

2004-2005-2006-2007

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As read a third time

**Workplace Relations Amendment (A
Stronger Safety Net) Bill 2007**

No. , 2007

**A Bill for an Act to amend the *Workplace Relations
Act 1996*, and for other purposes**

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1 THIS Bill originated in the House of
2 Representatives; and, having this day passed,
3 is now ready for presentation to the Senate
4 for its concurrence.

5 I.C. HARRIS
6 *Clerk of the House of Representatives*

7 House of Representatives
8 30 May 2007
9

10 **A Bill for an Act to amend the *Workplace Relations***
11 ***Act 1996, and for other purposes***

12 The Parliament of Australia enacts:

13 **1 Short title**

14 This Act may be cited as the *Workplace Relations Amendment (A*
15 *Stronger Safety Net) Act 2007*.

16 **2 Commencement**

17 (1) Each provision of this Act specified in column 1 of the table
18 commences, or is taken to have commenced, in accordance with
19 column 2 of the table. Any other statement in column 2 has effect
20 according to its terms.
21

Commencement information

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

1
2
3

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

1 (2) Column 3 of the table contains additional information that is not
2 part of this Act. Information in this column may be added to or
3 edited in any published version of this Act.

4 **3 Schedule(s)**

- 5 (1) Each Act, and each set of regulations, that is specified in a
6 Schedule to this Act is amended or repealed as set out in the
7 applicable items in the Schedule concerned, and any other item in a
8 Schedule to this Act has effect according to its terms.
- 9 (2) The amendment of any regulation under subsection (1) does not
10 prevent the regulation, as so amended, from being amended or
11 repealed by the Governor-General.

1
2 **Schedule 1—The Fairness Test**

3 **Part 1—Main amendments**

4 *Workplace Relations Act 1996*

5 **1 After Division 5 of Part 8**

6 Insert:

7 **Division 5A—The fairness test**

8 **Subdivision A—Preliminary**

9 **346B Definitions**

10 (1) In this Division:

11 *designated award*, in relation to an employee or employees whose
12 employment is or may be subject to a workplace agreement, means
13 an award determined by the Workplace Authority Director under
14 section 346L, and includes an award taken to be so designated in
15 relation to the employee or employees under section 346K (unless
16 a different award has been designated in relation to the employee
17 or employees under section 346L).

18 *enterprise award* means an award that regulates a term or
19 condition of employment of an employee or employees by an
20 employer in a single business specified in the award.

21 *industrial instrument* means any of the following:

- 22 (a) a pre-reform AWA;
23 (b) a pre-reform certified agreement (within the meaning of
24 Schedule 7);
25 (c) a workplace determination;
26 (d) a section 170MX award (within the meaning of Schedule 7);
27 (e) an old IR agreement (within the meaning of Schedule 7).

28 *protected award conditions* has the same meaning as in subsection
29 354(4), subject to subsection (2) of this section.

1 **reference award**, in relation to an employee whose employment is
2 subject to a workplace agreement, means:

- 3 (a) a relevant award in relation to the employee; or
4 (b) if there is no relevant award in relation to the employee—a
5 designated award in relation to the employee.

6 **relevant award**, in relation to an employee whose employment is
7 subject to a workplace agreement, means an award:

- 8 (a) that regulates, or would but for a workplace agreement or
9 another industrial instrument regulate, any term or condition
10 of employment of persons engaged in the same kind of work
11 as that performed or to be performed by the employee under
12 the workplace agreement; and
13 (b) that was binding on the employee’s employer immediately
14 before the day on which the workplace agreement was
15 lodged.

16 **salary** means gross basic salary and does not include the following:

- 17 (a) incentive-based payments and bonuses;
18 (b) loadings (other than casual loadings);
19 (c) monetary allowances;
20 (d) penalty rates;
21 (e) employer superannuation contributions;
22 (f) any other separately identifiable entitlements that are similar
23 to those mentioned in paragraphs (a) to (d).

24 Note: Section 346G contains provisions relating to this definition.

25 (2) For the purposes of the definition of **protected award conditions** in
26 subsection (1), the definition of **protected allowable award matters**
27 in subsection 354(4) has effect as if it did not include the matter
28 referred to in paragraph (i) of the latter definition.

29 Note: Paragraph (i) relates to outworker conditions. These conditions cannot
30 be excluded or modified by a workplace agreement to provide a less
31 favourable outcome for an employee in a particular respect—see
32 subsection 354(3).

33 (3) Unless the contrary intention appears, this Division applies to a
34 workplace agreement as varied in a corresponding way to the way
35 in which it applies to a workplace agreement.

1 **346C When protected award conditions apply to an employee**

- 2 (1) For the purposes of this Division, protected award conditions *apply*
3 to an employee whose employment is subject to a workplace
4 agreement:
- 5 (a) if, but for that workplace agreement, a previous workplace
6 agreement or another industrial instrument, the protected
7 award conditions would have effect in relation to the
8 employment of the employee under a relevant award in
9 relation to the employee; or
- 10 (b) in a case where there is no relevant award in relation to the
11 employee—if, assuming that the employee’s employer was
12 bound by a designated award in relation to the employee, the
13 protected award conditions would have effect in relation to
14 the employment of the employee but for the workplace
15 agreement, a previous workplace agreement or another
16 industrial instrument.
- 17 (2) Protected award conditions that apply to an employee because of
18 the operation of paragraph (1)(b) are not taken, for the purposes of
19 paragraph 354(1)(b), to be protected award conditions that would
20 have effect in relation to the employment of the employee.

21 **346D Application of Division to workplace agreements**

- 22 (1) The obligations imposed on the Workplace Authority Director by
23 this Division in relation to a workplace agreement apply
24 irrespective of whether the workplace agreement is in operation or
25 has ceased to operate.
- 26 (2) For the purposes of applying this Division to a workplace
27 agreement that has ceased to operate:
- 28 (a) a reference to an employee whose employment is subject to
29 the workplace agreement is taken to include a reference to an
30 employee whose employment was at any time subject to the
31 workplace agreement; and
- 32 (b) a reference to a person or organisation who is bound by the
33 workplace agreement is taken to include a reference to a
34 person or organisation who was at any time bound by the
35 workplace agreement.

- 1 (3) For the purposes of applying this Division to a workplace
2 agreement, a reference to an employee whose employment is
3 subject to the workplace agreement is, so far as the context
4 permits, taken to include a reference to an employee whose
5 employment may at a future time be subject to the workplace
6 agreement.

7 **Subdivision B—Workplace agreements to which the fairness**
8 **test applies**

9 **346E Workplace Authority Director must apply the fairness test to**
10 **certain workplace agreements**

- 11 (1) The Workplace Authority Director must decide under
12 section 346M whether an AWA passes the fairness test if:
13 (a) the AWA is lodged on or after 7 May 2007; and
14 (b) on the date of lodgment, the employee whose employment is
15 subject to the AWA is employed in an industry or occupation
16 in which the terms and conditions of the kind of work
17 performed or to be performed by the employee:
18 (i) are usually regulated by an award; or
19 (ii) would, but for a workplace agreement or another
20 industrial instrument, usually be regulated by an award;
21 and
22 (c) on the date of lodgment:
23 (i) in the case of a full-time employee, other than a
24 full-time employee who is paid a piece rate of pay—the
25 annual rate of salary payable to the employee under the
26 AWA is less than \$75,000; or
27 (ii) in the case of a full-time employee who is paid a piece
28 rate of pay—the annual full-time salary payable to the
29 employee under the AWA, worked out in accordance
30 with section 346G, is less than \$75,000; or
31 (iii) in the case of an employee not covered by
32 subparagraph (i) or (ii)—the annual full-time equivalent
33 amount of salary payable to the employee under the
34 AWA, worked out in accordance with section 346G, is
35 less than \$75,000; and

- 1 (d) the AWA excludes or modifies one or more protected award
2 conditions that apply to the employee under a reference
3 award in relation to the employee.

4 Note: Paragraph (d) will not be satisfied if there is no reference award
5 in relation to the employee.

- 6 (2) The Workplace Authority Director must decide under
7 section 346M whether a collective agreement passes the fairness
8 test if:

9 (a) the collective agreement is lodged on or after 7 May 2007;
10 and

11 (b) on the date of lodgment, one or more of the employees whose
12 employment is subject to the collective agreement is
13 employed in an industry or occupation in which the terms
14 and conditions of the kind of work performed or to be
15 performed by the employees:

16 (i) are usually regulated by an award; or

17 (ii) would, but for a workplace agreement or another
18 industrial instrument, usually be regulated by an award;
19 and

20 (c) the collective agreement excludes or modifies one or more
21 protected award conditions that apply to one or more of those
22 employees under a reference award in relation to the
23 employee or employees.

24 Note: Paragraph (c) will not be satisfied if there is no reference award
25 in relation to the employee.

26 **346F Workplace Authority Director must apply the fairness test to**
27 **certain workplace agreements as varied**

- 28 (1) The Workplace Authority Director must decide under
29 section 346M whether an AWA as varied under Division 8 passes
30 the fairness test if:

31 (a) the variation of the AWA is lodged on or after 7 May 2007;
32 and

33 (b) on the date of lodgment of the variation, the employee whose
34 employment is subject to the AWA as varied is employed in
35 an industry or occupation in which the terms and conditions
36 of the kind of work performed or to be performed by the
37 employee:

38 (i) are usually regulated by an award; or

- 1 (ii) would, but for a workplace agreement or another
2 industrial instrument, usually be regulated by an award;
3 and
4 (c) on the date of lodgment of the variation:
5 (i) in the case of a full-time employee, other than a
6 full-time employee who is paid a piece rate of pay—the
7 annual rate of salary payable to the employee under the
8 AWA as varied is less than \$75,000; or
9 (ii) in the case of a full-time employee who is paid a piece
10 rate of pay—the annual full-time salary payable to the
11 employee under the AWA as varied, worked out in
12 accordance with section 346G, is less than \$75,000; or
13 (iii) in the case of an employee not covered by
14 subparagraph (i) or (ii)—the annual full-time equivalent
15 amount of salary payable to the employee under the
16 AWA as varied, worked out in accordance with
17 section 346G, is less than \$75,000; and
18 (d) the variation excludes or modifies one or more protected
19 award conditions that apply to the employee under a
20 reference award in relation to the employee.

21 Note: Paragraph (d) will not be satisfied if there is no reference award
22 in relation to the employee.

- 23 (2) The Workplace Authority Director must decide under
24 section 346M whether a collective agreement as varied under
25 Division 8 passes the fairness test if:
26 (a) the variation of the collective agreement is lodged on or after
27 7 May 2007; and
28 (b) on the date of lodgment of the variation, one or more of the
29 employees whose employment is subject to the collective
30 agreement as varied is employed in an industry or occupation
31 in which the terms and conditions of the kind of work
32 performed or to be performed by the employees:
33 (i) are usually regulated by an award; or
34 (ii) would, but for a workplace agreement or another
35 industrial instrument, usually be regulated by an award;
36 and
37 (c) the variation excludes or modifies one or more protected
38 award conditions that apply to one or more of those
39 employees under a reference award in relation to the
40 employee or employees.

1 Note: Paragraph (c) will not be satisfied if there is no reference award
2 in relation to the employee.

3 **346G Provisions about annual rate of salary**

4 (1) The amount mentioned in paragraph 346E(1)(c) or 346F(1)(c) may
5 be increased by the regulations or in the manner prescribed by the
6 regulations.

7 (2) If an employee is paid a periodic rate of pay, the annual full-time
8 equivalent amount of salary payable to the employee for the
9 purpose of subparagraph 346E(1)(c)(iii) or 346F(1)(c)(iii) is the
10 salary the employee would earn if the employee were employed on
11 a full-time basis and paid at the employee's periodic rate of pay.

12 (3) For the purposes of subsection (2), the salary the employee would
13 earn is to be calculated for the 12 month period beginning on the
14 date on which the AWA is lodged.

15 (4) If an employee is paid a piece rate of pay and the employee is a
16 full-time employee, the annual full-time salary payable to the
17 employee for the purpose of subparagraph 346E(1)(c)(ii) or
18 346F(1)(c)(ii) is the salary that the employer reasonably estimates
19 the employee would earn.

20 (5) If an employee is paid a piece rate of pay and the employee is not a
21 full-time employee, the annual full-time equivalent amount of
22 salary payable to the employee for the purpose of subparagraph
23 346E(1)(c)(iii) or 346F(1)(c)(iii) is the salary that the employer
24 reasonably estimates the employee would earn if the employee
25 were employed on a full-time basis.

26 (6) The regulations may prescribe one or more methods (whether
27 described, in relation to classes of employees paid piece rates of
28 pay, by the kind of work performed by such employees, or
29 otherwise) by which an employer may reasonably estimate the
30 salary the employee would earn for the purposes of subsections (4)
31 and (5).

32 (7) For the purpose of subsections (4) and (5), the salary the employee
33 would earn is to be estimated for the 12 month period beginning on
34 the date on which the AWA is lodged.

- 1 (8) The regulations may prescribe a different definition of salary for
2 the purposes of paragraph 346E(1)(c) or 346F(1)(c) in relation to
3 employees paid piece rates of pay.

4 **346H Protected award conditions and designated awards—deemed**
5 **exclusion or modification**

- 6 (1) For the purposes of paragraphs 346E(1)(d) and 346F(1)(d), an
7 AWA is taken to exclude or modify one or more protected award
8 conditions that apply to an employee under a designated award in
9 relation to the employee if the condition or conditions:
10 (a) do not have effect in relation to the employee under the
11 AWA; or
12 (b) have a different effect in relation to the employee than they
13 would have under the designated award.
- 14 (2) For the purposes of paragraphs 346E(2)(c) and 346F(2)(c), a
15 collective agreement is taken to exclude or modify one or more
16 protected award conditions that apply to an employee or employees
17 under a designated award in relation to the employee or employees
18 if the condition or conditions:
19 (a) do not have effect in relation to the employee or employees
20 under the collective agreement; or
21 (b) have a different effect in relation to the employee or
22 employees than they would have under the designated award.

23 **346J Notice requirements**

- 24 (1) If the Workplace Authority Director is required to decide under
25 section 346M whether a workplace agreement passes the fairness
26 test, the Workplace Authority Director must give a written notice
27 to that effect to:
28 (a) the employer in relation to the workplace agreement; and
29 (b) if the workplace agreement is an AWA—the employee
30 whose employment is subject to the AWA; and
31 (c) if the agreement is a union collective agreement or a union
32 greenfields agreement—the organisation or organisations
33 bound by the agreement.
- 34 (2) If the Workplace Authority Director is not required to decide under
35 section 346M whether a workplace agreement passes the fairness

1 test, the Workplace Authority Director must give a written notice
2 to that effect to the persons referred to in paragraphs (1)(a), (b) and
3 (c).

