

2002

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Workplace Relations Amendment
(Improved Protection for Victorian
Workers) Bill 2002**

No. , 2002

(Employment and Workplace Relations)

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

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 day or days to be fixed by Proclamation, subject to subsection (3)	
3. Schedule 2	A day or days to be fixed by Proclamation, subject to subsection (3)	

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

4 (2) Column 3 of the table is for additional information that is not part
5 of this Act. This information may be included in any published
6 version of this Act.

7 (3) If a provision covered by item 2 or 3 of the table does not
8 commence within the period of 6 months beginning on the day on
9 which this Act receives the Royal Assent, it commences on the first
10 day after the end of that period.

11 **3 Schedule(s)**

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13 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—Matters concerning Victoria**

3 **Part 1—Amendment of the Workplace Relations Act**
4 **1996**

5 **1 After subsection 45(3)**

6 Insert:

7 (3A) The Full Bench must, on application, grant to a Minister of
8 Victoria, on behalf of the Government of Victoria, leave to
9 intervene in the following cases:

10 (a) an appeal against a decision of a member of the Commission
11 made under section 170MW in relation to a bargaining
12 period for negotiating a proposed agreement if one or more
13 of the employees to be covered by the proposed agreement is
14 an employee in Victoria;

15 (b) an appeal against a decision of a member of the Commission
16 made under section 501.

17 **2 Subsection 86(1)**

18 Repeal the subsection, substitute:

19 *Purpose for which powers of inspectors can be exercised*

20 (1) The powers of an inspector under this section may be exercised for
21 the purpose of ascertaining whether awards and certified
22 agreements, and the requirements of this Act, are being, or have
23 been, observed.

24 *Powers of inspectors*

25 (1A) The powers of an inspector are:

26 (a) to, without force, enter:

27 (i) premises on which the inspector has reasonable cause to
28 believe that work to which an award or certified
29 agreement applies is being or has been performed; or

30 (ii) a place of business in which the inspector has
31 reasonable cause to believe that there are documents
32 relevant to the purpose set out in subsection (1); and

- 1 (b) on premises or in a place referred to in paragraph (a):
2 (i) to inspect any work, material, machinery, appliance,
3 article or facility; and
4 (ii) as prescribed, to take samples of any goods or
5 substances; and
6 (iii) to interview any employee; and
7 (iv) to require a person having the custody of, or access to, a
8 document relevant to that purpose to produce the
9 document to the inspector within a specified period; and
10 (v) to inspect, and make copies of or take extracts from, a
11 document produced to him or her; and
12 (c) to require a person, by notice, to produce to the inspector a
13 document relevant to the purpose set out in subsection (1).

14 *When may the powers be exercised?*

- 15 (1B) An inspector may exercise the powers in subsection (1A) at any
16 time during ordinary working hours or at any other time at which it
17 is necessary to do so for the purpose set out in subsection (1).

18 **3 Subsection 86(2)**

19 Omit “subparagraph (1)(b)(iv)”, substitute “subparagraph (1A)(b)(iv)”.

20 **4 Subsection 86(3)**

21 Omit “subsection (2)”, substitute “paragraph (1A)(c) or subsection (2)”.

22 **5 After subsection 86(4)**

23 Insert:

24 *Notices under paragraph (1A)(c)*

- 25 (4A) The notice referred to in paragraph (1A)(c) must:
26 (a) be in writing; and
27 (b) be served on the person; and
28 (c) require the person to produce the document at a specified
29 place within a specified period of not less than 14 days.
30 Service may be effected by sending the notice to the person’s fax
31 number.

1 *Person must produce document even if it may incriminate them*

2 (4B) A person is not excused from producing a document under
3 paragraph (1A)(c) on the ground that the production of the
4 document may tend to incriminate the person.

5 *Limited use immunity for documents produced*

6 (4C) If an individual produces a document under paragraph (1A)(c), the
7 document produced and any information or thing (including any
8 document) obtained as a direct or indirect consequence of the
9 production of the document is not admissible in evidence against
10 the individual in any criminal proceedings unless it is proceedings
11 for an offence against section 305.

12 **6 At the end of section 86**

13 Add:

14 *Extended meaning of award*

15 (6) In this section, a reference to an *award* includes a reference to a
16 contract of employment with an employee in Victoria (other than
17 an employment agreement). The terms of the award, in this case,
18 are taken to be the minimum terms and conditions of employees in
19 Victoria applicable under subsection 500(1).

20 *Definitions used in this section*

21 (7) In this section:

22 *employee in Victoria* has the same meaning as the term *employee*
23 has in section 489.

