

EXPLANATORY STATEMENT

(Issued by the authority of the Fair Work Ombudsman)

Fair Work Act 2009

Paid Parental Leave Act 2010

Fair Work (Transitional and Consequential Amendments) Act 2009

Direction to Inspectors

Background

By reason of subsection 700(1) of the *Fair Work Act 2009* (**FW Act**), the Fair Work Ombudsman is empowered to appoint Fair Work Inspectors.

Under subsection 704(1) of the FW Act, Fair Work Inspectors, in the performance of their functions or the exercise of their powers as Fair Work Inspectors, are required to comply with directions made by the Fair Work Ombudsman.

On 1 July 2009, the Fair Work Ombudsman made a Direction under subsection 704(1) in the form of Legislative Instrument F2009L02679.

Prior to the enactment of the FW Act, Part 6 of the *Workplace Relations Act 1996* (**WR Act**) contained provisions relating to the appointment of workplace inspectors. Under Part 6 of the WR Act, workplace inspectors were required, in the exercise of powers and the performing of functions, to comply with directions made by the Workplace Ombudsman under Legislative Instrument F2007L02341. Item 15 of schedule 18 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* preserved directions given to one or more inspectors by the Workplace Ombudsman, including F2007L02341.

On 31 August 2009, the Fair Work Ombudsman revoked these prior Directions and made a Direction under subsection 704(1) in the form of Legislative Instrument F2009L03487. This Direction will revoke and replace Legislative Instrument F2009L03487.

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.

Clause 3

This clause applies to litigation action commenced or intervened in by Fair Work Inspectors on behalf of the Fair work Ombudsman (other than those Inspectors who are also Australian Building and Construction Commission Inspectors).

The clause requires Fair Work Inspectors, before commencing or intervening in litigation on behalf of the Fair Work Ombudsman to:

- comply with relevant Guidance Notes concerning the litigation policy of the Fair Work Ombudsman;
- be satisfied that there is sufficient evidence and it is in the public interest to commence litigation; and
- obtain the consent of the Fair Work Ombudsman or an authorised member of the staff of the Office of the Fair Workplace Ombudsman.

Clause 4

This clause applies in respect of litigation action concerning building industry participants commenced or intervened in by Fair Work Inspectors who are also Australian Building and Construction Commission Inspectors under the *Fair Work Act 2009* and related legislation. This clause requires Fair Work Inspectors who are also Australian Building and Construction Commission Inspectors to comply with the Direction of the Australian Building and Construction Commissioner made on 28 February 2011.