4 (3) A notice under this section is not required to be given at the same
5 time as the copy of the receipt is given under section 345 in respect
6 of the declaration for the workplace agreement concerned.

7 Note: Section 346ZE requires the employer to inform the employees
8 concerned of the contents of a notice under this section in relation to a
9 collective agreement.

10 **346K Designated awards—before a workplace agreement or**
11 **variation is lodged**

12 (1) The Workplace Authority Director may, on application by an
13 employer, determine that an award is a designated award in
14 relation to an employee or employees of the employer.

15 Note: For specification by class, see section 46 of the *Acts Interpretation Act*
16 *1901*.

17 (2) The Workplace Authority Director may make a determination
18 under this section only if the Workplace Authority Director is
19 satisfied that:

20 (a) the employee or employees are or may be employed in an
21 industry or occupation in which the terms and conditions of
22 the kind of work performed or to be performed by the
23 employee or employees:

24 (i) are usually regulated by an award; or

25 (ii) would, but for a workplace agreement or another
26 industrial instrument, usually be regulated by an award;
27 and

28 (b) there is no relevant award in relation to the employee or
29 employees; and

30 (c) there is an award that satisfies the requirements specified in
31 subsection (3).

32 (3) An award or awards determined by the Workplace Authority
33 Director under this section:

34 (a) must be an award or awards regulating, or that would, but for
35 a workplace agreement or another industrial instrument,
36 regulate, terms or conditions of employment of employees

- 1 engaged in the same kind of work as the work performed or
2 to be performed by the employee or employees; and
3 (b) must, in the opinion of the Workplace Authority Director, be
4 an award or awards that would be appropriate for the
5 purposes referred to in subsection 346L(2) if a workplace
6 agreement or a variation of a workplace agreement were
7 lodged; and
8 (c) must not be an enterprise award.

9 Note: An example of a case where paragraph (a) could be satisfied, but the
10 Workplace Authority Director may nevertheless not be satisfied that
11 there is an appropriate award for the purposes of paragraph (b), is
12 where an award regulates terms and conditions of the kind of work
13 performed by employees in a particular industry or occupation in one
14 State only, and terms and conditions of that kind of work are not
15 regulated by awards in other States.

- 16 (4) An award determined under this section in relation to an employee
17 or employees is taken to be the designated award determined by
18 the Workplace Authority Director under section 346L in relation to
19 the employee or employees if the employer later lodges a
20 workplace agreement, or a variation of a workplace agreement, in
21 relation to the employee or the employees.
- 22 (5) Despite subsection (4), the Workplace Authority Director may
23 determine under section 346L that another award is a designated
24 award in relation to the employee, or in relation to some or all of
25 the employees, if the Workplace Authority Director is satisfied that
26 it is necessary in all the circumstances to do so.
- 27 (6) The Workplace Authority Director may determine different awards
28 under subsection (2) in relation to different employees.
- 29 (7) In this section, a reference to an employee or employees of an
30 employer includes a reference to a person or persons who may
31 become an employee or employees of the employer.
- 32 (8) A determination made under this section is not a legislative
33 instrument.

34 **346L Designated awards—after a workplace agreement or variation**
35 **is lodged**

- 36 (1) This section applies to a workplace agreement if:
37 (a) in the case of an AWA:

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Part 1 Main amendments

- 1 (i) the AWA satisfies the requirements set out in
2 paragraphs 346E(1)(a), (b) and (c); and
3 (ii) there is no relevant award in relation to the employee
4 whose employment is subject to the AWA; or
5 (b) in the case of a collective agreement:
6 (i) the collective agreement satisfies the requirements set
7 out in paragraphs 346E(2)(a) and (b); and
8 (ii) there is no relevant award in relation to one or more
9 employees whose employment is subject to the
10 collective agreement; or
11 (c) a variation of the workplace agreement was lodged on or
12 after 7 May 2007, and:
13 (i) if the workplace agreement is an AWA—the AWA as
14 varied satisfies the requirements set out in paragraphs
15 346F(1)(b) and (c) and subparagraph (a)(ii) of this
16 subsection; or
17 (ii) if the workplace agreement is a collective agreement—
18 the collective agreement as varied satisfies the
19 requirements set out in paragraph 346F(2)(b) and
20 subparagraph (b)(ii) of this subsection.
- 21 (2) The Workplace Authority Director must determine that an award is
22 a designated award in relation to the employee or employees whose
23 employment is subject to the agreement:
24 (a) to ascertain whether or not the Workplace Authority Director
25 is required to decide under section 346M whether the
26 workplace agreement, or the workplace agreement as varied,
27 passes the fairness test; and
28 (b) if the Workplace Authority Director is so required, for the
29 purpose of deciding whether the workplace agreement, or the
30 workplace agreement as varied, passes the fairness test;
31 unless the Workplace Authority Director is satisfied that there is no
32 award that satisfies the requirements specified in subsection (3).
- 33 Note: For specification by class, see section 46 of the *Acts Interpretation Act*
34 *1901*.
- 35 (3) An award or awards determined by the Workplace Authority
36 Director under this section:
37 (a) must be an award or awards regulating, or that would, but for
38 a workplace agreement or another industrial instrument,
39 regulate, terms or conditions of employment of employees
-

- 1 engaged in the same kind of work as the work performed by
2 the employee or employees under the workplace agreement
3 concerned; and
4 (b) must, in the opinion of the Workplace Authority Director, be
5 appropriate for the purposes referred to in subsection (2); and
6 (c) must not be an enterprise award.

7 Note: An example of a case where paragraph (a) could be satisfied, but the
8 Workplace Authority Director may nevertheless not be satisfied that
9 there is an appropriate award for the purposes of paragraph (b), is
10 where an award regulates terms and conditions of the kind of work
11 performed by employees in a particular industry or occupation in one
12 State only, and terms and conditions of that kind of work are not
13 regulated by awards in other States.

- 14 (4) The Workplace Authority Director may determine different awards
15 under subsection (2) in relation to different employees.
16 (5) A determination made under this section is not a legislative
17 instrument.

18 **Subdivision C—The fairness test**

19 **346M When does an agreement pass the fairness test?**

- 20 (1) A workplace agreement passes the fairness test if:
21 (a) in the case of an AWA—the Workplace Authority Director is
22 satisfied that the AWA provides fair compensation to the
23 employee whose employment is subject to the AWA in lieu
24 of the exclusion or modification of protected award
25 conditions that apply to the employee; or
26 (b) in the case of a collective agreement—the Workplace
27 Authority Director is satisfied that, on balance, the collective
28 agreement provides fair compensation, in its overall effect on
29 the employees whose employment is subject to the collective
30 agreement, in lieu of the exclusion or modification of
31 protected award conditions that apply to some or all of those
32 employees.

33 Note: This section applies to a workplace agreement as varied in a
34 corresponding way to the way in which it applies to a workplace
35 agreement—see subsection 346B(3).

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Part 1 Main amendments

- 1 (2) In considering whether a workplace agreement provides fair
2 compensation to an employee, or in its overall effect on employees,
3 the Workplace Authority Director must first have regard to:
4 (a) the monetary and non-monetary compensation that the
5 employee or employees will receive under the workplace
6 agreement, in lieu of the protected award conditions that
7 apply to the employee or employees under a reference award
8 in relation to the employee or employees; and
9 (b) the work obligations of the employee or employees under the
10 workplace agreement.
- 11 (3) In considering whether a workplace agreement provides fair
12 compensation to an employee or in its overall effect on employees,
13 the Workplace Authority Director may also have regard to the
14 personal circumstances of the employee or employees, including in
15 particular the family responsibilities of the employee or employees.
- 16 (4) In exceptional circumstances, and if the Workplace Authority
17 Director is satisfied that it is not contrary to the public interest to
18 do so, the Workplace Authority Director may, in addition to the
19 matters specified in subsections (2) and (3), also have regard to the
20 industry, location or economic circumstances of the employer and
21 the employment circumstances of the employee or employees
22 when considering whether a workplace agreement provides fair
23 compensation to an employee or in its overall effect on employees.
- 24 (5) An example of a case where the Workplace Authority Director
25 may be satisfied that it is not contrary to the public interest to have
26 regard to the industry, location or economic circumstances of the
27 employer is where the workplace agreement is part of a reasonable
28 strategy to deal with a short-term crisis in, and to assist in the
29 revival of, the employer's business.
- 30 (6) In deciding whether a workplace agreement passes, or does not
31 pass, the fairness test, the Workplace Authority Director may
32 inform himself or herself in any way he or she considers
33 appropriate including (but not limited to) contacting the employer
34 and the employee, or some or all of the employees, whose
35 employment is subject to the workplace agreement.
- 36 (7) In this section:

1 ***non-monetary compensation***, in relation to an employee, means
2 compensation (other than an entitlement to a payment of money):

- 3 (a) for which there is a money value equivalent or to which a
4 money value can reasonably be assigned; and
5 (b) that confers a benefit or advantage on the employee which is
6 of significant value to the employee.

7 **346N Agreements to be tested as at lodgment date**

- 8 (1) In deciding whether a workplace agreement passes, or does not
9 pass, the fairness test, the Workplace Authority Director must
10 consider the agreement as in force immediately after lodgment.
- 11 (2) In deciding whether a workplace agreement as varied passes, or
12 does not pass, the fairness test, the Workplace Authority Director
13 must consider the agreement as in force immediately after the
14 variation was lodged.
- 15 (3) If:
- 16 (a) the Workplace Authority Director is required by
17 section 346E to decide under section 346M whether a
18 workplace agreement passes the fairness test; and
19 (b) before the Workplace Authority Director decides whether the
20 workplace agreement passes the fairness test, the Workplace
21 Authority Director is required by section 346F to decide
22 under section 346M whether the workplace agreement as
23 varied passes the fairness test;
- 24 then:
- 25 (c) the Workplace Authority Director must consider the
26 workplace agreement and the workplace agreement as varied
27 as part of the same process; and
28 (d) to avoid doubt, the Workplace Authority Director must
29 consider, and make a separate decision in respect of, both the
30 workplace agreement and the workplace agreement as varied.

31 **346P Workplace Authority Director must notify of decision**

- 32 (1) If the Workplace Authority Director decides under section 346M
33 that a workplace agreement passes the fairness test, the Workplace
34 Authority Director must notify the following of the decision:
35 (a) the employer in relation to the workplace agreement;

- 1 (b) if the workplace agreement is an AWA—the employee
2 whose employment is subject to the AWA;
3 (c) if the agreement is a union collective agreement or a union
4 greenfields agreement—the organisation or organisations
5 bound by the agreement.
- 6 (2) If the Workplace Authority Director decides under section 346M
7 that a workplace agreement does not pass the fairness test, the
8 Workplace Authority Director must notify the persons referred to
9 in paragraphs (1)(a), (b) and (c) of the decision.
- 10 (3) If the Workplace Authority Director decides under section 346M
11 that a workplace agreement does not pass the fairness test, the
12 notice must also:
13 (a) in the case of a workplace agreement that is in operation on
14 the date of issue specified in the notice—contain advice as to
15 how the agreement could be varied to pass the fairness test
16 (including by way of an undertaking); and
17 (b) in any case—state that compensation may be payable by the
18 employer to the employee or employees under
19 section 346ZD.
- 20 (4) If subsection 346N(3) requires the Workplace Authority Director
21 to consider, and make a separate decision in respect of, both a
22 workplace agreement and the workplace agreement as varied, the
23 notice under this section must deal with both agreements.
- 24 (5) A notice under this section:
25 (a) must be in writing; and
26 (b) must specify the date of issue of the notice.
- 27 Note: Section 346ZE requires the employer to inform the employees
28 concerned of the contents of a notice under this section in relation to a
29 collective agreement.

30 **Subdivision D—Consequences if a workplace agreement does**
31 **not pass the fairness test**

32 **346Q Agreement does not pass fairness test—agreement not in**
33 **operation**

34 If:

- 1 (a) the Workplace Authority Director decides under
2 section 346M that a workplace agreement does not pass the
3 fairness test; and
4 (b) the workplace agreement is not in operation in relation to any
5 employee immediately before the date of the decision;
6 the employee or employees whose employment was at any time
7 subject to the workplace agreement are, on and from the date of
8 issue specified in the notice under section 346P in relation to the
9 workplace agreement, entitled to any compensation payable to the
10 employee or employees under section 346ZD.

11 **346R Agreement does not pass fairness test—agreement in**
12 **operation**

- 13 (1) This section applies if:
14 (a) the Workplace Authority Director decides under
15 section 346M that a workplace agreement does not pass the
16 fairness test; and
17 (b) the workplace agreement is in operation immediately before
18 the date of the decision.
- 19 (2) The employer who is bound by the workplace agreement may:
20 (a) in the case of an AWA—lodge a variation of the AWA with
21 the Workplace Authority Director; or
22 (b) in the case of an AWA or a collective agreement—lodge a
23 variation of the workplace agreement by giving to the
24 Workplace Authority Director a written undertaking in
25 relation to the AWA or collective agreement.
- 26 (3) If the employer does not take the action referred to in
27 subsection (2) within the relevant period in relation to the
28 workplace agreement, then at the end of that period:
29 (a) the workplace agreement ceases to operate; and
30 (b) the employee or employees whose employment was at any
31 time subject to the workplace agreement are, after the end of
32 the relevant period in relation to the workplace agreement,
33 entitled to any compensation payable to the employee or
34 employees under section 346ZD.
- 35 (4) Despite subsection (3), if:

- 1 (a) because of subsection 346N(3), the Workplace Authority
2 Director considered, and made a separate decision in respect
3 of, both a workplace agreement and the workplace agreement
4 as varied; and
- 5 (b) the workplace agreement did not pass the fairness test, but
6 the workplace agreement as varied passed the fairness test;
7 the workplace agreement as varied continues in operation, and the
8 employee or employees whose employment was at any time
9 subject to the workplace agreement, whether before or after the
10 variation was lodged are, after the end of the relevant period in
11 relation to the workplace agreement, entitled to any compensation
12 payable to the employee or employees under section 346ZD.
- 13 (5) For the purposes of paragraph (2)(a), Division 8 does not apply to
14 the variation of an AWA, except for the following provisions:
15 (a) subsection 373(1);
16 (b) section 374.
- 17 (6) For the purposes of paragraph (2)(b), Division 8 does not apply to
18 an undertaking given to the Workplace Authority Director in
19 relation to an AWA or a collective agreement.
- 20 (7) In this section:
- 21 *relevant period*, in relation to a workplace agreement, means:
22 (a) the period of 14 days beginning on the date of issue specified
23 in the notice under section 346P in relation to the workplace
24 agreement; or
25 (b) if a longer period is prescribed by the regulations for the
26 purposes of this paragraph—that period; or
27 (c) if the period referred to in paragraph (a) or (b) is extended
28 under subsection (8) in relation to the workplace
29 agreement—the period as extended.
- 30 (8) The Workplace Authority Director may extend the period referred
31 to in paragraph (7)(a) or (b), as the case requires, in relation to a
32 particular workplace agreement in circumstances prescribed by the
33 regulations.

