Schedule 4, item 7, proposed paragraph 502(4)(e) of the *Social Security Act 1991***

omit

below the minimum terms and conditions

insert

less generous than the minimum terms and conditions

[4] Schedule 4, item 7, proposed paragraph 502(4)(f) of the *Social Security Act 1991*

omit

below the minimum terms and conditions

insert

less generous than the minimum terms and conditions

[5] Schedule 4, item 7, proposed subsection 502H(2) of the *Social Security Act 1991*, definition of *work*, paragraph (b)

substitute

(b) is for at least 8 hours per week on wages that are at or above the relevant minimum wage.

[6] Schedule 5, item 15, proposed paragraph 541D(1)(e) of the *Social Security Act 1991*

omit

below the minimum terms and conditions

insert

less generous than the minimum terms and conditions

[7] Schedule 5, item 15, proposed paragraph 541D(1)(f) of the *Social Security Act 1991*

omit

below the minimum terms and conditions

insert

less generous than the minimum terms and conditions

[8] Schedule 7, item 28, proposed paragraph 601(2A)(e) of the *Social Security Act 1991*

omit

below the minimum terms and conditions

insert

less generous than the minimum terms and conditions

[9] Schedule 7, item 28, proposed paragraph 601(2A)(f) of the *Social Security Act 1991*

omit

below the minimum terms and conditions

insert

less generous than the minimum terms and conditions

[10] Schedule 8, item 2, proposed paragraph 663B(e) of the *Social Security Act 1991*

substitute

(e) either:

- (i) the person commences employment for at least 15 hours per week on wages that are at or above the relevant minimum wage; or
- (ii) the person's hours of employment, on wages that are at or above the relevant minimum wage, increase to at least 15 hours per week; and

[11] Schedule 8, item 2, proposed paragraph 663F(e) of the *Social Security Act 1991*

substitute

(e) either:

- (i) the person commences employment for at least 15 hours per week on wages that are at or above the relevant minimum wage; or

-
- (ii) the person's hours of employment, on wages that are at or above the relevant minimum wage increase to at least 15 hours per week; and

[12] Schedule 8, item 3, proposed paragraph 664BA(d) of the *Social Security Act 1991*

substitute

(d) either:

- (i) the person commences employment for at least 15 hours per week on wages that are at or above the relevant minimum wage; or
- (ii) the person's hours of employment on wages that are at or above the relevant minimum wage increase to at least 15 hours per week; and

[13] Schedule 10, item 11, proposed paragraph 731B(1)(e) of the *Social Security Act 1991*

omit

below the minimum terms and conditions

insert

less generous than the minimum terms and conditions

[14] Schedule 10, item 11, proposed paragraph 731B(1)(f) of the *Social Security Act 1991*

omit

below the minimum terms and conditions

insert

less generous than the minimum terms and conditions

**[15] Schedule 11, item 2, proposed paragraph 1035A(2)(a)
of the *Social Security Act 1991***

substitute

- (a) at a particular time, the person's hours of work per week, on wages that are at or above the relevant minimum wage increase to at least 30 hours per week; and

**[16] Schedule 11, item 2, proposed subparagraph
1035A(2)(d)(i) of the *Social Security Act 1991***

substitute

- (i) has been working at least 30 hours per week on wages that are at or above the relevant minimum wage; and

**[17] Schedule 11, item 2, proposed paragraph 1035A(3)(b)
of the *Social Security Act 1991***

substitute

- (b) one or both of the following applies to the person:
- (i) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage;
 - (ii) the person is undertaking job search activities under an agreement between the Secretary and a service provider nominated by the Secretary of the Employment Department for work of at least 15 hours per week on wages that are at or above the relevant minimum wage; and

**[18] Schedule 11, item 2, proposed paragraph 1035A(4)(b)
of the *Social Security Act 1991***

substitute

- (b) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage; and

**[19] Schedule 11, item 2, proposed subparagraph
1035A(4)(e)(i) of the *Social Security Act 1991***

substitute

- (i) has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and

**[20] Schedule 11, item 2, proposed paragraph 1035A(5)(e)
of the *Social Security Act 1991***

substitute

- (e) since the time mentioned in paragraph (b), the person has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and

**[21] Schedule 11, item 2, proposed paragraph 1035A(6)(b)
of the *Social Security Act 1991***

substitute

- (b) one or both of the following applies to the person:
 - (i) the person is working for at least 15 hours per week on wages that are at or above the relevant minimum wage;
 - (ii) the person is undertaking job search activities under an agreement between the Secretary and a service provider nominated by the Secretary of the Employment Department for work of at least 15 hours per week on wages that are at or above the relevant minimum wage; and

**[22] Schedule 11, item 2, proposed paragraph 1035A(7)(d)
of the *Social Security Act 1991***

substitute

- (d) since the time mentioned in paragraph (a), the person has been working at least 15 hours per week on wages that are at or above the relevant minimum wage; and

**[23] Schedule 11, item 8, proposed subparagraph
1046(2B)(b)(iii) of the *Social Security Act 1991***

substitute

- (iii) to undertake job search activities, under an agreement between the Secretary and a service provider nominated by the Secretary of the Employment Department, for work of at least 15 hours per week on wages that are at or above the relevant minimum wage.

