EXPLANATORY STATEMENT

(Issued by the authority of the Workplace Ombudsman)

Workplace Relations Act 1996

Directions to Inspectors

Background

By reason of amendments made to the Workplace Relations Act 1996 (the Act) by the Workplace Relations Amendment (A Stronger Safety Net) Act 2007 (the Safety Net Act), subsection 167(2) of the Workplace Relations Act 1996 (the Act) now empowers the Workplace Ombudsman to appoint workplace inspectors.

Under subsection 167(5) of the Act a person appointed as a workplace inspector has the powers and functions conferred on a workplace inspector by the Act or by the regulations or by another Act.

Also by reason of the Safety Net Act, subsection 167(7) of the Act requires workplace inspectors in the exercise of powers and the performing of functions to comply with directions made by the Workplace Ombudsman.

Prior to the making of these Directions workplace inspectors were required to comply with directions made by the Minister for Employment and Workplace Relations (the Minister) under Legislative Instrument F2006L00983. The Minister no longer has that power.

Legislative Instrument F2006L00983 required workplace inspectors to obtain the approval of:

- a SES officer in the Office of Workplace Services before commencing litigation in respect of certain provisions (known as proscribed provisions) of the Act or the Workplace Relations Regulations 1996; and
- a SES officer approved by the Group Manager of the Workplace Relations Implementation Group located within the Department in respect of certain provisions (known as non-proscribed provisions) of the Act or the Workplace Relations Regulations 1996.

These Directions will revoke and replace Legislative Instrument F2006L00983 to reflect changes to the powers of workplace inspectors, and the creation of the Office of the Workplace Ombudsman as a Statutory Agency, as a result of the Safety Net Act.

Consultation

No consultation was undertaken pursuant to section 17 of the Legislative Instruments Act 2003 because these Directions are unlikely to have a direct or substantial indirect, effect on business and are unlikely to restrict competition. The Directions are technical in nature and do not substantially alter existing arrangements.
Notes on clauses

Clause 1
This clause specifies when the Directions will commence. The Directions will commence on the day that they are registered on the Federal Register of Legislative Instruments.

Clause 2
This clause is a formal definitions provision. It provides definitions for commonly used words and phrases in the Directions. The Directions no longer draw a distinction between a ‘prescribed provision’ and a ‘non-prescribed provision’.

Clause 3
This clause applies to litigation action commenced or intervened in by workplace inspectors in respect of an alleged breach of the Act or Regulations. The clause identifies that the workplace inspector must obtain consent from the Workplace Ombudsman or an authorised SES officer before commencing or intervening in litigation.

Clause 4
This clause provides that a workplace inspector must not commence or intervene in litigation in respect of an alleged breach of a provision of the Act or the Regulations, which in the opinion of the SES officer approving the litigation is a trivial or minor contravention of the Act or the Regulations.