EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment

Subject – Fair Work (Registered Organisations) Act 2009
Fair Work (Registered Organisations) Amendment Act 2016
Fair Work (Registered Organisations) Regulations 2009

Authority

Item 246 of Part 2 of Schedule 2 to the Fair Work (Registered Organisations) Amendment Act 2016 (the Amending Act) provides that rules about transitional matters arising out of the amendments and repeals made by Part 1 of Schedule 2 of the Amending Act may be made.

Under subsection 33(3) of the Acts Interpretation Act 1901 (AIA), where an Act confers a power to make, grant or issue any instrument of a legislative character (including rules), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Under section 4 of the AIA, where an Act has been enacted but is yet to commence, the power to make an instrument of a legislative nature (including rules) under the Act may be exercised before the commencement time as if the relevant commencement time had occurred.

Purpose

The Fair Work (Registered Organisations) (Transitional Provisions) Rules 2017 (the Transitional Rules) has the objective of dealing with a number of consequential matters relating to the amendment of the Fair Work (Registered Organisations) Act 2009 (the Act) by the Amending Act.

These matters include:
- providing for transitional recognition, and cancellation or suspension of recognition, of existing auditors of reporting units; and
- providing for transitional financial year disclosure and reporting requirements and for transitional disclosure of material personal interests of officers.

Background

The Amending Act amends the Act to ensure better governance of registered organisations and provide an appropriately empowered and independent regulator that will ensure compliance with the Act by registered organisations, branches of registered organisations and their officers.

Broadly, the Amending Act:
- establishes an independent regulator, the Registered Organisations Commission (the Commission), to monitor and regulate registered organisations with enhanced investigation and information gathering powers;
amends the requirements regarding officers’ disclosure of material personal interests (and related voting and decision making rights);

- strengthens provisions concerning grounds for disqualification and ineligibility for office;

- strengthens existing financial accounting, disclosure and transparency obligations under the Act by putting certain rule obligations on the face of the Act and making them enforceable as civil remedy provisions;

- increases civil penalties and introduces criminal offences for serious breaches of officers’ duties as well as new offences in relation to the conduct of investigations under the Act;

- ensures that employees of organisations whose work relates to organisations’ finances are held accountable and ensures that officers and employees responsible for such finances undertake appropriate financial training;

- establishes a system of registration of auditors; and

- strengthens whistle-blower protections and provides for the investigation of protected disclosures by authorised officials within prescribed timeframes.

The Commission will be headed by the Registered Organisations Commissioner (the Commissioner), who will assume some of the duties previously allocated to the General Manager of the Fair Work Commission under the Act.

The Government consulted with the States and Territories under the Intergovernmental Agreement for a National Workplace Relations System for the Private Sector on 17 January 2017. The Government also consulted with the Committee on Industrial Legislation (COIL) on the measures contained in the proposed Regulations on 17 January 2017. COIL is a body made up of representatives from registered employee and employer organisations as well as peak associations. No objections were raised.

The Government also consulted with the Fair Work Commission and the Fair Work Ombudsman. The need for an amendment dealing with the repeal of the requirement contained in Division 3A of Part 2 of Chapter 5 of the Act that an organisation or a branch of an organisation maintain certain rules in relation to the disclosure of certain information was identified by the regulators and incorporated into the final drafting.

Details of the Transitional Rules are found at Attachment A.

A statement of compatibility with human rights has been prepared for the Transitional Rules at Attachment B.

The relevant provisions of the Act and the Amending Act do not impose any conditions that need to be satisfied before the power to make the Transitional Rules may be exercised.

The Transitional Rules is a legislative instrument for the purposes of the Legislation Act 2003.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (reference OBPR ID: 21719).

The Transitional Rules commences at the same time as Schedule 2 to the Amending Act.
Details of the *Fair Work (Registered Organisations) (Transitional Provisions) Rules 2017*

**Part 1—Preliminary**

Section 1 – Name

Section 1 sets out the name of the Transitional Rules.

Section 2 – Commencement

Section 2 provides that the Transitional Rules commences at the same time as Schedule 2 to the Amending Act.