Schedule 14 Amendments of *Tradesmen's Rights Regulation Act 1946*
(regulation 3)

[1] Section 6, before the definition of *employment*

insert

Australian Pay and Classification Scale has the meaning given by the *Workplace Relations Act 1996*.

award includes:

- (a) a transitional award under the *Workplace Relations Act 1996*; and
- (b) an award made under a State industrial law (to the extent to which that State industrial law is not excluded by the *Workplace Relations Act 1996*).

industrial agreement includes:

- (a) a workplace agreement, pre-reform certified agreement, pre-reform AWA, notional agreement preserving State awards or preserved State agreement within the meaning of the *Workplace Relations Act 1996*; and
- (b) an agreement made under a State industrial law to the extent to which that State industrial law is not excluded by the *Workplace Relations Act 1996*.

[2] Subsection 33E(6)

after

the wage prescribed by

insert

the appropriate Australian Pay and Classification Scale,

[3] Subsection 41(6)

after

the wage prescribed by

insert

the appropriate Australian Pay and Classification Scale,

[4] Subsection 41(7)

after

the wage prescribed by

insert

the appropriate Australian Pay and Classification Scale,

[5] Subsection 41(8)

after

in accordance with

insert

the appropriate Australian Pay and Classification Scale,

Schedule 15 **Amendments of *Trade Practices Act 1974***

(regulation 3)

[1] Subsection 45DD(4)

omit

, *industrial dispute*

[2] Subsection 45DD(4)

omit

subsection 298B(1)

insert

subsection 779(1)

[3] Section 80AA

omit

[4] Paragraph 80AB(1)(b)

substitute

- (b) there is a proceeding in respect of a dispute relating to the conduct pending before a court, tribunal or authority of a State or Territory under a prescribed provision of a law of the State or Territory; and

[5] Subsection 80AB(3)

omit

the Australian Industrial Relations Commission, or the State or Territory court, tribunal or authority,

insert

the State or Territory court, tribunal or authority

[6] Subsection 87AA(2), definition of *industrial authority*

substitute

industrial authority means a State industrial authority as defined in subsection 4(1) of the *Workplace Relations Act 1996*.

**Schedule 16 Amendments of
*Superannuation Act 1976***
(regulation 3)

**[1] Subsection 3(1), definition of *industrial award*,
paragraph (b)**

substitute

- (b) an industrial agreement approved, lodged or registered under such a law; or
- (c) without limiting the operation of paragraphs (a) and (b):
 - (i) an award; or
 - (ii) a collective agreement; or
 - (iii) a transitional award; or
 - (iv) a pre-reform certified agreement; or
 - (v) a notional agreement preserving State awards; or
 - (vi) a preserved collective State agreement;within the meaning given by the *Workplace Relations Act 1996*.

[2] Paragraph 110H(2)(b)

omit

by an agreement certified, or an award made, by an industrial authority.

insert

by an industrial award.

Schedule 17 Amendments of Superannuation Guarantee (Administration) Act 1992

(regulation 3)

[1] After paragraph 5B(1)(a)

insert

- (aa) the jurisdiction, functions or powers of the Australian Fair Pay Commission under the *Workplace Relations Act 1996*;
or

[2] Subsection 5B(2)

substitute

- (2) Subsection (1) does not apply to any express reference in the *Workplace Relations Act 1996* to this Act or to the *Superannuation Guarantee Charge Act 1992*.

[3] Section 6, definition of *Commonwealth industrial award*, paragraph (b)

omit

law.

insert

law; or

[4] Section 6, definition of *Commonwealth industrial award*, after paragraph (b)

insert

- (c) a notional agreement preserving State awards; or
(d) a preserved State agreement.

[5] After section 12

insert

12A Interpretation: words and phrases in *Workplace Relations Act 1996*

In this Act:

AWA has the meaning given by section 4 of the *Workplace Relations Act 1996*.

collective agreement has the meaning given by section 4 of the *Workplace Relations Act 1996*.

notional agreement preserving State awards has the meaning given by clause 1 of Schedule 8 to the *Workplace Relations Act 1996*.

old IR agreement has the meaning given by clause 1 of Schedule 7 to the *Workplace Relations Act 1996*.

pre-reform AWA has the meaning given by clause 1 of Schedule 7 to the *Workplace Relations Act 1996*.

pre-reform certified agreement has the meaning given by clause 1 of Schedule 7 to the *Workplace Relations Act 1996*.

preserved State agreement has the meaning given by clause 1 of Schedule 8 to the *Workplace Relations Act 1996*.

reform commencement has the meaning given by section 4 of the *Workplace Relations Act 1996*.

Note Some of the definitions in section 4 of the *Workplace Relations Act 1996* refer to other provisions of that Act.

[6] Subsection 32C(6), including the heading

substitute

Contributions under certain workplace agreements

- (6) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with:
- (a) a pre-reform certified agreement; or

- (b) an AWA; or
- (c) a pre-reform AWA; or
- (d) a collective agreement; or
- (e) an old IR agreement.

Note A number of the expressions used in this subsection are defined in section 12A by reference to the *Workplace Relations Act 1996*.

Contributions under notional agreements preserving State awards

- (6A) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made:
 - (a) under, or in accordance with, a notional agreement preserving State awards; and
 - (b) in respect of salary or wages paid before 1 July 2006.

Note A number of the expressions used in this subsection are defined in section 12A by reference to the *Workplace Relations Act 1996*.

Contributions under preserved State agreements

- (6B) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with, a preserved State agreement.

Note A number of the expressions used in this subsection are defined in section 12A by reference to the *Workplace Relations Act 1996*.

[7] Subsection 32C(7)

omit

515

insert

890

[8] Subsection 32N(1), at the foot

insert

Note An employer does not have to provide a standard choice form to an existing employee except in the specific circumstances outlined in this section. See also the further exceptions in section 32NA.

