

1 **Part 6—Closing the labour hire loophole**

2 *Fair Work Act 2009*

3 **71 After paragraph 5(8)(a)**

4 Insert:

- 5 (aa) provided by Part 2-7A (which deals with regulated labour
6 hire arrangement orders); and

7 **72 Section 12**

8 Insert:

9 *alternative protected rate of pay order*: see subsection 306M(2).

10 *arbitrated protected rate of pay order*: see subsection 306Q(1).

11 *covered employment instrument* means:

- 12 (a) an enterprise agreement; or
13 (b) a workplace determination; or
14 (c) a determination under section 24 of the *Public Service Act*
15 *1999* that applies to a class of APS employees in an Agency
16 (within the meaning of that Act); or
17 (d) an instrument made under any other law of the
18 Commonwealth (other than this Act), or of a State or a
19 Territory, that provides for the terms and conditions of
20 employment for a class of national system employees of:
21 (i) the Commonwealth or a State or Territory; or
22 (ii) an authority of the Commonwealth or of a State or
23 Territory; or
24 (e) any other instrument relating to the employment of a class of
25 national system employees that:
26 (i) is made under a law of the Commonwealth (other than
27 this Act) or a State or Territory; and
28 (ii) is prescribed by the regulations.

29 *host employment instrument*: see subsection 306E(6).

30 *protected rate of pay*: see section 306F.

- 1 *recurring extended exemption period*: see subsection 306K(2).
2 *regulated employee*: see subsection 306E(5).
3 *regulated host*: see section 306C.
4 *regulated labour hire arrangement order*: see subsection 306E(1).

5 **72A At the end of section 201**

6 Add:

7 *Approval decision to note that enterprise agreement to be new host*
8 *employment instrument for regulated labour hire arrangement*
9 *order*

10 (5) If:

- 11 (a) the FWC approves an enterprise agreement; and
12 (b) the enterprise agreement will become the host employment
13 instrument covered by a regulated labour hire arrangement
14 order because of section 306EB;

15 the FWC must note in its decision to approve the agreement that
16 the agreement will be the host employment instrument covered by
17 the order.

18 Note: Certain notification requirements also apply if the enterprise
19 agreement will be the host employment instrument covered by a
20 regulated labour hire arrangement order (see section 306EC).

21 **73 After Part 2-7**

22 Insert:

23 **Part 2-7A—Regulated labour hire arrangement**
24 **orders**

25 **Division 1—Introduction**

26 **306A Guide to this Part**

27

This Part is about regulated labour hire arrangement orders.
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1 Division 2 deals with the making of regulated labour hire
2 arrangement orders by the FWC and sets out the obligations of
3 employers and regulated hosts covered by those orders.

4 Division 2 also deals with the making of alternative protected rate
5 of pay orders by the FWC, the continued application of regulated
6 labour hire arrangement orders in particular circumstances, and
7 certain payments relating to termination of employment.

8 Division 3 deals with disputes about the operation of this Part.

9 Division 4 is about anti-avoidance.

10 Division 5 requires the FWC to make written guidelines in relation
11 to the operation of this Part.

12 **306B Meanings of *employee* and *employer***

13 In this Part, *employee* means a national system employee, and
14 *employer* means a national system employer.

15 Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be
16 employees in certain circumstances).

17 **306C Meaning of *regulated host***

18 A *regulated host* is:

- 19 (a) a constitutional corporation; or
20 (b) the Commonwealth; or
21 (c) a Commonwealth authority; or
22 (d) a person, so far as work is performed for the person in
23 connection with constitutional trade or commerce, and the
24 work is of a kind that would ordinarily be performed by:
25 (i) a flight crew officer; or
26 (ii) a maritime employee; or
27 (iii) a waterside worker; or
28 (e) a body corporate incorporated in a Territory; or
29 (f) a person who carries on an activity (whether of a commercial,
30 governmental or other nature) in a Territory in Australia, so

- 1 far as work is performed for the person in connection with
2 the activity carried on in the Territory; or
3 (g) a person, so far as work is performed for the person in a
4 Territory in Australia; or
5 (h) any person in a State that is a referring State because of
6 Division 2A or 2B of Part 1-3.

7 Note: In this context, *Australia* includes Norfolk Island, the Territory of
8 Christmas Island and the Territory of Cocos (Keeling) Islands (see the
9 definition of *Australia* in section 12).

10 **306D References to kinds of work and work performed for a person**
11 **etc.**

- 12 (1) A reference in this Part to work of a kind includes a reference to
13 work that is substantially of that kind.
- 14 (2) A reference in this Part to work performed for a person includes a
15 reference to work performed wholly or principally for the benefit
16 of:
17 (a) the person; or
18 (b) an enterprise carried on by the person; or
19 (c) a joint venture or common enterprise engaged in by the
20 person and one or more other persons.
- 21 (3) To avoid doubt, in determining for the purposes of this Part
22 whether work is or is to be performed for a person by an employee
23 of an employer, it does not matter whether there is or will be any
24 agreement between the person and the employer relating to the
25 performance of the work.

1 **Division 2—Regulated labour hire arrangement orders**

2 **Subdivision A—Making regulated labour hire arrangement**
3 **orders**

4 **306E FWC may make a regulated labour hire arrangement order**

5 *Regulated labour hire arrangement order*

- 6 (1) The FWC must, on application by a person mentioned in
7 subsection (7), make an order (a ***regulated labour hire***
8 ***arrangement order***) if the FWC is satisfied that:
- 9 (a) an employer supplies or will supply, either directly or
10 indirectly, one or more employees of the employer to
11 perform work for a regulated host; and
 - 12 (b) a covered employment instrument that applies to the
13 regulated host would apply to the employees if the regulated
14 host were to employ the employees to perform work of that
15 kind; and
 - 16 (c) the regulated host is not a small business employer.

17 Note: The FWC may make other decisions under this Part which relate to
18 regulated labour hire arrangement orders: see Subdivisions C
19 (short-term arrangements) and D (alternative protected rate of pay
20 orders) of this Division, and Division 3 (dealing with disputes).

- 21 (1A) Despite subsection (1), the FWC must not make the order unless it
22 is satisfied that the performance of the work is not or will not be
23 for the provision of a service, rather than the supply of labour,
24 having regard to the matters in subsection (7A).
- 25 (2) Despite subsection (1), the FWC must not make the order if the
26 FWC is satisfied that it is not fair and reasonable in all the
27 circumstances to do so, having regard to any matters in
28 subsection (8) in relation to which submissions have been made.
- 29 (3) For the purposes of paragraph (1)(a), it does not matter:
- 30 (a) whether the supply is the result of an agreement, or one or
31 more agreements; or
 - 32 (b) if there are one or more agreements relating to the supply—
33 whether an agreement is between:
 - 34 (i) the regulated host and the employer; or

- 1 (ii) the regulated host and a person other than the employer;
2 or
3 (iii) the employer and a person other than the regulated host;
4 or
5 (iv) any 2 persons who are neither the regulated host nor the
6 employer; or
7 (c) whether the regulated host and employer are related bodies
8 corporate.

