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# Update Summary

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**NATIONAL WORKPLACE RELATIONS**

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## COMMENTARY

### *Year in Review*

Victoria Lambropoulos, Rohan Millar, Aaron Neal and Mark Rinaldi have updated the Year in Review. See [YIR.2024.10] to [YIR.2024.100].

### *Fair Work Act 2009*

Aaron Neal has reviewed and updated the commentary on Chapters 2 and 3 of the *Fair Work Act 2009*. Highlights include the following.

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

Making an enterprise agreement is discussed at [FWA.172.20].

Related employers are considered at [FWA.172.160]–[FWA.172.200].

New commentary is provided on the agreement of employee organisation bargaining representatives for multi-enterprise agreements, or a single enterprise agreement replacing an expiring single interest employer agreement or a supported bargaining agreement. See [FWA.180B.60].

Approval by the FWC is considered at [FWA.Pt2.4.Div4.SubB.20].

New commentary is provided on the requirement relating to a notice of variation of an agreement (s 187(3)). See [FWA.187.40].

When employees have genuinely agreed to an enterprise agreement is discussed at [FWA.188.00].

Minor procedural or technical errors are discussed at [FWA.188.20].

Passing the better off overall test is considered at [FWA.193.20].

New commentary is provided on multi-enterprise agreements. See [FWA.208.40].

When the FWC must approve a variation of an enterprise agreement is discussed at [FWA.211.20].

Division 7A was inserted by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) and subsequently amended by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (No 2 of 2024) (Cth). See the new commentary at [FWA.Pt2.4.Div7A.20].

New commentary is provided on the application for the FWC to reconsider whether an enterprise agreement passes the better off overall test. See [FWA.227A.20].

New commentary is provided on reconsideration of whether an enterprise agreement passes the better off overall test. See [FWA.227B.20].

*Transport Workers' Union of Australia v Cleanaway Operations Pty Ltd (t/as Cleanaway Operations Pty Ltd)* [2024] FWCFB 305 and *Transport Workers' Union of Australia v*

*Cleanaway Operations Pty Ltd (t/as Cleanaway Operations Pty Ltd)* [2024] FWCFB 127 are referred to at [FWA.235.40].

New commentary on the post-declaration negotiating period is provided at [FWA.235.60].

New commentary on the question of when does an employer agree to bargain (s 237(2)(b)) is provided at [FWA.237.40].

Scope orders are discussed at [FWA.238.20].

Subdivision E was inserted by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) and subsequently amended by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (No 2 of 2024) (Cth). See the new commentary at [FWA.Pt2.4.Div8.SubE.20].

When the FWC must make a supported bargaining authorisation is considered at [FWA.243.20].

When the FWC must make a single interest employer authorisation is discussed at [FWA.249.20].

When the FWC must make an intractable bargaining workplace determination is considered at [FWA.269.20].

What an order must specify is looked at with reference to *Re Mining and Energy Union* [2024] FWCFB 299. See [FWA.306E.160].

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

Commentary on the eligible protected action ballot agent has been updated at [FWA.444.80].

Mark Rinaldi has reviewed and updated the commentary on Chapters 1, 2, 3 and 4 of the *Fair Work Act 2009*. Highlights include the following.

#### **Chapter 1 – Introduction**

Commentary on new ss 15AA and 15A is provided at [FWA.15AA.20] and [FWA.15A.20]

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

Commentary on the formula for the calculation of the high income threshold has been updated at [FWA.333.20].

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

“Complaint” and “inquiry” are discussed in regard to *Shea v TRUenergy Services Pty Ltd (No 6)* [2014] FCA 271 and *Heal v Sydney Flames Basketball Pty Ltd* [2024] FCA 401. See [FWA.341.20].

Wide spectrum of conduct is discussed with reference to *Qantas Airways Ltd v Transport Workers’ Union of Australia* [2023] HCA 27; (2023) 97 ALJR 711. See [FWA.342.20].

*Khiani v Australian Bureau of Statistics* [2011] FCAFC 109 is referred to at [FWA.352.20].

Misrepresenting employment as an independent contracting arrangement is discussed with reference to the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*. See [FWA.357.20].

Valid reason for dismissal is considered in regard to *Doherty v Defend Fire Services Pty Ltd* [2024] FWC 1444. See [FWA.387.80].

#### **Chapter 4 – Compliance and enforcement**

Serious contraventions of civil remedy provisions are discussed with reference to the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*. See [FWA.557A.20].