1 **346S Lodging of variation documents with the Workplace Authority**
2 **Director**

- 3 (1) An employer lodges a variation with, or gives an undertaking to,
4 the Workplace Authority Director under section 346R if:
5 (a) the employer lodges a declaration under subsection (2); and
6 (b) a copy of the variation or undertaking is annexed to the
7 declaration.

- 8 (2) An employer lodges a declaration with the Workplace Authority
9 Director if:
10 (a) the employer gives it to the Workplace Authority Director;
11 and
12 (b) it meets the form requirements mentioned in subsection (3).

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

- 15 (3) The Workplace Authority Director may, by notice published in the
16 *Gazette*, set out requirements for the form of a declaration for the
17 purposes of paragraph (2)(b). The requirements may be different
18 for variations and undertakings.

- 19 (4) A declaration is given to the Workplace Authority Director for the
20 purposes of subsection (2) only if the declaration is actually
21 received by the Workplace Authority Director.

22 Note: This means that section 29 of the *Acts Interpretation Act 1901* (to the
23 extent that it deals with the time of service of documents) and
24 section 160 of the *Evidence Act 1995* do not apply to lodgment of a
25 declaration.

26 **346T Operation of section 346R variations**

- 27 (1) A variation of an AWA under paragraph 346R(2)(a) comes into
28 operation when the variation is lodged with the Workplace
29 Authority Director under that paragraph in accordance with
30 section 346S.
31 (2) A variation of an AWA or a collective agreement by way of an
32 undertaking under paragraph 346R(2)(b) comes into operation
33 when the undertaking is given to the Workplace Authority Director
34 under that paragraph in accordance with section 346S.

- 1 (3) For the purposes of this Act, an undertaking given by an employer
2 to the Workplace Authority Director in relation to an AWA or a
3 collective agreement is taken to be a variation of the AWA or
4 collective agreement, as the case may be, lodged by the employer
5 under section 346R.

6 **346U Workplace Authority Director must test varied agreement**

7 (1) If an employer lodges a variation of a workplace agreement under
8 section 346R, the Workplace Authority Director must decide under
9 this section whether the workplace agreement as varied passes the
10 fairness test set out in section 346M.

11 (2) If the Workplace Authority Director decides under subsection (1)
12 that a workplace agreement as varied passes the fairness test, the
13 Workplace Authority Director must notify the following of the
14 decision:

- 15 (a) the employer in relation to the workplace agreement;
16 (b) if the workplace agreement is an AWA—the employee
17 whose employment is subject to the AWA;
18 (c) if the agreement is a union collective agreement or a union
19 greenfields agreement—the organisation or organisations
20 bound by the agreement.

21 (3) If the Workplace Authority Director decides under subsection (1)
22 that a workplace agreement as varied does not pass the fairness
23 test, the Workplace Authority Director must notify the persons
24 referred to in paragraphs (2)(a), (b) and (c) of the decision.

25 (4) A notice under this section must be in writing and must specify:
26 (a) the date of issue of the notice; and
27 (b) the effect of the notice.

28 Note: Section 346ZE requires the employer to inform the employees
29 concerned of the contents of a notice under this section in relation to a
30 collective agreement.

31 (5) In deciding under this section whether a workplace agreement
32 passes, or does not pass, the fairness test, the Workplace Authority
33 Director may inform himself or herself in any way he or she
34 considers appropriate including (but not limited to) contacting the
35 employer and the employee, or some or all of the employees,
36 whose employment is subject to the workplace agreement.

1 **346V Effect if varied agreement does not pass fairness test—**
2 **agreement not in operation**

3 If:

- 4 (a) the Workplace Authority Director decides under subsection
5 346U(1) that a workplace agreement as varied does not pass
6 the fairness test; and
7 (b) the workplace agreement is not in operation in relation to any
8 employee immediately before the date of the decision;
9 the employee or employees whose employment was at any time
10 subject to the workplace agreement are, on and from the date of
11 issue specified in the notice under section 346U in relation to the
12 workplace agreement, entitled to any compensation payable to the
13 employee or employees under section 346ZD.

14 **346W Effect if varied agreement does not pass fairness test—**
15 **agreement in operation**

16 If the Workplace Authority Director decides under subsection
17 346U(1) that a workplace agreement as varied does not pass the
18 fairness test:

- 19 (a) the workplace agreement ceases to operate on the date of
20 issue specified in the notice under that section in respect of
21 the workplace agreement; and
22 (b) the employee or employees whose employment was at any
23 time subject to the workplace agreement are, on and from the
24 date of issue specified in the notice under section 346U in
25 relation to the workplace agreement, entitled to any
26 compensation payable to the employee or employees under
27 section 346ZD.

28 **346X Effect if varied agreement passes fairness test—agreement in**
29 **operation**

30 If the Workplace Authority Director decides under subsection
31 346U(1) that a workplace agreement as varied passes the fairness
32 test:

- 33 (a) the workplace agreement continues in operation; and
34 (b) the employee or employees whose employment is, or was at
35 any time, subject to the workplace agreement are, on and
36 from the date of issue specified in the notice under

1 section 346U in relation to the workplace agreement, entitled
2 to any compensation payable to the employee or employees
3 under section 346ZD.

4 Note: Even though the workplace agreement has been varied so that it passes
5 the fairness test, compensation may be payable in respect of the period
6 when the agreement did not pass the fairness test.

7 **346Y Employment arrangements that apply if a workplace**
8 **agreement ceases to operate because it does not pass**
9 **fairness test**

10 (1) This section applies if, on a particular day (the *cessation day*), a
11 workplace agreement (the *original agreement*) ceases to operate
12 under section 346R or 346W because the original agreement does
13 not pass the fairness test.

14 (2) The employer and the employee or employees who were bound by
15 the original agreement immediately before the cessation day are
16 taken, on and from the cessation day, to be bound by:
17 (a) the instrument or instruments that, but for the original
18 agreement having come into operation, would have bound the
19 employer and the employee or employees on and from the
20 cessation day; or
21 (b) if there is no instrument of a kind referred to in paragraph (a)
22 in relation to the employer and one or more of the
23 employees—the designated award in relation to that
24 employee or those employees, to the extent that the
25 designated award contains protected award conditions.

26 Note: A workplace agreement binds all persons whose employment is, at
27 any time when the agreement is in operation, subject to the agreement
28 (see paragraph 351(b)). A collective agreement may therefore bind an
29 employer in relation to existing and future employees.

30 (3) If the original agreement is a workplace agreement as varied under
31 Division 8, the workplace agreement as in force before the
32 variation was lodged is, despite section 346ZB, capable of being an
33 instrument described in paragraph (2)(a).

34 (4) An instrument that has ceased to operate in relation to an employee
35 or employees is capable of being an instrument described in
36 paragraph (2)(a) only if the reason it ceased to operate was because
37 the original agreement came into operation in relation to the
38 employee or employees.

1 (5) In this section:

2 ***instrument*** means any of the following:

- 3 (a) a workplace agreement;
- 4 (b) an award;
- 5 (c) a workplace determination;
- 6 (d) an employment agreement (within the meaning of
- 7 section 887);
- 8 (e) a pre-reform certified agreement (within the meaning of
- 9 Schedule 7);
- 10 (f) a pre-reform AWA;
- 11 (g) a section 170MX award (within the meaning of Schedule 7);
- 12 (h) an exceptional matters order (within the meaning of
- 13 Schedule 7);
- 14 (i) an old IR agreement (within the meaning of Schedule 7).

15 Note: Preserved State agreements and notional agreements preserving State
16 awards are dealt with in Schedule 8.

17 **346Z Effect of section 346Y in relation to instruments**

18 If, because of the operation of section 346Y, an employer and an
19 employee or employees, as the case requires, are taken to be bound
20 by an instrument, the instrument is taken, despite any other
21 provision of this Act, to operate again, or to have effect again, as
22 the case requires, in relation to the employer and the employee or
23 employees, on and from the cessation day.

24 Note 1: Subsections 347(7A), (8A) and (9A) modify the rule that an AWA or
25 a collective agreement that has ceased to operate can never operate
26 again.

27 Note 2: The following provisions operate in a similar way for other
28 instruments:

- 29 (a) subsection 506(5) (workplace determinations);
- 30 (b) subsection 890(3) (employment agreements within the meaning
31 of section 887);
- 32 (c) subclause 3(5A) of Schedule 7 (pre-reform certified agreements);
- 33 (d) subclause 18(5) of Schedule 7 (pre-reform AWAs);
- 34 (e) subclause 25(4) of Schedule 7 (section 170MX awards);
- 35 (f) subclause 27(2) of Schedule 7 (exceptional matters orders);
- 36 (g) subclause 28(5) of Schedule 7 (old IR agreements).

1 *designated provision* means a redundancy provision within the
2 meaning of any of the following:

- 3 (a) section 399A;
4 (b) clause 6A of Schedule 7;
5 (c) clause 20A of Schedule 7.

6 **346ZB Operation of workplace agreements**

7 A workplace agreement that has ceased to operate because it does
8 not pass the fairness test can never operate again.

9 Note: This rule is subject to subsection 346Y(3), which deals with the
10 situation where a workplace agreement as varied under Division 8
11 does not pass the fairness test.

12 **346ZC Regulations may make provision for operation of provisions**
13 **of revived instruments**

14 The regulations may make provision for and in relation to the
15 operation of instruments that are taken to bind an employer and the
16 employees because of the operation of section 346Y.

17 **Subdivision E—Entitlement to compensation**

18 **346ZD Employee is entitled to compensation in respect of fairness**
19 **test period**

- 20 (1) This section applies to an employee who is entitled to
21 compensation under this section on and from a particular day
22 because a workplace agreement binding on the employee's
23 employer did not pass the fairness test.

24 Note 1: Sections 346Q, 346R, 346V, 346W and 346X specify the day on
25 which an employee's entitlement to compensation takes effect.

26 Note 2: An employee may be able to recover compensation even where a
27 workplace agreement that initially does not pass the fairness test is
28 varied so that it subsequently passes the fairness test—see
29 section 346X.

- 30 (2) If the amount worked out under paragraph (a) is less than the
31 amount worked out under paragraph (b), the employer must pay to
32 the employee the amount of the shortfall:

- 33 (a) the total value of the entitlements to which the employee
34 became entitled under the workplace agreement in respect of

- 1 one or more periods of employment during the fairness test
2 period for the workplace agreement;
- 3 (b) the total value of the entitlements to which the employee
4 would have been entitled, in respect of one or more periods
5 of employment of the employee during the fairness test
6 period, assuming that the employee's employment had been
7 subject to:
- 8 (i) the instrument or instruments that, but for the workplace
9 agreement, would have bound the employer in relation
10 to that period of employment of the employee; or
- 11 (ii) if there is no such instrument—the designated award in
12 relation to the employee, to the extent that it contains
13 protected award conditions.
- 14 (3) An employer breaches this section if the employer does not pay to
15 the employee the amount of the shortfall calculated under
16 subsection (2) within whichever of the following periods is
17 applicable:
- 18 (a) if the employee is entitled to compensation because of the
19 operation of section 346Q in respect of the workplace
20 agreement—the period of 14 days beginning on the date of
21 issue specified in the notice under section 346P in relation to
22 the workplace agreement;
- 23 (b) if the employee is entitled to compensation because of the
24 operation of section 346R in respect of the workplace
25 agreement—the period of 14 days beginning at the end of the
26 relevant period (within the meaning of section 346R) in
27 relation to the workplace agreement;
- 28 (c) if the employee is entitled to compensation because of the
29 operation of section 346V, 346W or 346X in respect of the
30 workplace agreement—the period of 14 days beginning on
31 the date of issue specified in the notice under section 346U in
32 relation to the workplace agreement.
- 33 Note: Compliance with this section is dealt with in Part 14—this section is
34 an *applicable provision* within the meaning of section 717.
- 35 (4) In this section:
- 36 *fairness test period*, in relation to a workplace agreement, means:
- 37 (a) the period:

- 1 (i) beginning on the day on which the workplace agreement
2 was lodged; and
3 (ii) ending on the day on which the workplace agreement
4 ceased to operate (whether because of the operation of
5 this Division or otherwise); or
6 (b) if the workplace agreement is continued in effect because of
7 the operation of subsection 346R(4) or section 346X—the
8 period:
9 (i) beginning on the day on which the workplace agreement
10 was lodged; and
11 (ii) ending on the day on which the variation of the
12 workplace agreement was lodged under section 346R
13 or, if the workplace agreement had been varied before
14 that day in such a way as to pass the fairness test, on
15 that earlier day.

16 *instrument* has the same meaning as in section 346Y.

17 **Subdivision F—Civil remedy provisions**

18 **346ZE Employer must notify employees**

19 (1) An employer that has received a notice under section 346J, 346P or
20 346U in relation to a collective agreement must take reasonable
21 steps to ensure that all persons whose employment is subject to the
22 agreement when the employer receives the notice are given a copy
23 of the notice as soon as practicable.

24 (2) Subsection (1) is a civil remedy provision.

25 Note: See Division 11 for provisions on enforcement.

26 **346ZF Employer not to dismiss etc. employee because agreement**
27 **does not pass the fairness test**

28 (1) An employer must not:
29 (a) dismiss an employee; or
30 (b) threaten to dismiss an employee;
31 if the sole or dominant reason for the employer dismissing, or
32 threatening to dismiss, the employee is that a workplace agreement
33 does not, or may not, pass the fairness test.

Schedule 1 The Fairness Test

Part 1 Main amendments

1 (2) Subsection (1) is a civil remedy provision.

2 Note 1: An employee may still be entitled to compensation under
3 section 346ZD if his or her workplace agreement does not pass the
4 fairness test.

5 Note 2: A breach of this provision is enforceable by a workplace inspector—
6 see Division 11 for provisions on enforcement.

7 (3) In proceedings alleging a contravention of subsection (1) it is
8 presumed that the employer's sole or dominant reason was that the
9 workplace agreement did not, or may not, pass the fairness test,
10 unless the employer proves otherwise.

