

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 50

Issued by authority of the Minister for Employment and Workplace Relations

Workplace Relations Amendment (Work Choices) Act 2005

Bankruptcy Act 1966

Federal Magistrates Act 1999

Public Service Act 1999

Public Employment (Consequential and Transitional) Amendment Act 1999

Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)

Item 2 of Schedule 4 to the *Workplace Relations Amendment (Work Choices) Act 2005* (the Work Choices Act) provides that the Governor-General may make regulations amending Acts (including the *Workplace Relations Act 1996*), being amendments that are consequential on, or otherwise relate to, amendments made by the Work Choices Act.

The following Acts provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the relevant Act:

- subsection 315(1) of the *Bankruptcy Act 1966*;
- subsection 120(1) of the *Federal Magistrates Act 1999*;
- subsection 79(1) of the *Public Service Act 1999*; and
- subsection 14(1) of the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

The *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006* (the Regulations) amend 52 Acts consequential on the Work Choices Act. The Regulations also amend 4 regulations under the 4 Acts listed in the dot points above. Each Act, and each regulation, is consequentially amended by a separate Schedule to the Regulations.

The consequential amendments fall into the following categories:

- where minimum terms and conditions of employment are relevant to a provision – amendments to make appropriate reference to the Australian Fair Pay and Conditions Standard (the Standard) set out in Part 7 of the Work Choices Act. The Standard provides guaranteed minimum entitlements for “employees” employed by “employers” within the meaning of ss. 5 and 6 of the Work Choices Act;

- amendments to take account of the establishment and wage-setting functions of the Australian Fair Pay Commission under Part 2 of the Work Choices Act;
- amendments to provisions that apply generally to industrial instruments to, where appropriate, ensure that the provision applies to new instruments and transitional instruments under the Work Choices Act (including collective agreements, the Australian Fair Pay and Conditions Standard, transitional awards, pre-reform AWAs, pre-reform certified agreements, and Notional Agreements Preserving State Awards);
- the substitution of references to “certified agreement” with “collective agreement”, where appropriate. After the commencement of Schedule 1 to the Work Choices Act, the Workplace Relations Act will not include provision for agreements to be certified. The Work Choices Act does however make provision for the continued operation of pre-reform certified agreements, after the commencement of Schedule 1 to the Work Choices Act;
- amendments that take account of the coverage of the Work Choices Act. In particular, references in other Acts to “conciliation and arbitration” in relation to the Workplace Relations Act will often no longer be relevant, because the constitutional basis for many of the provisions of Work Choices do not depend on the conciliation and arbitration power under s.51(xxxv) of the Constitution;
- amendments to take account of Schedule 17 of the Work Choices Act relating to transitionally registered associations;
- amendments so that Acts refer to the appropriate section numbers in the amended *Workplace Relations Act 1996* (the Workplace Relations Act);
- amendments consequential on particular repeals made by the Work Choices Act;
- amendments that preserve the effect of transitional arrangements in other legislation;
- typographical changes; and
- amendments otherwise consequential on new provisions introduced by Work Choices.

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

On 26 May 2005, the Government announced proposed workplace relations forms. On 9 October 2005, the Government released a 64-page Work Choices booklet which further explained the proposed legislative reforms.

The *Workplace Relations Amendment (Work Choices) Bill 2005* 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 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 five days of public hearings.

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

The Regulations commenced on 27 March 2006.

Authority: Item 2 of Schedule 4 to the *Workplace Relations Amendment (Work Choices) Act 2005*;
Subsection 315(1) of the *Bankruptcy Act 1966*;
Subsection 120(1) of the *Federal Magistrates Act 1999*;
Subsection 79(1) of the *Public Service Act 1999*; and
Subsection 14(1) of the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

Details of the proposed *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)*

Preliminary

Regulations 1 and 2 contain preliminary matters, including the title of the Regulations and the commencement provisions.