Section 3 – Authority

Section 3 provides the legislative authority for the Transitional Rules. The rules are made under section 246 of the Amending Act.

Section 4 – Definitions

Section 4 provides definitions for common terms used in the Transitional Rules. It also provides that other expressions used in the Transitional Rules have the same meaning as in the Act.

Section 5 – When a person is transitionally recognised

Subsection 5(1) provides that to be a transitionally recognised auditor in relation to a reporting unit a person must hold, or be a member of a firm that holds, the position of auditor of the reporting unit and be an approved auditor immediately prior to the commencement time. Additionally:

- the person, or firm, must hold the position of auditor of the reporting unit continuously from the commencement time; and
- the person must not cease to be recognised under subsection 5(2) of the Transitional Rules; and
- the person’s recognition must not be suspended under subsection 5(3) of the Transitional Rules; and
- the person’s registration as an auditor under the *Corporations Act 2001* must not be suspended.

Subsection 5(2) provides that a person will cease to be a transitionally recognised auditor at either the end of 3 months from the commencement time or if any of the following events occurs or the circumstances listed below start to exist during the 3 months from commencement time:

- the person is registered as an auditor under the Act;
- the person is no longer a member of a least one of CPA Australia, The Institute of Chartered Accountants in Australia or the Institute of Public Accountants;
- the person ceases to hold a current Public Practice Certificate (where applicable); or
• the person’s transitional recognition as an auditor is cancelled under subsection 5(3) of the Transitional Rules.

Subsection 5(2) further provides that a person who has ceased to be recognised cannot become transitionally recognised again.

Subsection 5(3) provides that the Commissioner may cancel or suspend a person’s transitional recognition as an auditor in any circumstances where, had the person been a registered auditor, the Commissioner would have been permitted to cancel or suspend the person’s registration under the Act or the Fair Work (Registered Organisations) Regulations 2009 (the Regulations).

Subsection 5(4) provides that section 255H of the Act applies to a transitionally recognised auditor as if the person were a registered auditor under the Act. This means that the Commissioner may cancel the transitional recognition of a person whose registration as a company auditor is cancelled, or suspend the person’s transitional recognition for some or all of the period in which the person’s registration as a company auditor is suspended.

Subsection 5(5) and its note provide that written notice is to be given of the cancellation or suspension of transitional recognition of an auditor. The decision to suspend or cancel transitional recognition does not take effect until the day the notice is given.

**Part 2 – Transitional provisions for approved auditors**

**Section 6 – Advice of material change in circumstances**

Section 6 provides that the requirements in sections 255K and 255L of the Act apply to transitionally recognised auditors. Under section 255K of the Act, registered auditors must advise the Commissioner of any change in circumstances that could materially affect the person’s registration, for example, that the person is no longer holds a current Public Practice Certificate, within 14 days of that change. From commencement, the penalty provided under section 255K will apply in the same way to transitionally recognised auditors as to registered auditors. Section 255L provides that the Commissioner may request further information from any person for the purpose of making a decision relating to registration and that the Commissioner is not required to make a decision concerning registration until such information has been provided.

**Section 7 – Operation of Subdivision B of Division 4, and Divisions 5 and 6, of Part 3 of Chapter 8 of the Act**

Section 7 provides that any reference to an auditor of a reporting unit in Subdivision B of Division 4, or Divisions 5 and 6, of Part 3 of Chapter 8 of the Act, and the reporting guidelines, includes a reference to a person who is a transitionally recognised auditor in relation to the reporting unit.

**Section 8 – Operation of section 256 of the Act**

Paragraph 8(1) (a) provides that a reporting unit will satisfy the requirement in subsection 256(1) of the Act, that a reporting unit is to ensure there is an auditor of the reporting unit at any time an auditor is required, if the position of auditor for that reporting unit is held by a
person who is, or a firm at least one of whose members is, transitionally recognised in relation to the reporting unit.