11 Note: Division 3 of Part 14 contains other provisions relevant to civil
12 remedies.

13 **346ZG Other remedies for the contravention of section 346ZF**

14 (1) The Court, on application by an eligible person, may make one or
15 more of the following orders in relation to an employer who has
16 contravened subsection 346ZF(1):

17 (a) an order requiring the employer to pay a specified amount to
18 the employee as compensation for damage suffered by the
19 employee as a result of the contravention;

20 (b) any other order that the Court considers appropriate.

21 Note: The employee may still be entitled to compensation under
22 section 346ZD if his or her workplace agreement does not pass the
23 fairness test.

24 (2) The orders that may be made under paragraph (1)(b) include:

25 (a) injunctions; and

26 (b) any other orders that the Court considers necessary to stop
27 the conduct or remedy its effects.

28 (3) In this section:

29 ***eligible person*** means any of the following:

30 (a) a workplace inspector;

31 (b) an employee affected by the contravention;

32 (c) an organisation of employees that:

33 (i) has been requested in writing, by the employee
34 concerned, to apply on the employee's behalf; and

35 (ii) has a member employed by the employee's employer;
36 and

- 1 (iii) is entitled, under its eligibility rules, to represent the
2 industrial interests of the employee in relation to work
3 carried on by the employee for the employer;
4 (d) a person prescribed by the regulations for the purposes of this
5 paragraph.
- 6 (4) A regulation prescribing persons for the purposes of paragraph (d)
7 of the definition of *eligible person* may provide that a person is
8 prescribed only in relation to circumstances specified in the
9 regulation.

10 **346ZH Employer not to require employee to agree to exclude or**
11 **modify a protected award condition**

- 12 (1) An employer must not, in relation to a workplace agreement:
13 (a) take, or threaten to take, any action; or
14 (b) refrain, or threaten to refrain, from taking any action;
15 with intent to coerce an existing employee to agree, or not to agree,
16 to excluding or modifying a protected award condition.
- 17 (2) Subsection (1) does not apply to protected action (within the
18 meaning of section 435).
- 19 (3) Subsection (1) is a civil remedy provision.
- 20 Note: A breach of this provision is enforceable by a workplace inspector—
21 see Division 11 for provisions on enforcement.

1

2 **Part 2—Consequential amendments**

3 *Workplace Relations Act 1996*

4 **2 After paragraph 337(4)(c)**

5 Insert:

- 6 (ca) information about the circumstances in which the Workplace
7 Authority Director is required to decide whether the
8 agreement passes the fairness test set out in section 346M;
9 and

10 **3 Subsection 344(5)**

11 After “this Part”, insert “(other than Division 5A)”.

12 **4 After paragraph 347(4)(b)**

13 Insert:

- 14 (ba) the Workplace Authority Director decides under
15 section 346M that the agreement does not pass the fairness
16 test and the employer who is bound by the agreement does
17 not take the action referred to in subsection 346R(2) within
18 the relevant period (as defined in subsection 346R(7)) in
19 relation to the agreement; or
20 (bb) the Workplace Authority Director decides under
21 section 346U that the agreement as varied does not pass the
22 fairness test; or

23 **5 After subsection 347(7)**

24 Insert:

- 25 (7A) Despite subsection (7), an AWA that has ceased to operate can
26 operate again if:
27 (a) the AWA ceased to operate because it was replaced by
28 another AWA (the *replacement AWA*); and
29 (b) the replacement AWA later ceased to operate because it did
30 not pass the fairness test.

31 Note: See sections 346Y and 346Z.

32 **6 After subsection 347(8)**

1 Insert:

2 (8A) Despite subsection (8), a collective agreement that has ceased to
3 operate can operate again if:

4 (a) the collective agreement ceased to operate because it was
5 replaced after its nominal expiry date by another collective
6 agreement (the *replacement collective agreement*); and

7 (b) the replacement collective agreement later ceased to operate
8 because it did not pass the fairness test.

9 Note: See sections 346Y and 346Z.

10 **7 After subsection 347(9)**

11 Insert:

12 (9A) Despite subsection (9), a multiple-business agreement that has
13 ceased to operate in relation to a single business (or part of a single
14 business) can operate again if:

15 (a) the multiple-business agreement ceased to operate because it
16 was replaced by another collective agreement (the
17 *replacement collective agreement*) in accordance with
18 subsection (6); and

19 (b) the replacement collective agreement later ceased to operate
20 because it did not pass the fairness test.

21 Note: See sections 346Y and 346Z.

22 **8 At the end of subsection 354(2)**

23 Add:

24 Note: A workplace agreement that excludes or modifies certain protected
25 award conditions is subject to Division 5A (which relates to the
26 fairness test).

27 **9 After paragraph 367(2)(a)**

28 Insert:

29 (aa) section 346R (which deals with agreements that do not pass
30 the fairness test); or

31 **10 Subsection 377(5)**

32 After “this Part”, insert “(other than Division 5A)”.

33 **11 At the end of section 394**

1 Add:

2 (8) Despite subsection (7), undertakings that have ceased to operate
3 can operate again under this section if:

4 (a) the undertakings ceased to operate because they were
5 replaced by a workplace agreement (the *replacement*
6 *workplace agreement*); and

7 (b) the replacement workplace agreement later ceased to operate
8 because it did not pass the fairness test.

9 Note: See section 346ZA.

10 **12 At the end subsection 400(6)**

11 Add “, other than in the circumstance described in subsection (6A)”.

12 **13 After subsection 400(6)**

13 Insert:

14 (6A) The circumstance referred to in subsection (6) is that:

15 (a) the first person mentioned in subsection (6) is a new
16 employer; and

17 (b) the new employer requires another person to make an AWA;
18 and

19 (c) the other person would, if employed by the new employer, be
20 a transferring employee; and

21 (d) the requirement to make the AWA is a condition of the other
22 person becoming employed in the business being transferred.

23 **14 At the end of section 400**

24 Add:

25 (8) In this section:

26 *business being transferred* has the same meanings as in
27 section 579, clause 72C of Schedule 6 and subclause 4(2) of
28 Schedule 9.

29 *new employer* has the same meanings as in section 579 and
30 subclause 4(1) of Schedule 9, and includes a new transitional
31 employer within the meaning of clause 72C of Schedule 6.

1 *transferring employee* has the same meanings as in section 579
2 and clause 3 of Schedule 9, and includes a transferring transitional
3 employee within the meaning of clause 72C of Schedule 6.

4 **15 After paragraph 407(2)(ja)**

5 Insert:

- 6 (jb) for subsection 346ZE(1)—30 penalty units;
7 (jc) for subsection 346ZF(1)—60 penalty units;
8 (jd) for subsection 346ZH(1)—60 penalty units;

9 **16 Paragraph 416(1)(a)**

10 After “344(2),”, insert “346S(2),”.

11 **17 Paragraph 416(1)(d)**

12 After “subsection”, insert “346J(1) or (2), 346P(1) or (2), 346U(2) or”.

13 **18 At the end of subsection 416(1)**

14 Add:

- 15 ; (g) a determination that an award is a designated award made by
16 the Workplace Authority Director under section 346K or
17 346L.

18 **19 Paragraph 417(1)(a)**

19 After “344(2),”, insert “346S(2),”.

20 **20 Paragraph 417(1)(g)**

21 After “paragraph”, insert “346P(3)(a) or”.

22 **21 Paragraph 417(1)(k)**

23 After “subsection”, insert “346J(1) or (2), 346P(1) or (2), 346U(2) or”.

24 **22 At the end of section 506**

25 Add:

- 26 (5) To avoid doubt, a workplace determination that has ceased to
27 operate because of subsection (4) can operate again if:
28 (a) the workplace determination ceased to operate because it was
29 replaced by a collective agreement (the *replacement*
30 *collective agreement*); and

1 (b) the replacement collective agreement later ceased to operate
2 because it did not pass the fairness test.

3 Note: See sections 346Y and 346Z.

4 **23 Section 717 (after paragraph (a) of the definition of**
5 ***applicable provision*)**

6 Insert:

7 (aa) section 346ZD (fairness test compensation); and

8 **24 Subsection 718(1) (after item 5 of the table)**

9 Insert:

- | | | |
|----|---|---|
| 5A | section 346ZD (fairness
test compensation) | (a) an employee to whom section 346ZD
applies;
(b) an organisation of employees (subject to
subsection (6));
(c) an inspector |
|----|---|---|

10 **25 Subsection 718(2)**

11 After “4,” insert “5A,”.

12 **26 After paragraph 718(6)(b)**

13 Insert:

14 (ba) section 346ZD; or

15 **27 At the end of section 890**

16 Add:

17 (3) To avoid doubt, an employment agreement that has ceased to be in
18 force because of subsection (2) can come into force again if:

19 (a) the employment agreement ceased to be in force because it
20 was replaced by a workplace agreement (the ***replacement***
21 ***workplace agreement***); and

22 (b) the replacement workplace agreement later ceased to operate
23 because it did not pass the fairness test.

24 Note: See sections 346Y and 346Z.

25 **28 At the end of clause 89 of Schedule 6**

26 Add:

- 1 (3) If:
2 (a) a workplace agreement binds an employer and employees;
3 and
4 (b) immediately before the day on which the workplace
5 agreement was lodged, a common rule had the effect of
6 regulating employers in respect of the employment of their
7 employees;
8 then, Division 5A of Part 8 of this Act (which deals with the
9 fairness test) has effect in relation to that workplace agreement as
10 if:
11 (c) a reference in that Division to a relevant award included a
12 reference to a common rule that has effect, or continues to
13 have effect, because of this Subdivision; and
14 (d) the definition of *instrument* in subsection 346Y(5) included a
15 reference to a common rule that has effect, or continues to
16 have effect, because of this Subdivision.

17 **29 Clause 95 of Schedule 6**

18 Before “A”, insert “(1)”.

19 **30 At the end of clause 95 of Schedule 6**

20 Add:

- 21 (2) If:
22 (a) a workplace agreement binds an employer and an employee
23 or employees; and
24 (b) immediately before the day on which the workplace
25 agreement was lodged, the employer and employee or
26 employees were bound by a transitional Victorian reference
27 award in respect of the employee’s or employees’
28 employment;
29 then, Division 5A of Part 8 of this Act (which deals with the
30 fairness test) has effect in relation to that workplace agreement as
31 if:
32 (c) a reference in that Division to a relevant award included a
33 reference to a transitional Victorian reference award; and
34 (d) the definition of *instrument* in subsection 346Y(5) included a
35 reference to a transitional Victorian reference award.

36 **31 Clause 102 of Schedule 6**

1 Before “A”, insert “(1)”.

2 **32 At the end of clause 102 of Schedule 6**

3 Add:

4 (2) If:

- 5 (a) a workplace agreement binds an employer and employees;
6 and
7 (b) immediately before the day on which the workplace
8 agreement was lodged, a transitional award (other than a
9 Victorian reference award) regulated the employer, being an
10 excluded employer, in respect of the employment of
11 employees in Victoria;

12 then, Division 5A of Part 8 of this Act (which deals with the
13 fairness test) has effect in relation to that workplace agreement as
14 if:

- 15 (c) a reference in that Division to a relevant award included a
16 reference to a transitional award (other than a Victorian
17 reference award) to the extent that the award regulates
18 excluded employers in respect of the employment of
19 employees in Victoria; and
20 (d) the definition of *instrument* in subsection 346Y(5) included a
21 reference to a transitional award (other than a Victorian
22 reference award) to the extent that the award regulates
23 excluded employers in respect of the employment of
24 employees in Victoria.

25 **33 After subclause 3(5) of Schedule 7**

26 Insert:

- 27 (5A) Despite subclause (5), a pre-reform certified agreement that has
28 ceased to operate because of subclause (1) can operate again if:
29 (a) the pre-reform certified agreement ceased to operate because
30 it was replaced by a collective agreement (the *replacement*
31 *collective agreement*); and
32 (b) the replacement collective agreement later ceased to operate
33 because it did not pass the fairness test.

34 Note: See sections 346Y and 346Z.

35 **34 At the end of clause 18 of Schedule 7**

1 Add:

- 2 (5) Despite subclause (4), a pre-reform AWA that has ceased to
3 operate because of subclause (1) can operate again if:
4 (a) the pre-reform AWA ceased to operate because it was
5 replaced by an AWA (the **replacement AWA**); and
6 (b) the replacement AWA later ceased to operate because it did
7 not pass the fairness test.

8 Note: See sections 346Y and 346Z.

9 **35 At the end of clause 25 of Schedule 7**

10 Add:

- 11 (4) To avoid doubt, a section 170MX award that has ceased to operate
12 because of subclause (2) can operate again if:
13 (a) the section 170MX award ceased to operate because it was
14 replaced by a collective agreement (the **replacement**
15 **collective agreement**); and
16 (b) the replacement collective agreement later ceased to operate
17 because it did not pass the fairness test.

18 Note 1: See sections 346Y and 346Z.

19 Note 2: Under subclause (1), a section 170MX award has no effect in relation
20 to an employee while an AWA operates in relation to the employee,
21 but once the AWA has for any reason ceased to operate, the
22 section 170MX award is capable of operating again.

23 **36 Clause 27 of Schedule 7**

24 Before “An”, insert “(1)”.

25 **37 At the end of clause 27 of Schedule 7**

26 Add:

- 27 (2) To avoid doubt, an exceptional matters order that has ceased to be
28 in force because of subclause (2) can come into force again if:
29 (a) the exceptional matters order ceased to be in force because it
30 was replaced by a workplace agreement (the **replacement**
31 **workplace agreement**); and
32 (b) the replacement workplace agreement later ceased to operate
33 because it did not pass the fairness test.

34 Note: See sections 346Y and 346Z.

1 **38 At the end of clause 28 of Schedule 7**

2 Add:

3 (5) Despite subclause (4), an old IR agreement that has ceased to
4 operate because of subclause (2) can operate again if:

5 (a) the old IR agreement ceased to operate because it was
6 replaced by a workplace agreement (the *replacement*
7 *workplace agreement*); and

8 (b) the replacement workplace agreement later ceased to operate
9 because it did not pass the fairness test.

10 Note: See sections 346Y and 346Z.

11 **39 At the end of clause 15G of Schedule 8**

12 Add:

13 (4) Despite subclause (3), a preserved State agreement that has ceased
14 operating because of subclause (2) can operate again if:

15 (a) the preserved State agreement ceased to operate because it
16 was replaced by a workplace agreement (the *replacement*
17 *workplace agreement*); and

18 (b) the replacement workplace agreement later ceased to operate
19 because it did not pass the fairness test.