Acts and Regulations being amended

Regulation 3 sets out the Acts and regulations that are amended by each Schedule to the Regulations. The Schedules listed in the following table amend the relevant Act or regulations:

Schedule 1	<i>Workplace Relations Act 1996</i>
Schedule 2	<i>Builders Labourers' Federation (Cancellation of Registration – Consequential Provisions) Act 1986</i>
Schedule 3	<i>Building and Construction Industry Improvement Act 2005</i>
Schedule 4	<i>Coal Mining Industry (Long Service Leave Funding) Act 1992</i>
Schedule 5	<i>Defence Act 1903</i>
Schedule 6	<i>Long Service Leave (Commonwealth Employees) Act 1976</i>
Schedule 7	<i>Maternity Leave (Commonwealth Employees) Act 1973</i>
Schedule 8	<i>Remuneration and Allowances Act 1990</i>
Schedule 9	<i>Remuneration Tribunal Act 1973</i>
Schedule 10	<i>Safety, Rehabilitation and Compensation Act 1988</i>
Schedule 11	<i>Seafarers Rehabilitation and Compensation Act 1992</i>
Schedule 12	<i>Social Security Act 1991</i>
Schedule 13	<i>Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005</i>
Schedule 14	<i>Tradesmen's Rights Regulation Act 1946</i>
Schedule 15	<i>Trade Practices Act 1974</i>
Schedule 16	<i>Superannuation Act 1976</i>
Schedule 17	<i>Superannuation Guarantee (Administration) Act 1992</i>

Schedule 18	<i>Military Rehabilitation and Compensation Act 2004</i>
Schedule 19	<i>Parliamentary Service Act 1999</i>
Schedule 20	<i>Australian Film Commission Act 1975</i>
Schedule 21	<i>Telstra (Transition to Full Private Ownership) Act 2005</i>
Schedule 22	<i>Petroleum (Submerged Lands) Act 1967</i>
Schedule 23	<i>Snowy Hydro Corporatisation Act 1997</i>
Schedule 24	<i>Tourism Australia (Repeal and Transitional Provisions) Act 2004</i>
Schedule 25	<i>Dairy Industry Service Reform Act 2003</i>
Schedule 26	<i>Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000</i>
Schedule 27	<i>Public Service Act 1999</i>
Schedule 28	<i>Life Insurance Act 1995</i>
Schedule 29	<i>Administrative Decisions (Judicial Review) Act 1977</i>
Schedule 30	<i>Age Discrimination Act 2004</i>
Schedule 31	<i>Australian Federal Police Act 1979</i>
Schedule 32	<i>Bankruptcy Act 1966</i>
Schedule 33	<i>Crimes Act 1914</i>
Schedule 34	<i>Criminal Code Act 1995</i>
Schedule 35	<i>Disability Discrimination Act 1992</i>
Schedule 36	<i>Freedom of Information Act 1982</i>
Schedule 37	<i>Human Rights and Equal Opportunity Commission Act 1986</i>
Schedule 38	<i>Jury Exemption Act 1965</i>
Schedule 39	<i>Legislative Instruments Act 2003</i>
Schedule 40	<i>Sex Discrimination Act 1984</i>
Schedule 41	<i>Skilling Australia's Workforce Act 2005</i>
Schedule 42	<i>Commonwealth Serum Laboratories Act 1961</i>
Schedule 43	<i>Health Insurance Commission (Reform and Separation of Functions) Act 1997</i>
Schedule 44	<i>National Health Act 1953</i>

Schedule 45	<i>Christmas Island Act 1958</i>
Schedule 46	<i>Cocos (Keeling) Island Act 1955</i>
Schedule 47	<i>Navigation Act 1912</i>
Schedule 48	<i>Australian Capital Territory (Self-Government) Act 1988</i>
Schedule 49	<i>Seat of Government (Administration) Act 1910</i>
Schedule 50	<i>Fringe Benefits Tax Assessment Act 1986</i>
Schedule 51	<i>Income Tax Assessment Act 1997</i>
Schedule 52	<i>Northern Territory (Self-Government) Act 1978</i>
Schedule 53	<i>Workplace Relations Act 1996</i>
Schedule 54	<i>Naval Defence Act 1910</i>
Schedule 55	<i>Bankruptcy Regulations 1996</i>
Schedule 56	<i>Federal Magistrates Regulations 2000</i>
Schedule 57	<i>Public Service Regulations 1999</i>
Schedule 58	<i>Public Employment (Consequential and Transitional) Regulations 1999</i>

Detail of amendments

References to the Standard (including APCSs and the FMW)

The following amendments provide for references to the Australian Fair Pay and Conditions Standard (the Standard) as a relevant minimum entitlement for employees. The Standard is set out in Part 7 of the amended Workplace Relations Act. The Standard provides for minimum conditions of employment relating to wages (including the Federal Minimum Wage), annual leave, personal/carer’s leave, parental leave (including maternity leave) and maximum ordinary hours of work.

