

2022-2025

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Fair Work Legislation Amendment (Coal  
Worker Wage Theft Prevention) Bill  
2025  
No.     , 2025**

*(Senator Roberts)*

**A Bill for an Act to amend the *Fair Work Act 2009*,  
and for related purposes**



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1     **A Bill for an Act to amend the *Fair Work Act 2009*,**  
2     **and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act is the *Fair Work Legislation Amendment (Coal Worker*  
6                     *Wage Theft Prevention) Act 2025.*

7     **2 Commencement**

8             (1) Each provision of this Act specified in column 1 of the table  
9             commences, or is taken to have commenced, in accordance with  
10            column 2 of the table. Any other statement in column 2 has effect  
11            according to its terms.

12

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

13                     Note:     This table relates only to the provisions of this Act as originally  
14                     enacted. It will not be amended to deal with any later amendments of  
15                     this Act.

16             (2) Any information in column 3 of the table is not part of this Act.  
17             Information may be inserted in this column, or information in it  
18             may be edited, in any published version of this Act.

19     *[Senator, we have provided that this bill would commence the day after*  
20     *Royal Assent, which is a standard commencement. Please let us know*  
21     *if you require any changes.]*

22     **3 Schedules**

23                     Legislation that is specified in a Schedule to this Act is amended or  
24                     repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Fair Work Act 2009*

#### **1 At the end of Part 2-9**

Add:

### **Division 7—Minimum pay for casual employees in the black coal mining industry**

#### **333X Minimum pay for casual employees in the black coal mining industry**

(1) This section applies if:

- (a) a casual employee enters into a contract or arrangement with an employer to perform work for the employer; and
- (b) while performing the work, any of the following apply:
  - (i) the Black Coal Mining Industry Award applies to the casual employee;
  - (ii) an enterprise agreement applies to the casual employee;
  - (iii) the casual employee is an award/agreement free employee; and
- (c) the employer is part of the black coal mining industry.

(2) The employer must pay the casual employee so assigned as a casual by a contract or arrangement, in respect of the work:

- (a) a base rate of pay for the casual employee's hours of work that is no less than the base rate of pay that is, or would be, payable to a full-time employee of the employer undertaking the same kind of work for the same hours of work; and
  - (b) any of the following that is, or would be, payable to an employee of the employer in the same classification or class of work:
    - (i) incentive-based payments and bonuses;
    - (ii) loadings;
    - (iii) monetary allowances;
    - (iv) overtime or penalty rates;
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- 1 (v) any other separately identifiable amounts; and in  
2 addition  
3 (c) a loading of 25% of the base rate of pay referred to in  
4 paragraph (a).
- 5 (3) For the purposes of paragraph (2)(a), a person's *hours of work*  
6 includes:  
7 (a) the person's ordinary hours of work; and  
8 (b) the person's roster for when the work is performed.
- 9 Example: Tom and Ben both have a 40-hour work week. However, Ben is on a  
10 rotating roster, whereas Tom only works day shifts. For the purposes  
11 of paragraph (2)(a), Ben does not have the same *hours of work* as  
12 Tom.

13 **333Y Review by Fair Work Commission**

- 14 (1) The Fair Work Commission must review all enterprise agreements  
15 operative, and previously operative, under the Black Coal Mining  
16 Industry Award as soon as practicable after:  
17 (a) the 6 month anniversary of the commencement of this  
18 Division; and  
19 (b) each successive 12 month period.
- 20 (2) The review must examine:  
21 (a) whether the enterprise agreements referred to in  
22 subsection (1) comply with the requirement in section 333X;  
23 and  
24 (b) if an enterprise agreement fails to comply—the extent to  
25 which casual employees are being underpaid under each  
26 enterprise agreement.
- 27 (3) The Fair Work Commission must give the Minister a written report  
28 of the review within 3 months of the commencement of the review.
- 29 (4) Without limiting subsection (3), the report must include a list of  
30 every enterprise agreement which does not comply with the  
31 requirements in section 333X.
- 32 (5) The Minister must:
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- 1 (a) as soon as practicable after being given the report, cause a  
2 copy of the report to be given to the Fair Work Ombudsman;  
3 and  
4 (b) on the first sitting day after being given the report, cause a  
5 copy of the report to be tabled in each House of the  
6 Parliament.

