EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 340

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

Workplace Relations Act 1996
Workplace Relations Amendment (Work Choices) Act 2005

Workplace Relations Amendment Regulations 2006 (No. 4)

Subsection 846(1) of the *Workplace Relations Act 1996* (the WR Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Additional relevant details of the regulation-making powers under the WR Act are set out in Attachment A.

Item 1 of Part 1 of Schedule 4 to the *Workplace Relations Amendment (Work Choices) Act 2005* (the Work Choices Act) provides that the Governor-General may make regulations dealing with matters of a transitional nature relating to amendments made by that Act.

The *Workplace Relations Regulations 2006* (the Principal Regulations) are made under both the WR Act and the Work Choices Act. These amendments relate to matters under the WR Act and the Work Choices Act.

The Regulations make technical and minor corrections to the Principal Regulations. The Regulations include amendments to those provisions relating to preserved State agreements, personal and carer's leave, civil remedy provisions and record keeping and pay slip requirements.

The Regulations are divided into two schedules.

Schedule 1 Part 1 amends provisions in the Principal Regulations relating to training arrangements. These amendments ensure that a training arrangement (as defined in section 4 of the WR Act) is suspended, terminated, or cancelled in accordance with the relevant State or Territory law, regardless of anything contrary in an award or workplace agreement made under the WR Act.

Schedule 1 Part 2 inserts a new regulation to provide that protected preserved conditions (within the meaning of subclause 25A(4) of Schedule 8 to the WR Act) continue to have effect after a preserved State agreement is terminated in accordance with clause 21 of Schedule 8.

Schedule 1 Part 3 clarifies that arrangements for personal/carer's leave to be taken at half pay are not overridden by the Australian Fair Pay and Conditions Standard (the Standard). These regulations are also made pursuant to the regulation-making power in subsection 172(4) of the WR Act.

Schedule 1 Part 4 consolidates regulations dealing with contraventions of civil remedy provisions in a new Chapter 2, Part 14, Division 3 'General provisions relating to civil remedies', and includes a cross-reference to those general provisions from each civil remedy provision.

The amendments in Schedule 2 amend the Principal Regulations by repealing the existing Part 19 of Chapter 2 and replacing it with a streamlined set of record keeping and payslip requirements. The streamlined requirements are designed to ensure that sufficient records are maintained in order to ensure compliance with the Australian Fair Pay and Conditions Standard, while significantly reducing the administrative burden on employers.

The Government received a number of representations concerning the operation of the record keeping requirements from stakeholders and constituents and discussed possible changes with a number of key stakeholders who are required to keep records under the regulations. On 13 November 2006, the Minister issued a media release explaining the proposed amendments to streamline the record keeping requirements to more closely reflect the pre-WorkChoices requirements.

Other changes to the regulations are minor, or consequential on changes made to the WR Act by the *Workplace Relations Legislation Amendment (Independent Contractors) Act 2006* which passed the Parliament on 4 December 2006.

Details of the Regulations are set out in Attachment B.

Neither the WR Act nor the Work Choices Act impose any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Regulations 1, 2, 3 and Schedule 1 commence on the day after registration.

The amendments in Schedule 2 to the Regulations commence on 27 March 2007. The commencement date coincides with the end of the transitional period during which employers could not be prosecuted for contravention of Part 19.

ATTACHMENT A

Details of the regulation-making powers under the *Workplace Relations Act 1996*

Subsection 172(4) of the WR Act provides for the making of regulations to prescribe the circumstances in which the Australian Fair Pay and conditions Standard provides or does not provide a more favourable outcome in a particular respect.

Subclause 30(1) of Schedule 8 to the WR Act provides that the Governor-General may make Regulations for the purposes of applying provisions of the WR Act to preserved State agreements or modifying or adapting provisions of the Act that apply to those agreements.

Subsection 836(1) of the WR Act provides that the regulations may make provision for the making and retention by employers of records relating to the employment of employees and the inspection of such records.

Subsection 836(2) of the WR Act provides that the Regulations may require employers of employees to issue pay slips to those employees at prescribed times and containing prescribed particulars.

ATTACHMENT B

Details of the *Workplace Relations Amendment Regulations 2006 (No. 4)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Workplace Relations Amendment Regulations 2006 (No. 4).*

Regulation 2 – Commencement

This regulation provides that regulations 1, 2 and 3 and Schedule 1 to the Regulations commence on the day after the Regulations are registered on the Federal Register of Legislative Instruments and that Schedule 2 to the Regulations commences on 27 March 2007.