9 Note: If related bodies corporate with different corporate branding do not
10 provide labour to each other, a regulated labour hire arrangement
11 order cannot be made because labour is not supplied in the way
12 mentioned in paragraph (1)(a).

- 13 (4) For the purposes of paragraph (1)(b), in determining whether a
14 covered employment instrument would apply to the employees, it
15 does not matter on what basis the employees are or would be
16 employed.

17 *Regulated employee and host employment instrument*

- 18 (5) An employee referred to in paragraph (1)(a) is a **regulated**
19 **employee**.
20 (6) The covered employment instrument referred to in paragraph (1)(b)
21 is a **host employment instrument**.

22 *Who may apply for an order*

- 23 (7) The following persons may apply for the order:
24 (a) a regulated employee;
25 (b) an employee of the regulated host;
26 (c) an employee organisation that is entitled to represent the
27 industrial interests of an employee mentioned in
28 paragraph (a) or (b);
29 (d) the regulated host.

30 *Matters that must be considered in relation to whether work is for*
31 *the provision of a service*

- 32 (7A) For the purposes of subsection (1A), the matters are as follows:

- 1 (a) the involvement of the employer in matters relating to the
2 performance of the work;
- 3 (b) the extent to which, in practice, the employer or a person
4 acting on behalf of the employer directs, supervises or
5 controls (or will direct, supervise or control) the regulated
6 employees when they perform the work, including by
7 managing rosters, assigning tasks or reviewing the quality of
8 the work;
- 9 (c) the extent to which the regulated employees use or will use
10 systems, plant or structures of the employer to perform the
11 work;
- 12 (d) the extent to which either the employer or another person is
13 or will be subject to industry or professional standards or
14 responsibilities in relation to the regulated employees;
- 15 (e) the extent to which the work is of a specialist or expert
16 nature.

17 *Matters to be considered if submissions are made*

- 18 (8) For the purposes of subsection (2), the matters are as follows:
- 19 (a) the pay arrangements that apply to employees of the
20 regulated host (or related bodies corporate of the regulated
21 host) and the regulated employees, including in relation to:
- 22 (i) whether the host employment instrument applies only to
23 a particular class or group of employees; and
- 24 (ii) whether, in practice, the host employment instrument
25 has ever applied to an employee at a classification, job
26 level or grade that would be applicable to the regulated
27 employees; and
- 28 (iii) the rate of pay that would be payable to the regulated
29 employees if the order were made;
- 30 (c) the history of industrial arrangements applying to the
31 regulated host and the employer;
- 32 (d) the relationship between the regulated host and the employer,
33 including whether they are related bodies corporate or
34 engaged in a joint venture or common enterprise;
- 35 (da) if the performance of the work is or will be wholly or
36 principally for the benefit of a joint venture or common

- 1 enterprise engaged in by the regulated host and one or more
2 other persons:
- 3 (i) the nature of the regulated host’s interests in the joint
4 venture or common enterprise; and
- 5 (ii) the pay arrangements that apply to employees of any of
6 the other persons engaged in the joint venture or
7 common enterprise (or related bodies corporate of those
8 other persons);
- 9 (e) the terms and nature of the arrangement under which the
10 work will be performed, including:
- 11 (i) the period for which the arrangement operates or will
12 operate; and
- 13 (ii) the location of the work being performed or to be
14 performed under the arrangement; and
- 15 (iii) the industry in which the regulated host and the
16 employer operate; and
- 17 (iv) the number of employees of the employer performing
18 work, or who are to perform work, for the regulated host
19 under the arrangement;
- 20 (f) any other matter the FWC considers relevant.

21 *What an order must specify*

- 22 (9) A regulated labour hire arrangement order must specify:
- 23 (a) the regulated host covered by the order; and
- 24 (b) the employer covered by the order under this section; and
- 25 (c) the regulated employees covered by the order under this
26 section; and
- 27 (d) the host employment instrument covered by the order; and
- 28 (e) the day the order comes into force, which must be:
- 29 (i) if the order is made before 1 November 2024—that day
30 or a later day; or
- 31 (ii) otherwise—the day the order is made or a later day.

32 Note: For paragraphs (b) and (c), additional employers and regulated
33 employees of those employers may be covered by the order under
34 section 306EA.

1 *What an order may specify*

- 2 (10) A regulated labour hire arrangement order may specify when the
3 order ceases to be in force.

4 Note: For variation and revocation of a regulated labour hire arrangement
5 order, see section 603.

6 **306EA Regulated labour hire arrangement order may cover**
7 **additional arrangements**

8 *Determination that application covers additional employers and*
9 *employees*

- 10 (1) If an application for a regulated labour hire arrangement order is
11 made in relation to a regulated host, an employer and one or more
12 employees of the employer, the FWC may determine that the
13 application is taken to also relate to:

- 14 (a) one or more other employers (each of which is an **additional**
15 **employer**) that the FWC is satisfied supply or will supply, in
16 the manner referred to in paragraph 306E(1)(a), one or more
17 employees to perform work, for the regulated host, of the
18 kind in relation to which the application was made; and
19 (b) the employees referred to in paragraph (a) of this
20 subsection (each of whom is an **additional regulated**
21 **employee**).

22 Note: The employees referred to in paragraph (a) of this subsection are
23 **regulated employees** (see subsection 306E(5)).

- 24 (2) The FWC may make the determination:
25 (a) on its own initiative; or
26 (b) on application by any of the following:
27 (i) the applicant for the order or any other person who
28 could have applied for the order (see
29 subsection 306E(7));
30 (ii) the employer mentioned in paragraph 306E(1)(a);
31 (iii) an employer that supplies or will supply employees as
32 referred to in paragraph (1)(a) of this section;
33 (iv) a person who is such an employee;
34 (v) an employee organisation that is entitled to represent the
35 industrial interests of such an employee.

- 1 (3) If the FWC makes such a determination, the FWC must seek the
2 views of the following before deciding whether to make the
3 regulated labour hire arrangement order:
4 (a) the additional regulated employees;
5 (b) employee organisations that are entitled to represent the
6 industrial interests of the additional regulated employees;
7 (c) the additional employers.