7 **333Z Audit by Fair Work Ombudsman**

- 8 (1) As soon as practicable after being given a copy of a report under  
9 paragraph 333Y(5)(a), the Fair Work Ombudsman must notify  
10 each employer covered by an enterprise agreement mentioned in  
11 subsection 333Y(4) that the enterprise agreement has been  
12 included in the report.
- 13 (2) Within 30 days after the employer receives a notice under  
14 subsection (1), the employer must give the Fair Work Ombudsman  
15 a written statement that includes the following:
- 16 (a) the name of each casual employee of a kind referred to in  
17 subsection 333X(1);
- 18 (b) the pay rates and total remuneration paid to each casual  
19 employee for each financial year within the total period in  
20 which both:
- 21 (i) the employee has been performing work for the  
22 employer; and
- 23 (ii) the enterprise agreement referred to in a notification  
24 given to the employer under subsection (1) applied to  
25 the employee.

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

- 27 (4) The Fair Work Ombudsman must conduct an audit of written  
28 statements given to the Fair Work Ombudsman, including by  
29 undertaking an assessment of whether:
- 30 (a) each casual employee mentioned in a written statement has  
31 been underpaid; and
- 32 (b) if the Fair Work Ombudsman reasonably considers that the  
33 casual employee has been underpaid—the total amount by  
34 which the Fair Work Ombudsman reasonably considers each  
35 casual employee has been underpaid.
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- 1 (5) The Fair Work Ombudsman must give the Minister a written report  
2 of the audit within 3 months of the commencement of the audit.
- 3 (6) Without limiting subsection (5), the report must include the  
4 following:
- 5 (a) a list of each casual employee that the Fair Work  
6 Ombudsman reasonably considers has been underpaid;
- 7 (b) the total amount by which the Fair Work Ombudsman  
8 reasonably considers each casual employee has been  
9 underpaid.
- 10 (7) The Minister must cause a copy of the report to be tabled in each  
11 House of the Parliament on the first sitting day after being given  
12 the report.

13 **333AA Compensation for underpayment**

- 14 (1) This section applies if the Fair Work Ombudsman:
- 15 (a) conducts an assessment under subsection 333Z(3); and
- 16 (b) based on that assessment, reasonably considers that a casual  
17 employee has been underpaid.
- 18 (2) As soon as practicable after giving the Minister a report under  
19 subsection 333Z(5), the Fair Work Ombudsman must provide a  
20 compensation notice in respect of the casual employee to the  
21 following:
- 22 (a) the employer of the casual employee;
- 23 (b) the industrial association or industrial associations (if any)  
24 that supported the enterprise agreement covering the casual  
25 employee;
- 26 (c) the Fair Work Commission.
- 27 (3) As soon as practicable after receiving a compensation notice under  
28 subsection (2) the notified party must pay the amount of  
29 compensation included in that notice to the casual employee.
- 30 (4) A person referred to in paragraph (2)(a) or (2)(b) commits an  
31 offence if the person fails to comply with subsection (3).
- 32 Penalty:
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(a) for an individual—imprisonment for 2 years or 500 penalty units, or both; or

(b) for a body corporate—2,500 penalty units.

(5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

(6) In this section:

**compensation notice** means a notice setting out:

(a) the fact that the Fair Work Ombudsman considers that a casual employee has been underpaid; and

(b) the name of the casual employee; and

(c) the total amount by which the Fair Work Ombudsman considers the casual employee has been underpaid; and

(d) the compensation portion.

**compensation portion** means an amount of compensation that is the total amount of compensation that the Fair Work Ombudsman reasonably considers is owed to the casual employee divided by the total number of parties that the Fair Work Ombudsman proposes to notify under subsection (2).

### 333AB Funding

Expenditure for the purposes of this Division is to be made from funds appropriated by the Parliament.

### 333AC Definitions

In this Division:

**Black Coal Mining Industry Award** means the *Black Coal Mining Industry Award 2020*, as in force from time to time.

## 2 Subsection 539(2) (after table item 10E)

Insert:

10F	333Z(2)	an inspector;	(a) the Federal Court;	for a serious contravention—
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- |   |   |
|---|---|
| (b) the Federal Circuit and Family Court of Australia (Division 2); | 600 penalty units; or<br>otherwise—60 penalty units |
| (c) an eligible State or Territory court                            |   |

### 3 Application

Division 7 of Part 2-9 of the *Fair Work Act 2009*, as added by this Schedule, applies in relation to contracts or arrangements entered into before, on or after the commencement of this item.

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