Regulation 3 – Amendment of *Workplace Relations Regulations 2006*

This regulation provides that Schedules 1 and 2 to the Regulations amend the Principal Regulations.

Schedule 1 – Amendments

Part 1 Amendments relating to training arrangements

Item [101] – Chapter 2, after subregulation 1.2(6)

Item [101] amends regulation 1.2 by adding a new subregulations (7) and (8) relating to training arrangements (as defined in section 4 of the WR Act).

Subsection 16(1) provides that the WR Act applies to the exclusion of certain laws of a State and Territory so far as they would otherwise apply in relation to an employee or employer within the meaning of subsection 5(1) or 6(1). However subsection 16(1) does not apply to a law of a State or Territory in so far as the law is prescribed under paragraph 16(2)(b). Regulation 1.2 provides that certain State and Territory laws are prescribed for the purposes of paragraph 16(2)(b).

Item [101] adds to regulation 1.2 State or Territory industrial laws that provide a remedy following the termination of a training arrangement in circumstances that contravene laws relating to training arrangements. However, this does not include a State or Territory industrial law to the extent that is relates to a remedy for a termination of employment that is harsh, unjust or unreasonable.

The effect of this item is to ensure that a training arrangement is suspended, terminated, or cancelled in accordance with the relevant State or Territory law, which includes an industrial law within the scope of the regulation. For example, the regulation enables the penalty provision in section 139 of the *Industrial Relations Act 1999* (Qld) to apply where a training arrangement is terminated in contravention of the *Vocational Education, Training and Employment Act 2000* (Qld). Without this item, the penalty provision would not apply because the *Industrial Relations Act 1999* is a State and Territory industrial law, which is excluded by the WR Act (subsection 16(1) of the WR Act refers).

Item [102] – Chapter 2, paragraph 1.5(9)(b)

Subsection 17(1) of the WR Act provides that an award or workplace agreement prevails over the law of a State or Territory to the extent of any inconsistency. Subsection 17(2) provides that an award or workplace agreement that deals with, among other things, training arrangements is subject to a law of a State or Territory. However, subsection 17(2) provides an exception to this by allowing regulations to prescribe laws that deal with the matters in subsection 17(2) which, despite the listing of the matter in subsection 17(2), are to be subject to an inconsistent term in an award or workplace agreement.

Regulation 1.5 of Chapter 2 of the Principal Regulations provides that awards and workplace agreements operate subject to some State or Territory laws relating to training arrangements, while prevailing to the extent of any inconsistency over other laws relating to training arrangements, as prescribed in regulation 1.5 of Chapter 2 of the Principal Regulations.

Item [102] amends regulation 1.5 to replace paragraph 1.5(9)(b) with a new paragraph that clarifies the extent to which awards and workplace agreements remain subject to laws relating to the termination of training arrangements. The effect of the amendment is to confirm that an award or workplace agreement operates subject to a State or Territory law relating to training arrangements which authorises the training authority (as defined in section 4 of the WR Act) to suspend, cancel or terminate a training arrangement. This item does not amend the extent to which an award or agreement is not subject to a law relating to training arrangements.

<u>Part 2 – Amendment relating to protected preserved conditions</u>

Item [201] – Chapter 5, after regulation 2.1

Item [201] inserts a new regulation 2.2 in Chapter 5 to provide that protected preserved conditions (within the meaning of subclause 25A(4) of Schedule 8 to the WR Act) continue to have effect after a preserved State agreement is terminated in accordance with clause 21 of Schedule 8.

Formerly, where a preserved State agreement was terminated and not replaced with a new workplace agreement no protected preserved conditions would apply in relation to the employer or employee who had been subject to the preserved state agreement.

Subregulation 2.2(2) ensures that protected preserved conditions have effect in relation to an employer and an employee who is bound by a preserved State agreement when it is terminated in accordance with clause 21 of Schedule 8.

Subregulation 2.2(3) clarifies that once a workplace agreement comes into operation, clause 25A of Schedule 8 determines the application of preserved protected conditions.

Subregulation 2.2(4) provides that a protected preserved condition is enforceable as if the preserved State agreement continued in operation. This means, for example, that an employee can enforce entitlements determined by a protected preserved condition.

