

### **341 Meaning of *workplace right***

#### *Meaning of workplace right*

- (1) A person has a ***workplace right*** if the person:
- (a) is entitled to the benefit of, or has a role or responsibility under, a workplace law, workplace instrument or order made by an industrial body; or
  - (b) is able to initiate, or participate in, a process or proceedings under a workplace law or workplace instrument; or
  - (c) is able to make a complaint or inquiry:
    - (i) to a person or body having the capacity under a workplace law to seek compliance with that law or a workplace instrument; or
    - (ii) if the person is an employee—in relation to his or her employment.

#### *Meaning of process or proceedings under a workplace law or workplace instrument*

- (2) Each of the following is a ***process or proceedings under a workplace law or workplace instrument***:
- (a) a conference conducted or hearing held by the FWC;
  - (b) court proceedings under a workplace law or workplace instrument;
  - (c) protected industrial action;
  - (d) a protected action ballot;
  - (e) making, varying or terminating an enterprise agreement;
  - (f) appointing, or terminating the appointment of, a bargaining representative;
  - (g) making or terminating an individual flexibility arrangement under a modern award or enterprise agreement;
  - (h) agreeing to cash out paid annual leave or paid personal/carer's leave;
  - (i) making a request under Division 4 of Part 2-2 (which deals with requests for flexible working arrangements);
  - (j) dispute settlement for which provision is made by, or under, a workplace law or workplace instrument;
  - (k) any other process or proceedings under a workplace law or workplace instrument.

#### *Prospective employees taken to have workplace rights*

- (3) A prospective employee is taken to have the workplace rights he or she would have if he or she were employed in the prospective employment by the prospective employer.

**Note:** Among other things, the effect of this subsection would be to prevent a prospective employer making an offer of employment conditional on entering an individual flexibility arrangement.

#### *Exceptions relating to prospective employees*

- (4) Despite subsection (3), a prospective employer does not contravene subsection 340(1) if the prospective employer makes an offer of

	<p>employment conditional on the prospective employee accepting a guarantee of annual earnings.</p> <p>(5) Despite paragraph (1)(a), a prospective employer does not contravene subsection 340(1) if the prospective employer refuses to employ a prospective employee because the prospective employee would be entitled to the benefit of Part 2-8 or 6-3A (which deal with transfer of business).</p>
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