Items 20, 22 and 23 of Schedule 3 make amendments to the *Building and Construction Industry Improvement Act 2005* to ensure that a person cannot discriminate against another on the basis that the employee’s employment is or is not covered by the Standard or a particular Australian Pay and Classification Scale (APCS).

Items 1 and 2 of Schedule 4 amend paragraph (a) of the definition of “eligible employee” under the *Coal Mining Industry (Long Service Leave Funding) Act 1992*, so that the definition extends to a person employed in the black coal mining industry under the Standard.

Items 2, 5, 6, 7 and 8 of Schedule 11 amend the *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Act) to insert appropriate reference to the Standard, as an instrument under which a seafarer may be employed. Items 5, 6 and 7 relate to s.13 of the Seafarers Act. Section 13 of the Seafarers Act determines the employee’s normal weekly earnings for an employee who

is a seafarer. Items 5, 6 and 7 amend ss.13(2), 13(5) and 13(6)(b) of that Act, so that those sections operate in relation to amounts that would have been payable for employees employed under the Standard. Item 8 amends s.31(14)(a) of that Act, so that the normal weekly hours of an employee are those specified under the Standard (or the applicable collective agreement or pre-reform certified agreement).

Items 1, 2, 3, 5, 8, 11 and 12 of Schedule 12 respectively amend ss.23(1), 94(5), 542A(3), 603C(2), 731K(2)(b), 954A(1)(f) and 954A(2)(c)(ii) of the *Social Security Act 1991* to provide that references to “award wages or above” are substituted with provisions relevantly relating to the Federal Minimum Wage (FMW), as the legislated minimum for wages under the Standard and transitional awards under Schedule 6 to the Work Choices Act. Similar amendments are made by items 1, 2, 5, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of Schedule 13. These amendments made in Schedules 12 and 13 relate to the FMW multiplied by a number of hours over a week, since the FMW, under Subdivision G of Part 7 of the Work Choices Act, is a basic periodic rate of pay for each hour worked.

Item 13 of Schedule 12 makes an amendment to s.1061PB(2)(a) of the *Social Security Act 1991* which relates to persons not undertaking qualifying study for the purposes of that Act. Item 13 amends s.1061PB(2)(a) so that that section applies to a person employed on a full-time basis as an apprentice or trainee under the Standard.

Item 14 of Schedule 12 inserts a definition of the Standard for the purpose of s.1061PB.

Item 15 of Schedule 12 amends s.1067A(10)(c) of the *Social Security Act 1991*. Section 1067A(10)(c) provides that a person is independent if the person has supported himself or herself through paid work consisting of a period or periods of employment over an 18 month period since the person last left secondary school, earning the person at least the equivalent of 75% of the maximum Commonwealth training award payment that applied at the start of the period of the employment. Item 15 of Schedule 12 amends that section so that the formula will relevantly be 75% of the maximum rate of pay under Wage Level A of the Australian Pay and Classification Scale generally applicable to trainees, or that maximum rate as varied by the Australian Fair Pay Commission.

Items 1, 2, 3, 4 and 5 of Schedule 14 amend the *Tradesmen’s Rights Regulation Act 1946*, so that references are made to wages prescribed by the appropriate Australian Pay and Classification Scale (APCS) in addition to existing references in that Act to wages prescribed by the appropriate award, order, determination or industrial agreement.

Items 1, 2 and 3 of Schedule 18 make amendments to the *Military Rehabilitation and Compensation Act 2004*. Item 1 amends s.179 of that Act so that, if a person’s normal earnings for a week are less than the amount of the FMW, calculated by multiplying the FMW by 38 hours per week, the person’s normal earnings are taken to be the amount of the FMW multiplied by 38 hours per week.

Item 1 of Schedule 20, and items 1 and 2 of Schedule 32, respectively amend ss.40B(3) and 40C of the *Australian Film Commission Act 1975* and ss.109(1)(e) and 139Y(1)(b)(ii) of the *Bankruptcy Act 1966* so that various references in those provisions to contracts of employment, awards or agreements are also supplemented by references to the Standard.

Item 3 of Schedule 47 amends the *Navigation Act 1912*, to provide that an APCS or a transitional award which is binding on or applicable to seamen employed in the coasting trade is prima facie evidence of the rates of wages in Australia for those seamen.