8 *Additional employers and employees in regulated labour hire*
9 *arrangement order*

- 10 (4) Subject to subsections (5) and (6), if the FWC makes a
11 determination under subsection (1) in relation to an application for
12 a regulated labour hire arrangement order, the FWC may specify in
13 the regulated labour hire arrangement order (if made) that, in
14 addition to the persons referred to in paragraphs 306E(9)(b) and
15 (c), the order also covers:
16 (a) any or all of the additional employers; and
17 (b) additional regulated employees of those employers.
- 18 (5) The FWC must not specify an additional employer or additional
19 regulated employees of the employer under subsection (4) unless:
20 (a) the FWC is satisfied of the matters mentioned in
21 subsection 306E(1) in relation to the additional employer and
22 the additional regulated employees; and
23 (b) the FWC is satisfied that the covered employment instrument
24 that would apply to the additional regulated employees, as
25 referred to in paragraph 306E(1)(b), is the host employment
26 instrument covered by the order; and
27 (c) the FWC is satisfied that the performance of the work by the
28 additional regulated employees is not or will not be for the
29 provision of a service, rather than the supply of labour,
30 having regard to the matters in subsection 306E(7A) in
31 relation to the additional employer and the additional
32 regulated employees.
- 33 (6) The FWC must not specify an additional employer or additional
34 regulated employees of the employer under subsection (4) if the
35 FWC is satisfied that it is not fair and reasonable in all the
36 circumstances to do so, having regard to:

- 1 (a) the views (if any) of persons referred to in subsection (3);
2 and
3 (b) any matters mentioned in subsection 306E(8) in relation to
4 which submissions are made, to the extent the submissions
5 relate to the additional employer and the additional regulated
6 employees.

7 **306EB Application of regulated labour hire arrangement order to**
8 **new covered employment instrument**

- 9 (1) This section applies if:
10 (a) a regulated labour hire arrangement order is in force; and
11 (b) the host employment instrument covered by the order ceases
12 to apply to the regulated host covered by the order, or to a
13 class of employees of the regulated host covered by the
14 order, in connection with another covered employment
15 instrument (the *new instrument*) starting to apply to the
16 regulated host or those employees; and
17 (c) the new instrument would apply to the regulated employees
18 covered by the order if the regulated host were to employ the
19 employees to perform work of a kind to which the order
20 relates.
- 21 (2) From the time the new instrument starts to apply to the regulated
22 host or the class of employees mentioned in paragraph (1)(b), the
23 order has effect (and may be dealt with) as if the new instrument
24 were the host employment instrument covered by the order.
- 25 (3) For the purposes of paragraph (1)(c), in determining whether a
26 covered employment instrument would apply to the employees, it
27 does not matter on what basis the employees are or would be
28 employed.

29 **306EC Notification requirements in relation to new covered**
30 **employment instrument**

31 *Notification by regulated host*

- 32 (1) If a regulated labour hire arrangement order in force covers a
33 regulated host and an event mentioned in subsection (2) occurs, the

- 1 regulated host must, as soon as practicable after the event occurs,
2 give written notice to any employers covered by the order of:
3 (a) the event; and
4 (b) the effect that the event will have or would have in relation to
5 the order.

6 Note: This subsection is a civil remedy provision (see Part 4-1).

- 7 (2) The events are the following:
8 (a) approval, by employees, of a covered employment
9 instrument that will, if it comes into operation, become the
10 host employment instrument covered by the order because of
11 section 306EB;
12 (b) any other approval or making of a covered employment
13 instrument that will, if it comes into operation, become the
14 host employment instrument covered by the order because of
15 section 306EB, other than an approval by the FWC of an
16 enterprise agreement (see subsection (3) of this section).

17 *Notification by FWC*

- 18 (3) If the FWC approves an enterprise agreement that, because of
19 section 306EB, will become the host employment instrument
20 covered by a regulated labour hire arrangement order, the FWC
21 must, as soon as practicable after the approval, give written notice
22 to any employers covered by the order of:
23 (a) the approval of the enterprise agreement; and
24 (b) the effect of the approval in relation to the order.

25 **306ED Varying regulated labour hire arrangement order to cover**
26 **new employers**

- 27 (1) This section applies if:
28 (a) a regulated labour hire arrangement order that covers a
29 regulated host and one or more employers, and relates to a
30 kind of work, is in force or has been made but is not yet in
31 force; and
32 (b) one or more other employers (each of which is a *new*
33 *employer*) start or will start to supply employees (each of
34 whom is a *relevant regulated employee*) to perform work of

- 1 that kind for the regulated host, in a manner referred to in
2 paragraph 306E(1)(a); and
- 3 (c) the new employers are not covered by any regulated labour
4 hire arrangement order (whether in force, or made but not yet
5 in force) that covers or will cover the relevant regulated
6 employees in relation to the performance of that work; and
- 7 (d) the FWC did not make a determination under
8 subsection 306EA(1) in relation to the new employers and
9 the application for the regulated labour hire arrangement
10 order.

11 Note: The employees referred to in paragraph (b) of this subsection are
12 ***regulated employees*** (see subsection 306E(5)).

13 *Regulated host must make application*

- 14 (2) As soon as practicable after the regulated host becomes aware of
15 the circumstances referred to in paragraph (1)(b), the regulated host
16 must apply to the FWC for an order under this section varying the
17 regulated labour hire arrangement order to cover the new
18 employers and the relevant regulated employees of those
19 employers.

20 Note: This subsection is a civil remedy provision (see Part 4-1).

- 21 (3) Section 588 (discontinuing applications) does not apply in relation
22 to the application unless the circumstances referred to in
23 paragraph (1)(b) of this section no longer exist.

- 24 (4) As soon as possible after the application is made, the regulated host
25 must give written notice of the following to each of the new
26 employers:

- 27 (a) that the application has been made;
28 (b) the effect of subsection (11) in relation to the application.

29 Note: This subsection is a civil remedy provision (see Part 4-1).

30 *FWC must decide whether to make variation order*

- 31 (5) The FWC must:
32 (a) decide whether to make an order under this section varying
33 the regulated labour hire arrangement order in accordance
34 with subsection (6) or (7) to cover:

- 1 (i) any or all of the new employers; and
2 (ii) relevant regulated employees of those employers; and
3 (b) take all reasonable steps to make the decision before the time
4 any of those employees start to perform the work referred to
5 in paragraph (1)(b).
- 6 (6) The FWC must vary the regulated labour hire arrangement order to
7 cover a new employer and the relevant regulated employees of the
8 employer if the regulated host and the new employer notify the
9 FWC that the regulated host and the new employer agree to the
10 making of the variation.
- 11 (7) Subject to subsections (8) and (9), the FWC must also vary the
12 regulated labour hire arrangement order to cover a new employer
13 and the relevant regulated employees of the employer if the FWC
14 is satisfied of the matters referred to in subsection 306E(1) in
15 relation to the regulated host, the new employer and the relevant
16 regulated employees.
- 17 (8) The FWC must not vary the regulated labour hire arrangement
18 order in accordance with subsection (7) unless the FWC is satisfied
19 that the performance of the work by the relevant regulated
20 employees is not or will not be for the provision of a service, rather
21 than the supply of labour, having regard to the matters referred to
22 in subsection 306E(7A) in relation to the new employer and the
23 relevant regulated employees.
- 24 (9) The FWC must not vary the regulated labour hire arrangement
25 order in accordance with subsection (7) if the FWC is satisfied that
26 it is not fair and reasonable in all the circumstances to make the
27 variation, having regard to any matters referred to in
28 subsection 306E(8) in relation to which submissions have been
29 made in respect of the variation.
- 30 *When variation order comes into force*
- 31 (10) An order under this section comes into force on a day specified in
32 the order.