[9] After subsection 32NA(9)

insert

- (10) An employer is not required under section 32N to give an employee a standard choice form if:
- (a) the employee is covered by a notional agreement preserving State awards or a preserved State agreement; and
 - (b) before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*, the employer was required, under a State law, to give the employee a notification that the employee can choose a superannuation fund; and
 - (c) the employer has given the notification mentioned in paragraph (b) to the employee.

Schedule 18 Amendments of *Military Rehabilitation and Compensation Act 2004*

(regulation 3)

[1] Section 179, except the heading

substitute

If a person's normal earnings for a week are less than an amount calculated by multiplying the Federal Minimum Wage (as it applies under section 194 of the *Workplace Relations Act 1996*) by 38 hours per week, then the person's normal earnings for the week are instead the amount calculated by multiplying the Federal Minimum Wage (as it applies under section 194 of the *Workplace Relations Act 1996*) by 38 hours per week.

[2] Subparagraph 185(2)(b)(ii)

after

operation of

insert

an Australian Pay and Classification Scale (within the meaning given by the *Workplace Relations Act 1996*), or

[3] Paragraph 193(2)(b)

after

operation of

insert

an Australian Pay and Classification Scale (within the meaning given by the *Workplace Relations Act 1996*), or

Schedule 19 Amendments of *Parliamentary Service Act 1999*

(regulation 3)

[1] Section 7, definition of *AWA*

substitute

APCS has the meaning given by the *Workplace Relations Act 1996*.

Australian Fair Pay and Conditions Standard has the meaning given by the *Workplace Relations Act 1996*.

[2] Section 7, definition of *certified agreement*

omit

[3] Section 7, after definition of *Code of Conduct*

insert

collective agreement has the meaning given by the *Workplace Relations Act 1996*.

[4] Section 7, after definition of *Parliamentary Service Values*

insert

pre-reform AWA has the meaning given by the *Workplace Relations Act 1996*.

pre-reform certified agreement has the meaning given by the *Workplace Relations Act 1996*.

[5] Section 7, after definition of *SES employee*

insert

workplace agreement has the meaning given by the *Workplace Relations Act 1996*.

[6] Subsection 23(2)

omit

award,

insert

APCS,

[7] Subsection 23(5)

omit

award, certified agreement or AWA

insert

APCS, workplace agreement, pre-reform certified agreement or pre-reform AWA

[8] Subsection 24(1)

omit

an award, certified agreement or AWA.

insert

the Australian Fair Pay and Conditions Standard or an award, workplace agreement, pre-reform certified agreement or pre-reform AWA.

[9] Subsection 24(2)

omit

an award or certified agreement,

insert

the Australian Fair Pay and Conditions Standard or an award, collective agreement or pre-reform certified agreement,

Schedule 20 Amendment of *Australian Film Commission Act 1975*

(regulation 3)

[1] Subsection 40B(3)

omit

(other than an industrial award)

insert

(other than the Australian Fair Pay and Conditions Standard or an award or transitional award within the meaning given by the *Workplace Relations Act 1996*)

Schedule 21 **Amendments of *Telstra* (*Transition to Full Private Ownership*) Act 2005**

(regulation 3)

**[1] Schedule 1, item 64, proposed subsection 9A(2) of
the *Telstra Corporation Act 1991*, after definition of
*employee***

insert

industrial instrument means any of the following (within the meanings given by the *Workplace Relations Act 1996*):

- (a) a workplace agreement;
- (b) an award or a variation or order affecting an award;
- (c) a transitional award or a variation or order affecting a transitional award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement;
- (f) a preserved State agreement;
- (g) a notional agreement preserving State awards.

**[2] Schedule 1, item 64, proposed subsection 9A(2) of
the *Telstra Corporation Act 1991*, definition of *law*,
paragraph (b)**

omit

(other than an award, determination or industrial agreement)

insert

(other than a determination or industrial instrument)

**[3] Schedule 1, item 64, proposed subsection 9A(2) of
the *Telstra Corporation Act 1991*, definition of
*post-sale long service leave rights***

omit

an award, determination, industrial agreement

insert

a determination or industrial instrument

**Schedule 22 Amendments of *Petroleum
(Submerged Lands) Act 1967***
(regulation 3)

**[1] Schedule 7, clause 2, definition of *workforce
representative*, paragraph (a)**

after

a registered organisation

insert

or a transitionally registered association (within the meaning
given by Schedule 10 to the *Workplace Relations Act 1996*)

**[2] Schedule 7, clause 2, definition of *workforce
representative*, paragraph (b)**

after

a registered organisation

insert

or a transitionally registered association (within the meaning
given by Schedule 10 to the *Workplace Relations Act 1996*)

Schedule 23 Amendments of *Snowy Hydro Corporatisation Act 1997*

(regulation 3)

[1] Paragraph 23(5)(c)

after

Workplace Relations Act 1996

insert

, as in force immediately before the reform commencement within the meaning given by that Act

[2] Paragraph 23(5)(d)

after

Workplace Relations Act 1996

insert

, as in force immediately before the reform commencement within the meaning given by that Act

Schedule 24 **Amendment of *Tourism Australia (Repeal and Transitional Provisions) Act 2004***

(regulation 3)

[1] Paragraph 13(4)(b)

after

Workplace Relations Act 1996

insert

, as in force immediately before the reform commencement within the meaning given by that Act

Schedule 25 Amendment of *Dairy Industry Service Reform Act 2003*
(regulation 3)

[1] Paragraph 21(5)(b)

after

Workplace Relations Act 1996

insert

, as in force immediately before the reform commencement
within the meaning given by that Act

Schedule 26 **Amendment of *Horticulture
Marketing and Research and
Development Services
(Repeals and Consequential
Provisions) Act 2000***

(regulation 3)

[1] Paragraph 25(4)(b)

after

Workplace Relations Act 1996

insert

, as in force immediately before the reform commencement
within the meaning given by that Act

Schedule 27 Amendments of *Public Service Act 1999*

(regulation 3)

[1] Section 7, after definition of *Agency Minister*

insert

APCS has the meaning given by the *Workplace Relations Act 1996*.