Items 1 and 2 of Schedule 54 amend s.42D(3) of the *Naval Defence Act 1910*. Section 42D(3) provides that, for the purpose of facilitating a transfer of persons to the employment of a Commonwealth authority, the Commonwealth authority may, notwithstanding anything in any other law (other than an industrial award), determine special terms or conditions of employment that are to apply in relation to the persons (other than terms and conditions with respect to superannuation). Item 1 inserts a definition of the Standard into that Act. Item 2 inserts “(other than the Australian Fair Pay and Conditions Standard or an industrial award)” in place of “(other than an industrial award)” in s.42D(3).

Minimum wage setting function of the Australian Fair Pay Commission

The following amendments are made consequent on the establishment of the Australian Fair Pay Commission under s.20 of the Workplace Relations Act and its wage-setting function as set out in s.22 of that Act.

- Items 1 and 2 of Schedule 8;
- Item 2 of Schedule 9;
- Item 1 of Schedule 17;
- Item 1 of Schedule 30 (as it amends paragraph 39(8)(a) of the *Age Discrimination Act 2004*);
- Item 1 of Schedule 35;
- Item 1 of Schedule 36;
- Item 1 of Schedule 38;
- Item 1 of Schedule 39;
- Item 1 of Schedule 40;
- Item 3 of Schedule 40 (as it amends paragraph 40(1)(f) of the *Sex Discrimination Act 1984*); and
- Item 1 of Schedule 44.

Amendments to include new industrial instruments (including transitional instruments)

The following items make amendments so that the relevant provisions include, as appropriate, references to new industrial instruments under the Work Choices Act, including transitional industrial instruments. Those instruments variously include workplace agreements, collective agreements, transitional awards, pre-reform AWAs and pre-reform certified agreements.

- Items 7, 13, 14, 17, 18 (as item 18 amends subsection 36(1)(d) of the relevant Act) and 24 of Schedule 3 (which all relate to the definition of *Commonwealth industrial instrument* to be inserted by item 7);
- Item 4 of Schedule 4;
- Item 1 of Schedule 6;
- Item 4, 5, 6, 7, 8 and 8 of Schedule 11 (except as those items relate to the Standard);
- Item 1 of Schedule 14;
- Items 1 and 2 of Schedule 16;
- Items 3, 4, 5 and 6 of Schedule 17;
- Items 1 to 9 of Schedule 19;
- Item 1 of Schedule 20;
- Items 1, 2 and 3 of Schedule 21;
- Items 1 to 12 and 14 of Schedule 27;
- Item 1 of Schedule 30 (as it amends paragraph 9(8)(b) of the *Age Discrimination Act 2004*);
- Items 1, 2 and 3 of Schedule 31;
- Item 3 of Schedule 35;
- Item 2 of Schedule 37;
- Item 3 of Schedule 40 (as it inserts a new paragraph 40(1)(g) in the *Sex Discrimination Act 1984*);
- Items 1, 4 and 7 of Schedule 41;
- Items 1, 2, 3, and 4 of Schedule 42;
- Items 5, 6, 10 and 11 of Schedule 43;
- Items 1, 2 and 3 of Schedule 51; and
- Items 1 to 12 of Schedule 57.

References to “certified agreement” and “collective agreement”

The following items relevantly replace references to “certified agreement” in Acts with references to “collective agreement”. The amendments are consequential on the Work Choices Act, which does not make provision for agreements to be certified (other than in relation to applications for certification made before reform commencement).

- Items 5, 6, 18 (as they relate to subsection 36(1)(e) of the *Building and Construction Industry Improvement Act 2005*) and 28 (as it relates to ss. 41(a) and 44 of that Act) of Schedule 3; and
- Items 1, 3, 10, 11 and 12 of Schedule 11.

Amendments relating to coverage of the Act

Item 1 of Schedule 10, item 1 of Schedule 29, item 5 of Schedule 41, item 1 of Schedule 45, item 1 of Schedule 46, and items 1, 2 and 3 of Schedule 49, make amendments consequent on the coverage of the Work Choices Act – to reflect the Work Choices Act’s reliance on heads of power other than the conciliation and arbitration power under s.51(xxxv) of the Constitution. In particular, the items delete provisions so far as they relate to “industrial disputes” under the Workplace Relations Act.

Items 1 and 2 of Schedule 48 make amendments to the *Australian Capital Territory (Self-Government) Act 1988* (ACT (Self Government) Act). Section 152 of the pre-reform Workplace Relations Act dealt with the relationship between Commonwealth awards and State laws. That s.152 did not deal with the relationship between Commonwealth awards and Territory laws. That relationship was dealt with under s.28(2) of the ACT (Self Government) Act. Item 1 and 2 amend s.28(2) of that Act consequent on s.17 inserted in the Workplace Relations Act by the Work Choices Act. That s.17 now deals with inconsistency between awards and agreements made under the Workplace Relations Act and laws of the Territory.