Interim arrangements before FWC decides application

- 1
2 (11) If the FWC does not decide whether to make an order under this
3 section by the time referred to in paragraph (5)(b), the regulated
4 labour hire arrangement order is taken (so long as it is in force) to
5 cover the new employers and the relevant regulated employees
6 from the time the application for the order under this section is
7 made until:
8 (a) if the FWC decides not to make an order under this section—
9 the time the FWC makes that decision; or
10 (b) if the FWC decides to make an order under this section—the
11 time that order comes into force.

12 **306EE Notifying tenderers etc. of regulated labour hire**
13 **arrangement order**

- 14 (1) This section applies if:
15 (a) a regulated host is covered by a regulated labour hire
16 arrangement order that is in force or has been made but is not
17 yet in force; and
18 (b) a tender process is conducted:
19 (i) by or on behalf of the regulated host; or
20 (ii) for the purposes of a joint venture or common enterprise
21 engaged in by the regulated host and one or more other
22 persons.
- 23 (2) If it could reasonably be expected that one or more employers
24 would, as a result of the tender process, become covered by the
25 regulated labour hire arrangement order because of section 306ED,
26 the regulated host must ensure that, from the start of the tender
27 process, all prospective tenderers are advised, in writing, that if one
28 or more tenderers are successful in the process:
29 (a) one or more employers could become covered by the
30 regulated labour hire arrangement order; and
31 (b) the employers could be required to pay employees of the
32 employers who perform work for the regulated host, in
33 accordance with this Part, in connection with the work.

34 Note: This subsection is a civil remedy provision (see Part 4-1).

- 1 (3) If the regulated host is required to apply to the FWC in relation to
2 one or more employers under subsection 306ED(2) as a result of
3 the tender process, the regulated host must, as soon as practicable
4 after the end of the tender process, advise the successful tenderer or
5 tenderers in that process (whether or not they are the employers), in
6 writing, of the following:
- 7 (a) that the regulated host is required to make the application;
8 (b) the effect of subsection 306ED(11) in relation to the
9 application;
10 (c) that if the FWC decides to vary the order under
11 section 306ED to cover those employers, and the order is in
12 force or comes into force, the employers will be required to
13 pay employees of the employers who perform work for the
14 regulated host, in accordance with this Part, in connection
15 with the work.

16 Note: This subsection is a civil remedy provision (see Part 4-1).

17 **Subdivision B—Obligations of employers and regulated hosts**
18 **etc. when a regulated labour hire arrangement order**
19 **is in force**

20 **306F Protected rate of pay payable to employees if a regulated**
21 **labour hire arrangement order is in force**

22 *Application of section*

- 23 (1) This section applies if a regulated labour hire arrangement order is
24 in force that covers a regulated host, an employer and a regulated
25 employee of the employer.

26 *Employer must not pay less than protected rate of pay*

- 27 (2) The employer must pay the regulated employee at no less than the
28 protected rate of pay for the employee in connection with the work
29 performed by the employee for the regulated host.

30 Note: This subsection is a civil remedy provision (see Part 4-1).

1 *Exceptions*

- 2 (3) The employer does not contravene subsection (2) if the employer
3 pays the regulated employee at less than the protected rate of pay
4 because:
- 5 (a) the regulated host provides information to the employer
6 under section 306H (which deals with information about the
7 protected rate of pay); and
 - 8 (b) the employer reasonably relies on the information for the
9 purposes of working out the protected rate of pay for the
10 regulated employee; and
 - 11 (c) the information is incorrect in a material particular.
- 12 (3A) The employer does not contravene subsection (2) if:
- 13 (a) the regulated labour hire arrangement order covers the
14 employer because of the operation of subsection 306ED(11);
15 and
 - 16 (b) the employer pays the regulated employee at less than the
17 protected rate of pay because the employer has not been
18 either:
 - 19 (i) notified that the regulated host has made an application
20 under subsection 306ED(2) (which deals with certain
21 variation orders); or
 - 22 (ii) for an employer who was a successful tenderer in a
23 tender process—advised under subsection 306EE(2) or
24 (3) (which deal with notifying tenderers) in relation to
25 the regulated labour hire arrangement order.

26 *Meaning of protected rate of pay*

- 27 (4) Unless subsection (5) applies, the ***protected rate of pay*** for the
28 regulated employee is the full rate of pay that would be payable to
29 the employee if the host employment instrument covered by the
30 regulated labour hire arrangement order were to apply to the
31 employee.
- 32 (5) If the regulated employee is a casual employee, and there is no
33 covered employment instrument that applies to the regulated host
34 that provides for work of that kind to be performed by casual
35 employees, the ***protected rate of pay*** for the regulated employee is
36 the full rate of pay that would be payable to the employee if:

- 1 (a) the employee were an employee other than a casual employee
2 and the host employment instrument covered by the regulated
3 labour hire arrangement order were to apply to the employee;
4 and
5 (b) the base rate of pay that would be payable to the employee,
6 in the circumstances referred to in paragraph (a), were
7 increased by 25%.

- 8 (6) Despite subsections (4) and (5), if the employer is a national
9 system employer only because of section 30D or 30N, the
10 ***protected rate of pay*** for the regulated employee does not include
11 any amount that relates to an excluded subject matter within the
12 meaning of subsection 30A(1) or 30K(1).

13 Note: Sections 30D and 30N extend the meaning of ***national system***
14 ***employer***.

- 15 (7) If the regulated employee is a pieceworker and paragraph 16(2)(b)
16 would apply to the employee were the host employment instrument
17 to apply to the employee, the base rate of pay that would be
18 payable to the employee for the purposes of subsection (5) of this
19 section is taken to be the base rate of pay that would be referred to
20 in that paragraph.

- 21 (8) If the regulated employee is a pieceworker and paragraph 18(2)(b)
22 would apply to the employee were the host employment instrument
23 to apply to the employee, the full rate of pay that would be payable
24 to the employee for the purposes of subsections (4) and (5) of this
25 section is taken to be the full rate of pay that would be referred to
26 in that paragraph.

- 27 (9) To avoid doubt, this section does not require that a regulated
28 employee referred to in subsection (5) be taken to be an employee
29 other than a casual employee for the purposes of determining
30 entitlements to kinds of leave, or any other purpose, except
31 determining the protected rate of pay for the regulated employee.

32 *Requirement to pay no less than protected rate of pay applies*
33 *despite other fair work instruments etc.*

- 34 (10) Subsection (2) applies despite any provision of:

- 1 (a) a fair work instrument (other than an instrument made by the
2 FWC under this Part) that applies to the regulated employee;
3 or
4 (b) a covered employment instrument (other than a fair work
5 instrument) that applies to the regulated employee; or
6 (c) the regulated employee's contract of employment;
7 that provides for a rate of pay for the regulated employee that is
8 less than the protected rate of pay for the regulated employee.

9 Note: See also section 306N (effect of alternative protected rate of pay
10 order) and subsection 306Q(6) (effect of arbitrated protected rate of
11 pay order).

12 **306G Exceptions from requirement to pay protected rate of pay**

13 *Training arrangements*

- 14 (1) Section 306F does not apply to a regulated employee if a training
15 arrangement applies to the employee in respect of the work
16 performed for the regulated host.