[2] Section 7, definition of *AWA*

omit

[3] Section 7, after definition of *award*

insert

Australian Fair Pay and Conditions Standard has the meaning given by the *Workplace Relations Act 1996*.

[4] Section 7, definition of *certified agreement*

omit

[5] Section 7, after definition of *Code of Conduct*

insert

collective agreement has the meaning given by the *Workplace Relations Act 1996*.

[6] Section 7, after definition of overseas*insert*

pre-reform AWA has the meaning given by the *Workplace Relations Act 1996*.

pre-reform certified agreement has the meaning given by the *Workplace Relations Act 1996*.

[7] Section 7, after definition of Statutory Agency*insert*

workplace agreement has the meaning given by the *Workplace Relations Act 1996*.

[8] Subsection 23(2)*omit*

award,

insert

APCS,

[9] Subsection 23(5)*omit*

award, certified agreement or AWA

insert

APCS, workplace agreement, pre-reform certified agreement or pre-reform AWA

[10] Subsection 24(1)*omit*

an award, certified agreement or AWA.

insert

the Australian Fair Pay and Conditions Standard or an award, workplace agreement, pre-reform certified agreement or pre-reform AWA.

[11] Subsection 24(2)

omit

an award or certified agreement,

insert

the Australian Fair Pay and Conditions Standard or an award, collective agreement or pre-reform certified agreement,

[12] Paragraph 72(3)(a)

substitute

(a) the Australian Fair Pay and Conditions Standard or an award, workplace agreement, pre-reform certified agreement or pre-reform AWA; or

[13] Subsection 72(4)

omit each mention of
variation

insert

change

[14] Paragraph 72(4)(a)

substitute

(a) results from:

- (i) the making or variation of an award or workplace agreement; or
- (ii) an adjustment or variation of the Australian Fair Pay and Conditions Standard; or
- (iii) the termination or replacement of a pre-reform certified agreement or pre-reform AWA; and

Schedule 28 **Amendment of *Life Insurance Act 1995***

(regulation 3)

[1] **Paragraph 11(3)(b)**

substitute

- (b) business in relation to the benefits provided for its members or their dependants by an association of employees that is:
- (i) an organisation within the meaning of Schedule 1 to the *Workplace Relations Act 1996*; or
 - (ii) a transitionally registered association within the meaning of Schedule 10 to the *Workplace Relations Act 1996*;

Schedule 29 **Amendment of *Administrative Decisions (Judicial Review) Act 1977***

(regulation 3)

[1] Schedule 2, paragraph (u)

omit

the prevention or settlement of industrial disputes, or otherwise relating to

**Schedule 30 Amendment of Age
Discrimination Act 2004**
(regulation 3)

[1] Subsection 39(8), including the subheading
substitute

Workplace relations

- (8) This Part does not make unlawful anything done by a person in direct compliance with any of the following:
- (a) an order, decision or award of a court or tribunal having power to fix minimum wages;
 - (b) any of the following instruments (an *industrial instrument*) within the meaning given by the *Workplace Relations Act 1996*:
 - (i) an award or a variation or order affecting an award;
 - (ii) a transitional award or a variation or order affecting a transitional award;
 - (iii) a pre-reform certified agreement;
 - (iv) a notional agreement preserving State awards.

Note A person does not comply with an industrial instrument for the purpose of subsection (1) if that person purports to comply with a provision of that instrument that is void (for example, a term of a pre-reform certified agreement is void to the extent that it contains prohibited content prescribed for section 356 of the *Workplace Relations Act 1996*: see section 358 of that Act). Accordingly, the exemption under this subsection for acting in direct compliance with such an instrument would not apply in such circumstances.

Schedule 31 **Amendments of *Australian Federal Police Act 1979***

(regulation 3)

[1] Subsection 4(1), definition of *Australian workplace agreement*

omit

[2] Subsection 4(1), definition of *certified agreement*

omit

[3] Section 27, including the subheadings

substitute

27 Remuneration and other conditions

- (1) The Commissioner may from time to time determine in writing the remuneration and other terms and conditions of employment applying to an AFP employee, other than:
- (a) terms and conditions of employment that the Commissioner may determine under subsection 40H(2); or
 - (b) accommodation arrangements that are to apply to an AFP employee, and allowances an AFP employee is to be paid, while the employee is performing duties of the kind covered by paragraph 40H(3)(b).

Application etc. of industrial instrument

- (2) A determination under subsection (1) may apply, adopt or incorporate, with or without modification, any of the provisions of an industrial instrument, as in force at a particular time or as in force from time to time.

Industrial instrument prevails over a determination under subsection (1)

- (3) An industrial instrument overrides any determination under subsection (1), to the extent of any inconsistency.

Interpretation

- (4) In this section:

industrial instrument means any of the following instruments within the meaning given by the *Workplace Relations Act 1996*:

- (a) a workplace agreement;
- (b) an award or a variation or order affecting an award;
- (c) a transitional award or a variation or order affecting a transitional award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement.

Note A determination under section (1) must not provide less than the minimum entitlements of employment under the Australian Fair Pay and Conditions Standard, within the meaning given by the *Workplace Relations Act 1996*.

