

# Contents

<b>Introduction .....</b>	<b>10</b>
<b>Section One .....</b>	<b>11</b>
The National Employment Standards .....	12
Interaction with Modern Awards and Enterprise Agreements .....	12
Maximum Weekly Hours of Work.....	13
Request for Flexible Working Arrangements.....	14
Offers and requests for casual conversion.....	18
Parental Leave and Related Entitlements .....	19
Annual Leave .....	26
Personal/Carer’s Leave, Compassionate Leave and Family and Domestic Violence Leave .....	30
Community Service Leave .....	37
Long Service Leave.....	39
Public Holidays .....	40
Notice of Termination and Redundancy Pay .....	43
Fair Work Information Statement.....	50
Casual Employment Information Statement .....	51
Miscellaneous.....	51
<b>Section Two .....</b>	<b>52</b>
<b>Modern Awards.....</b>	<b>53</b>
Application.....	53
Coverage.....	53
What Terms May be Included in Modern Awards? .....	54
What Terms Must be Included in Modern Awards?.....	56
What Terms Must Not be Included in Modern Awards?.....	58
Four Yearly Reviews of Modern Awards .....	59
Exercising Modern Award Powers Outside 4 Yearly Reviews and Annual Wage Review .....	60
General Provisions Relating to Modern Award Powers.....	61
<b>Section Three .....</b>	<b>63</b>
<b>Enterprise Agreements – What are They and Why Make Them? .....</b>	<b>64</b>

What Is Enterprise Bargaining?.....	64
Why Do Employers and Employees Make Agreements? .....	64
What Are the Benefits of Agreements? .....	64
What Are the Potential Problems with Agreements?.....	65
Types of Workplace Agreements.....	65
Who Can Enter into Agreements .....	67
Effect and Operation of Enterprise Agreements.....	67
Content of Workplace Agreements .....	69
Procedure for Making Enterprise Agreements.....	72
Good Faith Bargaining.....	73
Voting Process and Requirements .....	74
Approval Process .....	76
Role of the Fair Work Commission in Bargaining.....	78
Industrial Action.....	80
Operation of Agreements Made Before 1 July 2009 .....	82
<b>Section Four.....</b>	<b>85</b>
<b>Federal Minimum Wages .....</b>	<b>86</b>
Introduction.....	86
Determination of Minimum Wages.....	86
Date of Effect of Changes to Minimum Wages.....	87
Equal Remuneration.....	87
Payment of Wages .....	88
Method of Payment.....	88
Frequency of Payments.....	89
Authorised Deductions.....	89
Unreasonable Requirement to Spend Amount.....	90
Certain Terms have No Effect .....	90
What is a “High Income” Employee?.....	93
What Forms a “Guaranteed Period”?.....	94
What Comprises “Earnings”?.....	94
What Benefits are Not to be Included in “Earnings”?.....	94
An Employer’s Obligations in Relation to a Guarantee.....	96
<b>Section Five .....</b>	<b>98</b>

<b>Transfer of Business</b> .....	<b>99</b>
When is there a Transfer of Business? .....	99
Meaning of 'Associated Entity' .....	99
Meaning of 'Transfer of Business' .....	100
Meaning of 'Connection' Between Old and New Employer .....	100
Industrial Instrument Coverage on Transfer .....	101
What is a 'Flexibility Arrangement'? .....	102
Non-transferring Employees may be Covered by Transferring Instruments .....	103
Continuity of Transferable Instrument .....	103
Transferring High Income Employees .....	103
Preserved Redundancy Provisions .....	104
Fair Work Commission Orders.....	105
Variation of Transferable Instruments.....	105
Considerations for the Fair Work Commission .....	106
When a Fair Work Commission Order Comes into Operation.....	106
Continuity of Service and Leave Entitlements .....	107
Transfer between Non-associated Entities.....	107
Transfer between Associated Entities .....	108
Other Situation where Service Not Counted .....	109
Parental Leave.....	109
Written Notice – Obligations .....	109
Written Notice May Protect Against Unfair Dismissal.....	109
Fair Work Information Statement.....	110
General Protections.....	111
Record Keeping Requirements .....	111
<b>Section Six</b> .....	<b>113</b>
<b>General Protections</b> .....	<b>114</b>
Workplace Rights .....	115
Adverse Action .....	117
Industrial Activities.....	118
Other Protections .....	120
Age Discrimination.....	120
Sham Arrangements.....	122

