



## **Fair Work Amendment (Protecting Vulnerable Workers) Regulations 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 14 December 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Michaelia Cash  
Minister for Employment

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## 1 Name

This instrument is the *Fair Work Amendment (Protecting Vulnerable Workers) Regulations 2017*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	21 December 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Fair Work Act 2009*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Fair Work Regulations 2009*

#### **1 Subregulation 3.44(1)**

Repeal the subregulation.

#### **2 Regulation 4.01A (table item 14)**

Repeal the item.

#### **3 After subregulation 4.05(2) (before the note)**

Insert:

- (3) If a maximum penalty for a serious contravention of a civil remedy provision is specified in subsection 539(2) of the Act, the penalty specified in accordance with paragraph (1)(f) of this regulation in an infringement notice given to a person in respect of an alleged contravention of that civil remedy provision must not exceed one-tenth of the maximum penalty that a court could have ordered the person to pay under section 546 of the Act for a contravention of that civil remedy provision that is not a serious contravention.

#### **4 Regulation 4.05 (note)**

Repeal the note, substitute:

Note: If there is no maximum penalty for a serious contravention of a civil remedy provision specified in subsection 539(2) of the Act, the maximum penalty payable under an infringement notice for an alleged contravention of that civil remedy provision is one-tenth of the maximum penalty that a court could impose: see subsection 558(2) of the Act.

#### **5 Before regulation 5.05**

Insert:

### **Subdivision D—Functions and powers of Fair Work Inspectors—general**

#### **6 Before regulation 5.06**

Insert:

### **Subdivision DA—Power to enter premises**

#### **7 At the end of Division 3 of Part 5-2**

Add:

### **Subdivision DB—Powers to ask questions and require records and documents**

#### **5.07 Definitions for Subdivision DB**

In this Subdivision:

*public transport* means any form of passenger transport that is available for use by the public on payment of a fare.

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**specified place** means the place specified in the FWO notice under paragraph 712AC(d) of the Act as the place for the attendance.

**Taxation Office Determination** means the determination that sets out the amounts that the Commissioner of Taxation considers are reasonable for the purposes of the substantiation exception in Subdivision 900-B of the *Income Tax Assessment Act 1997* for domestic travel allowance expenses and reasonable overtime meal allowance expenses, as in force or existing when this regulation commences.

### 5.08 Form of FWO notice

For the purposes of paragraph 712AC(a) of the Act:

- (a) Form 1 of Schedule 5.3 to these Regulations sets out the form of an FWO notice that requires a person to give information to the Fair Work Ombudsman or a specified member of the staff of the Office of the Fair Work Ombudsman; and
- (b) Form 2 of Schedule 5.3 to these Regulations sets out the form of an FWO notice that requires a person to produce documents to the Fair Work Ombudsman or a specified member of the staff of the Office of the Fair Work Ombudsman; and
- (c) Form 3 of Schedule 5.3 to these Regulations sets out the form of an FWO notice that requires a person to attend before the Fair Work Ombudsman, or a specified member of the staff of the Office of the Fair Work Ombudsman who is an SES employee or an acting SES employee, and answer questions relevant to an investigation.

### 5.09 Expenses incurred in attending as required by an FWO notice

For the purposes of subsection 712C(1) of the Act, regulations 5.10 to 5.13 set out the allowances payable to a person (the **attendee**) who attends as required by an FWO notice.

- Note: The attendee is not entitled to be paid allowances under section 712C of the Act unless the attendee:
- (a) applies, in writing, to the Fair Work Ombudsman for payment of the expenses within 3 months after the attendance; and
  - (b) provides to the Fair Work Ombudsman sufficient evidence to establish that the attendee incurred the expenses.

### 5.10 Travelling allowance

- (1) The attendee is entitled to a payment (a **travelling allowance**) towards meeting the expenses that the attendee incurs in travelling between the attendee's place of work or residence (being a place in Australia) and the specified place.
- (2) The amount of the travelling allowance is as follows:
  - (a) if it is reasonable for the attendee to travel by air—the amount that is payable for economy class air travel;
  - (b) if public transport is available—the amount that the attendee actually and properly pays for the public transport;
  - (c) if public transport is not available and the attendee travels using their private motor vehicle—the amount calculated at the rate of \$0.74 per kilometre travelled.