20 Note: See sections 346Y and 346Z.

21 **40 At the end of clause 38A of Schedule 8**

22 Add:

23 (5) Despite subclause (4), a notional agreement that has ceased
24 operating because of subclause (2) can operate again if:

25 (a) the notional agreement ceased to operate because it was
26 replaced by a workplace agreement (the *replacement*
27 *workplace agreement*); and

28 (b) the replacement workplace agreement later ceased to operate
29 because it did not pass the fairness test.

30 Note: See sections 346Y and 346Z.

31 **41 At the end of Division 6A of Part 2 of Schedule 8**

32 Add:

1 **25B Application of fairness test where employment was subject to**
2 **preserved State agreement**

3 (1) If:

4 (a) a workplace agreement binds an employer and an employee
5 or employees; and

6 (b) immediately before the day on which the workplace
7 agreement was lodged, the employer and employee or
8 employees were bound by a preserved State agreement in
9 respect of the employee's or employees' employment; and

10 (c) the workplace agreement contains protected preserved
11 conditions because of paragraph 25A(2)(a) of this Schedule;
12 then, Division 5A of Part 8 of this Act (which deals with the
13 fairness test) has effect in relation to that workplace agreement as
14 if:

15 (d) a reference in that Division to protected award conditions
16 were a reference to protected preserved conditions; and

17 (e) a reference in that Division to a relevant award or a reference
18 award were a reference to a relevant preserved State
19 agreement; and

20 (f) paragraph 346C(1)(a) were substituted with the following
21 paragraph:

22 “(a) if the protected preserved conditions are taken to be included
23 in the workplace agreement because of paragraph 25A(2)(a)
24 of Schedule 8.”; and

25 (g) paragraph 346C(1)(b) and subsection 346C(2) were omitted;
26 and

27 (h) paragraphs 346E(1)(b) and (2)(b) and 346F(1)(b) and (2)(b)
28 were omitted; and

29 (i) sections 346H, 346K and 346L were omitted; and

30 (j) paragraph 346Y(2)(b) were substituted with the following
31 paragraph:

32 “(b) if there is no instrument of a kind referred to in paragraph (a)
33 in relation to the employer and one or more of the
34 employees—protected preserved conditions that were taken
35 to be contained in the original agreement as if those
36 conditions were never excluded or modified by the
37 agreement.”; and

38 (k) the definition of *instrument* in subsection 346Y(5) included a
39 reference to a preserved State agreement; and

- 1 (l) the definition of *designated provision* in subsection
2 346ZA(4) included a reference to clauses 21A and 21D of
3 Schedule 8; and
4 (m) subparagraph 346ZD(2)(b)(ii) were substituted with the
5 following subparagraph:
6 “(ii) if there is no such instrument—protected preserved
7 conditions in relation to the employee.”.
- 8 (2) For the purpose of paragraph 346Y(2)(b) (as substituted by
9 paragraph (1)(j) of this clause), Parts 6 and 14 of this Act apply to
10 protected preserved conditions as if the conditions were:
11 (a) if the workplace agreement was an AWA—an AWA in
12 operation; or
13 (b) if the workplace agreement was a collective agreement—a
14 collective agreement in operation.
- 15 (3) In this clause:
16 *protected preserved condition* has the same meaning as in
17 subclause 25A(4), subject to subclause (4) of this clause.
18 *relevant preserved State agreement*, in relation to an employee
19 whose employment is subject to a workplace agreement, means a
20 preserved State agreement that was binding on the employee’s
21 employer immediately before the day on which the workplace
22 agreement was lodged.
- 23 (4) For the purposes of the definition of *protected preserved*
24 *conditions* in subclause (3), the definition of *protected allowable*
25 *award matters* in subclause 25A(4) has effect as if it did not
26 include the matter referred to in paragraph (i) of the latter
27 definition.
- 28 Note: Paragraph (i) relates to outworker conditions. These conditions cannot
29 be excluded or modified by a workplace agreement to provide a less
30 favourable outcome for an employee in a particular respect—see
31 subclause 25A(3).

42 At the end of Division 6 of Part 3 of Schedule 8

Add:

1 **52AAA Application of fairness test where employment was subject**
2 **to notional agreement preserving State awards**

3 (1) If:

4 (a) a workplace agreement binds an employer and an employee
5 or employees; and

6 (b) immediately before the day on which the workplace
7 agreement was lodged, the employer and employee or
8 employees were bound by a notional agreement preserving
9 State awards in respect of the employee's or employees'
10 employment; and

11 (c) the workplace agreement contains protected notional
12 conditions because of paragraph 52(2)(a) of this Schedule;
13 then, Division 5A of Part 8 of this Act (which deals with the
14 fairness test) has effect in relation to that workplace agreement as
15 if:

16 (d) a reference in that Division to protected award conditions
17 were a reference to protected notional conditions; and

18 (e) a reference in that Division to a relevant award or a reference
19 award were a reference to a relevant notional agreement
20 preserving State awards; and

21 (f) paragraph 346C(1)(b) and subsection 346C(2) were omitted;
22 and

23 (g) paragraphs 346E(1)(b) and (2)(b) and 346F(1)(b) and (2)(b)
24 were omitted; and

25 (h) sections 346H, 346K and 346L were omitted; and

26 (i) paragraph 346Y(2)(b) were omitted; and

27 (j) the definition of *instrument* in subsection 346Y(5) included a
28 reference to a notional agreement preserving State awards;
29 and

30 (k) subparagraph 346ZD(2)(b)(ii) were omitted.

31 (2) In this clause:

32 *protected notional conditions* has the same meaning as in
33 subclause 52(3), subject to subclause (3) of this clause.

34 *relevant notional agreement preserving State awards*, in relation
35 to an employee whose employment is subject to a workplace
36 agreement, means a notional agreement preserving State awards

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1 that was binding on the employee’s employer immediately before
2 the day on which the workplace agreement was lodged.

3 (3) For the purposes of the definition of *protected notional conditions*
4 in subclause (2), the definition of *protected allowable award*
5 *matters* in subclause 52(3) has effect as if it did not include the
6 matter referred to in paragraph (h) of the definition.

7 Note: Paragraph (h) relates to outworker conditions. These conditions cannot
8 be excluded or modified by a workplace agreement to provide a less
9 favourable outcome for an employee in a particular respect—see
10 subclause 52(2A).

1
2 **Schedule 2—Workplace Authority**

3 **Part 1—Main amendments**

4 *Workplace Relations Act 1996*

5 **1 Part 5 (heading)**

6 Repeal the heading, substitute:

7 **Part 5—Workplace Authority Director**

8 **2 Divisions 1 and 2 of Part 5**

9 Repeal the Divisions, substitute:

10 **Division 1—Workplace Authority Director**

11 **Subdivision A—Establishment and functions**

12 **150A Workplace Authority Director**

13 There is to be a Workplace Authority Director.

14 **150B Functions of Workplace Authority Director**

15 (1) The functions of the Workplace Authority Director are as follows:

- 16 (a) to promote an understanding of Commonwealth workplace
17 relations legislation, including by making available to the
18 public general information and guidance about the operation
19 of the legislation;
- 20 (b) to provide education, assistance and advice to employees,
21 employers and organisations in relation to their rights and
22 obligations under Commonwealth workplace relations
23 legislation;
- 24 (c) to promote the making of workplace agreements;
- 25 (d) to provide education, assistance and advice to employees,
26 employers (especially employers in small business) and
27 organisations in relation to workplace agreements;
- 28 (e) to accept lodgment of:

- 1 (i) workplace agreements; and
2 (ii) notices about transmission of instruments;
3 (f) to decide under Division 5A of Part 8 whether workplace
4 agreements pass the fairness test;
5 (g) to authorise multiple-business agreements in accordance with
6 the regulations;
7 (h) to analyse workplace agreements;
8 (i) to refer matters to the Workplace Ombudsman and workplace
9 inspectors;
10 (j) to perform any other function conferred on the Workplace
11 Authority Director by Commonwealth workplace relations
12 legislation, the Registration and Accountability of
13 Organisations Schedule or another Act.
- 14 (2) In performing his or her functions relating to workplace
15 agreements, the Workplace Authority Director must have particular
16 regard to:
17 (a) the needs of workers in disadvantaged bargaining positions,
18 including, for example, women, people from a non-English
19 speaking background, young people, apprentices, trainees
20 and outworkers; and
21 (b) encouraging parties to agreement-making to take account of
22 those needs; and
23 (c) assisting workers to balance work and family responsibilities;
24 and
25 (d) the need to prevent and eliminate discrimination because of,
26 or for reasons including, race, colour, sex, sexual preference,
27 age, physical or mental disability, marital status, family
28 responsibilities, pregnancy, religion, political opinion,
29 national extraction or social origin.

30 **150C Minister may give directions to Workplace Authority Director**

- 31 (1) The Minister may, by legislative instrument, give written directions
32 to the Workplace Authority Director about the performance of his
33 or her functions.
- 34 (2) Directions given by the Minister under subsection (1) must be of a
35 general nature only, and cannot relate to a particular case.

- 1 (3) The Minister must not direct the Workplace Authority Director in
2 relation to the Workplace Authority Director's performance of
3 functions, or exercise of powers, as an Agency Head under the
4 *Public Service Act 1999*.
- 5 (4) The Workplace Authority Director must comply with any direction
6 given by the Minister under subsection (1).
- 7 (5) Section 42 (Disallowance of legislative instruments) of the
8 *Legislative Instruments Act 2003* applies to a direction given under
9 subsection (1) of this section, despite section 44 of that Act.

10 **Subdivision B—Appointment and terms and conditions**

11 **151A Appointment of Workplace Authority Director**

- 12 (1) The Workplace Authority Director is to be appointed by the
13 Governor-General by written instrument.
- 14 (2) The Governor-General must not appoint a person as the Workplace
15 Authority Director unless the Minister is satisfied that the person:
16 (a) has suitable qualifications or experience; and
17 (b) is of good character.
- 18 (3) The Workplace Authority Director holds office for the period
19 specified in the instrument of appointment. The period must not
20 exceed 5 years.
- 21 (4) The Workplace Authority Director holds office on a full-time
22 basis.

23 **151B Remuneration**

- 24 (1) The Workplace Authority Director is to be paid the remuneration
25 that is determined by the Remuneration Tribunal. If no
26 determination of that remuneration by the Tribunal is in operation,
27 the Workplace Authority Director is to be paid the remuneration
28 that is prescribed.
- 29 (2) The Workplace Authority Director is to be paid the allowances that
30 are prescribed.
- 31 (3) This section has effect subject to the *Remuneration Tribunal Act*
32 *1973*.

1 **151C Leave of absence**

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

7 **151D Other terms and conditions**

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

11 **151E Outside employment**

12 The Workplace Authority Director must not engage in paid
13 employment outside the duties of the Workplace Authority
14 Director's office without the Minister's approval.

15 **151F Disclosure of interests**

16 The Workplace Authority Director must give written notice to the
17 Minister of all interests, pecuniary or otherwise, that the
18 Workplace Authority Director has or acquires that could conflict
19 with the proper performance of the Workplace Authority Director's
20 functions.

21 **151G Acting appointments**

- 22 (1) The Minister may appoint a person to act as the Workplace
23 Authority Director:
24 (a) during a vacancy in the office of Workplace Authority
25 Director (whether or not an appointment has previously been
26 made to the office); or
27 (b) during any period, or during all periods, when the Workplace
28 Authority Director is absent from duty or from Australia, or
29 is, for any reason, unable to perform the duties of the office.
- 30 (2) The Minister must not appoint a person to act as the Workplace
31 Authority Director unless the Minister is satisfied that the person:
32 (a) has suitable qualifications or experience; and

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

9 **151H Resignation**

- 10 (1) The Workplace Authority Director may resign his or her
11 appointment by giving the Governor-General a written resignation.
- 12 (2) The resignation takes effect on the day it is received by the
13 Governor-General or, if a later day is specified in the resignation,
14 on that later day.

15 **151J Termination of appointment**

- 16 (1) The Governor-General may terminate the appointment of the
17 Workplace Authority Director for misbehaviour or physical or
18 mental incapacity.
- 19 (2) The Governor-General must terminate the appointment of the
20 Workplace Authority Director if:
- 21 (a) the Workplace Authority Director:
- 22 (i) becomes bankrupt; or
23 (ii) applies to take the benefit of any law for the relief of
24 bankrupt or insolvent debtors; or
25 (iii) compounds with his or her creditors; or
26 (iv) makes an assignment of his or her remuneration for the
27 benefit of his or her creditors; or
- 28 (b) the Workplace Authority Director is absent, except on leave
29 of absence, for 14 consecutive days or for 28 days in any 12
30 months; or
- 31 (c) the Workplace Authority Director engages, except with the
32 Minister's approval, in paid employment outside the duties of
33 his or her office; or

- 1 (d) the Workplace Authority Director fails, without reasonable
2 excuse, to comply with section 151F.

3 **Division 2—Workplace Authority Deputy Directors**

4 **152A Workplace Authority Deputy Directors**

5 The Workplace Authority Director is to be assisted by as many
6 Workplace Authority Deputy Directors as are appointed from time
7 to time.

8 **152B Appointment of Workplace Authority Deputy Director**

- 9 (1) A Workplace Authority Deputy Director is to be appointed by the
10 Minister by written instrument.
- 11 (2) The Minister must not appoint a person as a Workplace Authority
12 Deputy Director unless the Minister is satisfied that the person:
13 (a) has suitable qualifications or experience; and
14 (b) is of good character.
- 15 (3) A Workplace Authority Deputy Director holds office for the period
16 specified in the instrument of appointment. The period must not
17 exceed 5 years.
- 18 (4) A Workplace Authority Deputy Director is to be appointed on a
19 full-time or part-time basis.

20 **152C Remuneration**

- 21 (1) A Workplace Authority Deputy Director is to be paid the
22 remuneration that is determined by the Remuneration Tribunal. If
23 no determination of that remuneration by the Tribunal is in
24 operation, a Workplace Authority Deputy Director is to be paid the
25 remuneration that is prescribed.
- 26 (2) A Workplace Authority Deputy Director is to be paid the
27 allowances that are prescribed.
- 28 (3) This section has effect subject to the *Remuneration Tribunal Act*
29 *1973*.

1 **152D Leave of absence**

- 2 (1) A full-time Workplace Authority Deputy Director has the
3 recreation leave entitlements that are determined by the
4 Remuneration Tribunal.
- 5 (2) The Minister may grant a full-time Workplace Authority Deputy
6 Director leave of absence, other than recreation leave, on the terms
7 and conditions as to remuneration or otherwise that the Minister
8 determines.
- 9 (3) The Minister may grant a part-time Workplace Authority Deputy
10 Director leave of absence on the terms and conditions as to
11 remuneration or otherwise that the Minister determines.