Part 3 – Amendments relating to personal/carer's leave

Item [301] – Chapter 2, paragraph 7.1(6)(da)

Item [302] – Chapter 2, after subregulation 7.1(11F)

Items [301] and [302] amend the Principal Regulations to clarify that arrangements for personal/carer's leave to be taken at half pay are not overridden by the Australian Fair Pay and Conditions Standard (the Standard).

The Standard prevails over workplace agreements made after the commencement of amendments to the WR Act made by the *Workplace Relations Amendment* (*Work Choices) Act 2005* (27 March 2006), or contracts of employment, to the extent that it provides a more favourable outcome in a particular respect (subsection 172(2)). Subsection 172(4) provides for the making of regulations that prescribe circumstances in which the Standard provides or does not provide a more favourable outcome in a particular respect. Subregulation 7.1(6) provides that the types of paid and unpaid leave provided for in the Standard are each a particular respect for the purpose of subsection 172(2) of the WR Act.

Item [302] inserts a new subregulation 7.1(11G) in Chapter 2, which makes clear that arrangements in contracts of employment and workplace agreements that spread payment for personal/carer's leave over a longer period, and correspondingly increase the amount of personal/carer's leave, are not less favourable than the Standard – this permits, for example, clauses which provide twice the amount of personal/carer's leave at half the rate of pay.

Item [301] amends paragraph 7.1(6)(da) of Chapter 2 by inserting a reference to new subparagraph 7.1(11G), to make clear that personal/carer's leave is a 'particular respect' for the purpose of subregulation 7.1(11G).

Item [303] – Chapter 2, paragraph 21.3(6)(da)

Item [304] – Chapter 2, after subregulation 21.3(11F)

Items [303] and [304] have the same effect in relation to Victorian employees bound by an employment agreement (under Part 2 of the former *Employee Relations Act 1992* of Victoria) as items [301] and [302] have in relation to employees within the meaning of subsection 5(1) of the WR Act.

Victorian employment agreements entered into before 1 January 1997 continue in force under Division 12 of Part 21 of the Act. Subsection 896(2) of the WR Act provides that the Standard prevails over an employment agreement to the extent that it provides a more favourable outcome in a particular respect.

Part 4 – Amendments relating to civil remedy provisions

Division 3 – General provisions relating to civil remedies

Item [401] – Chapter 2, after subregulation 4.9(4)

Item [401] inserts new subregulation 4.9(5) to clarify that subregulation 4.9(2) is a civil remedy provision. Item [401] also inserted a note to new subregulation 4.9(5) to

make clear that Chapter 2, Part 14 sets out provisions dealing with contraventions of civil remedy provisions.

Item [402] – Chapter 2, regulation 4.11

Item [405] – Chapter 2, subregulation 8.14(4), including the note

Item [406] – Chapter 2, regulation 8.15

Item [407] – Chapter 2, subregulation 9.8(6), including the note

Item [408] – Chapter 2, subregulation 9.11(3), including the note

Item [409] – Chapter 2, subregulation 9.22(7), including the note

Item [410] – Chapter 2, regulation 9.26

Item [413] – Chapter 2, subregulation 19.32(4)

Item [425] – Chapter 8, subregulation 1.1(3), including the note

Item [426] - Chapter 8, regulation 1.3

These items make minor technical amendments to various regulations to change references to 'civil penalty provision' to 'civil remedy provision'. Item [426] also corrected the reference from 'in this Part' to 'in this Chapter.'

Items 405, 407, 408, 409, 413, and 425 also inserts a note to make it clear that Chapter 2, Part 14 sets out provisions dealing with contraventions of the civil remedy provisions.

Item [403] – Chapter 2, subregulation 8.11 (3), note

Item [404] – Chapter 2, subregulation 8.13 (4), note

Item [414] – Chapter 2, subregulation 19.33 (4), at the foot

Item [415] – Chapter 2, subregulation 19.34 (3), at the foot

Item [416] – Chapter 2, subregulation 19.35 (3), at the foot

Item [417] – Chapter 2, subregulation 19.36 (7), at the foot

Item [419] – Chapter 2, subregulation 19.37 (5), at the foot

Item [420] – Chapter 2, subregulation 19.38 (3), at the foot

Item [421] – Chapter 2, subregulation 19.39 (5), at the foot

Item [422] – Chapter 2, subregulation 19.40 (5), at the foot

These items make minor technical amendments to various civil remedy provisions to insert a note to make it clear that Chapter 2, Part 14 sets out provisions dealing with contraventions of the civil remedy provisions.

