

EXPLANATORY STATEMENT

Issued by authority of the Minister for Jobs and Industrial Relations

Fair Work Act 2009

Section 14

Fair Work (State Declarations — employer not to be national system employer) Endorsement 2019 (No. 1)

The *Fair Work (State Declarations – employer not to be national system employer) Endorsement 2019 (No. 1)* (the Endorsement) is made under paragraph 14(4)(a) of the *Fair Work Act 2009* (Fair Work Act), and endorses a declaration made under the *Industrial Relations Act 1996* (NSW) that the Far North West Joint Organisation and the Far South West Joint Organisation (the two Joint Organisations) are not national system employers. The Endorsement commences on 1 March 2019.

The Fair Work Act sets out the workplace relations framework for national system employers and national system employees. Subsection 14(2) of the Fair Work Act provides that a particular employer is not a national system employer if:

- the employer is
 - a body established for a public purpose by or under a law of a State or Territory, by the Governor of a State, by the Administrator of a Territory or by a Minister of a State or Territory; or
 - a body established for a local government purpose by or under a law of a State or Territory or an entity that is wholly owned or controlled by such a body; and
- the employer is declared by or under a law of a State or Territory not to be a national system employer; and
- a written endorsement under paragraph 14(4)(a) of the Fair Work Act made by the Minister administering the Fair Work Act is in force in relation to the employer.

This recognises that certain entities are integral to State, Territory and local government administration and the employment relationships of these entities may be appropriately regulated by States and Territories.

The two Joint Organisations were established by proclamation under the *Local Government Act 1993* (NSW) on 4 July 2018 (that came into effect on 6 July 2018).

The effect of the Endorsement is that, from its commencement, the two Joint Organisations will not be national system employers and will not generally be subject to the Fair Work Act. The two Joint Organisations will instead be subject to the workplace relations arrangements under New South Wales State laws. Parts 6-3 and 6-4 of the Fair Work Act, which relate to

unlawful termination of employment, notice of termination and parental leave, and which apply to all employers and employees, will continue to apply to the two Joint Organisations.

The Endorsement is a legislative instrument for the purposes of the *Legislation Act 2003* but is not subject to the disallowance or sunset provisions of that Act (subsection 14(5) of the Fair Work Act).