

EXPLANATORY STATEMENT

Select Legislative Instrument No. , 2017

Issued by the authority of the Minister for Employment

Subject – *Fair Work Act 2009*

*Fair Work Amendment (Notice of Employee Representational Rights)
Regulations 2017*

The *Fair Work Act 2009* (Fair Work Act) sets out a framework for the making of enterprise agreements between employers and employees. Section 173 of the Fair Work Act provides that an employer must take all reasonable steps to give a Notice of Employee Representational Rights (the Notice) to each employee who will be covered by a proposed enterprise agreement and who is employed at the notification time.

Section 174 provides the requirements for the content and form of the Notice. Subsection 174(1A) provides that the Notice must contain the content prescribed by the *Fair Work Regulations 2009* (the Fair Work Regulations), must not contain any other content, and must be in the form prescribed by the Fair Work Regulations. Regulation 2.05 provides that the Notice is prescribed at Schedule 2.1 to the Fair Work Regulations.

The *Fair Work Amendment (Notice of Employee Representational Rights) Regulations 2017* (the Amending Regulations) are technical in nature and are intended to reduce the occurrence of errors in respect of the content of the Notice.

The Amending Regulations amend the Notice prescribed at Schedule 2.1 by replacing the words in the last paragraph of the Notice under the heading ‘Questions’ with a new paragraph, guiding employees who have questions about the Notice or enterprise bargaining to speak to their employer or bargaining representative, or contact the Fair Work Ombudsman or the Fair Work Commission.

The Amending Regulations also update references in regulation 2.05 and Schedule 2.1 to the relevant regulation making provision of the Fair Work Act.

The amendments made by the Amending Regulations will only apply to Notices that are given to employees on and from 3 April 2017. Notices that were issued in accordance with the requirements of the Fair Work Act before 3 April 2017 will not be affected by these amendments.

Details of the Amending Regulations are set out at Attachment A.

The Amending Regulations are a legislative instrument for purposes of the *Legislation Act 2003*.

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

The Government consulted with the States and Territories under the *Intergovernmental Agreement for a National Workplace Relations System for the Private Sector*.

A Statement of Compatibility with Human Rights has been completed for the Amending Regulations, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* and is at Attachment B. The Statement's assessment is that the Amending Regulations are compatible with human rights.

The amendments are minor and technical and there are no regulatory cost arising from these changes.

The Amending Regulations commence on 3 April 2017.

Details of the *Fair Work Amendment (Notice of Employee Representational Rights) Regulations 2017*

Section 1 – Name

This section provides that the title of the Regulations is the *Fair Work Amendment (Notice of Employee Representational Rights) Regulations 2017* (the Amending Regulations).

Section 2 – Commencement

This section provides that the Amending Regulations will commence on 3 April 2017.

Section 3 – Authority

This section provides that the Amending Regulations are made under the *Fair Work Act 2009*.

Section 4 – Schedules

This section provides that the *Fair Work Regulations 2009* (the Fair Work Regulations) are amended or repealed according to the terms of each item in the Schedule and that any other item operates according to its terms.

Schedule 1 – Amendments

Part 1 – Amendments

Item 1 – Regulation 2.05

Item 1 omits the reference to subsection 174(6) and substitutes it with subsection 174(1A), which is the current relevant regulation making provision of the Fair Work Act.

Item 2 – Schedule 2.1

Item 2 omits the reference to the ‘*Fair Work Act 2009*, subsection 174(6)’ and substitutes it with ‘*Fair Work Act 2009*, subsection 174(1A)’.

Item 3 – Schedule 2.1

Item 3 omits all the words after the heading ‘Questions?’ in the Notice and substitutes a new paragraph that directs employees who have any questions about the Notice or about enterprise bargaining, to speak to their employer, or bargaining representative, or contact the Fair Work Ombudsman or the Fair Work Commission.

Part 2 – Application and transitional provisions

Item 4 – After Chapter 6

This item inserts new Chapter 7 in the Fair Work Regulations. The effect of new regulation 7.01 is that there will be a new Notice that will replace the current version on and from 3 April 2017.

Statement of Compatibility with Human Rights

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

Fair Work Amendment (Notice of Employee Representational Rights) Regulations 2017

The *Fair Work Amendment (Notice of Employee Representational Rights) Regulations 2017* (the Amending Regulations) are 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

The object of the *Fair Work Act 2009* (the Fair Work Act) is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians.

Part 2-4 of the Fair Work Act sets out a framework for the making of enterprise agreements between employers and employees. Section 173 of the Fair Work Act provides that an employer must take all reasonable steps to give a Notice of Employee Representational Rights (the Notice) to each employee who will be covered by a proposed enterprise agreement and who is employed at the notification time.

Section 174 provides the requirements for the content and form of the Notice. Subsection 174(1A) provides that the Notice must contain the content prescribed by the *Fair Work Regulations 2009* (the Fair Work Regulations), must not contain any other content, and must be in the form prescribed by the Fair Work Regulations. Regulation 2.05 provides that the Notice is prescribed at Schedule 2.1 to the Fair Work Regulations.

The Amending Regulations amends the Notice prescribed at Schedule 2.1 by replacing the words in the last paragraph of the Notice under the heading ‘Questions’ with a new paragraph, which clarifies that employees who have questions about the Notice or enterprise bargaining should speak to their employer or bargaining representative, or contact the Fair Work Ombudsman or the Fair Work Commission.

The Amending Regulations also update references to the relevant provision of the Fair Work Act that regulation 2.05 and Schedule 2.1 of the Fair Work Regulations are made under.

The amendments made by the Amending Regulations will only apply to Notices that are given to employees on and from 3 April 2017. Notices that were issued in accordance with the requirements of the Fair Work Act before 3 April 2017 will not be affected by these amendments.

Human rights implications

The Amending Regulations are technical and do not engage any of the applicable rights or freedoms.

Conclusion

The Amending Regulations are compatible with human rights because they do not raise any human rights issues.

Senator the Hon Michaelia Cash, Minister for Employment