Item [411] – Chapter 2, Part 14, after Division 2

Division 3 Contravention of civil remedy provisions

Item [411] inserts a new Division 3 setting out general provisions relating to the contravention of civil remedy provisions under the Principal Regulations.

Division 3 outlines the consequences of contravening a civil remedy provision under the Regulations, and provides for workplace inspectors to have standing to commence proceedings for a contravention before certain courts.

Regulation 14.3 – Standing for civil remedies

Regulation 14.3 provides that a workplace inspector has standing to commence proceedings in relation to contraventions of civil remedy provisions and sets out the different courts that can deal with particular civil remedy provisions.

Subregulation 14.3(1) provides that the courts to which a workplace inspector may apply for an order for a contravention of a civil remedy provision in Part 4 or Part 8 of Chapter 2 are limited to the Federal Court or the Federal Magistrates Court.

Subregulation 14.3(2) provides that a workplace inspector may apply to a 'section 717 court' for a contravention of a civil remedy provision in the Principal Regulations, other than a civil remedy provision in Part 4 or Part 8 of Chapter 2. A 'section 717 court' is defined to mean an eligible court as defined in section 717 of the Act: the Federal Court; the Federal Magistrates Court; a District, County or Local Court; a magistrate's court; the Industrial Relations Court of South Australia, or any other State or Territory court that is prescribed by the regulations.

The expanded range of courts that can deal with civil remedy provisions other than those provisions in Part 4 or Part 8 allows workplace inspectors to bring enforcement action in areas where there may not be a Federal Court or Federal Magistrates Court.

Regulation 14.4 – Court may order pecuniary penalty

Regulation 14.4 provides that a court may order a person who contravened a civil penalty provision in these Regulations to pay a pecuniary penalty of up to the maximum permissible under paragraph 846(2)(g) of the WR Act.

Regulation 14.5 – Multiple contraventions of penalty provisions

Subregulations 14.5(1) and (2) provide that a person who commits two or more contraventions of a civil remedy provision relating to the same action or course of conduct is deemed to have only contravened the applicable provision once. This prevents a person being punished multiple times for the same contravention of an applicable civil remedy provision.

This regulation is similar to subsections 717 (2) and (3) of the WR Act.

Subregulation 14.5(3) provides that subregulation 14.5(2) will not apply after a penalty has been imposed on a person for the original two or more contraventions. In effect, an imposition of a penalty will 'reset the counter' allowing a fresh penalty to be imposed for any new contraventions of an applicable provision. In other words any new contraventions can not be deemed to relate to the original.

Regulation 14.6 – Crown not liable to penalty for contravention of civil remedy provision

Regulation 14.6 provides that the Crown in right of the Commonwealth, a State or a Territory is not liable to proceedings for a contravention of a civil remedy provision in these Regulations.

Item [412] – Chapter 2, subregulation 19.30

Item [424] – Chapter 2, Part 19A, Division 5

As a consequence of Chapter 2, Part 14 applying to all civil remedy provisions in the Principal Regulations, item [424] repealed separate machinery provisions for proceedings for civil penalties in Chapter 2, Part 19A, Division 5, relating to contract outworker records in Victoria. Item [412] made a minor technical amendment to regulation 19.30 to reflect this change.

Item [423] – Chapter 2, after subregulation 19.40

Item 423 inserts a new regulation 19.40A to provide that Chapter 2 of the *Criminal Code*, other than section 13.2 and Part 2.7, applies to civil remedy provisions in Part 19A as if those provisions were offences.

Item [418]

Item [418] substitutes the heading of Chapter 2, Part 19A, Division 4.

Schedule 2 – Amendments commencing on 27 March 2007

Item [1] – Chapter 2, Part 19

Item [1] repeals and replaces Chapter 2, Part 19 of the Principal Regulations.

Part 19 – Records relating to employees and pay slips

Subsection 836(1) of the WR Act provides for regulations in relation to the making and retention by employers of records relating to the employment of employees and for the inspection of such records. Subsection 836(2) provides for regulations requiring employers to issue pay slips to those employees.