- (3) However, the maximum amount payable for the travelling allowance is \$2,000.
- (4) When deciding whether public transport is or is not available, regard must be had to whether a public transport system is operating by which the attendee could conveniently:
  - (a) travel to the specified place in a reasonable time before the attendee's required attendance; and
  - (b) return to the attendee's place of work or residence in a reasonable time after the attendee's attendance at the specified place.

### 5.11 Accommodation allowance

- (1) The attendee is entitled to a payment (an *accommodation allowance*) towards meeting the expenses that the attendee incurs for accommodation when the attendee is necessarily absent overnight from the attendee's place of residence to attend as required by the FWO notice.
- (2) The amount of the accommodation allowance is the amount calculated at the accommodation rate specified in the Taxation Office Determination for the lowest salary range.
- (3) The amount must be calculated having regard to:
  - (a) the time of the latest public transport by which the witness could conveniently travel to the specified place in a reasonable time before the attendee's required attendance; and
  - (b) the time by which the attendee could conveniently return to the attendee's place of work or residence using the earliest public transport in a reasonable time after the attendee's attendance at the specified place.

### 5.12 Attendance allowance

- (1) The attendee is entitled to a payment (an *attendance allowance*) towards meeting any loss of earnings that the attendee incurs when the attendee is necessarily absent from the attendee's work to attend as required by the FWO notice.
- (2) The amount of the attendance allowance is the amount (the *usual pay*) that the attendee would otherwise have been entitled to receive for performing his or her normal duties during the attendee's absence from work to attend the specified place.
- (3) When claiming the attendance allowance, the attendee must provide evidence that confirms:
  - (a) the attendee's usual pay; and
  - (b) that the attendee did not receive the attendee's usual pay for the time when the attendee was necessarily absent from the attendee's work to attend the specified place.

### 5.13 Legal allowance

- (1) The attendee is entitled to a payment (a *legal allowance*) towards meeting the legal costs and disbursements that the attendee reasonably incurs for a lawyer to represent the attendee at the specified place.



- (2) The amount of the legal allowance is an amount calculated using the costs for general federal law proceedings set out in the *Federal Circuit Court Rules 2001*, as in force when this regulation commences.

## 8 After Schedule 5.2

Insert:

### **Schedule 5.3—Forms for FWO Notices**

Note: See regulation 5.08.

#### **Form 1—FWO notice to give information**

##### **COMMONWEALTH OF AUSTRALIA**

*Fair Work Act 2009*

**NOTICE ISSUED TO** [name]

##### **FWO NOTICE TO GIVE INFORMATION**

I, [name], a nominated AAT presidential member, acting under subsection 712AB(1) of the *Fair Work Act 2009*, require you to give the information specified in Part 1 of the Schedule to this notice.

The information is relevant to an investigation by an inspector into a suspected contravention of a provision of the *Fair Work Act 2009*, a fair work instrument or a safety net contractual entitlement that relates, directly or indirectly, to:

- the underpayment of wages, or other monetary entitlements, of employees; or
- the unreasonable deduction of amounts from amounts owed to employees; or
- the placing of unreasonable requirements on employees to spend or pay amounts paid, or payable, to employees; or
- the unfair dismissal of an employee; or
- the bullying of a worker at work; or
- the unlawful discrimination of a person in relation to employment; or
- a contravention of a provision of the National Employment Standards; or
- the coercion of an employee by an employer.

Note: The details relating to the investigation are specified in Parts 2 to 5 of the Schedule to this notice.

The information is to be given to [the *Fair Work Ombudsman*] [OR [name] who is a member of the staff of the Office of the *Fair Work Ombudsman*], by [time and date], in the manner and form specified in Part 6 of the Schedule to this notice.

Note: You are not excused from giving information under this notice on the ground that to do so might tend to incriminate you or otherwise expose you to a penalty or other liability. However, there are restrictions on when any information given under this notice may be admissible in evidence against you. See section 713 of the *Fair Work Act 2009*.