24 *employment agreement* has the same meaning it has in
25 section 489.

26 **7 After subsection 170MW(1)**

27 Insert:

28 (1A) The Commission must, on application, grant to a Minister of
29 Victoria, on behalf of the Government of Victoria, leave to
30 intervene in proceedings under subsection (1) if one or more of the

1 employees to be covered by the proposed agreement is an
2 employee in Victoria.

3 **8 Section 305**

4 Omit “86(1)(b)(iv)”, substitute “86(1A)(b)(iv), paragraph 86(1A)(c)”.

5 **9 At the end of subsection 501(1)**

6 Add:

7 Note: See also section 501A.

8 **10 After subsection 501(2)**

9 Insert:

10 (2A) The Commission must, on application, grant to a Minister of
11 Victoria, on behalf of the Government of Victoria, leave to
12 intervene in proceedings under subsection (1).

13 **11 After section 501**

14 Insert:

15 **501A Supported Wage System—minimum wage**

16 (1) For the purposes of Schedule 1A, the Commission may, by order,
17 determine that the Supported Wage System applies to the
18 employment of employees within a work classification.

19 Note: The Supported Wage System was endorsed by the Commission in the
20 Full Bench decision dated 10 October 1994 (print L5723).

21 (2) If the Commission makes an order under subsection (1), the
22 minimum wage for the purposes of Schedule 1A for employees
23 whose wages are set under the Supported Wage System is the
24 supported wage rate worked out in accordance with the Supported
25 Wage System and not the relevant minimum wage otherwise
26 applicable to those employees under paragraph 1(1)(c) of that
27 Schedule.

28 (3) If the Supported Wage System requires a supported wage rate to be
29 worked out by reference to another wage rate, then, for the
30 purposes of subsection (2), the supported wage rate is to be worked
31 out by reference to the minimum wage that would otherwise apply
32 to those employees under paragraph 1(1)(c) of Schedule 1A.

- 1 (4) The Commission may only make an order under subsection (1) on
2 application by:
3 (a) an employee, or group of employees, within the work
4 classification; or
5 (b) an employer of such an employee or group of employees; or
6 (c) the Minister; or
7 (d) an organisation that is entitled to represent the industrial
8 interests of one or more of the employees within the work
9 classification; or
10 (e) an organisation of which an employer of employees within
11 the work classification is a member.

12 **12 Subsection 502(1)**

13 After “subsection 501(2)”, insert “or 501A(2)”.

14 **13 After subsection 502(5)**

15 Insert:

- 16 (5A) The Commission must, on application, grant to a Minister of
17 Victoria, on behalf of the Government of Victoria, leave to
18 intervene in proceedings under subsection (5).

19 **14 Section 503**

20 After “section 501”, insert “or 501A”.

21 **15 Subsection 506(2)**

22 Repeal the subsection, substitute:

- 23 (2) Subject to sections 507 and 508, if a contract of employment, other
24 than an employment agreement, with an employee in Victoria does
25 not at any time comply with a minimum term or condition of
26 employment applicable under subsection 500(1), sections 178 and
27 179 apply as if that minimum term or condition were a term of an
28 award binding the parties to the contract.
- 29 (3) Subsection (2) does not imply that an employee who is a party to
30 an agreement referred to in that subsection may not take
31 proceedings in an eligible court to recover money owed under the
32 contract of employment as if the contract of employment did
33 comply with that minimum term or condition of employment.

1 Note: The heading to section 506 is omitted and the following heading substituted “**Penalties**
2 **and recovery of wages—application of sections 178 and 179 to Victorian**
3 **employees**”.

4 **16 At the end of Subdivision B of Division 3 of Part XV**

5 Add:

6 **509A Stand down provisions in a contract of employment (other**
7 **than an employment agreement)**

8 (1) If a contract of employment with an employee in Victoria (other
9 than an employment agreement) does not contain provision for the
10 standing-down of employees who cannot be usefully employed
11 because of any strike, breakdown of machinery or any stoppage of
12 work for any cause for which the employer cannot reasonably be
13 held responsible, the contract is taken to include the provision
14 mentioned in subsection (2).

15 (2) The provision is that:

16 (a) the employer may deduct payment for any part of a day
17 during which an employee cannot usefully be employed
18 because of any strike, breakdown of machinery or any
19 stoppage of work for any cause for which the employer
20 cannot reasonably be held responsible; and

21 (b) this does not break the continuity of employment of the
22 employee for the purpose of any entitlements.