Paragraph 846(2)(g) of the WR Act allows for regulations to be made which impose civil penalties for contravention of the regulations.

Item 1 of Part 1 of Schedule 4 to the Work Choices Act provides that the Governor-General may make regulations dealing with matters of a transitional nature relating to amendments made by that Act.

A note following each civil remedy provision in this Part makes it clear that Chapter 2, Part 14 sets out provisions dealing with contraventions of the civil remedy provisions.

Division 1 – Preliminary

Division 1 sets out the purpose of Part 19, its operation, and provides for the application of the *Criminal Code Act 1995* (the Criminal Code) to its civil penalties.

Regulation 19.1 – Purpose of Part

Regulation 19.1 sets out the purpose of Part 19 which is to provide for:

- the making and retention of records by employers relating to the employment of employees (paragraph 19.1(1)(a));
- the inspection of records by workplace inspectors (paragraph 19.1(1)(b));
- the issue of pay slips to employees by employers (paragraph 19.1(1)(c)); and
- transitional matters arising out of the reform commencement (subregulation 19.1(2)).

Regulation 19.2 – Application of Part

Regulation 19.2 provides that Part 19 applies to:

- employees and employers within the meaning of subsections 5(1) and 6(1) (paragraph 19.2(1)(a));
- employees and employers within the meaning of section 858 (paragraphs 19.2(2)(a) and 19.2(2)(b));
- employment within the meaning of subsection 7(1) (paragraph 19.2(1)(b)); and
- employment within the meaning of Schedule 6 to the Act (paragraph 19.2(2)(c)).

This means that all employers will be required to keep records in accordance with Part 19 if they are within the constitutional coverage of the WR Act.

The note to regulation 19.2 refers the reader to regulation-making powers that extend section 836 to Victorian employers and employees within the meaning of section 858, and to transitional employers and employees within the meaning in Schedule 6 to the WR Act.

Regulation 19.3 – Application of the Criminal Code to civil remedy provisions

Regulation 19.3 provides that Chapter 2 of the Criminal Code, other than section 13.2 and Part 2.7, applies to civil remedy provisions in Part 19 as if those provisions were offences.

Division 2 – Rules concerning keeping records

Division 2 sets out employers' obligations to make and keep records relating to employees, the condition that records must be kept in, and the form the records must be kept in.

Regulation 19.4 – Obligation to make and keep records relating to employees

Regulation 19.4 sets out:

- the obligations on employers to make and keep records relating to employees in accordance with Divisions 3 and 4; and

- how long an entry in a record must be kept for.

Subregulations 19.4(3) and 19.4(4) provide that the above obligations are subject to a civil penalty and that strict liability applies to the physical elements of the obligations.

Regulation 19.5 – Condition of records

Subregulation 19.5(1) provides that a record that relates to an employee must be in a condition that allows a workplace inspector to determine the employee's entitlements and whether the employee is receiving those entitlements.

Subregulations 19.5(2) and 19.5(3) provide that the obligation is subject to a civil penalty and that strict liability applies to the physical elements of the obligation.

Regulation 19.6 – Form of records

Subregulation 19.6(1) provides that a record must be in a legible form in the English language (paragraph 19.6(1)(a)) and in a form that is readily accessible to a workplace inspector (paragraph 19.6(1)(b)).

Subregulations 19.6(2) and 19.6(3) provide that the above obligations are subject to a civil penalty and that strict liability applies to the physical elements of the obligations.

Division 3 – Content of records

Division 3 sets out the contents that must be contained in records relating to employees.

Regulation 19.7 – Content requirement for records

Regulation 19.7 provides that the record relating to the employee must contain the matters specified in the provisions of Divisions 3 and 4 of this Part, to the extent that they apply to the employee.

Regulation 19.8 – Contents of records – general

Regulation 19.8 sets out the general content requirements for records relating to employees, including:

- the name of the employer and the employee (paragraphs 19.8(1)(a) and (b));

- whether the employee's employment is full-time or part-time (paragraph 19.8(1)(c));

- whether the employee's employment is permanent, temporary or casual (paragraph 19.8(1)(d)); and

- the date on which the employee's employment began (paragraph 19.8(1)(e)).

Subregulations 19.8(2) and 19.8(3) provide that the content requirements are subject to a civil penalty and that strict liability applies to the physical elements of the requirements.