Item 1 of Schedule 50 amends s.65J(1)(f) of the *Fringe Benefits Tax Assessment Act 1986*. Section 65J of that Act deals with rebates for certain non-profit employers, etc. Item 1 of Schedule 50 amends s.65J(1)(f) to insert “*Workplace Relations Act 1996* or” before the words “a law of the Commonwealth, a State or a Territory relating to the settlement of industrial disputes”. The amendment is made because the amended Workplace Relations Act is not only a law that can be characterised as one relating to the settlement of industrial disputes. Item 4 of Schedule 51 makes an amendment for a similar reason, to s.50-15 of the *Income Tax Assessment Act 1997*.

Items 1 and 2 of Schedule 52 amend s.53 of the *Northern Territory (Self-Government) Act 1978* (the NT (Self-Government) Act). Item 1 omits s.53(1) and (2) because s.17 of the Workplace Relations Act now deals with inconsistency between awards and agreements made under the Workplace Relations Act and laws of the Territory. Former ss.53(1) and (2) modified the application of the pre-reform Workplace Relations Act in relation to the definition of “industrial dispute” in s.4(1) of the Workplace Relations Act. The pre-reform definition of “industrial dispute” is repealed by the Work Choices Act. Item 2 amends s.53(7) of the NT (Self-Government) Act, consequent on s.17 inserted in the Workplace Relations Act by the Work Choices Act. The amendment ensures that the existing effect of s.53(7) is maintained.

References to transitionally registered associations

The following items make amendments to provisions that referred, prior to the commencement of the Work Choices Act, to registered organisations under Schedule 1B to the *Workplace Relations Act 1996*. The following items amend those provisions to provide that they also apply, after the commencement of the Work Choices Act, to transitionally registered associations within the meaning of Schedule 10 to the Workplace Relations Act.

- Item 2 to Schedule 47;

- Items 1 and 2 of Schedule 22;
- Item 1 of Schedule 28;
- Item 1 of Schedule 33;
- Items 1 and 2 of Schedule 34;
- Item 2 of Schedule 35;
- Item 1 of Schedule 37; and
- Item 2 of Schedule 40.

Amendments to section numbers

The following items make amendments so that Acts refer to the appropriate section numbers in the Workplace Relations Act, as renumbered by the Work Choices Act:

- Item 2 of Schedule 1, items 10, 11, 12, 25, 27 and 28 (as it relates to ss.42(1), 42(1)(a), 42(1)(b), 42(2), 44(1)(c), 44(3)(a), 44(4)(a), 44(5), 50(4), 50(4)(b), 64(2) of the *Building and Construction Industry Improvement Act 2005*) of Schedule 3;
- Item 1 of Schedule 7;
- Item 2 of Schedule 15;
- Item 7 of Schedule 17;
- Item 4 of Schedule 40;
- Items 2 and 3 of Schedule 41; and
- Item 1 of Schedule 53.

Amendments consequential on repeals by Work Choices

The following items make amendments to legislation consequent on various repeals made by the Work Choices Act:

- Item 3 of Schedule 1;
- Item 1 of Schedule 2;
- Items 3 and 19 of Schedule 3;
- Items 1, 3, 4, 5 and 6 of Schedule 15; and
- Item 2 of Schedule 17;

Transitional arrangements

The following items make amendments to legislative provisions with a transitional effect, in particular provisions that relate to rights that accrued at or before a particular time, before commencement of the Work Choices Act. The amendments ensure that the relevant provisions, as they operated before commencement of the Work Choices Act, are not affected by the reforms.

- Items 1 and 2 of Schedule 23;
- Item 1 of Schedule 24;
- Item 1 of Schedule 25;
- Item 1 of Schedule 26;
- Items 6 and 8 of Schedule 41;
- Items 1, 2, 3, 4, 5, 8 and 9 of Schedule 43;
- Item 1 of Schedule 47; and
- Items 1, 2 and 3 of Schedule 58.

Typographical changes

The following are amendments that make minor typographical changes, consequent on amendments to terminology made by the Work Choices Act:

- Item 1 of Schedule 1;
- Items 1, 4, and 21 of Schedule 3;
- Item 1 of Schedule 5;
- Items 3, 4, 6, 7, 8, 9, 13, and 14 Schedule 13;
- Item 13 of Schedule 27; and
- Items 1, 3, 4, 6 of Schedule 56.