23 **17 Heading to Subdivision D of Division 3 of Part XV**

24 Repeal the heading, substitute:

25 **Subdivision D—Records relating to certain employees**

26 **18 Section 514**

27 Repeal the section, substitute:

28 **514 Making and retaining employment records**

29 (1) This section applies to persons who are employees in Victoria and
30 who are not employed under an award, a certified agreement or an
31 AWA.

- 1 (2) The regulations may make provision in relation to:
2 (a) the making and retention by employers of records relating to
3 the employment of persons who are employees to whom this
4 section applies; and
5 (b) the inspection of such records.
- 6 (3) The regulations may require employers of persons who are
7 employees to whom this section applies to issue pay slips to those
8 persons at such times, and containing such particulars, as are
9 prescribed.

10 Note: The requirements concerning the making and keeping of records and
11 the issuing of pay slips in relation to persons who are employees in
12 Victoria but who are covered by awards, certified agreements or
13 AWAs are to be found in section 353A.

14 **19 Section 532**

15 Repeal the section.

16 **20 At the end of section 533**

17 Add:

- 18 (4) A person is not entitled to apply for an order under this section in
19 respect of a breach of a minimum term or condition of employment
20 applicable under subsection 500(1) if the person has already sought
21 a penalty under section 178 (as that section applies under
22 section 506) in respect of that breach.

23 **21 Paragraphs 1(1)(a) and (b) of Schedule 1A**

24 Repeal the paragraphs, substitute:

- 25 (a) except in the case of an employee engaged in casual work—
26 paid annual leave for each year worked (see clause 1A for the
27 calculation of the number of hours of annual leave and
28 further details about taking this leave);
29 (b) except in the case of an employee engaged in casual work—
30 paid personal leave (see clauses 1B to 1D for the calculation
31 of personal leave and further details about taking this leave);
32 (ba) except in the case of an employee engaged in casual work—
33 paid bereavement leave (see clause 1E for the details about
34 taking this leave);

1 **22 Paragraph 1(1)(c) of Schedule 1A**

2 Before “the greater of”, insert “unless paragraph (ca) applies—”.

3 **23 After paragraph 1(1)(c) of Schedule 1A**

4 Insert:

5 (ca) if the employee’s wages are set under the Supported Wage
6 System—the supported wage rate for the employee worked
7 out in accordance with the Supported Wage System;

8 **24 At the end of subclause 1(1) of Schedule 1A**

9 Add:

10 ; (f) if an employee works in excess of 38 hours in a working
11 week—to be paid for the excess hours at the hourly rate set
12 out in subclause (3).

13 **25 At the end of clause 1 of Schedule 1A**

14 Add:

15 *Rate of pay for hours in excess of 38*

16 (3) Unless an employee and employer agree to a higher hourly rate of
17 pay, the rate of pay for hours that an employee works in excess of
18 38 hours in a working week is the hourly rate for the work
19 classification of the employee applicable under section 501 or
20 501A.

21 **26 At the end of Part 1 of Schedule 1A**

22 Add:

23 **1A Annual leave**

24 *Calculation of annual leave*

25 (1) To work out the number of hours of annual leave that an employee
26 is entitled to:

27 (a) first, work out the number of ordinary hours the employee
28 worked in the year, or part of the year, as the case may be;
29 and

30 (b) second, divide that number by 48; and

1 (c) third, multiply that number of hours by 4.

2 *Rules about annual leave*

3 (2) Annual leave:

- 4 (a) accrues on a pro-rata basis and is cumulative; and
5 (b) is credited on the anniversary of the employee's employment;
6 and
7 (c) counts as service for all purposes; and
8 (d) is to be paid at the employee's ordinary hourly rate of pay;
9 and
10 (e) is to be paid when the employee takes annual leave or leaves
11 his or her employment, as the case may be; and
12 (f) must be taken within 12 months after the end of the year in
13 which it accrued unless the employee and the employer have
14 agreed otherwise; and
15 (g) must be taken by an employee when directed to take it by the
16 employer, if the employer directs the employee to do so
17 because the employer shuts down his or her business for a
18 period.

19 **1B Personal leave**

20 *When personal leave may be used*

- 21 (1) Subject to clauses 1C and 1D, an employee is entitled to paid
22 personal leave when he or she is absent from work in the following
23 circumstances:
24 (a) due to personal illness or injury (*sick leave*);
25 (b) for the purposes of caring for a member of the employee's
26 immediate family or member of the employee's household
27 who is sick and requires the employee's care and support
28 (*carer's leave*).

29 Note: For *immediate family* see clause 1F.

30 *When personal leave is to be paid*

- 31 (2) Personal leave is to be paid when an employee takes personal
32 leave.