Regulation 19.9 – Contents of records – overtime hours worked

Regulation 19.9 provides that if an employee actually works overtime hours and a penalty rate or loading (however described) must be paid for those overtime hours worked, the employer must record:

- the number of overtime hours worked by the employee (paragraph 19.9(1)(a)); and

- when the employee started and ceased working overtime hours (paragraph 19.9(1)(b)).

This means that where an employee is entitled to paid overtime (should they work overtime hours), but the employee does not does not actually work overtime hours, an employer will not have to create a record with the matters specified in paragraphs 19.9(1)(a) and (b).

Subregulations 19.9(2) and 19.9(3) provide that the content requirements are subject to a civil penalty and that strict liability applies to the physical elements of the requirements.

Regulation 19.10 – Contents of records – reasonable additional hours

Subregulation 19.10(1) provides that if the employer and employee agree, in writing, to an averaging of the employee's hours or work under section 226, the employer must keep a copy of that agreement.

Subregulations 19.10(2) and 19.10(3) provide that the obligation is subject to a civil penalty and that strict liability applies to the physical elements of the obligation.

Regulation 19.11 – Contents of records – pay

Regulation 19.11 sets out the contents that records must contain in respect to an employee's pay or remuneration.

Subregulation 19.11(1) provides that the record relating to the employee must contain details of the rate of remuneration paid to the employee. For subregulation 19.11(1), the rate of remuneration paid to the employee includes a basic periodic rate of pay or a basic piece rate of pay.

Subregulation 19.11(2) provides that if the employee is a casual or irregular part-time employee who is guaranteed a basic periodic rate of pay, the record relating to the employee must also contain a record of the hours worked by the employee.

Subregulation 19.11(3) provides that the record relating to an employee must contain details of any incentive–based payment, bonus, loading, penalty rate, or other monetary allowance or separately identifiable entitlement that the employee is entitled to be paid.

Subregulation 19.11(4) provides that the record relating to the employee must contain details of the gross and net amounts paid to the employee, as well as any deductions made from the gross amount paid to the employee.

Subregulations 19.11(5) and 19.11(6) provide that the above content requirements are subject to a civil penalty and that strict liability applies to the physical elements of the requirements.

Regulation 19.12 – Contents of records – leave

Subregulations 19.12(1) provides that if the employee is entitled to leave of any kind (eg annual leave, personal/carer's leave), the record relating to the employee must detail:

- the accrual of that kind of leave (paragraph 19.12(1)(a));
- any leave of that type taken by the employee (paragraphs 19.12(1)(b)); and
- the balance of the employee's entitlement to that leave from time to time (paragraph 19.12(1)(c)).

Subregulation 19.12(2) requires an employer to retain a copy of an employee's written election to forgo an amount of leave in accordance with section 233 (eg cashing out of annual leave).

The above content requirements are subject to a civil penalty and the Regulations make it clear that strict liability applies to the physical elements of the requirements.

Regulation 19.13 – Contents of records – superannuation contributions

Regulation 19.13 sets out the contents that a record must contain if the employer is required to make superannuation contributions for the benefit of an employee including:

- the amount of the contributions made (paragraph 19.13(1)(a));
- the period over which the contributions were made (paragraph 19.13(1)(b));
- the dates on which the contributions were made (paragraph 19.13(1)(c));
- the name of any fund to which the contributions were made (paragraph 19.13(1)(d)); and
- the basis on which the employer became liable to make the contributions, including a record of any election made by the employee as to the fund to

which contributions are to be made and the date of any relevant election (paragraph 19.13(1)(e)).

Subregulations 19.13(2) and 19.13(3) provide that the content requirements are subject to a civil penalty and that strict liability applies to the physical elements of the requirements.

Subregulation 19.13(4) provides that an employer does not have to include within the record contributions in respect of a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations* 1994) in a defined benefit superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993.*

Regulation 19.14 – Contents of records – Termination of employment

Regulation 19.14 provides that if the employee's employment is terminated, the record relating to the employee must contain information on how the employment was terminated and the name of the person who acted to terminate the employment.

Division 4 – Transmission of business

Division 4 deals with the obligations and rights of old and new employers with respect to their record keeping obligations where there is a succession, transmission or assignment (transmission) of a business.