12 **152E Other terms and conditions**

13 A Workplace Authority Deputy Director holds office on the terms
14 and conditions (if any) in relation to matters not covered by this
15 Act that are determined by the Minister.

16 **152F Outside employment**

- 17 (1) A full-time Workplace Authority Deputy Director must not engage
18 in paid employment outside the duties of the Workplace Authority
19 Deputy Director's office without the Minister's approval.
- 20 (2) A part-time Workplace Authority Deputy Director must not engage
21 in any paid employment that conflicts or may conflict with the
22 proper performance of the Workplace Authority Deputy Director's
23 duties.

24 **152G Disclosure of interests**

25 A Workplace Authority Deputy Director must give written notice
26 to the Minister of all interests, pecuniary or otherwise, that the
27 Workplace Authority Deputy Director has or acquires that could
28 conflict with the proper performance of the Workplace Authority
29 Deputy Director's functions.

1 **152H Resignation**

- 2 (1) A Workplace Authority Deputy Director may resign his or her
3 appointment by giving the Minister a written resignation.
- 4 (2) The resignation takes effect on the day it is received by the
5 Minister or, if a later day is specified in the resignation, on that
6 later day.

7 **152J Termination of appointment**

- 8 (1) The Minister may terminate the appointment of a Workplace
9 Authority Deputy Director for misbehaviour or physical or mental
10 incapacity.
- 11 (2) The Minister must terminate the appointment of a Workplace
12 Authority Deputy Director if:
- 13 (a) the Workplace Authority Deputy Director:
- 14 (i) becomes bankrupt; or
15 (ii) applies to take the benefit of any law for the relief of
16 bankrupt or insolvent debtors; or
17 (iii) compounds with his or her creditors; or
18 (iv) makes an assignment of his or her remuneration for the
19 benefit of his or her creditors; or
- 20 (b) the Workplace Authority Deputy Director is appointed on a
21 full-time basis and is absent, except on leave of absence, for
22 14 consecutive days or for 28 days in any 12 months; or
- 23 (c) the Workplace Authority Deputy Director is appointed on a
24 full-time basis and engages, except with the Minister's
25 approval, in paid employment outside the duties of his or her
26 office; or
- 27 (d) the Workplace Authority Deputy Director is appointed on a
28 part-time basis and engages in paid employment that
29 conflicts or could conflict with the proper performance of the
30 duties of his or her office; or
- 31 (e) the Workplace Authority Deputy Director fails, without
32 reasonable excuse, to comply with section 152G.

1 **Division 3—Staff, delegations etc.**

2 **153A Staff**

3 The staff assisting the Workplace Authority Director in the
4 performance of the Workplace Authority Director’s functions must
5 be persons engaged under the *Public Service Act 1999*.

6 **153B Workplace Authority**

7 (1) The Workplace Authority is established by this subsection.

8 (2) The Workplace Authority consists of:

9 (a) the Workplace Authority Director; and

10 (b) the Workplace Authority Deputy Directors; and

11 (c) the staff assisting the Workplace Authority Director.

12 (3) For the purposes of the *Public Service Act 1999*:

13 (a) the Workplace Authority Director and the staff assisting the
14 Workplace Authority Director together constitute a Statutory
15 Agency; and

16 (b) the Workplace Authority Director is the Head of that
17 Statutory Agency.

18 **153C Delegation**

19 (1) The Workplace Authority Director may, in writing, delegate to a
20 person appointed or employed by the Commonwealth any of the
21 Workplace Authority Director’s powers or functions.

22 (2) In exercising powers or functions under a delegation, the delegate
23 must comply with any directions of the Workplace Authority
24 Director.

25 **3 Division 3 of Part 5 (heading)**

26 Repeal the heading, substitute:

27 **Division 4—Reporting and disclosing information**

28 **4 Before section 165**

29 Insert:

1 **Subdivision A—Reporting**

2 **163A Minister may require reports**

- 3 (1) The Minister may, in writing, direct the Workplace Authority
4 Director to give the Minister specified reports relating to the
5 Workplace Authority Director's functions.
- 6 (2) The Workplace Authority Director must comply with the direction.
- 7 (3) A direction made under subsection (1) is not a legislative
8 instrument.
- 9 (4) If the report is made in writing, the report is not a legislative
10 instrument.

11 **163B Annual report**

12 The Workplace Authority Director must, as soon as practicable
13 after the end of each financial year, prepare and give to the
14 Minister, for presentation to the Parliament, a report on the
15 operations of the Workplace Authority during that year.

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

18 **163C Reports not to include information relating to an individual's**
19 **affairs**

- 20 (1) Information relating to the affairs of an individual must not be
21 included in a report under section 163A or 163B if:
- 22 (a) the individual is named, or otherwise specifically identified,
23 in the report as the individual to whom the information
24 relates; or
- 25 (b) it is reasonably likely that people generally (other than people
26 to whom the individual has disclosed information relating to
27 the individual's affairs) would be able to work out the
28 identity of the individual to whom the information relates.
- 29 (2) For the purposes of applying paragraph (1)(b) to information
30 relating to a particular individual's affairs, the context in which the
31 information appears, and information that is otherwise publicly
32 available, must be taken into account (as well as any other relevant
33 matter).

1 **Subdivision B—Disclosing information**

2 **164A Disclosure of information by workplace agreement officials**

3 *Disclosure that is necessary or appropriate*

- 4 (1) A workplace agreement official may disclose information he or she
5 acquired in the course of exercising powers, or performing
6 functions, as such an official, if he or she considers on reasonable
7 grounds that it is necessary or appropriate to do so in the course of
8 exercising his or her powers, or performing his or her functions, as
9 such an official.

10 *Disclosure to Minister*

- 11 (2) A workplace agreement official may:
12 (a) provide aggregated statistical information to the Minister;
13 and
14 (b) give the Minister, in accordance with the regulations,
15 information and copies of documents.
- 16 (3) Regulations made for the purposes of paragraph (2)(b) may require
17 that documents given to the Minister are given with such deletions
18 as are necessary to prevent the identification of individuals to
19 whom the documents refer.

20 *Disclosure to Workplace Ombudsman and workplace inspectors*

- 21 (4) A workplace agreement official may:
22 (a) disclose information that relates to the functions of the
23 Workplace Ombudsman to the Workplace Ombudsman in
24 response to requests from the Workplace Ombudsman; and
25 (b) disclose information that relates to the functions of
26 workplace inspectors to workplace inspectors in response to
27 requests from workplace inspectors; and
28 (c) disclose information to the Workplace Ombudsman or
29 workplace inspectors that the workplace agreement official
30 considers on reasonable grounds is likely to assist the
31 Workplace Ombudsman or workplace inspectors in
32 performing their functions.

1 *Disclosure authorised by regulations to prescribed persons*
2 (5) The regulations may authorise a prescribed workplace
3 agreement official to disclose information of the prescribed
4 kind, to persons of the prescribed kind, for prescribed
5 purposes.

6 *Limits on disclosure*

7 (6) Despite subsections (1), (2) and (4), a prescribed workplace
8 agreement official is not authorised by whichever of those
9 subsections is prescribed to disclose information of the prescribed
10 kind, to persons of the prescribed kind, for prescribed purposes.

11 (7) Despite subsections (1), (2) and (5), a workplace agreement official
12 is not authorised by any of those subsections to disclose to the
13 Minister information relating to:

- 14 (a) a decision under Division 5A of Part 8 whether a particular
15 workplace agreement passes the fairness test; or
16 (b) whether that Division requires the Workplace Authority
17 Director to decide whether a particular workplace agreement
18 passes the fairness test.

19 *Relationship with the Privacy Act 1988*

20 (8) To avoid doubt, a disclosure in accordance with this section of
21 personal information (within the meaning of the *Privacy Act 1988*)
22 is taken, for the purposes of that Act, to be authorised by law.

23 *Relationship with section 165*

24 (9) To avoid doubt, a disclosure in accordance with this section of
25 protected information (as defined in section 165) is taken, for the
26 purposes of that section, to be permitted by this Act.

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Part 2—Consequential amendments

Division 1—Workplace Relations Act 1996

5 Subsection 4(1) (definition of *Employment Advocate*)

Repeal the definition.

6 Subsection 4(1)

Insert:

member of the Workplace Authority means a person covered by subsection 153B(2).

7 Subsection 4(1)

Insert:

workplace agreement official means:

- (a) the Workplace Authority Director; or
- (b) a Workplace Authority Deputy Director; or
- (c) a member of the staff assisting the Workplace Authority Director; or
- (d) a delegate of the Workplace Authority Director.

8 Subsection 4(1)

Insert:

Workplace Authority Deputy Director means a Workplace Authority Deputy Director holding office under Part 5.

9 Subsection 4(1)

Insert:

Workplace Authority Director means the Workplace Authority Director holding office under Part 5.

10 Paragraph 120(3)(e)

Repeal the paragraph, substitute:

- (e) in the case of an appeal under paragraph (1)(d) in relation to an award—by:

- 1 (i) an employer, employee or organisation bound by the
2 award; or
3 (ii) the Workplace Authority Director; and

4 **11 Subsection 165(2) (definition of *workplace agreement***
5 ***official*)**

6 Repeal the definition.

7 **12 Sections 166, 332, 335, 337, 344, 345, 346A, 357 and 358**

8 Omit “Employment Advocate” (wherever occurring), substitute
9 “Workplace Authority Director”.

10 Note: The headings to sections 166, 342, 344 and 345 are altered by omitting “**Employment**
11 **Advocate**” and substituting “**Workplace Authority Director**”.

12 **13 Subsection 359(1)**

13 Omit “Employment Advocate”, substitute “Workplace Authority
14 Director”.

15 **14 Subsection 359(2)**

16 Omit “Employment Advocate’s”, substitute “Workplace Authority
17 Director’s”.

18 **15 Sections 360, 361, 363, 370, 377, 378, 380, 381, 384, 389,**
19 **390, 392, 393, 395, 396, 416, 417, 418, 578, 583, 585, 595,**
20 **598A, 603, 603B and 604**

21 Omit “Employment Advocate” (wherever occurring), substitute
22 “Workplace Authority Director”.

23 Note 1: The headings to sections 360, 363, 375, 377, 378, 388, 389, 390, 395, 396, 603 and
24 603B are altered by omitting “**Employment Advocate**” and substituting “**Workplace**
25 **Authority Director**”.

26 Note 2: The headings to subsections 603(4) and 603B(3) are altered by omitting “*Employment*
27 *Advocate*” and substituting “*Workplace Authority Director*”.

28 Note 3: The heading to section 604 is altered by omitting “**Employment Advocate**” and
29 substituting “**Workplace Authority Director**”.

30 **16 Section 6 of Schedule 1 (definition of *Employment***
31 ***Advocate*)**

32 Repeal the definition.

33 **17 Subparagraph 337A(b)(ii) of Schedule 1**

1 Repeal the subparagraph, substitute:
2 (ii) a workplace agreement official (as defined in the
3 Workplace Relations Act);

4 **18 Paragraphs 2(2)(m), (n) and (o) of Schedule 2**

5 Repeal the paragraphs, substitute:
6 (m) paragraph 150B(1)(b);
7 (n) paragraph 150B(1)(d);

8 **19 Paragraphs 3(2)(f), (g) and (h) of Schedule 2**

9 Repeal the paragraphs, substitute:
10 (f) paragraph 150B(1)(b);
11 (g) paragraph 150B(1)(d);

12 **20 Paragraphs 4(2)(m) and (n) of Schedule 2**

13 Repeal the paragraphs, substitute:
14 (m) section 151E;
15 (ma) paragraph 151J(2)(c);
16 (n) subsections 152F(1) and (2);
17 (na) paragraph 152J(2)(c);
18 (nb) paragraph 152J(2)(d);

19 **21 Clauses 72B, 72G, 72K and 72L of Schedule 6**

20 Omit “Employment Advocate” (wherever occurring), substitute
21 “Workplace Authority Director”.

22 Note 1: The heading to clause 72K of Schedule 6 is altered by omitting “**Employment**
23 **Advocate**” and substituting “**Workplace Authority Director**”.

24 Note 2: The heading to subclause 72K(4) of Schedule 6 is altered by omitting “*Employment*
25 *Advocate*” and substituting “*Workplace Authority Director*”.

26 Note 3: The heading to clause 72L of Schedule 6 is altered by omitting “**Employment**
27 **Advocate**” and substituting “**Workplace Authority Director**”.

28 **22 Clauses 9 and 15B of Schedule 8**

29 Omit “Employment Advocate”, substitute “Workplace Authority
30 Director”.

31 **23 Subclause 19(1) of Schedule 8**

1 Omit “Employment Advocate”, substitute “Workplace Authority
2 Director”.

3 **24 Subclause 19(2) of Schedule 8**

4 Omit “Employment Advocate’s”, substitute “Workplace Authority
5 Director’s”.

6 **25 Subclauses 19(3), (5), (9), (10), (11) and (12) of Schedule 8**

7 Omit “Employment Advocate” (wherever occurring), substitute
8 “Workplace Authority Director”.

9 Note: The headings to subclauses 19(3) and (9) of Schedule 8 are altered by omitting
10 “*Employment Advocate*” and substituting “*Workplace Authority Director*”.

11 **26 Subclause 42(1) of Schedule 8**

12 Omit “Employment Advocate”, substitute “Workplace Authority
13 Director”.

14 **27 Subclause 42(2) of Schedule 8**

15 Omit “Employment Advocate’s”, substitute “Workplace Authority
16 Director’s”.

17 **28 Subclauses 42(3), (5), (9), (10), (11) and (12) of Schedule 8**

18 Omit “Employment Advocate” (wherever occurring), substitute
19 “Workplace Authority Director”.

20 Note: The headings to subclauses 42(3) and (9) of Schedule 8 are altered by omitting
21 “*Employment Advocate*” and substituting “*Workplace Authority Director*”.

22 **29 Clauses 2, 7, 10, 19, 27A, 29, 29B and 30 of Schedule 9**

23 Omit “Employment Advocate” (wherever occurring), substitute
24 “Workplace Authority Director”.

25 Note 1: The headings to clauses 29 and 29B of Schedule 9 are altered by omitting
26 “**Employment Advocate**” and substituting “**Workplace Authority Director**”.

27 Note 2: The heading to subclause 29B(3) of Schedule 9 is altered by omitting “*Employment*
28 *Advocate*” and substituting “*Workplace Authority Director*”.

29 Note 3: The heading to clause 30 of Schedule 9 is altered by omitting “**Employment Advocate**”
30 and substituting “**Workplace Authority Director**”.