**WARNING**—Under subsection 712B(1) of the *Fair Work Act 2009* you may be liable to a civil remedy if you have been given this notice and fail to give the information by the time, and in the manner and form, specified in this notice (or by such later time as provided for under subsection 712AD(3) or (4) of the *Fair Work Act 2009*), except to the extent that you are not capable of complying with the requirement.

## Schedule 1 Amendments

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Note: Under subsections 712AD(3) and (4) of the *Fair Work Act 2009* the Fair Work Ombudsman may vary the time for compliance with this notice. The varied time must be at least 14 days after this notice is given.

**PENALTY:** 600 penalty units.

Note: Section 712D of the *Fair Work Act 2009* provides that a person who, in good faith, gives information when required to do so under an FWO notice is not liable to:

- (a) any proceedings for contravening any other law because of that conduct; or
- (b) civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

Dated 20 .

.....  
Signature

## SCHEDULE

### Part 1

[*information to be given*]

### Part 2

[*address (if any) to which the suspected contravention relates*]

### Part 3

[*name (if known) of the employer or other person suspected of the contravention*]

### Part 4

[*suspected contravention of the Fair Work Act 2009, fair work instrument or safety net contractual entitlement, and which matter or matters referred to in subparagraphs 712AA(1)(a)(i) to (viii) of the Fair Work Act 2009 the suspected contravention relates to*]

### Part 5

[*period during which the suspected contravention took place*]

### Part 6

[*manner and form in which information must be given*]

## Form 2—FWO notice to produce documents

### COMMONWEALTH OF AUSTRALIA

*Fair Work Act 2009*

**NOTICE ISSUED TO** [name]

### FWO NOTICE TO PRODUCE DOCUMENTS

I, [name], a nominated AAT presidential member, acting under subsection 712AB(1) of the *Fair Work Act 2009*, require you to produce the documents specified in Part 1 of the Schedule to this notice.

The documents are relevant to an investigation by an inspector into a suspected contravention of a provision of the *Fair Work Act 2009*, a fair work instrument or a safety net contractual entitlement that relates, directly or indirectly, to:

- the underpayment of wages, or other monetary entitlements, of employees; or
- the unreasonable deduction of amounts from amounts owed to employees; or
- the placing of unreasonable requirements on employees to spend or pay amounts paid, or payable, to employees; or
- the unfair dismissal of an employee; or
- the bullying of a worker at work; or
- the unlawful discrimination of a person in relation to employment; or
- a contravention of a provision of the National Employment Standards; or
- the coercion of an employee by an employer.

Note: The details relating to the investigation are specified in Parts 2 to 5 of the Schedule to this notice.

The documents are to be produced to [*the Fair Work Ombudsman*] [*OR [name] who is a member of the staff of the Office of the Fair Work Ombudsman*], by [*time and date*], in the manner specified in Part 6 of the Schedule to this notice.

Note: You are not excused from producing a document under this notice on the ground that to do so might tend to incriminate you or otherwise expose you to a penalty or other liability. However:

- (a) there are restrictions on when any document produced under this notice may be admissible in evidence against you (see section 713 of the *Fair Work Act 2009*); and
- (b) you are not required to produce a document that would disclose information that is the subject of legal professional privilege (see section 713AA of the *Fair Work Act 2009*).

**WARNING**—Under subsection 712B(1) of the *Fair Work Act 2009* you may be liable to a civil remedy if you have been given this notice and fail to produce the documents by the time, and in the manner, specified in this notice (or by such later time as provided for under subsection 712AD(3) or (4) of the *Fair Work Act 2009*), except to the extent that you are not capable of complying with the requirement.

Note: Under subsections 712AD(3) and (4) of the *Fair Work Act 2009* the Fair Work Ombudsman may vary the time for compliance with this notice. The varied time must be at least 14 days after this notice is given.

**PENALTY:** 600 penalty units.

Note: Section 712D of the *Fair Work Act 2009* provides that a person who, in good faith, produces a document when required to do so under an FWO notice is not liable to:

- (a) any proceedings for contravening any other law because of that conduct; or
- (b) civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

Dated 20 .