Regulation 19.15 – Transmission of business

Regulation 19.15 sets out the record keeping requirements in relation to a new employer who employs a transferring employee and is a successor, transmittee or assignee of a whole or part of a business of an old employer, including:

- requiring an old employer to give a new employer all records in relation to any transferring employee, which the old employer was required to keep at the time of transmission under these Regulations (subregulation 19.15(2)), or in the case of the Commonwealth, providing copies of those records (subregulation 19.15(3));

- requiring a new employer to request records from an old employer, in relation to a transferring employee that the new employer employs within two months of transmission and requiring an old employer to comply with the request (subregulations 19.15(4) and 19.15(5)); and

- transferring the obligations to keep a transferring employee's records to the new employers (subregulation 19.15(6)).

Subregulation 19.15(7) clarifies that a new employer has no obligation to make records in relation to a transferring employee's employment with the old employer.

Subregulations 19.15(8) and 19.15(9) provide that the above obligations are subject to a civil penalty and that strict liability applies to the physical elements of the obligations.

For the purposes of regulation 19.15, 'transferring employee' has the same meaning as in the WR Act. The definition also includes a transferring transitional employee (within the meaning of the WR Act) (paragraph 19.15(1)(b)).

Division 5 – Miscellaneous

Division 5 sets out various obligations that an employer has in relation to a record, and prescribes certain conduct that the employer must not do in relation to a record.

Regulation 19.16 – Alteration and correction of a record

Regulation 19.16 provides that an employer must:

- not alter a record, or allow a record to be altered, unless he or she does so in accordance with subregulations 19.16(2) and (3); and

- correct any error in a record as soon as the employer becomes aware of that error and record the nature of the error when correcting an error.

Subregulations 19.16(4) and 19.16(5) provide that the above obligations are subject to a civil penalty and that strict liability applies to the physical elements of the obligations.

Regulation 19.17 – False or misleading entry in a record

Subregulation 19.17(1) provides that a person must not make, or make use of, an entry in any record required to be kept under Part 19 if the person does so knowing that the entry is false or misleading.

Subregulations 19.17(2) and 19.17(3) provide that the above obligations are subject to a civil penalty and that strict liability applies to the physical elements of the obligations.

Regulation 19.18 – Inspection and copying of a record

Regulation 19.18 provides for the inspection and copying of records. Subregulation 19.18(1) provides that an employer must make a copy of a record available on request by an employee, or former employee, to whom the record relates (paragraph 19.18(1)(a)), or a workplace inspector (paragraph 19.18(1)(b)).

The regulations also set out the form in which the copy of the record must be and the time frame in which that copy must be made available (subregulations 19.18(2) and (3)).

A note to subregulation 19.18(1) refers the reader to Divisions 4 and 5 of Part 15 of the Act which deal with a registered organisation's right to inspect records in relation to employment.

Subregulations 19.18(4) and 19.18(5) provide that the above obligations are subject to a civil penalty and that strict liability applies to the physical elements of the obligations.

Regulation 19.19 – Information concerning a record

Subregulation 19.19(1) provides that an employer who has received a request to inspect or copy records under regulation 19.18 must tell the person entitled to inspect and copy the records where the records relating to the employee, or a class of employees, are kept.

Subregulation 19.19(2) provides that the person may interview the employer, or their representative, at any time during ordinary working hours, about a record made or required to be made by the employer. Subregulation 19.19(3) provides that the employer must give reasonable assistance to the person in the conduct of the interview.

Subregulations 19.19(4) and (5) provide that the above obligations are subject to a civil penalty and that strict liability applies to the physical elements of the obligations.

Division 6 – Pay slips

Subsection 836(2) of the WR Act provides that the Regulations may require employers of employees to issue pay slips to employees. Division 6 sets out the obligations on employers to issue such pay slips to employees and what must be contained in these pay slips.

Regulation 19.20 – Pay slips

Subregulations 19.20(1) and (2) provide that an employer must issue written pay slips to employees relating to each payment by the employer within 1 day of making the payment to the employee. The pay slips must contain the particulars set out in regulation 19.21 (subregulation 19.20(3)).

Subregulations 19.20(4) and (5) provide that the above obligations are subject to a civil penalty and that strict liability applies to the physical elements of the obligations.

Paragraph 19.20(2)(b) makes it clear that a pay slip may be issued as a hard copy (ie paper) or in electronic form.