17 *Certain short-term arrangements*

- 18 (2) Section 306F does not apply to a regulated employee if:
19 (a) no determination for the purposes of paragraph 306J(2)(a)
20 (no exemption period) that applies to the employee in respect
21 of the work performed for the regulated host is in force; and
22 (b) the employee performs, or is to perform, the work for the
23 regulated host during:
24 (i) if neither subparagraph (ii) nor (iii) applies—a period of
25 no longer than 3 months; or
26 (ii) if a determination in force under section 306J specifies a
27 period as the exemption period for the regulated host,
28 the employer and the work—a period of no longer than
29 the period specified; or
30 (iii) if subparagraph (ii) does not apply and the work
31 commences during a recurring extended exemption
32 period for work of the kind performed by the employee
33 for the regulated host—a period of no longer than the
34 remainder of the extended exemption period, or a period
35 of no longer than 3 months, whichever ends later.

- 1 (3) However, if the regulated employee does in fact perform the work
2 for longer than the maximum period applicable under
3 paragraph (2)(b), as a result of a variation to or the making of one
4 or more agreements, section 306F applies to the regulated
5 employee on and after the day the agreements are varied or made.

6 **306H Obligations of regulated hosts covered by a regulated labour**
7 **hire arrangement order**

8 *Application of this section*

- 9 (1) This section applies to a regulated host and an employer if the
10 regulated host and employer are covered by a regulated labour hire
11 arrangement order that is in force.

12 *Ability to request information regarding protected rate of pay*

- 13 (2) If the employer reasonably considers that the employer does not
14 have all of the information needed regarding what is the protected
15 rate of pay for one or more regulated employees of the employer
16 covered by the order, the employer may request, in writing, that the
17 regulated host provide the employer with specified information
18 needed.

- 19 (3) The regulated host must comply with the request:
20 (a) as soon as reasonably practicable; and
21 (b) in any event, within such a period as would reasonably
22 enable the employer to comply with its obligations under
23 section 306F (protected rate of pay payable to employees if a
24 regulated labour hire arrangement order is in force) in
25 relation to the employees.

26 Note: This subsection is a civil remedy provision (see Part 4-1).

27 *Manner of complying with request*

- 28 (4) The regulated host may comply with the request by:
29 (a) providing the employer with the information requested; or
30 (b) providing information, for each relevant pay period of the
31 employees, setting out the protected rate of pay for each
32 employee for the period.

1 **Subdivision C—Short-term arrangements**

2 **306J Determination altering exemption period for short-term**
3 **arrangements**

4 (1) This section applies if:

- 5 (a) a regulated labour hire arrangement order is in force that
6 covers a regulated host, an employer and one or more
7 regulated employees of the employer performing work for
8 the regulated host; or
9 (b) a regulated labour hire arrangement order has been made but
10 is not yet in force that covers a regulated host, an employer
11 and one or more regulated employees of the employer
12 performing work for the regulated host; or
13 (c) an application for a regulated labour hire arrangement order
14 that would cover a regulated host, an employer and one or
15 more regulated employees of the employer performing work
16 for the regulated host has been made to the FWC under
17 section 306E but has not been finally determined.

18 (2) The FWC may determine that, in relation to the regulated host, the
19 employer and work to be performed by one or more regulated
20 employees of the employer:

- 21 (a) there is no exemption period for the purposes of
22 section 306G; or
23 (b) a specified period of less than 3 months is the exemption
24 period for the purposes of that section; or
25 (c) a specified period of more than 3 months is the exemption
26 period for the purposes of that section.

27 Note: The exemption period is used in determining whether the exception to
28 pay the protected rate of pay in the case of short-term arrangements in
29 subsection 306G(2) applies.

30 **306K Determination of recurring extended exemption period**

31 (1) This section applies if:

- 32 (a) a regulated labour hire arrangement order is in force that
33 covers a regulated host, one or more employers and one or
34 more regulated employees performing work for the regulated
35 host; or

- 1 (b) a regulated labour hire arrangement order has been made but
2 is not yet in force that covers a regulated host, one or more
3 employers and one or more regulated employees performing
4 work for the regulated host; or
5 (c) an application for a regulated labour hire arrangement order
6 that would cover a regulated host, one or more employers
7 and one or more regulated employees performing work for
8 the regulated host has been made to the FWC under
9 section 306E but has not been finally determined.
- 10 (2) The FWC may determine that a specified period of more than 3
11 months, starting on a specified day of the year in specified
12 consecutive years, is a ***recurring extended exemption period*** for
13 the regulated host in relation to a specified kind of work to which
14 the regulated labour hire arrangement order relates.

15 **306L Making and effect of determinations under this Subdivision**

16 *Who may apply for determination*

- 17 (1) The FWC may make a determination under this Subdivision only
18 on application by:
19 (a) the regulated host, an employer covered by the regulated
20 labour hire arrangement order or a regulated employee
21 covered by the order who is performing or is to perform work
22 for the regulated host; or
23 (b) an organisation entitled to represent the industrial interests of
24 any of those persons.

25 *Time for making determination*

- 26 (2) The FWC must decide whether or not to make the determination as
27 quickly as possible after the application is made.

28 *Requirements for making determination*

- 29 (3) Before deciding whether or not to make the determination, the
30 FWC must seek the views of any person or organisation that, apart
31 from the applicant, could have applied for the determination under
32 subsection (1).

- 1 (4) The FWC may make the determination only if satisfied that there
2 are exceptional circumstances that justify making it, having regard
3 to:
- 4 (a) whether the purpose of the proposed exemption period or
5 recurring extended exemption period relates to satisfying a
6 seasonal or short-term need for workers; and
- 7 (b) the industry in which the work is performed or is to be
8 performed; and
- 9 (c) the circumstances of:
- 10 (i) the regulated host; and
11 (ii) any relevant employers covered by the regulated labour
12 hire arrangement order; and
- 13 (d) the views (if any) of any persons or organisations mentioned
14 in subsection (1); and
- 15 (e) for a determination made for the purposes of
16 paragraph 306J(2)(c)—the principle that the longer the period
17 to be specified in the determination, the greater the
18 justification required; and
- 19 (f) for a determination that a period is a recurring extended
20 exemption period for a regulated host for a kind of work—
21 the principle that the longer the period to be specified in the
22 determination, and the greater the number of recurrences of
23 that period to be specified, the greater the justification
24 required; and
- 25 (g) any other matter the FWC considers relevant.

26 *When determination comes into force*

- 27 (5) The determination comes into force on the later of the day the
28 regulated labour hire arrangement order comes into force, and the
29 following:
- 30 (a) for a determination under section 306J that there is no
31 exemption period for the purposes of section 306G—the day
32 it is made;
- 33 (b) for a determination under section 306J that there is an
34 exemption period of more than, or less than, 3 months for the
35 purposes of section 306G—the day it is made or a later day
36 specified in the determination;

- 1 (c) for a determination under section 306K (which deals with
2 recurring extended exemption periods)—the day it is made or
3 a later day specified in the determination.