1 **Division 2—Other legislation**

2 ***Coal Mining Industry (Long Service Leave Funding) Act***
3 ***1992***

4 **30 Subsection 4(1) (definition of *industrial authority*)**

5 After “Australian Industrial Relations Commission,”, insert “the
6 Workplace Authority Director,”.

7 ***Financial Management and Accountability Regulations 1997***

8 **31 At the end of Part 1 of Schedule 1**

9 Add:

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- | | | |
|-----|--|---------------------|
| 146 | Workplace Authority, comprising: | Workplace Authority |
| | (a) the Workplace Authority Director; and | Director |
| | (b) the Workplace Authority Deputy
Directors; and | |
| | (c) the staff assisting the Workplace
Authority Director. | |
- See Note B*

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2 **Part 3—Transitional provisions**

3 **32 General transitional provision**

- 4 (1) This item applies to anything done by or in relation to the Employment
5 Advocate before the commencement of this Schedule.
- 6 (2) For the purposes of the operation of an Act, or an instrument (including
7 regulations) or agreement made under an Act, in relation to a time on or
8 after the commencement of this Schedule, the thing is taken to have
9 been done by or in relation to the Workplace Authority Director.
- 10 (3) Subitem (2) does not affect the time the thing was done.
- 11 (4) This item does not affect the following items in this Part.

12 **33 Substitution of parties to proceedings**

13 From the commencement of this Schedule, the Workplace Authority
14 Director is substituted for the Employment Advocate as a party in any
15 proceedings that were pending in any court or tribunal immediately
16 before that commencement.

17 **34 Gazette notices of requirements**

- 18 (1) This item applies to a requirement that:
19 (a) was made under any of the following provisions of the
20 *Workplace Relations Act 1996*:
21 (i) paragraph 337(4)(d);
22 (ii) subsection 344(3);
23 (iii) paragraph 370(4)(d);
24 (iv) subsection 377(3);
25 (v) paragraph 384(3)(c);
26 (vi) subsection 389(3);
27 (vii) paragraph 392(5)(b);
28 (viii) paragraph 392(5)(c);
29 (ix) paragraph 393(5)(c);
30 (x) paragraph 393(5)(d);
31 (xi) subsection 395(3); and

- 1 (b) was made by notice published in the *Gazette* before the
2 amendment of the provision by this Schedule; and
3 (c) was in force immediately before the amendment.
- 4 (2) The requirement has effect on and after the amendment as if it had been
5 made under the provision as amended.
- 6 (3) This item does not prevent amendment or revocation of the
7 requirement.

8 **35 Workplace agreement officials**

- 9 (1) For the purposes of the operation of section 165 of the *Workplace*
10 *Relations Act 1996* on and after the amendment of that section by this
11 Schedule, a person is taken to be a workplace agreement official if the
12 person was, at any time before that amendment, a workplace agreement
13 official as defined in that section before that amendment.
- 14 (2) Subitem (1) does not limit the definition of ***workplace agreement***
15 ***official*** in subsection 4(1) of the *Workplace Relations Act 1996* as
16 amended by this Schedule.

17 **36 Annual report on Employment Advocate's operations**

- 18 (1) Despite its repeal by this Schedule, section 155 (Annual report) of the
19 *Workplace Relations Act 1996* continues to apply in relation to each
20 financial year that:
21 (a) is the financial year (the ***repeal year***) in which this Schedule
22 commences or the financial year immediately before the
23 repeal year; and
24 (b) is a financial year for which the Employment Advocate had
25 not given the Minister a report under that section before the
26 repeal.
- 27 (2) However, that section applies as if it required the Workplace Authority
28 Director (instead of the Employment Advocate) to prepare and give the
29 report.

1
2 **Schedule 3—Workplace Ombudsman**

3 **Part 1—Amendments**

4 **Division 1—Main amendments**

5 *Workplace Relations Act 1996*

6 **1 Subsection 4(1)**

7 Insert:

8 *Commonwealth workplace relations legislation* means:

- 9 (a) this Act; or
10 (b) the *Independent Contractors Act 2006*; or
11 (c) regulations made under the *Independent Contractors Act*
12 *2006*.

13 Note: The definition of *Commonwealth workplace relations legislation*
14 does not cover the Registration and Accountability of Organisations
15 Schedule or regulations made under that Schedule, because the
16 definition of *this Act* excludes them both (although it includes other
17 regulations made under the Act).

18 **2 Subsection 4(1)**

19 Insert:

20 *member* of the Office of the Workplace Ombudsman means a
21 person covered by subsection 166P(2).

22 **3 Subsection 4(1) (definition of *workplace inspector*)**

23 Repeal the definition, substitute:

24 *workplace inspector* means a person who is a workplace inspector
25 under section 167.

26 **4 Subsection 4(1)**

27 Insert:

28 *Workplace Ombudsman* means the Workplace Ombudsman
29 holding office under Part 5A.

1 **5 After Part 5**

2 Insert:

3 **Part 5A—Workplace Ombudsman**

4 **Division 1—Establishment and functions**

5 **166A Workplace Ombudsman**

6 There is to be a Workplace Ombudsman.

7 **166B Functions of the Workplace Ombudsman**

8 The functions of the Workplace Ombudsman are as follows:

- 9 (a) to assist employees and employers to understand their rights
10 and obligations under Commonwealth workplace relations
11 legislation;
- 12 (b) to promote compliance with Commonwealth workplace
13 relations legislation, including by providing assistance and
14 advice and disseminating information;
- 15 (c) to monitor compliance with Commonwealth workplace
16 relations legislation;
- 17 (d) to investigate suspected contraventions of Commonwealth
18 workplace relations legislation;
- 19 (e) to inquire into any act or practice that may be contrary to
20 Commonwealth workplace relations legislation;
- 21 (f) to refer matters to relevant authorities;
- 22 (g) to institute proceedings to enforce Commonwealth workplace
23 relations legislation;
- 24 (h) to appoint workplace inspectors;
- 25 (i) to give, as necessary, directions relating to the exercise or
26 performance of appointed workplace inspectors' powers or
27 functions;
- 28 (j) to represent employees who are, or might become, a party to
29 proceedings under this Act, in situations where the
30 Workplace Ombudsman considers that representing the
31 employees will promote compliance with Commonwealth
32 workplace relations legislation;

1 (k) any other functions conferred on the Workplace Ombudsman
2 by Commonwealth workplace relations legislation.

3 Note: Among other things, the Workplace Ombudsman has the functions of
4 a workplace inspector because section 167 makes the Workplace
5 Ombudsman a workplace inspector.

6 **166C Minister may give directions to Workplace Ombudsman**

7 (1) The Minister may, by legislative instrument, give written directions
8 to the Workplace Ombudsman about the performance of his or her
9 functions.

10 (2) Directions given by the Minister under subsection (1) must be of a
11 general nature only, and cannot relate to a particular case.

12 (3) The Minister must not direct the Workplace Ombudsman in
13 relation to the Workplace Ombudsman's performance of functions,
14 or exercise of powers, as an Agency Head under the *Public Service*
15 *Act 1999*.

16 (4) The Workplace Ombudsman must comply with any direction given
17 by the Minister under subsection (1).

18 (5) Section 42 (Disallowance of legislative instruments) of the
19 *Legislative Instruments Act 2003* applies to a direction given under
20 subsection (1) of this section, despite section 44 of that Act.

21 **Division 2—Appointment and terms and conditions**

22 **166D Appointment of Workplace Ombudsman**

23 (1) The Workplace Ombudsman is to be appointed by the
24 Governor-General by written instrument.

25 (2) The Governor-General must not appoint a person as the Workplace
26 Ombudsman unless the Minister is satisfied that the person:
27 (a) has suitable qualifications or experience; and
28 (b) is of good character.

29 (3) The Workplace Ombudsman holds office for the period specified
30 in the instrument of appointment. The period must not exceed 5
31 years.

32 (4) The Workplace Ombudsman holds office on a full-time basis.

1 **166E Remuneration**

- 2 (1) The Workplace Ombudsman is to be paid the remuneration that is
3 determined by the Remuneration Tribunal. If no determination of
4 that remuneration by the Tribunal is in operation, the Workplace
5 Ombudsman is to be paid the remuneration that is prescribed.
- 6 (2) The Workplace Ombudsman is to be paid the allowances that are
7 prescribed.
- 8 (3) This section has effect subject to the *Remuneration Tribunal Act*
9 *1973*.

10 **166F Leave of absence**

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

16 **166G Other terms and conditions**

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

20 **166H Outside employment**

21 The Workplace Ombudsman must not engage in paid employment
22 outside the duties of the Workplace Ombudsman's office without
23 the Minister's approval.

24 **166J Disclosure of interests**

25 The Workplace Ombudsman must give written notice to the
26 Minister of all interests, pecuniary or otherwise, that the
27 Workplace Ombudsman has or acquires that could conflict with the
28 proper performance of the Workplace Ombudsman's functions.

1 **166K Acting appointments**

- 2 (1) The Minister may appoint a person to act as the Workplace
3 Ombudsman:
4 (a) during a vacancy in the office of Workplace Ombudsman
5 (whether or not an appointment has previously been made to
6 the office); or
7 (b) during any period, or during all periods, when the Workplace
8 Ombudsman is absent from duty or from Australia, or is, for
9 any reason, unable to perform the duties of the office.
- 10 (2) The Minister must not appoint a person to act as the Workplace
11 Ombudsman unless the Minister is satisfied that the person:
12 (a) has suitable qualifications or experience; and
13 (b) is of good character.
- 14 (3) Anything done by or in relation to a person purporting to act under
15 an appointment is not invalid merely because:
16 (a) the occasion for the appointment had not arisen; or
17 (b) there was a defect or irregularity in connection with the
18 appointment; or
19 (c) the appointment had ceased to have effect; or
20 (d) the occasion to act had not arisen or had ceased.

21 **166L Resignation**

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

27 **166M Termination of appointment**

- 28 (1) The Governor-General may terminate the appointment of the
29 Workplace Ombudsman for misbehaviour or physical or mental
30 incapacity.
- 31 (2) The Governor-General must terminate the appointment of the
32 Workplace Ombudsman if:
33 (a) the Workplace Ombudsman:

- 1 (i) becomes bankrupt; or
2 (ii) applies to take the benefit of any law for the relief of
3 bankrupt or insolvent debtors; or
4 (iii) compounds with his or her creditors; or
5 (iv) makes an assignment of his or her remuneration for the
6 benefit of his or her creditors; or
7 (b) the Workplace Ombudsman is absent, except on leave of
8 absence, for 14 consecutive days or for 28 days in any 12
9 months; or
10 (c) the Workplace Ombudsman engages, except with the
11 Minister's approval, in paid employment outside the duties of
12 his or her office; or
13 (d) the Workplace Ombudsman fails, without reasonable excuse,
14 to comply with section 166J.

15 **Division 3—Staff, delegations etc.**

16 **166N Staff**

17 The staff assisting the Workplace Ombudsman in the performance
18 of the Workplace Ombudsman's functions must be persons
19 engaged under the *Public Service Act 1999*.

20 **166P Office of the Workplace Ombudsman**

- 21 (1) The Office of the Workplace Ombudsman is established by this
22 subsection.
- 23 (2) The Office of the Workplace Ombudsman consists of:
24 (a) the Workplace Ombudsman; and
25 (b) the staff assisting the Workplace Ombudsman in the
26 performance of the Workplace Ombudsman's functions; and
27 (c) the appointed workplace inspectors.
- 28 (3) For the purposes of the *Public Service Act 1999*:
29 (a) the Workplace Ombudsman and the staff assisting the
30 Workplace Ombudsman in the performance of the Workplace
31 Ombudsman's functions together constitute a Statutory
32 Agency; and
33 (b) the Workplace Ombudsman is the Head of that Statutory
34 Agency.

1 **166Q Delegation**

- 2 (1) The Workplace Ombudsman may, in writing, delegate to an SES
3 employee, or an acting SES employee, in the Office of the
4 Workplace Ombudsman any of the Workplace Ombudsman's
5 functions and powers under Commonwealth workplace relations
6 legislation.
- 7 (2) In performing functions or exercising powers under a delegation,
8 the delegate must comply with any directions of the Workplace
9 Ombudsman.
- 10 (3) Subsection (1) does not apply to the functions and powers of a
11 workplace inspector that the Workplace Ombudsman has because
12 of section 167.

13 Note: If the Workplace Ombudsman wants an SES employee, or an acting
14 SES employee, in the Office of the Workplace Ombudsman to have
15 any of the functions or powers of a workplace inspector, the
16 Workplace Ombudsman can appoint the SES employee or acting SES
17 employee as a workplace inspector under section 167.

18 **Division 4—Reporting and disclosing information**

19 **Subdivision A—Reporting to Minister**

20 **166R Minister may require reports**

- 21 (1) The Minister may, in writing, direct the Workplace Ombudsman to
22 give the Minister specified reports relating to the Workplace
23 Ombudsman's functions.

24 Note: Section 166T restricts the disclosure of personal information in a
25 report.

- 26 (2) The Workplace Ombudsman must comply with the direction.
- 27 (3) A direction made under subsection (1) is not a legislative
28 instrument.
- 29 (4) If the report is made in writing, the report is not a legislative
30 instrument.

1 **166S Annual report**

2 The Workplace Ombudsman must, as soon as practicable after the
3 end of each financial year, prepare and give to the Minister, for
4 presentation to the Parliament, a report on the operations of the
5 Office of the Workplace Ombudsman during that year.

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

8 **166T Reports not to include information relating to an individual's**
9 **affairs**

- 10 (1) Information relating to the affairs of an individual must not be
11 included in a report under section 166R or 166S if:
- 12 (a) the individual is named, or otherwise specifically identified,
13 in the report as the individual to whom the information
14 relates; or
 - 15 (b) it is reasonably likely that people generally (other than people
16 to whom the individual has disclosed information relating to
17 the individual's affairs) would be able to work out the
18 identity of the individual to whom the information relates.
- 19 (2) For the purposes of applying paragraph (1)(b) to information
20 relating to a particular individual's affairs, the context in which the
21 information appears, and information that is otherwise publicly
22 available, must be taken into account (as well as any other relevant
23 matter).

24 **Subdivision B—Disclosing information**

25 **166U Disclosure of information by members of the Office of the**
26 **Workplace Ombudsman**

27 *Disclosure that is necessary or appropriate*

- 28 (1) A member of the Office of the Workplace Ombudsman may
29 disclose information acquired by the member in the course of
30 exercising powers, or performing functions, as such a member
31 (including as a delegate of the Workplace Ombudsman), if the
32 member considers on reasonable grounds that it is necessary or
33 appropriate to do so in the course of exercising his or her powers,
34 or performing his or her functions, as such a member.