Schedule 32 Amendments of *Bankruptcy Act 1966*

(regulation 3)

[1] Paragraph 109(1)(e)

omit

a contract of employment or under an award or agreement regulating conditions of employment,

insert

a contract of employment or under an award or agreement, regulating conditions of employment, or the Australian Fair Pay and Conditions Standard (within the meaning given by the *Workplace Relations Act 1996*),

[2] Subparagraph 139Y(1)(b)(i)

substitute

- (i) in the case of employment where an industrial award or agreement, or the Australian Fair Pay and Conditions Standard (within the meaning given by the *Workplace Relations Act 1996*), prescribes rates or minimum rates of salary or wages for the employment—might reasonably be expected to be or to have been received by the bankrupt in respect of the employment by virtue of that industrial award or agreement, or the Australian Fair Pay and Conditions Standard; or

Schedule 33 **Amendment of *Crimes Act* 1914**

(regulation 3)

**[1] Section 85ZL, definition of *Commonwealth authority*,
subparagraph (c)(ii)**

substitute

- (ii) an organisation within the meaning of Schedule 1 to the *Workplace Relations Act 1996* or a branch of such an organisation; or
- (iii) a transitionally registered association within the meaning of Schedule 10 to the *Workplace Relations Act 1996*;

Schedule 34 Amendments of *Criminal Code Act 1995*

(regulation 3)

[1] Dictionary, definition of *Commonwealth authority*, subparagraph (a)(vi)

substitute

- (vi) Part 2 of Chapter 2 of Schedule 1 to the *Workplace Relations Act 1996*; or
- (vii) Schedule 10 to the *Workplace Relations Act 1996*; or

[2] Dictionary, definition of *Commonwealth public official*, subparagraph (n)(vi)

substitute

- (vi) Part 2 of Chapter 2 of Schedule 1 to the *Workplace Relations Act 1996*; or
- (vii) Schedule 10 to the *Workplace Relations Act 1996*; or

Schedule 35 **Amendments of *Disability Discrimination Act 1992***

(regulation 3)

[1] Subsection 4(1), definition of *Commonwealth law*, paragraph (c)

substitute

- (c) an order or award made under a law referred to in paragraph (a) or (b); or
- (d) a decision of the Australian Fair Pay Commission (within the meaning of the *Workplace Relations Act 1996*).

[2] Subsection 4(1), definition of *registered organisation*

substitute

registered organisation means:

- (a) an organisation within the meaning of Part 2 of Chapter 2 of Schedule 1 to the *Workplace Relations Act 1996*; or
- (b) a transitionally registered association within the meaning of Schedule 10 to the *Workplace Relations Act 1996*.

[3] Paragraphs 47(1)(b) and (c)

substitute

- (b) any of the following instruments (an ***industrial instrument***) within the meaning given by the *Workplace Relations Act 1996*:
 - (i) an award or a variation or order affecting an award;
 - (ii) a transitional award or a variation or order affecting a transitional award;
 - (iii) a pre-reform certified agreement;

- (iv) a notional agreement preserving State awards; to the extent to which the industrial instrument has specific provisions relating to the payment of rates of salary or wages to persons, in circumstances in which:
 - (v) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension; and
 - (vi) the salary or wages are determined by reference to the capacity of the person;
- (c) an order, award or determination of a court or tribunal having power to fix minimum wages, to the extent to which the order, award or determination has specific provisions relating to the payment of rates of salary or wages to persons, in circumstances in which:
 - (i) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension; and
 - (ii) the salary or wages are determined by reference to the capacity of the person.

Note A person does not comply with an industrial instrument for the purpose of subsection (1) if that person purports to comply with a provision of that instrument that is void (for example, a term of a pre-reform certified agreement is void to the extent that it contains prohibited content prescribed for section 356 of the *Workplace Relations Act 1996*: see section 358 of that Act). Accordingly, the exemption under this subsection for acting in direct compliance with such an instrument would not apply in such circumstances.

Schedule 36 **Amendment of *Freedom of Information Act 1982***

(regulation 3)

[1] **Schedule 1***after*

Australian Industrial Relations Commission

insert

Australian Fair Pay Commission

Schedule 37 Amendments of *Human Rights and Equal Opportunity Commission Act 1986*

(regulation 3)

[1] Subsection 3(1), definition of *trade union*, paragraph (a)

substitute

- (a) an organisation of employees that is:
- (i) a registered organisation within the meaning of Schedule 1 to the *Workplace Relations Act 1996*; or
 - (ii) a transitionally registered association within the meaning of Schedule 10 to the *Workplace Relations Act 1996*.

[2] Section 46PW

substitute

46PW Referral of discriminatory industrial instruments to the Australian Industrial Relations Commission

- (1) A complaint in writing alleging that a person has done a discriminatory act under an industrial instrument may be lodged with the Commission by:
- (a) a person aggrieved by the act, on that person's own behalf or on behalf of that person and one or more other persons aggrieved by the act; or
 - (b) 2 or more persons aggrieved by the act, on their own behalf or on behalf of themselves and one or more other persons aggrieved by the act; or
 - (c) a person or persons who are in a class of persons aggrieved by the act, on behalf of all the persons in the class; or