Reverse Onus of Proof.....	122
Rebutting the Presumption.....	123
Ancillary Rules .....	123
Compliance.....	124
Workplace Bullying and Sexual Harassment .....	125
Anti-bullying and Sexual Harassment Measures .....	125
When is a Worker Bullied at Work? .....	125
When is a Worker Sexually Harassed at Work? .....	126
Harassment on the ground of Sex .....	127
What Does 'At Work' Mean? .....	128
What is the Process? .....	128
Orders and Remedies.....	129
<b>Section Seven .....</b>	<b>131</b>
<b>Termination of Employment .....</b>	<b>132</b>
Notice of Termination by Employers: Written Notice .....	132
Notice Periods .....	132
Payment in Lieu of Notice .....	133
Exclusions .....	133
Notice of Termination by Employees .....	133
Redundancy Pay.....	135
Quantification of Redundancy Payments .....	135
Variation in the Amount of Redundancy Payments.....	136
Exclusions from the Obligation to Pay Redundancy .....	137
Definition of Small Business .....	137
Transfer of Employment .....	138
Limits on the Scope of this Division .....	138
Unfair Dismissal .....	138
Objectives of the Fair Work Act.....	138
Protection from Unfair Dismissal .....	138
Meaning of the Minimum Employment Period.....	139
Period of Employment.....	140
What is an Unfair Dismissal?.....	140
The Meaning of 'Dismissed' .....	141

Determining Whether the Dismissal was Harsh, Unjust or Unreasonable.....	144
The Small Business Fair Dismissal Code .....	145
Summary Dismissal .....	147
The Meaning of Genuine Redundancy.....	147
Remedies .....	148
Remedies for Unfair Dismissal .....	148
The Remedy of Reinstatement .....	148
The Remedy of Compensation .....	149
Misconduct.....	149
Shock and Distress.....	149
Cap on Compensation .....	150
Procedural Matters .....	150
Application for Unfair Dismissal Remedy .....	150
Application Fees .....	151
Conferences and Hearings.....	151
Dismissing Applications.....	151
Appeals .....	151
Cost Orders Against Parties .....	152
Cost Orders Against Solicitors and Paid Agents.....	152
Notifications of Redundancy.....	152
Centrelink .....	152
Union Notification.....	153
Exemptions.....	154
<b>Section Eight.....</b>	<b>155</b>
<b>Industrial Action .....</b>	<b>156</b>
Overview.....	156
What is Industrial Action?.....	156
Protected Industrial Action .....	157
Unprotected Industrial Action .....	158
Employer Responses to Unprotected Industrial Action .....	158
Orders from the Fair Work Commission – Stop Industrial Action .....	158
Employer Responses to Protected Industrial Action .....	159
Federal Court - Injunctive Relief.....	160

Actions in Tort .....	161
Payment in Relation to Periods of Industrial Action .....	162
Protected Action.....	162
Pecuniary Penalties for Non-Compliance with Industrial Action Payment Provisions .....	163
Workplace Rights in Relation to Protected Industrial Action .....	164
Dispute Resolution and Consultation .....	165
Stand Down .....	165
Overview .....	165
Fair Work Act .....	166
<b>Section Nine .....</b>	<b>167</b>
<b>Right of Entry for Unions to a Workplace .....</b>	<b>168</b>
What Is Right of Entry?.....	168
Glossary of Terms .....	168
Provisions for Employers Covered Under Fair Work Act .....	169
Applying for a Right of Entry Permit.....	169
Entry to Investigate Suspected Breaches.....	170
Notice of Entry to the Premises to Investigate a Breach .....	170
Access to Records .....	171
Access to Non Member Records.....	171
Entry to Hold Discussions with Employees.....	172
Notice of Entry to the Premises to Hold Discussions .....	172
Entry for Work Health and Safety Purposes .....	173
General Overview .....	173
Notice to Investigate Work Health and Safety Breach.....	173
Limitations.....	174
Conduct Whilst On Site – General Overview.....	174
Abuse of Right of Entry.....	175
Accommodation and Transport Arrangements in Remote Locations .....	176
Information Obtained after the Inspection .....	177
<b>Section Ten .....</b>	<b>179</b>
<b>Record Keeping and Payslips .....</b>	<b>180</b>
Record Keeping .....	180

Responsibilities in Relation to Records .....	183
Access to Employment Records.....	183
Payslips .....	184
<b>Section Eleven .....</b>	<b>186</b>
<b>Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021 .....</b>	<b>187</b>
<b>Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020 .....</b>	<b>188</b>
<b>Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 .....</b>	<b>191</b>
<b>Fair Work Amendment (Corrupting Benefits) Bill 2017 .....</b>	<b>193</b>
<b>Schedule of Rates .....</b>	<b>194</b>
<b>Appendix: Future Fair Work Act Amendments.....</b>	<b>195</b>