EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 323

Issued by the authority of the Minister for Employment and Workplace Relations

Subject - Fair Work Act 2009

Fair Work Amendment Regulation 2012 (No. 3)

Section 796 of the Fair Work Act 2009 (FW Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the FW Act, or necessary or convenient to be prescribed for carrying out or giving effect to the FW Act.

The Regulation amends the Fair Work Regulations 2009, consequential on amendments to the Fair Work Act 2009 (FW Act) made by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012 (TCF Act). The TCF Act made a number of amendments to the Fair Work Act 2009 (FW Act) in respect of outworkers in the TCF industry, including in relation to right of entry laws. The TCF Act amended the special right of entry rules that apply to suspected breaches relating to outworkers (which allow entry without 24 hours notice), by extending the existing framework to apply to the TCF industry more broadly.

The Regulation prescribes Ethical Clothing Australia as the body specified by name for the purposes of performing the accreditation role.

Subsection 483A(6) of the FW Act provides that a person’s principal place of business will be exempt from the extended special right of entry rules provided for under paragraph 483A(1)(a) of the FW Act if the person is accredited by a person or body specified by name in the regulations. Accreditation will exempt an accredited person’s principal place of business from being entered under paragraph 483A(1)(a) of the FW Act for the purpose of investigating a suspected contravention, in which case the premises may still be entered under the standard right of entry rules.

The Government consulted with the States and Territories as required by the Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector. Employer and employee stakeholders have also been consulted.

Details of the Regulation are in the Attachment.

Under subsection 483A(7) of the FW Act, the Minister must be satisfied that the person or body to be specified by name in the Regulation for the purposes of paragraph 483A(6)(a) of the FW Act:

- has aims that are consistent with the objects of Part 6-4A of the FW Act, that is, to eliminate exploitation of outworkers in the TCF industry and to ensure that outworkers are employed or engaged under secure, safe and fair systems of work; and
- has the endorsement of at least one employee organisation entitled to represent the industrial interests of TCF award workers and one employer organisation entitled to represent those that employ or engage TCF award workers.
The Minister has had regard to these conditions and is satisfied that the conditions have been met.

The Regulation is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required.

The Regulation commences operation on 1 January 2013.

**Authority:** Section 796 of the Fair Work Act 2009
Details of the *Fair Work Amendment Regulation 2012 (No. 3)*

**Section 1 – Name of regulation**

This section sets out the name of the Regulation as the *Fair Work Amendment Regulation 2012 (No. 3).*

**Section 2 – Commencement**

This section provides that the Regulation commences on 1 January 2013.

**Section 3 – Amendment of the *Fair Work Regulations 2009***

This section provides that Schedule 1 to the Regulation amends the Principal Regulations.

**Schedule 1 – Amendments**

**Item [1] – Part 3-4, before Division 3**

This item inserts new Division 2 - Entry to investigate suspected contravention relating to TCF award workers after Part 3-3.

Item 1 inserts new subregulation 3.24A(1) to specify Ethical Clothing Australia as the prescribed body for the the purposes of paragraph 483A(6)(a) of the *Fair Work Act 2009.*

Item 1 also inserts new subregulation 3.24A(2), to make clear that Ethical Clothing Australia means the Homeworker Code Committee Inc trading as Ethical Clothing Australia.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Fair Work Amendment Regulation 2012 (No. 3)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument

The purpose of this legislative instrument is to amend the Fair Work Regulations 2009 (the Principal Regulations) consequential on amendments to the Fair Work Act 2009 (FW Act) made by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2009 (TCF Act).

The legislative instrument prescribes Ethical Clothing Australia as the body specified by name for the purposes of performing the accreditation role in relation to right of entry in the textile, clothing and footwear (TCF) industry, as described in paragraph 483A(6)(a) of the FW Act.

The TCF Act made a number of amendments to the Fair Work Act 2009 (FW Act) in respect of outworkers in the TCF industry, including in relation to right of entry laws. The TCF Act amended the special right of entry rules that apply to suspected breaches relating to outworkers (which allow entry without 24 hours notice), by extending the existing framework to apply to the TCF industry more broadly.

Subsection 483A(6) of the FW Act provides that a person’s principal place of business will be exempt from the extended special right of entry rules provided for under paragraph 483A(1)(a) of the FW Act if the person is accredited by a person or body specified by name in the regulations. Accreditation will exempt an accredited person’s principal place of business from being entered under paragraph 483A(1)(a) of the FW Act for the purpose of investigating a suspected contravention, in which case the premises may still be entered under the standard right of entry rules.

Human rights implications

This legislative instrument engages with the following human rights:

- The right to work and rights in work including the right to just and favourable conditions of work in articles 6(1), 7 and 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Right to Work and Rights in Work

Article 6(1) of the ICESCR recognises the right to work and obliges States Parties to take appropriate steps to safeguard this right. The United Nations Committee on Economic, Social and Cultural Rights (the UN Committee) has stated that the right to work in article 6(1) of ICESCR encompasses the need to provide the worker with just and favourable conditions of work. Article 7 of the ICESCR sets out the right to just and favourable conditions of work.
The legislative instrument promotes the right to just and favourable working conditions because it is made with the purpose of giving effect to the broader aims of the TCF Act, which is the elimination of exploitation of outworkers (including through the use of sweatshop labour in the TCF industry).

As the accrediting body has aims that are consistent with the object of ensuring outworkers are engaged or employed under secure, safe and fair systems of work by providing nationally consistent rights and protections, accreditation is a means by which this objective is promoted throughout the TCF industry.

The effect of accreditation is merely that the right of entry rules that apply to a person’s principal place of business are the standard FW Act right of entry rules. Other premises in the TCF industry operated by accredited persons and all premises operated by non-accredited persons will remain subject to enhanced TCF right of entry laws.

In this way the legislative instrument promotes the right to just and favourable working conditions and in our view does not impinge upon other rights provided for in the ICESCR.

Conclusion

The Legislative Instrument is compatible with human rights.

The Hon William Richard Shorten MP
Minister for Employment and Workplace Relations