.....  
Signature

## SCHEDULE

### Part 1

[*documents/kinds of documents to be produced*]

### Part 2

[*address (if any) to which the suspected contravention relates*]

### Part 3

[name (if known) of the employer or other person suspected of the contravention]

**Part 4**

[suspected contravention of the Fair Work Act 2009, fair work instrument or safety net contractual entitlement, and which matter or matters referred to in subparagraphs 712AA(1)(a)(i) to (viii) of the Fair Work Act 2009 the suspected contravention relates to]

**Part 5**

[period during which the suspected contravention took place]

**Part 6**

[manner in which documents must be produced]

## **Form 3—FWO notice to attend and answer questions**

### **COMMONWEALTH OF AUSTRALIA**

*Fair Work Act 2009*

**NOTICE ISSUED TO** [name]

### **FWO NOTICE TO ATTEND AND ANSWER QUESTIONS**

I, [name], a nominated AAT presidential member, acting under subsection 712AB(1) of the *Fair Work Act 2009*, require you to attend before [the Fair Work Ombudsman] [OR [name] who is an SES or acting SES member of the staff of the Office of the Fair Work Ombudsman] at:

[time] on [date] at [place]

to answer questions that are relevant to an investigation by an inspector into a suspected contravention of a provision of the *Fair Work Act 2009*, a fair work instrument or a safety net contractual entitlement that relates, directly or indirectly, to:

- the underpayment of wages, or other monetary entitlements, of employees; or
- the unreasonable deduction of amounts from amounts owed to employees; or
- the placing of unreasonable requirements on employees to spend or pay amounts paid, or payable, to employees; or
- the unfair dismissal of an employee; or
- the bullying of a worker at work; or
- the unlawful discrimination of a person in relation to employment; or
- a contravention of a provision of the National Employment Standards; or
- the coercion of an employee by an employer.

Note 1: The details relating to the investigation are specified in Parts 1 to 4 of the Schedule to this notice.

Note 2: For your right to be represented by a lawyer, see subsection 712AE(1) of the *Fair Work Act 2009*.

Note 3: You are not excused from answering a question under this notice on the ground that to do so might tend to incriminate you or otherwise expose you to a penalty or other liability. However, there are restrictions on when any answers given under this notice may be admissible in evidence against you. See section 713 of the *Fair Work Act 2009*.

**WARNING**—Under subsection 712B(1) of the *Fair Work Act 2009* you may be liable to a civil remedy if you have been given this notice and fail:

- 
- to attend to answer questions at the time and place specified in this notice or at such later time as provided for under subsection 712AD(3) or (4) of the *Fair Work Act 2009*; or
  - to take an oath or make an affirmation, if required to do so under subsection 712AE(2) of the *Fair Work Act 2009*; or
  - to answer questions relevant to the investigation while attending as required by this notice;

except to the extent that you are not capable of complying with the requirement.

Note: Under subsections 712AD(3) and (4) of the *Fair Work Act 2009* the Fair Work Ombudsman may vary the time for compliance with this notice. The varied time must be at least 14 days after this notice is given.

**PENALTY:** 600 penalty units.

Note 1: Section 712D of the *Fair Work Act 2009* provides that a person who, in good faith, answers a question when required to do so under an FWO notice is not liable to:

- (a) any proceedings for contravening any other law because of that conduct; or
- (b) civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

Note 2: If you attend as required by this notice, you may be entitled to be paid fees and allowances in accordance with the *Fair Work Regulations 2009* (see section 712C of the *Fair Work Act 2009*).

Dated 20 .

.....  
Signature

## **SCHEDULE**

### **Part 1**

*[address (if any) to which the suspected contravention relates]*

### **Part 2**

*[name (if known) of the employer or other person suspected of the contravention]*

### **Part 3**

*[suspected contravention of the Fair Work Act 2009, fair work instrument or safety net contractual entitlement, and which matter or matters referred to in subparagraphs 712AA(1)(a)(i) to (viii) of the Fair Work Act 2009 the suspected contravention relates to]*

### **Part 4**

*[period during which the suspected contravention took place]*