

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 23**

Subject - *Fair Work Act 2009*

*Fair Work Amendment Regulations 2011 (No. 1)*

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

The Act, together with the *Fair Work Regulations 2009* (the Principal Regulations), establishes a statutory framework to govern federal workplace relations and replaces the *Workplace Relations Act 1996*.

The Regulations correct a technical error in a provision in the Principal Regulations which deals with the interaction between fair work instruments and public sector employment laws.

Section 40 of the Act provides that public sector employment laws (which are defined to include Territory laws that deal with public sector employment) prevail over fair work instruments unless the regulations specify otherwise. Regulation 1.16 of the Principal Regulations was made to ensure that section 40 of the Act did not inadvertently revive specified Australian Capital Territory (ACT) and Northern Territory (NT) public sector laws. However, regulation 1.16 does not prescribe the fair work instruments that are intended to prevail over the specified Territory public sector laws. An unintended consequence is that the ACT *Public Sector Management Act 1994* (and other Territory public sector laws) prevail over modern awards and enterprise agreements to the extent of the inconsistency. This was not the intent and is inconsistent with current practice.

The Regulations amend regulation 1.16 to prescribe all fair work instruments (other than Fair Work Australia orders) for the purposes of the public sector employment laws specified in paragraphs 1.16 (a)-(c).

The Act does not impose any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The amendment has been requested by the ACT government. In accordance with the requirements of the *Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector* relevant State and Territory bodies have been consulted in relation to the amendment and all agreed to the amendment as drafted.

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

An assessment was made under the guidelines issued by the Office of Best Practice Regulation which indicated that a Regulation Impact Statement was not required.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Authority: Section 796 of the *Fair Work Act 2009*