-
- (d) a trade union, on behalf of one or more of its members aggrieved by the act or on behalf of a class of its members aggrieved by the act.
- (2) If the Commission receives a complaint under this section, the Commission must notify the President accordingly.
- (3) If it appears to the President that the act is a discriminatory act, the President must refer the industrial instrument to the Australian Industrial Relations Commission. However, the President need not refer the industrial instrument if the President is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.
- (4) If the President decides not to refer the industrial instrument, the President must give notice in writing of that decision to the complainant or each of the complainants, together with notice of the reasons for the decision.
- (5) If the President refers the industrial instrument to the Australian Industrial Relations Commission, the President must give notice in writing of the outcome of the referral to the complainant or each of the complainants.
- (6) The President may obtain documents or information under section 46PI for the purposes of this section.
- (7) In this section:
- discriminatory act under an industrial instrument*** means an act that would be unlawful under Part II of the *Sex Discrimination Act 1984* except for the fact that the act was done in direct compliance with an industrial instrument.
- industrial instrument*** includes any of the following instruments within the meaning given by the *Workplace Relations Act 1996*:
- (a) a collective agreement;
- (b) an award or a variation or order affecting an award;
- (c) a transitional award or a variation or order affecting a transitional award;
- (d) a pre-reform certified agreement;
- (e) a Preserved State Agreement;

- (f) a notional agreement preserving State awards.
- (8) For the purposes of the definition of *discriminatory act under an industrial instrument* in subsection (7), the fact that an act is done in direct compliance with the industrial instrument does not of itself mean that the act is reasonable.

Schedule 38 **Amendment of *Jury Exemption Act 1965***
(regulation 3)

[1] The Schedule

after

Members of the Australian Industrial Relations Commission

insert

Members of the Australian Fair Pay Commission

Schedule 39 **Amendment of *Legislative Instruments Act 2003***
(regulation 3)

[1] **Subsection 7(1), table, after item 18**

insert

18A Decisions of the Australian Fair Pay Commission

Schedule 40 **Amendments of Sex Discrimination Act 1984**

(regulation 3)

**[1] Subsection 4(1), definition of *Commonwealth law*,
paragraph (c)**

substitute

- (c) an order or award made under or pursuant to a law referred to in paragraph (a) or (b); or
- (d) a decision of the Australian Fair Pay Commission (within the meaning of the *Workplace Relations Act 1996*).

[2] Subsection 4(1), definition of *registered organization*

substitute

registered organization means:

- (a) a registered organisation within the meaning of Schedule 1 to the *Workplace Relations Act 1996*; or
- (b) a transitionally registered association within the meaning of Schedule 10 to the *Workplace Relations Act 1996*.

[3] Paragraph 40(1)(f)

substitute

- (f) a decision of the Australian Fair Pay Commission (within the meaning of the *Workplace Relations Act 1996*); or
- (g) any of the following instruments (an ***industrial instrument***) within the meaning given by the *Workplace Relations Act 1996*:
 - (i) an award or a variation or order affecting an award;
 - (ii) a transitional award or a variation or order affecting a transitional award;
 - (iii) a pre-reform certified agreement;

(iv) a notional agreement preserving State awards.

Note A person does not comply with an industrial instrument for the purpose of subsection (1) if that person purports to comply with a provision of that instrument that is void (for example, a term of a pre-reform certified agreement is void to the extent that it contains prohibited content prescribed for section 356 of the *Workplace Relations Act 1996*: see section 358 of that Act). Accordingly, the exemption under this subsection for acting in direct compliance with such an instrument would not apply in such circumstances.

[4] Section 109

omit

section 121

insert

section 116

**Schedule 41 Amendments of *Skilling
Australia's Workforce Act
2005***

(regulation 3)

- [1] **Subsection 3(1), definition of *certified agreement***
omit
- [2] **Subsection 3(1), definition of *industrial association***
omit
 subsection 88AF(6) of
- [3] **Subsection 3(1), definition of *industrial instrument***
after
 as in
insert
 section 779 of
- [4] **Subsection 3(1), after definition of *VET provider***
insert
workplace agreement has the meaning given by the *Workplace
Relations Act 1996*.

[5] Paragraph 12(1)(b)*omit*

making such agreements under the *Workplace Relations Act 1996* is not possible because of the corporate status of the TAFE institution,

insert

the *Workplace Relations Act 1996* does not apply,

[6] Subsection 12(2)*omit*

certified agreements

insert

pre-reform certified agreements (within the meaning given by the *Workplace Relations Act 1996*)

[7] Subsection 12(3)*omit*

certified agreements or other industrial instruments made, approved or certified

insert

pre-reform certified agreements, workplace agreements or other industrial instruments made or lodged

[8] Subsection 12(4)*omit*

certified agreement

insert

pre-reform certified agreement

**Schedule 42 Amendments of
Commonwealth Serum
Laboratories Act 1961**
(regulation 3)

[1] Subsection 27(1)

omit

award, determination or agreement

insert

determination or industrial instrument

[2] After subsection 27(4)

insert

(5) In this section:

industrial instrument means any of the following instruments within the meaning given by the *Workplace Relations Act 1996*:

- (a) a workplace agreement;
- (b) an award or a variation or order affecting an award;
- (c) a transitional award or a variation or order affecting a transitional award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement.

[3] Paragraph 29(2)(b)

omit

award, determination or agreement.

insert

determination or industrial instrument.

[4] Subsection 29(3), before definition of *terms and conditions*

insert

industrial instrument means any of the following instruments within the meaning given by the *Workplace Relations Act 1996*:

- (a) a workplace agreement;
- (b) an award or a variation or order affecting an award;
- (c) a transitional award or a variation or order affecting a transitional award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement.