1 *Accrual of personal leave credit*

- 2 (3) An employee accrues personal leave as follows:
3 (a) if the employee has worked for the employer for less than 12
4 months—one day for each completed 6 weeks;
5 (b) if the employee has worked for the employer for 12 months
6 or more—8 days for each year.
7 Employees who work part-time accrue personal leave on a pro-rata
8 basis.

9 *Accumulation of personal leave*

- 10 (4) At the end of each year of employment, an employee's unused
11 personal leave accrues by the lesser of:
12 (a) 8 days; or
13 (b) the balance of the employee's unused personal leave.

14 **1C Sick leave**

15 *Employee's responsibilities*

- 16 (1) An employee's entitlement to sick leave is conditional on the
17 employee promptly notifying the employer of:
18 (a) any illness or injury that will cause him or her to be absent
19 from work; and
20 (b) the approximate period of that absence.

21 *Employer may require medical certificate etc.*

- 22 (2) If required by the employer, an employee who takes sick leave
23 must establish by producing a medical certificate or making a
24 statutory declaration that he or she was unable to work because of
25 injury or personal illness.

26 *Post sick leave payment*

- 27 (3) After the first 5 months of service, an employee must be paid for
28 any sick leave taken during that period to which he or she was not
29 entitled, due to insufficient service, up to a maximum of 4 days.

1 *Sick leave and workers' compensation*

- 2 (4) An employee is not entitled to take sick leave during any period for
3 which he or she is receiving compensation payable under a law
4 relating to workers' compensation.

5 **1D Carer's leave**

6 *Up to 5 days' personal leave may be taken as carer's leave*

- 7 (1) An employee is entitled to use up to 5 days' personal leave each
8 year to care for a member of his or her immediate family or a
9 member of his or her household who is ill and requires the
10 employee's care and support. However, an employee is not entitled
11 to take carer's leave for a particular period if another person has
12 taken leave to care for the person for the same period.

13 *Employee's responsibility*

- 14 (2) An employee's entitlement to carer's leave is conditional on the
15 employee promptly notifying the employer of his or her inability to
16 attend for duty.

17 *Employer may require medical certificate etc.*

- 18 (3) If required by the employer, an employee who takes carer's leave
19 must establish by producing a medical certificate, or making a
20 statutory declaration:
21 (a) the nature of the illness of the person cared for; and
22 (b) the need of that person for care and support by another
23 person.

24 **1E Bereavement leave**

- 25 (1) An employee is entitled to take up to 2 days' paid bereavement
26 leave on the death of a member of the employee's immediate
27 family or household. The 2 days need not be consecutive.

28 Note: For *immediate family* see clause 1F.

- 29 (2) The employee must give the employer such evidence of the death
30 as the employer reasonably requires.

1 **1F Definitions**

2 In this Part:

3 *de facto spouse*, in relation to an employee, means a person of the
4 opposite sex to the employee who lives with the employee as his or
5 her husband or wife on a bona fide domestic basis.

6 *immediate family*, in relation to an employee, includes:

- 7 (a) a spouse of the employee (including a former spouse, a de
8 facto spouse and a former de facto spouse); and
9 (b) a child (including an adopted child, a step-child or an
10 ex-nuptial child), parent, grandparent, grandchild or sibling
11 of the employee or spouse of the employee.

1

2 **Part 2—Application and saving provisions**

3 **27 Definition**

4 In this Part:

5 *Principal Act* means the *Workplace Relations Act 1996*.

6 **28 Application of item 1**

7 The amendment of the Principal Act made by item 1 applies to:

- 8 (a) appeals to the Full Bench instituted under section 45 of the
9 Principal Act but not determined before the commencement
10 of that item; and
11 (b) appeals to the Full Bench under that section instituted on or
12 after that commencement.

13 **29 Application of item 7**

14 The amendment of the Principal Act made by item 7 applies to:

- 15 (a) applications made under section 170MW of the Principal Act
16 but not determined as at the commencement of that item; and
17 (b) applications made under that section on or after that
18 commencement.

19 **30 Application of item 10**

20 The amendment of the Principal Act made by item 10 applies to:

- 21 (a) applications made under section 501 of the Principal Act but
22 not determined as at the commencement of that item; and
23 (b) applications made under that section on or after that
24 commencement.

25 **31 Application of item 13**

26 The amendment of the Principal Act made by item 13 applies to:

- 27 (a) proceedings before the Full Bench under section 502 of the
28 Principal Act but not determined as at the commencement of
29 that item; and
30 (b) proceedings referred to the Full Bench under that section on
31 or after that commencement.