1 *Disclosure to migration officer*

- 2 (2) A member of the Office of the Workplace Ombudsman may
3 disclose information to an officer of the Department administered
4 by the Minister who administers the *Migration Act 1958* if the
5 member considers on reasonable grounds that the disclosure of the
6 information is likely to assist the officer in the administration of
7 that Act.

8 *Disclosure authorised by regulations to Commonwealth officers*

- 9 (3) The regulations may authorise prescribed members of the Office of
10 the Workplace Ombudsman to disclose information of the
11 prescribed kind, to officers of the Commonwealth of the prescribed
12 kind, for prescribed purposes.

13 *Disclosure to State workplace relations official*

- 14 (4) A member of the Office of the Workplace Ombudsman may
15 disclose information to an officer of a State who has powers, duties
16 or functions that relate to the administration of a workplace
17 relations or other system relating to terms and conditions, or
18 incidents, of employment, if the member considers on reasonable
19 grounds that the disclosure of the information is likely to assist the
20 officer in the administration of that system.

21 *Disclosure to other officials and authorities*

- 22 (5) A member of the Office of the Workplace Ombudsman may
23 disclose information to:
24 (a) a person employed by, or appointed to an office of, the
25 Commonwealth, a State or a Territory; or
26 (b) an authority of the Commonwealth, a State or a Territory;
27 if the member considers on reasonable grounds that the disclosure
28 of the information is likely to assist the person or authority in
29 discharging a responsibility of the person or authority relating to
30 the administration of a law of the Commonwealth, a State or a
31 Territory.

1 *Relationship with other laws*

- 2 (6) To avoid doubt, a disclosure in accordance with this section of
3 personal information (within the meaning of the *Privacy Act 1988*)
4 is taken, for the purposes of that Act, to be authorised by law.

5 **166V Directions about exercise of powers to disclose information**

- 6 (1) The Workplace Ombudsman may, by legislative instrument, give
7 written directions to the members of the Office of Workplace
8 Ombudsman about the disclosure of information under
9 section 166U.
- 10 (2) Directions given by the Workplace Ombudsman under
11 subsection (1) must be of a general nature only.
- 12 (3) A member of the Office of Workplace Ombudsman must comply
13 with any direction given by the Workplace Ombudsman under
14 subsection (1).

15 **6 After subsection 167(1)**

16 Insert:

- 17 (1A) The Workplace Ombudsman is a workplace inspector by force of
18 this subsection.

19 **7 Subsection 167(2)**

20 Omit “Minister”, substitute “Workplace Ombudsman”.

21 **8 Subsections 167(7) and (8)**

22 Repeal the subsections, substitute:

- 23 (7) In exercising powers or performing functions as a workplace
24 inspector, a workplace inspector appointed under subsection (2)
25 must comply with any directions of the Workplace Ombudsman.
- 26 (8) If a direction under subsection (7) is of general application, the
27 direction is a legislative instrument for the purposes of the
28 *Legislative Instruments Act 2003*.
- 29 (9) If a direction under subsection (7) relates to a particular case, the
30 direction is not a legislative instrument for the purposes of the
31 *Legislative Instruments Act 2003*.

1 **9 Subsection 168(1)**

2 Omit “Minister”, substitute “Workplace Ombudsman”.

3 **10 Subsection 168(1)**

4 Omit “prescribed form”, substitute “form approved by the Workplace
5 Ombudsman”.

6 **11 Paragraph 168(3)(b)**

7 Omit “Secretary of the Department”, substitute “Workplace
8 Ombudsman”.

9 **12 Section 170**

10 Repeal the section.

11 **13 Subparagraph 337A(b)(v) of Schedule 1**

12 Repeal the subparagraph, substitute:

13 (v) a member of the Office of the Workplace Ombudsman
14 (as defined in the Workplace Relations Act); and

15 **14 Before paragraph 2(2)(p) of Schedule 2**

16 Insert:

17 (oa) paragraph 166B(a);

18 (ob) paragraph 166B(j);

19 **15 Before paragraph 3(2)(i) of Schedule 2**

20 Insert:

21 (ha) paragraph 166B(a);

22 **16 Paragraph 4(2)(o) of Schedule 2**

23 Repeal the paragraph, substitute:

24 (o) section 166H;

25 (oa) paragraph 166M(2)(c);

26 (ob) subsection 166U(4);

27 **Division 2—Consequential amendment**

28 ***Financial Management and Accountability Regulations 1997***

1 **17 Part 1 of Schedule 1 (after table item 140AA)**

2 Insert:

3

- | | | |
|--------|---|---------------------|
| 140AAA | Office of the Workplace Ombudsman,
comprising: | Workplace Ombudsman |
| | (a) the Workplace Ombudsman; and | |
| | (b) the staff assisting the Workplace
Ombudsman in the performance of the
Workplace Ombudsman's functions;
and | |
| | (c) the workplace inspectors appointed
under section 167 of the <i>Workplace
Relations Act 1996</i> . | |
- See Note B*

1

2 **Part 2—Transitional and application provisions**

3 **18 Workplace inspectors**

- 4 (1) This item applies to an appointment if:
5 (a) the appointment was made under subsection 167(2) of the
6 *Workplace Relations Act 1996*; and
7 (b) the appointment was in force immediately before the
8 commencement of this Schedule.
- 9 (2) The appointment has effect, after the commencement of this item, as if
10 it had been made under subsection 167(2) of the *Workplace Relations*
11 *Act 1996* as amended by this Schedule.

12 **19 Identity cards**

- 13 (1) Subitem (2) applies to an identity card if:
14 (a) the identity card was issued under subsection 168(1) of the
15 *Workplace Relations Act 1996*; and
16 (b) the identity card was in force immediately before the
17 commencement of this Schedule.
- 18 (2) The identity card has effect, after the commencement of this item, as if
19 it had been issued under subsection 168(1) of the *Workplace Relations*
20 *Act 1996* as amended by this Schedule.
- 21 (3) The amendment of subsection 168(3) of the *Workplace Relations Act*
22 *1996* made by this Schedule applies to persons ceasing to be inspectors
23 after the commencement of this Schedule.

24 **20 Disclosures qualifying for whistleblowers' protection**

- 25 (1) This item applies to a disclosure of information that qualified for
26 protection under Part 4A of Chapter 11 of Schedule 1 to the *Workplace*
27 *Relations Act 1996*, because of subparagraph 337A(b)(v) of that
28 Schedule as in force before the repeal and substitution of that
29 subparagraph by this Schedule.
- 30 (2) On and after the commencement of this Schedule, the disclosure
31 qualifies for protection under that Part, despite that repeal and
32 substitution.

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Schedule 4—Prohibited content

Workplace Relations Act 1996

1 Subsection 4(2)

Omit “section 356”, substitute “paragraph 356(1)(f)”.

2 Section 356

Repeal the section, substitute:

356 Prohibited content

- (1) For the purposes of this Act, each of the following is *prohibited content*:
- (a) a provision that requires or permits any conduct that would contravene Part 16, or that would contravene that Part if Division 2 of that Part were disregarded;
 - (b) a provision that directly or indirectly requires a person:
 - (i) to encourage another person to become, or remain, a member of an industrial association; or
 - (ii) to discourage another person from becoming, or remaining, a member of an industrial association;
 - (c) a provision that indicates support for persons being members of an industrial association;
 - (d) a provision that indicates opposition to persons being members of an industrial association;
 - (e) a provision that requires or permits payment of a bargaining services fee;
 - (f) a matter specified in the regulations.
- (2) An expression used in paragraph (1)(a), (b), (c), (d) or (e) that is also used in section 810 has the same meaning in that paragraph as it has in that section.

3 Transitional—regulations made for the purposes of section 356 of the *Workplace Relations Act 1996*

Schedule 4 Prohibited content

- 1 (1) This item applies to regulations that:
2 (a) were made for the purposes of section 356 of the *Workplace*
3 *Relations Act 1996*; and
4 (b) were in force immediately before the commencement of this
5 item;
6 but does not apply to subregulation 8.5(7) of the *Workplace Relations*
7 *Regulations 2006*.
- 8 (2) The regulations have effect, after the commencement of this item, as if
9 they had been made for the purposes of paragraph 356(1)(f) of the
10 *Workplace Relations Act 1996* as amended by this Act.

1
2 **Schedule 5—Membership requirements for**
3 **registered organisations**
4

5 ***Workplace Relations Act 1996***

6 **1 Section 6 of Schedule 1**

7 Insert:

8 *constitutional trade or commerce* has the same meaning as in the
9 Workplace Relations Act.

10 **2 Section 6 of Schedule 1**

11 Insert:

12 *designated Commonwealth authority* means:

- 13 (a) a body corporate established for a public purpose by or under
14 a law of the Commonwealth; or
15 (b) a body corporate:
16 (i) incorporated under a law of the Commonwealth or a
17 State or Territory; and
18 (ii) in which the Commonwealth has a controlling interest.

19 **3 Section 6 of Schedule 1 (definition of *federal system***
20 ***employee*)**

21 Repeal the definition, substitute:

22 *federal system employee* means:

- 23 (a) an individual so far as he or she is employed, or usually
24 employed, as described in paragraph (a), (b), (c), (d), (e) or
25 (f) of the definition of *federal system employer*, by a federal
26 system employer, except on a vocational placement; or
27 (b) an individual who is employed in Victoria, so long as the
28 provisions of this Schedule that would apply to:
29 (i) the individual as a federal system employee; or
30 (ii) an association of which the individual is a member;

- 1 fall within the legislative power referred to the
2 Commonwealth under the *Commonwealth Powers (Industrial*
3 *Relations) Act 1996* of Victoria; or
4 (c) an independent contractor who, if he or she were an
5 employee performing work of the kind which he or she
6 usually performs as an independent contractor, would be an
7 employee who could be characterised in either or both of the
8 ways mentioned in paragraphs (a) and (b).

9 **4 Section 6 of Schedule 1 (definition of *federal system***
10 ***employer*)**

11 Repeal the definition, substitute:

12 *federal system employer* means:

- 13 (a) a constitutional corporation, so far as it employs, or usually
14 employs, an individual; or
15 (b) the Commonwealth, so far as it employs, or usually employs,
16 an individual; or
17 (c) a designated Commonwealth authority, so far as it employs,
18 or usually employs, an individual; or
19 (d) a person or entity (which may be an unincorporated club) so
20 far as the person or entity, in connection with constitutional
21 trade or commerce, employs, or usually employs, an
22 individual as:
23 (i) a flight crew officer; or
24 (ii) a maritime employee; or
25 (iii) a waterside worker; or
26 (e) a body corporate incorporated in a Territory, so far as the
27 body employs, or usually employs, an individual; or
28 (f) a person or entity (which may be an unincorporated club) that
29 carries on an activity (whether of a commercial,
30 governmental or other nature) in a Territory in Australia, so
31 far as the person or entity employs, or usually employs, an
32 individual in connection with the activity carried on in the
33 Territory; or
34 (g) an employer in Victoria, so long as the provisions of this
35 Schedule that would apply to:
36 (i) the employer as a federal system employer; or
37 (ii) an association of which the employer is a member;

1 fall within the legislative power referred to the
2 Commonwealth under the *Commonwealth Powers (Industrial*
3 *Relations) Act 1996* of Victoria.

4 Note: In the context of paragraph (f), *Australia* includes the Territory of
5 Christmas Island and the Territory of Cocos (Keeling) Islands. See
6 paragraph 17(a) of the *Acts Interpretation Act 1901*.

7 **5 Section 6 of Schedule 1**

8 Insert:

9 *flight crew officer* has the same meaning as in the Workplace
10 Relations Act.

11 **6 Section 6 of Schedule 1**

12 Insert:

13 *maritime employee* has the same meaning as in the Workplace
14 Relations Act.

15 **7 Section 6 of Schedule 1**

16 Insert:

17 *vocational placement* has the same meaning as in the Workplace
18 Relations Act.

19 **8 Section 6 of Schedule 1**

20 Insert:

21 *waterside worker* has the same meaning as in the Workplace
22 Relations Act.

23 **9 Paragraph 18A(1)(b) of Schedule 1**

24 Omit “the majority”, substitute “some or all”.

25 **10 Subsection 18A(2) of Schedule 1**

26 Repeal the subsection.

27 **11 Paragraph 18A(4)(b) of Schedule 1**

28 Repeal the paragraph, substitute:

29 (b) it is not the case that some or all of the association’s
30 members are federal system employers.

1 **12 Paragraph 18B(1)(b) of Schedule 1**

2 Omit “the majority”, substitute “some or all”.

3 **13 Subsection 18B(2) of Schedule 1**

4 Repeal the subsection.

5 **14 Paragraph 18B(5)(b) of Schedule 1**

6 Repeal the paragraph, substitute:

7 (b) it is not the case that some or all of the association’s
8 members are federal system employees.

9 **15 Paragraph 18C(2)(b) of Schedule 1**

10 Omit “the majority”, substitute “some or all”.

11 **16 Subparagraph 18C(3)(c)(i) of Schedule 1**

12 Repeal the subparagraph, substitute:

13 (i) an employee who could be characterised in either or
14 both of the ways mentioned in paragraphs (a) and (b) of
15 the definition of *federal system employee* in section 6;
16 and

17 **17 Subsection 18D(1) of Schedule 1**

18 Repeal the subsection, substitute:

19 *Associations of employers*

20 (1) If the Parliament would not have sufficient legislative power to
21 provide for the registration of a particular association of employers
22 if:

23 (a) a particular class of employers mentioned in paragraphs (a) to
24 (g) of the definition of *federal system employer* in section 6
25 were included when working out whether some or all of the
26 association’s members are federal system employers;
27 that definition applies as if it did not include a reference to that
28 class of employers.

29 **18 Subsection 18D(3) of Schedule 1**

30 Repeal the subsection, substitute:

1 *Associations of employees*

2 (3) If the Parliament would not have sufficient legislative power to
3 provide for the registration of an association of employees if:

4 (a) a particular class of individuals so far as they are employed,
5 or usually employed, as described in paragraph (a), (b), (c),
6 (d), (e) or (f) of the definition of ***federal system employer*** in
7 section 6, by a federal system employer were included when
8 working out whether some or all of the association's
9 members are federal system employees;

10 the definition of ***federal system employee*** in section 6 applies as if
11 it did not include a reference to that class of employees.

12 (3A) If the Parliament would not have sufficient legislative power to
13 provide for the registration of an association of employees if:

14 (a) a particular class of individuals mentioned in paragraph (b) or
15 (c) of the definition of ***federal system employee*** in section 6
16 were included in working out whether some or all of the
17 association's members are federal system employees;

18 that definition applies as if it did not include a reference to that
19 class of employees.
20

(100/07)