



Workplace Relations Amendment Regulations 2007 (No. 2)¹

Select Legislative Instrument 2007 No. 183

I, PROFESSOR MARIE BASHIR, AC, CVO, Deputy for the Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Workplace Relations Act 1996*.

Dated 28 June 2007

MARIE BASHIR
Deputy for the Governor-General
By Her Excellency's Command

JOE HOCKEY
Minister for Employment and Workplace Relations

1 Name of Regulations

These Regulations are the *Workplace Relations Amendment Regulations 2007 (No. 2)*.

2 Commencement

These Regulations commence on 1 July 2007.

3 Amendment of *Workplace Relations Regulations 2006*

Schedule 1 amends the *Workplace Relations Regulations 2006*.

Schedule 1 Amendments

(regulation 3)

[1] Chapter 2, Part 5, heading

substitute

Part 5 Workplace Authority Director

[2] Chapter 2, Part 5, Division 1

omit

[3] Chapter 2, Part 5, Division 2, heading

substitute

Division 2 Remuneration and allowances of Workplace Authority Director

[4] Chapter 2, regulation 5.2

omit

For subsection 157 (2) of the Act, the Employment Advocate

insert

For subsection 151B (2) of the Act, the Workplace Authority Director

[5] Chapter 2, Part 5, Division 3, heading

substitute

**Division 3 Disclosure of identity of parties to
AWA**

[6] Chapter 2, subregulation 5.3 (1)

omit

paragraph 165 (1) (e)

insert

subsection 164A (5)

[7] Chapter 2, Part 5, regulations 5.4 and 5.5

omit

[8] Chapter 2, Part 5, after Division 3*insert***Division 4 Disclosure of information by workplace agreement official****5.6 Disclosure of information by workplace agreement official**

- (1) For subsection 164A (5) and paragraph 165 (1) (e) of the Act:
 - (a) a workplace agreement official is prescribed; and
 - (b) the workplace agreement official may disclose information prescribed in subregulation (3) to a person prescribed in subregulation (2) for a purpose prescribed in subregulation (4).
- (2) The persons are:
 - (a) a Minister; or
 - (b) the Secretary; or
 - (c) an SES employee or an APS employee performing duties in the Department.
- (3) The information is:
 - (a) information that is:
 - (i) acquired by the workplace agreement official in the course of exercising powers, or performing functions, as a workplace agreement official; and
 - (ii) relevant to a purpose in paragraph (4) (a); and
 - (b) information that has previously been disclosed to the public other than information that has been disclosed to the public in contravention of the Act or regulations made under the Act; and
 - (c) information relating to a proceeding initiated by a workplace inspector.

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- (4) The purposes are:
- (a) the purpose of briefing a Minister, or considering briefing a Minister:
 - (i) to assist the Minister:
 - (A) to consider a complaint or issue raised with the Minister by or on behalf of a person (in writing or orally); and
 - (B) to respond to the person in relation to the complaint or issue; or
 - (ii) in relation to a meeting or other event that the Minister is to attend; or
 - (iii) for an issue that has been raised publicly, or is proposed to be raised publicly, by or on behalf of the person to whom the information of a kind mentioned in paragraph (3) (a) relates — to assist the Minister to respond to the issue; or
 - (iv) in relation to an error or delay on the part of the Workplace Authority; or
 - (v) in relation to an instance of an anomalous or unusual operation of:
 - (A) Commonwealth workplace relations legislation; or
 - (B) the *Building and Construction Industry Improvement Act 2005*; or
 - (C) Schedule 1 to the Act; and
 - (b) for information mentioned in paragraphs (3) (b) or (3) (c) — to provide information to the person
 - (i) about a matter that has previously been disclosed to the public; or
 - (ii) about a proceeding initiated by a workplace inspector.

- (5) In this regulation:

APS employee has the same meaning as in the *Public Service Act 1999*.

Minister means:

- (a) a Minister of State administering any part of Commonwealth workplace relations legislation; or

(b) the Prime Minister.

SES employee has the same meaning as in the *Public Service Act 1999*.

Note Under subsection 164A (7) of the Act, a workplace agreement official is not authorised to disclose to the Minister information relating to:

- (a) a decision under Division 5A of Part 8 of the Act whether a particular workplace agreement passes the fairness test; or
- (b) whether that Division requires the Workplace Authority Director to decide whether a particular workplace agreement passes the fairness test.

[9] Chapter 2, after sub-subparagraph 6.2 (1) (b) (i) (E)

insert

(EA) an instrument given effect to by the Act;

[10] Chapter 2, after paragraph 6.3 (1) (e)

insert

(ea) an instrument given effect to by the Act;

[11] Chapter 2, Part 6, regulation 6.4

substitute

**6.4 Investigating alleged breach of section 34 of the
*Independent Contractors Act 2006***

For subsection 167 (5) of the Act, it is a function of a workplace inspector to investigate an alleged breach of section 34 of the *Independent Contractors Act 2006*.