32 **32 Application of item 15**

1 The amendment of the Principal Act made by item 15 applies only in
2 relation to a breach of a minimum term or condition of employment
3 applicable to an employee under subsection 500(1) of that Act if that
4 breach occurs on or after the commencement of that item.

5 **33 Saving provision in relation to certain regulations made**
6 **for the purposes of sections 353A and 514 of the**
7 **Principal Act**

- 8 (1) Any regulations made for the purposes of section 353A of the Principal
9 Act and dealing with record keeping in relation to employees covered
10 by an employment agreement (within the meaning of Part XV) that are
11 in force immediately before the commencement of items 17, 18 and 19
12 continue in force, on and after that day, as if they were regulations made
13 to deal with that matter for the purposes of subsection 514(2) of that Act
14 as amended by those items.
- 15 (2) Any regulations made for the purposes of section 514 of the Principal
16 Act that are in force immediately before the commencement of item 18
17 continue in force, on and after that day, as if they were regulations made
18 for the purposes of subsection 514(3) of that Act as amended by that
19 item.

20 **34 Application of items 21 and 26—annual leave**

- 21 (1) The amendments of the Principal Act made by items 21 and 26 (except
22 the insertion of clause 1E of Schedule 1A) apply to the calculation of an
23 employee's annual leave in respect of:
- 24 (a) the first year of the employee's employment that commences
25 on or after the commencing day; and
26 (b) each subsequent year of the employee's employment.
- 27 (2) For the purpose of the application of subitem (1) to an employee
28 engaged before the commencing day and continuing in that employment
29 on that day, the reference in paragraph (1)(a) to the first year of the
30 employee's employment that commences after the commencing day is a
31 reference to the year commencing on the first anniversary of that
32 engagement occurring on or after that day.
- 33 (3) The rule in subitem (1) applies even if an employee only works part of a
34 year.

1 (4) To avoid doubt, the amendments made by items 21 and 26 do not affect
2 any annual leave accumulated by an employee under Schedule 1A of
3 the Principal Act before the commencing day.

4 (5) In this item:

5 *commencing day* means the day that items 21 and 26 of this Schedule
6 commence.

7 **35 Application of items 21 and 26—personal leave**

8 (1) The amendments of the Principal Act made by items 21 and 26 (except
9 the insertion of clause 1E of Schedule 1A) apply to:

10 (a) the calculation of an employee's personal leave in respect of:

11 (i) the first year of the employee's employment that
12 commences on or after the commencing day; and

13 (ii) each subsequent year of the employee's employment;
14 and

15 (b) personal leave taken on or after the commencing day.

16 (2) For the purpose of the application of paragraph (1)(a) to an employee
17 engaged before the commencing day and continuing in that employment
18 on that day, the reference in subparagraph (1)(a)(i) to the first year of
19 the employee's employment that commences after the commencing day
20 is a reference to the year commencing on the first anniversary of that
21 engagement occurring on or after that day.

22 (3) The rule in paragraph (1)(a) applies even if an employee only works
23 part of a year.

24 (4) Any sick leave accumulated by an employee under paragraph 1(1)(b) of
25 Schedule 1A as in force immediately before the commencing day is
26 taken to be personal leave accumulated by the employee as at the
27 commencing day.

28 (5) In this item:

29 *commencing day* means the day that items 21 and 26 of this Schedule
30 commence.

31 **36 Bereavement leave**

32 Clause 1E of Schedule 1A to the Principal Act applies in relation to
33 deaths that occur on or after the commencement of item 26.

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2

Schedule 2—Contract outworkers in Victoria in the textile, clothing and footwear industry

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4

5

Part 1—Amendment of the Workplace Relations Act 1996

6

7

1 Subsection 86(1)

8

After “this Act”, insert “other than section 541”.

9

2 Section 305

10

After “subsection 86(2)”, insert “or subparagraph 542(2)(b)(iv),
paragraph 542(2)(c) or subsection 542(4)”.

11

12

3 After Part XV

13

Insert:

14

Part XVI—Contract outworkers in Victoria in the textile, clothing and footwear industry

15

16

Division 1—Preliminary

17

537 Object of Part

18

The object of this Part is to ensure that an individual who is an
outworker other than an employee performing work in Victoria in
the textile, clothing or footwear industry is paid not less than the
amount he or she would have been entitled to be paid for
performing the same work as an employee.

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23

538 Definitions

24

In this Part:

25

contract outworker means an individual who:

26

(a) is a party to a contract for services; and

1 (b) performs work under it for another party or parties to the
2 contract.