Regulation 19.21 – Contents of pay slips

Subregulation 19.21(1) sets out the details required in pay slips, including:

- the name of the employer and employee (paragraphs 19.21(1)(a) and (b));
- the date on which the payment to which the pay slip relates was made (paragraph 19.21(1)(c)), and the period to which that pay slip relates (paragraph 19.21(1)(d));
- if the employee is paid at an hourly rate of pay, the ordinary hourly rate, the number of hours in that period for which the employee was employed at that rate and the payment made at that rate (paragraph 19.21(1)(e));
- if the employee is paid at an annual rate of pay, that rate as at the latest date to which the payment relates (paragraph 19.21(1)(f));

- the gross and net amounts of the payment (paragraphs 19.21(1)(g) and (h));

- any amount paid that is an incentive-based payment, bonus, loading, monetary allowance, penalty rate or other separately identifiable entitlement that the employee has (paragraph 19.21(1)(i));

- details of each amount deducted from the gross amount, including the name, or the name and number, of the fund or account into which the deduction was paid (paragraph 19.21(1)(j)); and

- if the employer is required to make superannuation contributions for the benefit of the employee, the record must state the amount of each contribution that:

    - the employer has made for the benefit of the employee during the period to which the pay slip relates and the name of any fund to which that contribution was made, (subparagraph 19.21(1)(k)(i)); or

    - the amounts of contributions that the employer is liable to make in relation to the period to which the pay slip relates and the name of any fund to which those contribution will be made (subparagraph 19.21(1)(k)(ii)).

Subregulation 19.21(2) provides that an employer does not have to include within the record contributions in respect of a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations* 1994) in a defined benefit superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993.*

Division 7 – Transitional provisions

Division 7 sets out the transitional arrangements that apply following the repeal of Parts 9A and 9B of the *Workplace Relations Regulations 1996* (the pre-reform Regulations). This division details the effect of the repeal of the pre-reform Regulations and the application of the Principal Regulations after a transitional award ceases to operate.

Item 1 of Part 1 of Schedule 4 to the *Workplace Relations Amendment (Work Choices) Act 2005* (the Work Choices Act) provides that the Governor-General may make regulations dealing with matters of a transitional nature relating to amendments made by that Act.

Regulation 19.22 – Effect of repeal of pre-reform Regulations

Regulation 19.22 provides that the repeal of Parts 9A and 9B of the pre-reform Regulations does not affect:

- a right under those Parts which accrued before the reform commencement (paragraph 19.22(1)(a)); or

- a cause of action under those Parts which had not been finally determined before the reform commencement (paragraph 19.22(1)(b)).

This regulation ensures that:

- the penalty provisions specified in Parts 9A and 9B of the pre-reform Regulations continue to apply in relation to a failure to make or keep a record that was required to be made or kept under those Parts (paragraphs 19.22(2)(a) and 19.22(3)(a));

- a record that was required to be kept for a period of time under Part 9A of the pre-reform Regulations is retained for the relevant period of time (paragraph 19.22(2)(b)); and

- a workplace inspector has the powers set out in Part IV of the pre-reform Regulations in respect of the offence provisions specified in Parts 9A and 9B of the pre-reform Regulations (paragraphs 19.22(2)(c) and 19.22(3)(b)).

Regulation 19.23 – Application of provisions after transitional award ceases to operate

Regulation 19.23 provides that after a transitional award ceases to be in force, Part IV and Parts 9A and 9B of the pre-reform Regulations are taken to continue to apply to the extent necessary to ensure that:

- a record that was required to be kept for a period of time under Part 9Aof the pre-reform Regulations is retained for the relevant period of time (paragraph 19.23(1)(a));

- the penalty provisions specified in Part 9A and 9B of the pre-reform Regulations continue to apply in relation to record keeping and payslip requirements (paragraphs 19.23(1)(b) and 19.23(2)(a)); and

- a workplace inspector has the powers set out in Part IV of the pre-reform Regulations in respect of the offence provisions specified in Parts 9A and 9B of the pre-reform Regulations (paragraphs 19.23(1)(c) and 19.23(2)(b)).

Subregulation 19.23(3) provides that for the purposes of this regulation, transitional award has the meaning given in Division 2 of Part 1 of Schedule 6 to the Act.