**Schedule 43 Amendments of *Health
Insurance Commission
(Reform and Separation of
Functions) Act 1997***

(regulation 3)

[1] Paragraph 22(2)(b)

after

Workplace Relations Act 1996

insert

as in force immediately before the commencement of
Schedule 1 to the *Workplace Relations Amendment (Work
Choices) Act 2005*

[2] Paragraph 22(2)(c)

after

Workplace Relations Act 1996

insert

as in force immediately before the commencement of
Schedule 1 to the *Workplace Relations Amendment (Work
Choices) Act 2005*

[3] Paragraph 22(2)(d)

after

Workplace Relations Act 1996

insert

as in force immediately before the commencement of
Schedule 1 to the *Workplace Relations Amendment (Work
Choices) Act 2005*

[4] Paragraph 22(2)(e)

substitute

- (e) an old IR agreement within the meaning given by Schedule 7 to the *Workplace Agreement 1996*.

[5] Paragraph 26(1)(b)

omit

award, determination or agreement.

insert

determination or industrial instrument.

[6] Subsection 26(2), before definition of vary

insert

industrial instrument means any of the following instruments within the meaning given by the *Workplace Relations Act 1996*:

- (a) a workplace agreement;
- (b) an award or a variation or order affecting an award;
- (c) a transitional award or a variation or order affecting a transitional award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement.

[7] Paragraph 29(2)(c)

after

Workplace Relations Act 1996

insert

as in force immediately before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*

[8] Paragraph 29(2)(d)

after

Workplace Relations Act 1996

insert

as in force immediately before the commencement of
Schedule 1 to the *Workplace Relations Amendment (Work
Choices) Act 2005*

[9] Paragraph 29(2)(e)

after

Workplace Relations Act 1996

insert

as in force immediately before the commencement of
Schedule 1 to the *Workplace Relations Amendment (Work
Choices) Act 2005*

[10] Paragraph 33(1)(b)

omit

award, determination or agreement.

insert

determination or industrial instrument.

[11] Subsection 33(2), before definition of vary

insert

industrial instrument means any of the following instruments
within the meaning given by the *Workplace Relations
Act 1996*:

- (a) a workplace agreement;
- (b) an award or a variation or order affecting an award;
- (c) a transitional award or a variation or order affecting a
transitional award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement.

Schedule 44 Amendment of *National Health Act 1953*

(regulation 3)

[1] Subsection 98B(5)

substitute

- (5) In determining fees or other amounts referred to in paragraph (2)(c), and in approving criteria under subsection (4), the Tribunal must have regard to:
- (a) wage-setting decisions of the Australian Fair Pay Commission, and in particular, any statements by the Australian Fair Pay Commission about the effect of wage increases on productivity, inflation and levels of employment; or
 - (b) if the Australian Fair Pay Commission has not yet made its first wage-setting decision—the Statement of Principles enunciated by the Australian Industrial Relations Commission in its 2005 Safety Net Review Decision.

Schedule 45 **Amendment of *Christmas Island Act 1958***
(regulation 3)

[1] **Section 8F**
omit

Schedule 46 **Amendment of Cocos
(Keeling) Islands Act 1955**
(regulation 3)

[1] **Section 8F**
omit

Schedule 47 **Amendments of *Navigation Act 1912***

(regulation 3)

[1] **Paragraph 135(a)**

after

that Act

insert

as in force immediately before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*

[2] **Paragraph 138(2)(b)**

substitute

(b) the owner, or an association of seamen that is:

- (i) a registered organisation within the meaning of Schedule 1 to the *Workplace Relations Act 1996*; or
- (ii) a transitionally registered association within the meaning of Schedule 10 to the *Workplace Relations Act 1996*;

requests the Marine Council to hear and determine the question;

[3] Section 292

substitute

292 Evidence of rates of wages

An Australian Pay and Classification Scale (or *APCS*) or a transitional award within the meaning of the *Workplace Relations Act 1996* which is binding on or applicable to seamen employed in any part of the coasting trade is prima facie evidence of the rates of wages in Australia for those seamen.

Schedule 48 **Amendments of *Australian
Capital Territory
(Self-Government) Act 1988***
(regulation 3)

[1] Subsection 28(2), definition of *law*, paragraph (b)

omit

award,

[2] Subsection 28(2), after definition of *law*

insert

Note Section 17 of the *Workplace Relations Act 1996* deals with inconsistency between awards and agreements made under that Act, and laws of the Territory.

**Schedule 49 Amendments of Seat of
Government (Administration)
Act 1910**

(regulation 3)

[1] Subsections 5(1) and (2)

omit

[2] Subsection 5(3)

omit

(other than powers in relation to industrial issues referred to in paragraph 5(3)(d) of the *Workplace Relations Act 1996*)

[3] Subsection 5(5)

substitute

(5) If an Ordinance under this Act, or an enactment, is inconsistent with:

- (a) a provision of the *Workplace Relations Act 1996*; or
- (b) an agreement, award, order or determination made under the *Workplace Relations Act 1996*;

the provision, agreement, award, order or determination prevails, and the Ordinance or enactment is, to the extent of the inconsistency, invalid.

Schedule 50 **Amendment of *Fringe Benefits Tax Assessment Act 1986***
(regulation 3)

[1] Paragraph 65J(1)(f)

after

under

insert

the Workplace Relations Act 1996 or

Schedule 51 **Amendments of *Income Tax Assessment Act 1997***

(regulation 3)

[1] **Paragraph 26-80(4)(c)**

omit

an industrial award or determination

insert

an industrial award, determination or notional agreement preserving State awards (within the meaning given by Schedule 8 to *the Workplace Relations Act 1996*)

[2] **Subsection 26-80(4)**

omit

the industrial award or determination.

insert

the industrial award, determination or notional agreement preserving State awards.