3 *court of competent jurisdiction* means:

4 (a) a District, County or Local Court; or

5 (b) a magistrates court.

6 *employee* has the same meaning as in Part XV.

7 **Division 2—New Commonwealth provisions**

8 **Subdivision A—General**

9 **539 Constitutional corporations**

10 Without affecting its operation apart from this section, this Part
11 applies where a person who is a party to a contract for services is a
12 constitutional corporation.

13 **540 Interstate trade or commerce etc.**

14 Without affecting its operation apart from this section, this Part
15 applies where work is contracted to be performed under a contract
16 for services in the course of, or in relation to, trade or commerce:

17 (a) between Australia and a place outside Australia; or

18 (b) between the States; or

19 (c) within a Territory; or

20 (d) between a State and a Territory; or

21 (e) between 2 Territories.

22 **Subdivision B—Minimum rate of pay**

23 **541 Minimum rate of pay**

24 (1) To the extent that work performed under and in accordance with a
25 contract for services to which a contract outworker is a party is
26 work that:

27 (a) is performed by:

28 (i) the contract outworker; or

Schedule 2 Contract outworkers in Victoria in the textile, clothing and footwear industry

Part 1 Amendment of the Workplace Relations Act 1996

- 1 (ii) one or more other individuals who are not parties to the
2 contract; and
- 3 (b) satisfies the criteria in subsection (2);
4 a person who is obliged under the contract to pay for the work
5 performed must pay the contract outworker and each other
6 individual not less than the statutory amount calculated under
7 subsection (3) or (5) (as appropriate) for his or her work.
- 8 (2) The criteria are:
- 9 (a) the work is performed in Victoria; and
10 (b) the work comprises packing, processing or otherwise
11 working on articles or materials for the textile, clothing or
12 footwear industry; and
13 (c) the work is performed in or about:
14 (i) private residential premises; or
15 (ii) premises that are not business or commercial premises
16 of anyone who is obliged under the contract to pay for
17 the work performed.
- 18 (3) The **statutory amount** owed to the contract outworker and each
19 other individual is the amount that he or she would have been
20 entitled to be paid because of clause 1 of Schedule 1A for the work
21 mentioned in subsection (1) if he or she had performed the work as
22 an employee in or about any premises in Victoria. This subsection
23 is subject to subsection (5).
- 24 (4) For the purposes of subsection (3), disregard provisions in clause 1
25 of Schedule 1A that deal with paid leave.
- 26 (5) The **statutory amount** owed to a contract outworker or other
27 individual who holds a certificate in force under section 509 is the
28 amount (worked out by reference to the minimum rate of pay
29 specified in the certificate) that he or she would have been entitled
30 to be paid if he or she had performed the work as an employee in
31 or about any premises in Victoria.
- 32 (6) A person may discharge an obligation under subsection (1) to pay
33 an amount to an individual other than a contract outworker by
34 paying the amount to the contract outworker on behalf of the
35 individual.
-

- 1 (7) To avoid doubt, the obligation imposed by subsection (1) on a
2 person to pay not less than the statutory amount for work
3 performed under a contract for services does not apply to that
4 person to the extent that the obligation relates to work performed
5 under another contract for services.

6 Example: A person (the *head contractor*) enters into a contract for services with
7 a contract outworker under which the contract outworker is to make
8 shirts. If the contract outworker subcontracts some of that work to
9 other contract outworkers and agrees to pay them for that work, it is
10 the subcontractor who is subject to the obligation in subsection (1) and
11 not the head contractor.

12 **Subdivision C—Inspectors**

13 **542 Powers of inspectors**

14 *Purpose for which powers of inspectors can be exercised*

- 15 (1) The powers of an inspector under this section may be exercised for
16 the purpose of ascertaining whether section 541 is being, or has
17 been, observed.

18 *Powers of inspectors*

- 19 (2) The powers of an inspector are:
20 (a) to, without force, enter:
21 (i) premises on which the inspector has reasonable cause to
22 believe that work to which section 541 applies is being
23 or has been performed; or
24 (ii) a place of business in which the inspector has
25 reasonable cause to believe that there are documents
26 relevant to the purpose set out in subsection (1); and
27 (b) on premises or in a place referred to in paragraph (a):
28 (i) to inspect any work, material, machinery, appliance,
29 article or facility; and
30 (ii) as prescribed, to take samples of any goods or
31 substances; and
32 (iii) to interview any person; and
33 (iv) to require a person having the custody of, or access to, a
34 document relevant to that purpose to produce the
35 document to the inspector within a specified period; and

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1 (v) to inspect, and make copies of or take extracts from, a
2 document produced to him or her; and

3 (c) to require a person, by notice, to produce to the inspector a
4 document relevant to the purpose set out in subsection (1).