Paragraph 8(1)(b) provides that the requirement in subsection 256(2) the Act for the position of auditor of a reporting unit to be held by an individual who is a registered auditor, or a firm at least one of whose members is a registered auditor, or a company at least one of whose directors, officers or employees is a registered auditor, is satisfied if the position of auditor of that reporting unit is held by a person who is, or a firm at least one of whose members is, transitionally recognised as an auditor in relation to the reporting unit.

Paragraph 8(1)(c) provides that references to a registered auditor in relation to the requirements for an individual, a firm or a company to resign an appointment as auditor of a reporting unit is taken to include a reference to a person who is transitionally recognised in relation to the reporting unit.

Subsection 8(2) is included for the avoidance of doubt. It provides that paragraphs 256(3)(a), 256(4)(a) and 256(4A)(a) do not apply to persons who are transitionally recognised in relation to a reporting unit. These paragraphs provide that individual auditors, members of firms and companies cannot ordinarily accept appointment as an auditor unless they are, or have at least one member, director, officer or employee who is, a registered auditor.

Section 9 – Operation of section 256A of the Act

Section 9 provides that periods during which an individual is transitionally recognised as an auditor of a reporting unit are to be taken into account in working out limited terms in which an individual may play a significant role in the audit of a reporting unit.

Part 3—Financial year disclosure and reporting requirements

Section 10 – Reporting guidelines

Section 10 provides that obligations stemming from reporting guidelines created under new subsection 255(2A) of the Act will only apply in relation to financial years beginning on or after 1 July 2017. Guidelines created under new subsection 255(2A) will require that reporting units detail total expenditure incurred during a financial year in relation to remuneration and employment related costs in respect of employees, advertising, operating costs, donations to political parties and legal costs.

Section 11 – Disclosure of remuneration paid to officers

Section 11 provides that an officer will not have to comply with section 293B of the Act for remuneration paid prior to 1 July 2017 if the officer’s remuneration is or was paid under a contract or other arrangement entered into before commencement time and was paid on a regular basis. Section 293B requires officers of organisations and branches to disclose their remuneration in accordance with either section 293BA or 293BB. Officers will otherwise have to comply with section 293B after commencement time.
Section 12 – Officer and related party disclosure statements

Section 12 provides that the new reporting and disclosure obligations contained in sections 293J, 293BC and 293G of the Act will only apply to organisations, branches and officers in financial years beginning on or after 1 July 2017.

Section 293J of the Act requires that organisations and branches prepare, as soon as practicable after the end of each financial year, an officer and related party disclosure statement for each financial year. Section 293G of the Act requires that organisations and branches disclose details of each payment made to a related party or declared person within a financial year. Section 293BC requires that organisations and branches disclose the remuneration of their five most highly remunerated officers in that organisation or branch for each financial year.

Section 12 also provides that despite the repeal of the requirement contained in Division 3A of Part 2 of Chapter 5 of the Act that an organisation or a branch of an organisation maintain certain rules in relation to the disclosure of certain information, these obligations will continue to apply until immediately before the start of the first financial year beginning 1 July 2017.

Section 13 – Disclosure of material personal interests of officers

Section 13 provides that officers at commencement time who have duties including duties related to the financial management of an organisation or branch and who are required by section 293C to disclose their material personal interests, will satisfy the requirement that disclosure be made as soon as practicable if they make the disclosure, in accordance with subsections 293C(2) or (3), before the end of three months from commencement time.
Statement of Compatibility with Human Rights

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

Fair Work (Registered Organisations) (Transitional Provisions) Rules 2017

This 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 instrument

The Transitional Rules has the objective of dealing with consequential matters relating to the amendment of the Act by the Amending Act.

These matters include:
- providing for transitional recognition, and cancellation or suspension of recognition, of existing auditors of reporting units; and
- providing for transitional financial year disclosure and reporting requirements and for transitional disclosure of material personal interests of officers.

Human rights implications

The Transitional Rules does not alter the human rights implications of the Act or the Amending Act as set out in the Statement of Compatibility with Human Rights that accompanies the explanatory memorandum for each.

Conclusion

The Transitional Rules is compatible with human rights as it does not raise any human rights issues.

Senator the Hon. Michaelia Cash, Minister for Employment