[3] **Subsection 26-80(4), note**

omit

an Australian Workplace Agreement or a Certified Agreement,

insert

an Australian Workplace Agreement, Collective Agreement or preserved State agreement under the *Workplace Relations Act 1996*,

[4] Section 50-15, item 3.1, column 3, paragraph (a)

after

under

insert

the *Workplace Relations Act 1996* or

Schedule 52 Amendments of *Northern Territory (Self-Government) Act 1978*

(regulation 3)

[1] Subsections 53(1) and (2)

omit

[2] Subsection 53(7)

substitute

- (7) A determination mentioned in paragraph 6(b) is taken to be a law of the Territory within the meaning of section 17 of the *Workplace Relations Act 1996*.

Schedule 53 Amendment of *Workplace Relations Act 1996*

(regulation 3)

Note This Schedule commences on the commencement of Schedule 5 to the *Workplace Relations Amendment (Work Choices) Act 2005*, which renumbers the *Workplace Relations Act 1996*. Therefore, this Schedule refers to provisions of the *Workplace Relations Act* by their numbers after the renumbering takes place.

[1] Subsection 665(9), note

omit

sections 170MU and 298K.

insert

sections 448 and 792.

Schedule 54 Amendments of *Naval Defence Act 1910*

(regulation 3)

[1] Section 40, before definition of *authorized person*

insert

Australian Fair Pay and Conditions Standard has the meaning given by the *Workplace Relations Act 1996*.

[2] Subsection 42D(3)

omit

(other than an industrial award)

insert

(other than the Australian Fair Pay and Conditions Standard or an industrial award)

Schedule 55 Amendment of *Bankruptcy Regulations 1996*

(regulation 3)

[1] Subparagraph 6.12B (1) (b) (ii)

substitute

- (ii) an industrial agreement registered, made or lodged under a law of the Commonwealth, a State or a Territory; or

Schedule 56 Amendments of *Federal Magistrates Regulations 2000*
(regulation 3)

[1] Paragraph 7 (2) (f)

omit

1986.

insert

1986;

[2] After paragraph 7 (2) (f)

insert

(g) an application under section 663 of the *Workplace Relations Act 1996* (except the filing fee mentioned in item 12 of Schedule 1).

[3] Regulation 14

omit

items 2 and 9

insert

items 2, 9 and 12

[4] Subregulation 15 (1), definition of *fee*

omit

item 2 or 9

insert

item 2, 9 or 12

[5] Schedule 1, after item 11*insert*

- | | | |
|----|---|--|
| 12 | Filing of an application under section 663 of the <i>Workplace Relations Act 1996</i> | The fee payable under subsection 644 (2) or (3) of the <i>Workplace Relations Act 1996</i> |
|----|---|--|

[6] Schedule 1, note*omit*

items 2 and 9

insert

items 2, 9 and 12

Schedule 57 Amendments of *Public Service Regulations 1999*

(regulation 3)

[1] Subregulation 3.11 (2)

substitute

(2) If:

- (a) an award; or
- (b) a workplace agreement; or
- (c) a pre-reform certified agreement; or
- (d) a pre-reform AWA;

sets out procedures that apply to the termination of the non-ongoing APS employee, the procedures apply to the termination of the engagement of the employee unless the procedures are prohibited content (within the meaning given by the *Workplace Relations Act 1996*).

[2] Paragraphs 3.15 (7) (a) and (b)

substitute

- (a) calculation of leave entitlements under the Australian Fair Pay and Conditions Standard or an award, workplace agreement, pre-reform certified agreement or pre-reform AWA that applies to the employee; or
- (b) calculation of the employee's redundancy pay, however described, under an award, workplace agreement, pre-reform certified agreement or pre-reform AWA that applies to the employee.

[3] Subregulation 8.1 (3), note

omit

award, certified agreement or AWA.

insert

the Australian Fair Pay and Conditions Standard or an award, collective agreement or pre-reform certified agreement.

[4] Paragraph 8.1 (4) (b)

substitute

(b) an award, Australian Pay and Classification Scale or collective agreement:

[5] Subregulation 8.1 (4)

omit

the award, certified agreement or AWA

insert

the award, Australian Pay and Classification Scale or workplace agreement

[6] Subregulation 8.2 (2), note

omit

award, certified agreement or AWA.

insert

the Australian Fair Pay and Conditions Standard or an award, collective agreement or pre-reform certified agreement.

[7] Paragraph 8.2 (3) (b)

substitute

(b) an award, Australian Pay and Classification Scale or workplace agreement:

[8] Subregulation 8.2 (3)

omit

the award, certified agreement or AWA

insert

the award, Australian Pay and Classification Scale or workplace agreement

[9] Dictionary, after definition of *APS Values

insert

Australian Fair Pay and Conditions Standard has the meaning given by the *Workplace Relations Act 1996*.

[10] Dictionary, definition of *certified agreement

omit

[11] Dictionary, after definition of *pre-move Agency Head*

insert

pre-reform AWA has the meaning given by the *Workplace Relations Act 1996*.

pre-reform certified agreement has the meaning given by the *Workplace Relations Act 1996*.

[12] Dictionary, after definition of *Tribunal*

insert

workplace agreement has the meaning given by the *Workplace Relations Act 1996*.

Schedule 58 **Amendments of *Public
Employment (Consequential
and Transitional) Regulations
1999***

(regulation 3)

[1] Dictionary, definition of *AWA*

substitute

AWA has the meaning it had under the *Workplace Relations Act 1996* at the commencing time.

[2] Dictionary, definition of *award*

substitute

award has the meaning it had under the *Workplace Relations Act 1996* at the commencing time.

[3] Dictionary, definition of *certified agreement*

substitute

certified agreement has the meaning it had under the *Workplace Relations Act 1996* at the commencing time.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frlj.gov.au.