5 *When may the powers be exercised?*

6 (3) An inspector may exercise the powers in subsection (2) at any time
7 during ordinary working hours or at any other time at which it is
8 necessary to do so for the purpose set out in subsection (1).

9 (4) If a person who is required under subparagraph (2)(b)(iv) to
10 produce a document contravenes the requirement, an inspector
11 may, by written notice served on the person, require the person to
12 produce the document at a specified place within a specified period
13 (not being less than 14 days).

14 (5) Where a document is produced to an inspector under
15 paragraph (2)(c) or subsection (4), the inspector may:

16 (a) inspect, and make copies of or take extracts from, the
17 document; and

18 (b) retain the document for such period as is necessary for the
19 purpose of exercising powers or performing functions as an
20 inspector.

21 (6) During the period for which an inspector retains a document, the
22 inspector must permit the person otherwise entitled to possession
23 of the document, or a person authorised by the person, to inspect,
24 and make copies of or take extracts from, the document at all
25 reasonable times.

26 *Notices under paragraph (2)(c)*

27 (7) The notice referred to in paragraph (2)(c) must:

28 (a) be in writing; and

29 (b) be served on the person; and

30 (c) require the person to produce the document at a specified
31 place within a specified period of not less than 14 days.

32 Service may be effected by sending the notice to the person's fax
33 number.

1 *Person must produce document even if it may incriminate them*

2 (8) A person is not excused from producing a document under
3 paragraph (2)(c) on the ground that the production of the document
4 may tend to incriminate the person.

5 *Limited use immunity for documents produced*

6 (9) If an individual produces a document under paragraph (2)(c), the
7 document produced and any information or thing (including any
8 document) obtained as a direct or indirect consequence of the
9 production of the document is not admissible in evidence against
10 the individual in any criminal proceedings unless it is proceedings
11 for an offence against section 305.

12 (10) If an inspector proposing to enter, or being on, premises is required
13 by the occupier to produce evidence of authority, the inspector is
14 not entitled to enter or remain on the premises without producing
15 to the occupier the inspector's identity card.

16 **Subdivision D—Enforcement of minimum rate of pay**

17 **543 Imposition and recovery of penalties**

18 (1) If a person breaches subsection 541(1), a penalty may be imposed
19 by the Court or a court of competent jurisdiction.

20 (2) Subject to subsection (3), if:

21 (a) 2 or more breaches of subsection 541(1) are committed by
22 the same person; and

23 (b) the breaches arose out of a course of conduct by the person;
24 the breaches are taken for the purposes of this section to constitute
25 a single breach of that subsection.

26 (3) Subsection (2) does not apply in relation to a breach of subsection
27 541(1) that is committed by the person after a court has imposed a
28 penalty on the person for an earlier breach of that subsection.

29 (4) The maximum penalty that may be imposed under subsection (1)
30 for a breach of subsection 541(1) is:

31 (a) \$10,000 for a body corporate; or

32 (b) \$2,000 in other cases.

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- 1 (5) A penalty for a breach of subsection 541(1) may be sued for and
2 recovered by:
- 3 (a) an inspector; or
4 (b) an individual to whom the obligation concerned was owed.
- 5 (6) If, in a proceeding against a person under this section, it appears to
6 the court that an individual has not been paid an amount that the
7 person was required to pay, the court may order the person to pay
8 to the individual the amount of the underpayment.
- 9 (7) An order must not be made under subsection (6) in relation to so
10 much of an underpayment as relates to any period more than 6
11 years before the commencement of the proceeding.
- 12 (8) A proceeding under this section in relation to a breach of
13 subsection 541(1) must be commenced not later than 6 years after
14 the commission of the breach.

15 **544 Recovery of pay**

16 If a person is required by subsection 541(1) to pay an amount to an
17 individual, the individual may sue for the amount of the payment in
18 the Court or in any court of competent jurisdiction not later than 6
19 years after the person was required to make the payment to him or
20 her.

21 **545 Interest up to judgment**

- 22 (1) In exercising its powers under section 543 or in a proceeding under
23 section 544, the Court or a court of competent jurisdiction must, on
24 application:
- 25 (a) order that there be included in the sum for which an order is
26 made or judgment given, interest at such rate as the Court or
27 court of competent jurisdiction (as the case requires) thinks
28 fit on all or any part of the money for all or any part of the
29 period between the date when the cause of action arose and
30 the date on which the order is made or judgment entered; or

1 (b) without proceeding to calculate interest in accordance with
2 paragraph (a), order that there be included in the sum for
3 which an order is made or judgment given, a lump sum
4 instead of any such interest.