4 **Subdivision D—Alternative protected rate of pay orders**

5 **306M Making an alternative protected rate of pay order**

6 *Application of this section*

- 7 (1) This section applies if:
8 (a) a regulated labour hire arrangement order is in force that
9 covers a regulated host, an employer and a regulated
10 employee of the employer performing work for the regulated
11 host; or
12 (b) a regulated labour hire arrangement order has been made but
13 is not yet in force that covers a regulated host, an employer
14 and a regulated employee of the employer performing work
15 for the regulated host; or
16 (c) an application for a regulated labour hire arrangement order
17 that would cover a regulated host, an employer and a
18 regulated employee of the employer performing work for the
19 regulated host has been made to the FWC under section 306E
20 but has not been finally determined.

21 *Alternative protected rate of pay order*

- 22 (2) The FWC may make an order (an *alternative protected rate of pay*
23 *order*) specifying:
24 (a) how the rate of pay at which the employer must pay the
25 regulated employee in connection with the work is to be
26 worked out; and
27 (b) that the employer must pay the rate of pay worked out in that
28 way to the regulated employee in connection with the work.

29 *Rate of pay*

- 30 (3) The rate of pay for the purposes of paragraph (2)(a) must be the
31 protected rate of pay for the regulated employee that would apply
32 if the references in section 306F to the host employment instrument
33 covered by the regulated labour hire arrangement order were

1 instead references to a specified covered employment instrument
2 that:

- 3 (a) applies to a related body corporate of the regulated host and
4 would apply to a person employed by the related body
5 corporate to perform work of that kind; or
6 (b) applies to the regulated host and would apply to a person
7 employed by the regulated host to perform work of that kind
8 in circumstances that do not apply in relation to the
9 employee.

10 *Who may apply*

- 11 (4) The FWC may make an alternative protected rate of pay order only
12 on application by the employee, the employer, the regulated host or
13 an organisation entitled to represent the industrial interests of any
14 of those persons.

15 *Time for making*

- 16 (5) The FWC must decide whether or not to make the order as quickly
17 as possible after the application is made.

18 *Criteria for making etc.*

- 19 (6) The FWC must not make the order unless satisfied that:
20 (a) it would be unreasonable for the requirement in section 306F,
21 that the employer pay the regulated employee at no less than
22 the protected rate of pay, to apply in connection with that
23 work (including, for example, because the rate would be
24 insufficient or would be excessive); and
25 (b) there is a covered employment instrument of the kind
26 referred to in paragraph (3)(a) or (b).
- 27 (7) Before deciding whether to make the order, the FWC must seek the
28 views of the following:
29 (a) the employer;
30 (b) the regulated host;
31 (c) the employer to which a covered employment instrument to
32 be specified in the order for the purposes of subsection (3)
33 applies (if not the regulated host);
34 (d) the employee;

- 1 (e) employees to whom the covered employment instrument to
2 be specified in the order for the purposes of subsection (3)
3 applies;
4 (f) organisations entitled to represent the industrial interests of
5 any of the persons referred to in paragraphs (a) to (e).
- 6 (8) In deciding whether to make the order, the FWC must have regard
7 to:
8 (a) whether the host employment instrument covered by the
9 regulated labour hire arrangement order applies only to a
10 particular class or group of employees; and
11 (b) whether, in practice, the host employment instrument has
12 ever applied to an employee at a classification, job level or
13 grade that would be applicable to the regulated employee;
14 and
15 (c) the views (if any) of any persons or organisations mentioned
16 in subsection (7);
17 (d) the rate of pay that would be payable to the regulated
18 employee in connection with the work if the order were
19 made; and
20 (e) any other matter the FWC considers relevant.

21 *Exception for short-term arrangements*

- 22 (9) In making an order under this section, the FWC must ensure that, if
23 an exception in section 306G would apply to the requirement to
24 pay the regulated employee at no less than the protected rate of
25 pay, the exception also applies in relation to the requirement to pay
26 the employee at the rate worked out under the alternative protected
27 rate of pay order.

28 **306N Effect of alternative protected rate of pay order**

29 *When alternative protected rate of pay order comes into force*

- 30 (1) An alternative protected rate of pay order comes into force:
31 (a) if the order is made before the regulated labour hire
32 arrangement order to which the order relates comes into
33 force:

- 1 (i) on the day the regulated labour hire arrangement order
2 comes into force; or
3 (ii) on a later day specified in the alternative protected rate
4 of pay order; or
5 (b) otherwise—on the day the alternative protected rate of pay
6 order is made, or on a later day specified in the order.

7 *Effect of alternative protected rate of pay order*

- 8 (2) If:
9 (a) a regulated labour hire arrangement order is in force that
10 covers a regulated host, an employer and work performed by
11 a regulated employee of the employer; and
12 (b) an alternative protected rate of pay order is made in relation
13 to the regulated labour hire arrangement order;
14 then:
15 (c) the alternative protected rate of pay order applies in relation
16 to so much of the work as is performed during the period that
17 the alternative protected rate of pay order is in force; and
18 (d) during that period, the alternative protected rate of pay order
19 has effect despite section 306F (protected rate of pay payable
20 to employees if a regulated labour hire arrangement order is
21 in force), and despite any provision of the following that
22 provides for a lower rate of pay than that worked out in
23 accordance with the order:
24 (i) a fair work instrument that applies to the regulated
25 employee;
26 (ii) a covered employment instrument (other than a fair
27 work instrument) that applies to the regulated employee;
28 (iii) the regulated employee's contract of employment.

29 *Person must not contravene an alternative protected rate of pay*
30 *order*

- 31 (3) A person must not contravene a term of an alternative protected
32 rate of pay order.

33 Note: This subsection is a civil remedy provision (see Part 4-1).

1 **Subdivision E—Termination payments**

2 **306NA Determining amounts of payments relating to termination of**
3 **employment**

4 *Application of this section*

- 5 (1) This section applies if:
6 (a) a regulated employee’s employment is or is to be terminated;
7 and
8 (b) the employee is or has been covered by a regulated labour
9 hire arrangement order.

10 *Determining amounts of payments relating to termination of*
11 *employment*

- 12 (2) Subject to subsection (5), if an amount that the employee’s
13 employer is required to pay to the employee (or to a person on the
14 employee’s behalf) in relation to the termination of the
15 employment is to be determined wholly or partly on the basis of a
16 rate of pay in relation to the employee, the rate of pay for the
17 purposes of determining the amount is:
18 (a) if the employee is covered by subsection (3) in relation to the
19 amount—the applicable rate of pay that results from the
20 operation of this Part; or
21 (b) in any other case—the applicable rate of pay to which the
22 employee is entitled apart from the operation of this Part.
- 23 (3) This subsection covers the employee in relation to the amount if:
24 (a) immediately before the termination of the employment
25 occurs or is to occur, the employee is or will be covered by a
26 regulated labour hire arrangement order in force in relation to
27 work performed by the employee for a regulated host; and
28 (b) the termination of the employment occurs or is to occur
29 during a period in which the employee is performing work
30 for the regulated host, including a period when the employee
31 is taking paid or unpaid leave, or is absent, in connection
32 with that work and the leave or absence is authorised:
33 (i) by the employee’s employer; or

- 1 (ii) by or under a term or condition of the employee's
2 employment; or
3 (iii) by or under a law of the Commonwealth, a State or a
4 Territory, or an instrument in force under such a law;
5 and
6 (c) the rate of pay mentioned in paragraph (2)(a) is higher than
7 the rate mentioned in paragraph (2)(b); and
8 (d) unless the amount is a payment in lieu of notice of
9 termination—the employee has not performed work for any
10 other regulated host in relation to the employee's
11 employment with the employer.

