

316 Transferring employees who are high income employees

- (1) This section applies if:
 - (a) the old employer had given a guarantee of annual earnings for a guaranteed period to a transferring employee; and
 - (b) the transferring employee was a high income employee immediately before the termination of the transferring employee's employment with the old employer; and
 - (c) some of the guaranteed period occurs after the time (the *transfer time*) the transferring employee becomes employed by the new employer; and
 - (d) an enterprise agreement does not apply to the transferring employee in relation to the transferring work at the transfer time.
- (2) The guarantee of annual earnings has effect after the transfer time (except as provided in this section) as if it had been given to the transferring employee by the new employer.
- (3) The new employer is not required to comply with the guarantee of annual earnings in relation to any part of the guaranteed period before the transfer time.
- (4) The new employer is not required to comply with the guarantee of annual earnings to the extent that it requires the new employer to pay an amount of earnings to the transferring employee, in relation to the part of the guaranteed period after the transfer time, at a rate that is more than the annual rate of the guarantee of annual earnings.
- (5) If:
 - (a) the transferring employee is entitled to non-monetary benefits under the guarantee of annual earnings after the transfer time; and
 - (b) it is not practicable for the new employer to provide those benefits to the transferring employee;then the guarantee of annual earnings is taken to be varied so that, instead of the entitlement to those benefits, the transferring employee is entitled to an amount of money that is equivalent to the agreed money value of those benefits.
- (6) This section does not affect the rights and obligations of the old employer that arose before the transfer time in relation to the guarantee of annual earnings.