5 (2) Subsection (1) does not:

6 (a) authorise the giving of interest on interest or of a sum instead
7 of such interest; or

8 (b) apply in relation to any debt on which interest is payable as
9 of right whether by virtue of an agreement or otherwise; or

10 (c) authorise the giving of interest, or a sum instead of interest,
11 except by consent, on any sum for which judgment is given
12 by consent.

13 (3) Subsection (1) does not apply if good cause is shown to the
14 contrary.

15 **546 Interest on judgment**

16 A debt under a judgment or order of a court of competent
17 jurisdiction made under section 543 or 544 carries interest from the
18 date on which the judgment is entered or order made at such rate as
19 would apply under section 52 of the *Federal Court of Australia Act*
20 *1976* if the debt were a judgment debt to which that section
21 applies.

22 **547 Plaintiffs may choose small claims procedure in magistrates** 23 **courts**

24 (1) An action started by a person under section 544 in a magistrates
25 court is to be dealt with in accordance with this section if the
26 person indicates, in a manner prescribed by the regulations or by
27 rules of court relating to that court, that he or she wants a small
28 claims procedure to apply.

29 (2) The procedure is governed by the following conditions:

30 (a) the court may not award an amount exceeding \$5,000 or such
31 higher amount as is prescribed;

32 (b) the court may act in an informal manner, is not bound by any
33 rules of evidence, and may act without regard to legal forms
34 and technicalities;

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- 1 (c) at any stage of the action, the court may amend the papers
2 initiating the action if sufficient notice is given to any party
3 adversely affected by the amendment;
- 4 (d) a person is not entitled to be represented by counsel or
5 solicitor unless the court permits;
- 6 (e) if the court permits a party to be represented by counsel or
7 solicitor, the court may, if it thinks fit, do so subject to
8 conditions designed to ensure that no other party is unfairly
9 disadvantaged.
- 10 (3) If the case is heard in a court of a Territory, the regulations may
11 (despite paragraphs (2)(d) and (e)) prohibit or restrict legal
12 representation of the parties.
- 13 (4) Despite paragraphs (2)(d) and (e), if:
14 (a) the case is heard in a court of a State; and
15 (b) in a particular proceeding in that court (whatever the nature
16 of the proceeding), the law of the State prohibits or restricts
17 legal representation of the parties;
18 regulations made under this Act may prohibit or restrict legal
19 representation of the parties to the same extent as that law.

20 **548 Enforcement of penalties etc.**

- 21 (1) If a court has:
22 (a) imposed a monetary penalty under this Part (other than a
23 penalty for an offence); or
24 (b) under subsection 543(6), ordered the payment of an amount;
25 or
26 (c) ordered the payment of costs or expenses;
27 a certificate signed by a registrar, specifying the amount payable
28 and by whom and to whom respectively it is payable, may be filed
29 in the Court or in any other court of competent jurisdiction.
- 30 (2) A certificate filed in a court under subsection (1) is enforceable in
31 all respects as a final judgment of the court in which it is filed.
- 32 (3) If there are 2 or more creditors under a certificate, process may be
33 issued separately by each creditor for the enforcement of the
34 certificate as if there were separate judgments.

1 **549 Records relating to contracts for services with contract**
2 **outworkers**

3 (1) The regulations may make provision in relation to:

4 (a) the making of outworker records by a person who is a party
5 to a contract for services and who is subject to an obligation
6 under subsection 541(1); and

7 (b) the making of outworker records by a contract outworker
8 who is a party to a contract for services and to whom an
9 obligation is owed under subsection 541(1) in relation to the
10 contract; and

11 (c) the inspection of records mentioned in paragraphs (a) and
12 (b); and

13 (d) the giving of records mentioned in paragraphs (a) and (b) (or
14 a copy of them) by a party to the contract concerned to one or
15 more other parties to the contract; and

16 (e) the retention of outworker records by parties to the contract
17 concerned.

18 (2) In subsection (1):

19 ***outworker records***, in relation to a contract for services, means
20 records relating to the contract to the extent that work to be
21 performed under the contract meets the criteria in subsection
22 541(2).

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Part 2 Application

1

2 **Part 2—Application**

3 **4 Application of amendments made by Part 1**

4 The amendments made by Part 1 of this Schedule apply to work
5 performed after the commencement of item 3 under a contract for
6 services whether or not the contract was entered into before or after that
7 commencement.