- 12 (4) If the performance of the work for the regulated host relates to a
13 joint venture or common enterprise engaged in by the regulated
14 host and one or more other persons, then for the purposes of
15 paragraph (3)(d), disregard any work that is taken to be performed
16 for those other persons because of the operation of
17 paragraph 306D(2)(c).

18 *Excluded subject matters*

- 19 (5) If the employer is a national system employer only because of
20 section 30D or 30N, nothing in this Part, including the
21 determination of any rate of pay under or in accordance with this
22 Part, affects any amount:
23 (a) that the employer is required to pay to the employee (or to a
24 person on the employee's behalf) in relation to the
25 termination of the employment; and
26 (b) which relates to an excluded subject matter within the
27 meaning of subsection 30A(1) or 30K(1).

28 *Interaction with fair work instruments etc.*

- 29 (6) This section applies despite:
30 (a) a fair work instrument that applies to the employee; or
31 (b) a covered employment instrument (other than a fair work
32 instrument) that applies to the employee; or
33 (c) the employee's contract of employment.

1 **Division 3—Dealing with disputes**

2 **306P Disputes about the operation of this Part**

3 *When this Division applies to a dispute*

- 4 (1) This Division applies to a dispute about the operation of this
5 Part if:
- 6 (a) a regulated labour hire arrangement order is in force that
7 covers a regulated host, an employer and a regulated
8 employee of the employer performing work for the regulated
9 host; or
 - 10 (b) a regulated labour hire arrangement order has been made but
11 is not yet in force that covers a regulated host, an employer
12 and a regulated employee of the employer performing work
13 for the regulated host.
- 14 (2) Without limiting subsection (1), this Division applies to a dispute
15 about:
- 16 (a) what the protected rate of pay for a regulated employee is; or
 - 17 (b) whether a regulated employee has been, or is being, paid less
18 than the protected rate of pay for the employee.

19 *Parties must attempt to resolve dispute at workplace level*

- 20 (3) In the first instance, the parties to the dispute must attempt to
21 resolve the dispute at the workplace level by discussions between
22 the parties.
- 23 (4) If discussions at the workplace level do not resolve the dispute, a
24 party to the dispute may apply to the FWC to resolve the dispute.

25 *How the FWC deals with dispute*

- 26 (5) If a party to the dispute makes an application under subsection (4):
- 27 (a) the FWC must first deal with the dispute by means other than
28 arbitration, unless there are exceptional circumstances; and
 - 29 (b) the FWC may deal with the dispute by arbitration in
30 accordance with section 306Q.

31 Note: For the purposes of paragraph (a), the FWC may deal with the dispute
32 as it considers appropriate, including by mediation, conciliation,

1 making a recommendation or expressing an opinion (see
2 subsection 595(2)).

3 *Representatives*

4 (6) The employer, employee or regulated host may appoint a person or
5 organisation that is entitled to represent the industrial interests of
6 the employer, employee or regulated host to provide the employer,
7 employee or regulated host (as the case may be) with support or
8 representation for the purposes of:

- 9 (a) resolving the dispute; or
10 (b) the FWC dealing with the dispute.

11 Note: A person may be represented by a lawyer or paid agent in a matter
12 before the FWC only with the permission of the FWC (see
13 section 596).

14 *Joinder of other employees to disputes*

15 (7) Without limiting section 609, the procedural rules may provide for
16 the joinder, as parties to a dispute in relation to which an employee
17 has made an application under subsection (4), of any other
18 employees who have a dispute about the operation of this Part with
19 the same regulated host or employer.

20 **306Q Dealing with disputes by arbitration**

21 (1) The FWC may deal with the dispute by arbitration, including by
22 making an order (an *arbitrated protected rate of pay order*)
23 determining:

- 24 (a) how the rate of pay at which the employer must pay the
25 employee in connection with the work is to be worked out;
26 and
27 (b) that the employer must pay the rate of pay worked out in that
28 way to the employee in connection with the work.

29 (2) If the employer is a national system employer only because of
30 section 30D or 30N, the rate of pay for the purposes of
31 paragraph (1)(a) of this section must not include any amount that
32 relates to an excluded subject matter within the meaning of
33 subsection 30A(1) or 30K(1).

Schedule 1 Main amendments
Part 6 Closing the labour hire loophole

1 Note: Sections 30D and 30N extend the meaning of *national system*
2 *employer*.

3 (3) The FWC must not make an arbitrated protected rate of pay order
4 unless the FWC considers that it would be fair and reasonable to
5 make the order.

6 (4) If the parties have notified the FWC, in writing, that they agree to
7 the FWC arbitrating the dispute, an arbitrated protected rate of pay
8 order made in relation to the dispute may apply in relation to work
9 performed at any time on or after the day the regulated labour hire
10 arrangement order comes into force.

11 (5) If the parties have not notified the FWC that they agree to the FWC
12 arbitrating the dispute, an arbitrated protected rate of pay order
13 made in relation to the dispute may apply only in relation to work
14 performed on or after:

15 (a) if the arbitrated protected rate of pay order is made before the
16 regulated labour hire arrangement order to which the order
17 relates comes into force—the day the regulated labour hire
18 arrangement order comes into force; or

19 (b) otherwise—the day the arbitrated protected rate of pay order
20 is made.

21 *Effect of arbitrated protected rate of pay order*

22 (6) If the FWC makes an arbitrated protected rate of pay order in
23 relation to the dispute, the order has effect, in relation to so much
24 of the work as is performed during the period to which the order
25 applies, despite the following:

26 (a) section 306F (protected rate of pay payable to employees if a
27 regulated labour hire arrangement order is in force);

28 (b) any provision of the following that provides for a lower rate
29 of pay than that worked out in accordance with the order:

30 (i) a fair work instrument that applies to the employee;

31 (ii) a covered employment instrument (other than a fair
32 work instrument) that applies to the employee;

33 (iii) the employee's contract of employment.

34 (7) A person must not contravene a term of an arbitrated protected rate
35 of pay order.

1 Note: This subsection is a civil remedy provision (see Part 4-1).

2 (8) In making an order under this section, the FWC must ensure that, if
3 an exception in section 306G would apply to the requirement to
4 pay the regulated employee at no less than the protected rate of
5 pay, the exception also applies in relation to the requirement to pay
6 the employee at the rate worked out under the arbitrated protected
7 rate of pay order.

