

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No.52

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 Regulations 2006

The *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices Act), which amends the *Workplace Relations Act 1996* (WR Act), received Royal Assent on 14 December 2005. The key provisions of the Work Choices Act will commence on a day fixed by proclamation. A separate Minute recommends that these provisions commence on 27 March 2006.

Section 359 of the WR Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing 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.

Item 1 of Schedule 4 to the Work Choices Act provides, in part, that the Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to amendments made by the Work Choices Act. Subitem 1(2) of Schedule 4 provides that, despite the restriction specified in subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made under subitem 1(1) of Schedule 4 may be expressed to take effect from a date before the regulations are registered under that Act.

The purpose of the *Workplace Relations Regulations 2006* is to repeal and replace the *Workplace Relations Regulations 1996* to accommodate the amendments to the WR Act introduced by the Work Choices Act. The Regulations are largely machinery or transitional in nature and necessary for the effective operation of the WR Act as amended by the Work Choices Act. Some of the Regulations, however, replicate, with appropriate amendments, the current provisions in the *Workplace Relations Regulations 1996*.

The Regulations are divided into eight Chapters.

Chapter 1 repeals the *Workplace Relations Regulations 1996*. It also contains preliminary matters, such as the name of the regulations, definitions and the commencement provisions.

Chapter 2 contains general regulations for purposes of the WR Act. The key provisions:

- exclude certain persons who are insufficiently connected with Australia from the operation of the WR Act (Division 1 of Part 1);
- prescribe the relationship between certain State and Territory laws and the WR Act or instruments made pursuant to the WR Act (Divisions 2 and 3 of Part 1);

- provide for certain powers and procedures of the Australian Industrial Relations Commission such as the convening of compulsory conferences (Part 3);
- set out aspects of operation of the Australian Industrial Registry (eg. office hours, lodgement of documents, signing of documents, etc. (Part 4);
- provide for general matters relating to workplace inspectors (eg. period of appointment, identity cards) (Part 6);
- prescribe what constitutes a more favourable outcome in certain respects for operation of the Australian Fair Pay and Conditions Standard (the Standard) (Part 7);
- set out prohibited content for the purposes of workplace agreements (Part 8);
- set out procedures for secret ballots on protected action (Part 9);
- set out how to determine whether an employee's entitlement under a preserved award term is 'more generous' than the corresponding Standard entitlement (Part 10);
- provide dispute resolution processes to be used for particular disputes between employers and employees at the workplace level (Part 13);
- establish a small claims procedure for the recovery of wages etc. (including a prescribed maximum amount for recovery) (Part 14);
- provide for the making, retention and inspection of employee records and the issue of pay slips (Part 19); and
- establish a system of infringement notices to be issued by workplace inspectors in certain circumstances (Part 19B).

Chapter 3 provides transitional arrangements for parties bound by federal awards for the purposes of new Schedule 6 to the WR Act, which deals with transitional arrangements for those parties.

Chapter 4 provides for the amendment of clauses 2, 3 and 4 of Schedule 2 to the WR Act (which explain when a reference in the WR Act to 'an employee', 'an employer' or 'employment' has its ordinary meaning).

Chapter 5 provides for the transitional treatment of aspects of State employment agreements and State awards for the purposes of Schedule 8 to the WR Act, which deals with the transitional treatment of those instruments.

Chapter 6 provides for the regulation of certain aspects of transitionally registered associations for the purposes of Schedule 10 to the WR Act, including the modification of Schedule 1, Registration and Accountability of Organisations, for transitionally registered associations.

Chapter 7 provides for matters of a transitional, saving or application nature relating to amendments made by the Work Choices Act for item 1 of Schedule 4 to that Act (for example, part-heard matters before State courts or tribunals).

Chapter 8 provides for certain miscellaneous provisions, including the availability of actions for defamation in certain cases.

Changes to the federal workplace relations system have been the subject of extensive debate and public consideration.

On 26 May 2005, the Government announced proposed workplace relations reforms.

On 9 October 2005 the Government released a 64-page Work Choices booklet which further explained the proposed legislative reforms, including some aspects of the Regulations, such as prohibited content in workplace agreements.

The Workplace Relations Amendment (Work Choices) Bill 2005 (the Work Choices Bill) was introduced in the House of Representatives on 2 November 2005 and was the subject of extensive debate in the Commonwealth Parliament.

Upon introduction, the Work Choices Bill was immediately referred to the Senate Employment, Workplace Relations and Education Committee for inquiry. The Committee received 202 major submissions, as well as over 5000 small submissions or expressions of interest, and conducted 5 days of public hearings. Many of the submissions canvassed issues dealt with the Regulations.

On 1 December 2005 the Government tabled over 300 Government amendments to the Work Choices Bill. Many of these amendments were responses to submissions made to the Committee and representations made by stakeholders.

Details of the proposed Regulations are in the [Attachment](#).

The WR and Work Choices Acts do not impose any conditions that need to be satisfied before the powers to make the Regulations may be exercised.

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

The Regulations commenced on the proclamation of Schedule 5 to the Work Choices Act.