Note Section 34 of the *Independent Contractors Act 2006* prohibits certain coercive conduct in relation to reform opt-in agreements which may be entered into by parties to services contracts under the transitional provisions of that Act.

[12] Chapter 2, regulation 6.6

substitute

6.6 Disclosure of information by Workplace Ombudsman

- (1) For paragraph 165 (1) (e) and subsection 166U (3) of the Act:
 - (a) a member of the Office of the Workplace Ombudsman is prescribed; and
 - (b) the member of the Office of the Workplace Ombudsman may disclose information prescribed in subregulation (3) to a person prescribed in subregulation (2) for a purpose prescribed in subregulation (4).
- (2) The persons are:
 - (a) a Minister; or
 - (b) the Secretary; or
 - (c) an SES employee or an APS employee performing duties in the Department.
- (3) The information is:
 - (a) information that is:
 - (i) acquired by the member in the course of exercising powers, or performing functions, as a member of the Office of the Workplace Ombudsman; and
 - (ii) relevant to a purpose in paragraph (4) (a); and
 - (b) information that has previously been disclosed to the public other than information that has been disclosed to the public in contravention of the Act or regulations made under the Act; and
 - (c) information relating to a proceeding initiated by a workplace inspector.
- (4) The purposes are:
 - (a) the purpose of briefing a Minister, or considering briefing a Minister:
 - (i) to assist the Minister:
 - (A) to consider a complaint or issue raised with the Minister by or on behalf of a person (in writing or orally); and

- (B) to respond to the person in relation to the complaint or issue; or
 - (ii) in relation to a meeting or other event that the Minister is to attend; or
 - (iii) for an issue that has been raised publicly, or is proposed to be raised publicly, by or on behalf of the person to whom the information of a kind mentioned in paragraph (3) (a) relates — to assist the Minister to respond to the issue; or
 - (iv) in relation to an error or delay on the part of the Office of the Workplace Ombudsman; or
 - (v) in relation to an instance of an anomalous or unusual operation of:
 - (A) Commonwealth workplace relations legislation; or
 - (B) the *Building and Construction Industry Improvement Act 2005*; or
 - (C) Schedule 1 to the Act; and
 - (b) for information mentioned in paragraphs (3) (b) or (3) (c) — to provide information to the person
 - (i) about a matter that has previously been disclosed to the public; or
 - (ii) about a proceeding initiated by a workplace inspector.
- (5) In this regulation:
- APS employee** has the same meaning as in the *Public Service Act 1999*.
- Minister** means:
- (a) a Minister of State administering any part of Commonwealth workplace relations legislation; or
 - (b) the Prime Minister.
- SES employee** has the same meaning as in the *Public Service Act 1999*.

[13] Chapter 2, after regulation 21.3*insert***21.4 Additional effect of Act — Workplace Relations Fact Sheet**

For section 899 of the Act, without affecting the operation of Division 3A of Part 5 of the Act apart from this regulation, Division 3A of Part 5 of the Act also has effect as follows:

- (a) each reference in Division 3A of Part 5 of the Act to an employer is to be read as a reference to an employer (within the meaning of section 858 of the Act) in Victoria; and
- (b) each reference in Division 3A of Part 5 of the Act to an employee is to be read as a reference to an employee (within the meaning of section 858 of the Act) in Victoria; and
- (c) each reference in Division 3A of Part 5 of the Act to employment is to be read as a reference to the employment of an employee (within the meaning of section 858 of the Act) in Victoria.

[14] Schedules 5 and 6*omit***[15] Further amendments**

| <i>Provision</i> | <i>omit each mention of</i> | <i>insert</i> |
|---|-----------------------------|--------------------------------|
| Chapter 2: | | |
| Subregulation 5.3 (2), definition of <i>authorised person</i> ; regulation 8.1; regulation 8.9; paragraphs 8.9 (b), (d) and (e) | Employment Advocate | Workplace Authority Director |
| Paragraph 8.9 (e) | Employment Advocate's | Workplace Authority Director's |

| <i>Provision</i> | <i>omit each mention of</i> | <i>insert</i> |
|---|-----------------------------|--------------------------------|
| Paragraph 8.9 (f) | Employment Advocate | Workplace Authority Director |
| Paragraph 8.9 (f) | Employment Advocate's | Workplace Authority Director's |
| Subregulations 8.10 (6); 9.1 (8); 9.5 (8); 9.20 (8) | Employment Advocate | Workplace Authority Director |
| Chapter 7: Subregulation 2.13 (1) | Employment Advocate | Workplace Authority Director |

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.