8 **306R Application fees**

9 (1) An application under subsection 306P(4) must be accompanied by
10 any fee prescribed by the regulations.

11 (2) The regulations may prescribe:

12 (a) a fee for making an application to the FWC under that
13 subsection; and

14 (b) a method for indexing the fee; and

15 (c) the circumstances in which all or part of the fee may be
16 waived or refunded.

17 **Division 4—Anti-avoidance**

18 **306S Preventing making of regulated labour hire arrangement**
19 **orders**

20 (1) A person contravenes this section if:

21 (a) the person is an employer or a regulated host; and

22 (b) the person, either alone or with one or more other persons:

23 (i) enters into a scheme; or

24 (ii) begins to carry out a scheme; or

25 (iii) carries out a scheme; and

26 (c) the person does so for the sole or dominant purpose of
27 preventing the FWC from making a regulated labour hire
28 arrangement order in relation to any person or persons
29 (whether or not those persons are the same persons
30 mentioned in paragraph (b)); and

31 (d) as a result of that scheme or part of that scheme, the FWC is
32 prevented from making the order.

1 Note: This section is a civil remedy provision (see Part 4-1).

2 (2) In this section:

3 *scheme* means:

- 4 (a) any agreement, arrangement, understanding, promise or
5 undertaking, whether express or implied and whether or not
6 enforceable, or intended to be enforceable, by legal
7 proceedings; or
8 (b) any scheme, plan, proposal, action, course of action or course
9 of conduct, whether unilateral or otherwise.

10 **306SA Avoidance of application of regulated labour hire**
11 **arrangement orders**

12 (1) A person contravenes this section if:

- 13 (a) the person is an employer or a regulated host; and
14 (b) the person, either alone or with one or more other persons:
15 (i) enters into a scheme; or
16 (ii) begins to carry out a scheme; or
17 (iii) carries out a scheme; and
18 (c) the person does so for the sole or dominant purpose of
19 avoiding the application of a regulated labour hire
20 arrangement order that has been made (whether or not the
21 order is yet in force), in relation to any person or persons
22 (whether or not those persons are the same persons
23 mentioned in paragraph (b)); and
24 (d) as a result of that scheme or part of that scheme, a person
25 avoids the application of the regulated labour hire
26 arrangement order.

27 Note: This section is a civil remedy provision (see Part 4-1).

28 (2) In this section:

29 *scheme* means:

- 30 (a) any agreement, arrangement, understanding, promise or
31 undertaking, whether express or implied and whether or not
32 enforceable, or intended to be enforceable, by legal
33 proceedings; or

- 1 (b) any scheme, plan, proposal, action, course of action or course
2 of conduct, whether unilateral or otherwise.

3 **306T Short-term arrangements—engaging other employees**

4 An employer covered by a regulated labour hire arrangement order
5 contravenes this section if:

- 6 (a) the employer is not required to pay a regulated employee at a
7 rate determined under or in accordance with this Part because
8 of the operation of subsection 306G(2) (including as it
9 applies because of subsection 306M(9) or 306Q(8)); and
10 (b) the employer engages another person to perform the same, or
11 substantially the same, work as that performed by the
12 employee for the regulated host; and
13 (c) it could reasonably be concluded that the purpose, or one of
14 the purposes, of engaging the other person is to achieve the
15 result that the employer is not required to pay a regulated
16 employee at a rate determined under or in accordance with
17 this Part.

18 Note: This section is a civil remedy provision (see Part 4-1).

19 **306U Short-term arrangements—entering into other labour hire**
20 **agreements**

21 A regulated host covered by a regulated labour hire arrangement
22 order contravenes this section if:

- 23 (a) an employer covered by the regulated labour hire
24 arrangement order is not required to pay a regulated
25 employee at a rate determined under or in accordance with
26 this Part because of the operation of subsection 306G(2)
27 (including as it applies because of subsection 306M(9) or
28 306Q(8)); and
29 (b) the regulated host enters into an agreement that has the result
30 that another person is to perform the same, or substantially
31 the same, work as that performed by the regulated employee
32 for the regulated host; and
33 (c) it could reasonably be concluded that the purpose, or one of
34 the purposes, of engaging the other person is to achieve the
35 result that the employer is not required to pay a regulated

1 employee at a rate determined under or in accordance with
2 this Part.

3 Note: This section is a civil remedy provision (see Part 4-1).

4 **306V Engaging independent contractors**

5 An employer covered by a regulated labour hire arrangement order
6 contravenes this section if:

- 7 (a) the employer dismisses an employee who performs, or is to
8 perform, work for a regulated host covered by the order; and
9 (b) the employer engages another person as an independent
10 contractor, under a contract for services, to perform that
11 work, or work of that kind, for the regulated host; and
12 (c) a result of the employer dismissing the employee and
13 engaging the independent contractor is that the employer is
14 not required to pay a person at a rate determined under or in
15 accordance with this Part; and
16 (d) it could reasonably be concluded that the employer dismissed
17 the employee and engaged the independent contractor for the
18 purpose, or purposes including the purpose, of achieving that
19 result.

20 Note: This section is a civil remedy provision (see Part 4-1).

21 **Division 5—Other matters**

22 **306W Guidelines**

- 23 (1) The FWC may make written guidelines in relation to the operation
24 of this Part.
- 25 (2) Guidelines made under subsection (1) are not a legislative
26 instrument.
- 27 (3) The FWC must ensure that guidelines under subsection (1) are in
28 force:
29 (a) by 1 November 2024; and
30 (b) at all times on and after that day.

1 **74 Subsection 539(2) (after table item 9)**

2 Insert:

3

Part 2-7A—Regulated labour hire arrangement orders

9A	306EC(1)	(a) an employee;	(a) the Federal	for a serious
	306ED(2)	(b) an employee	Court;	contravention
	306ED(4)	organisation;	(b) the Federal	—600 penalty
	306EE(2)	(c) an inspector	Circuit and	units; or
	306EE(3)		Family Court	otherwise—60
	306F(2)		of Australia	penalty units
	306H(3)		(Division 2);	
	306N(3)		(c) an eligible	
	306Q(7)		State or	
	306S(1)		Territory court	
	306SA(1)			
	306T			
	306U			
	306V			

4 **75 After paragraph 557(2)(f)**

5 Insert:

- 6 (fa) subsection 306F(2) (which deals with the protected rate of
7 pay payable to employees covered by a regulated labour hire
8 arrangement order);
- 9 (fb) subsection 306H(3) (which deals with the obligations of
10 regulated hosts covered by a regulated labour hire
11 arrangement order);
- 12 (fc) subsection 306N(3) (which deals with the contravention of
13 alternative protected rate of pay orders);
- 14 (fd) subsection 306Q(7) (which deals with the contravention of
15 arbitrated protected rate of pay orders);

16 **76 After paragraph 576(1)(f)**

17 Insert:

- 18 (fa) regulated labour hire arrangement orders (Part 2-7A);