Other amendments consequential on new provisions

References to “employer” and “employee”

Items 8, 9 and 16 of Schedule 3 make amendments to the definitions of “employer” and “employee” under the *Building and Construction Industry Improvement Act 2005* so that those definitions are consistent with the equivalent definitions under ss.5 and 6 of the Work Choices Act.

References to Workplace Inspectors

Item 28 of Schedule 3 (as it relates to ss.73(1) and 73(2) of the *Building and Construction Industry Improvement Act 2005*) substitutes references to “inspectors” with “workplace inspectors” consequent on new Part 6 of the Workplace Relations Act, which relates to Workplace Inspectors.

Amendments to reflect provisions for lodgement of agreements

Item 26 of Schedule 3, and item 1 of Schedule 55, make amendments consequent on provisions for the lodgement of agreements under the Workplace Relations Act (rather than certification under the pre-reform Act). Except in relation to application for applications for certification lodged before reform commencement, the amended Workplace Relations Act does not include provision for the certification of agreements. Division 5 of Part 8 of the amended Workplace Relations Act deals with the lodgement of agreements.

Item 3 of Schedule 4 inserts a reference to the lodgement of agreements with the Employment Advocate in the definition of “industrial authority” in s.4(1) of the *Coal Mining Industry (Long Service Leave Funding) Act 1992*. The amendment is made to reflect provisions for the lodgement of agreements under the reformed Workplace Relations Act.

Remuneration Tribunal and the Australian Fair Pay Commission

Item 1 of Schedule 9 amends s.3(4) of the *Remuneration Tribunal Act 1973* (Remuneration Tribunal Act), so that a reference to “public office” defined in s.3(1) of in that Act does not include an office of Chair or member of the Australian Fair Pay Commission (AFPC). Paragraph 4(4)(c) of the Remuneration Tribunal Act provides that a person shall not be appointed as a member of the Remuneration Tribunal if he or she is a holder of public office.

Item 3 of Schedule 9 inserts new subsection 7(4C) in the Remuneration Tribunal Act, so that the Tribunal may inquire into and determine the travelling allowances to be paid to members of the AFPC under s.20 of the Workplace Relations Act for travel within Australia.

Federal Magistrates Court

On commencement, the Work Choices Act will confer on the Federal Magistrates Court similar jurisdiction to that of the Federal Court in workplace relations matters. The following amendments are consequential on the definition of “Court” under s.419 of the Workplace Relations Act, which includes the Federal Magistrates Court.

Item 4 of Schedule 12 amends s.596(4) of the *Social Security Act 1991*. Section 596(4) provides that, subject to exceptions, where a relevant industrial action or series of industrial actions is in breach of an order, direction or injunction issued by a State industrial authority, the Australian Industrial Relations Commission or the Federal Court, a person is not qualified for a newstart allowance in respect of a period. Item 4 of Schedule 12 amends s.596(4) so that it also applies to an order, direction or injunction issued by the Federal Magistrates Court.

Items 6, 7, 9 and 10 of Schedule 12 make a similar amendment (to item 4 of Schedule 12) respectively in relation to ss.660XBE, s.729AA(4)(c), 759(4)(c) and 771HB(4) of the *Social Security Act 1991*.

Item 2 of Schedule 56 inserts new paragraph (g) after paragraph 7(2)(f) of the *Federal Magistrates Regulations 2000*. New paragraph (g) provides that, except for the filing fee mentioned in new item 12 of Schedule 1, fees are not payable for an application under s.663 of

the Workplace Relations Act. This exemption mirrors the fee exemption for the same application that applies in the Federal Court under paragraph 1(2)(b) of Schedule 3 to the Federal Court Regulations.

Item 5 of Schedule 56 prescribes the fee payable for an unlawful termination of employment application filed in the Federal Magistrates Court. New item 12, inserted by item 5, relates to the filing of an application under s.663 of the Workplace Relations Act. The fee payable for such an application is the fee payable under subsection 644(2) or (3) of the Workplace Relations Act. This provision mirrors item 3 of Schedule 1 to the Federal Court Regulations.

Superannuation Guarantee (Administration) Act 1992

Items 8 of Schedule 17 inserts a legislative note to clarify that there will be no requirement for employers affected by the consequential amendments to be made to the *Superannuation Guarantee (Administration) Act 1992* (SGA Act) to provide the standard choice form to their existing employees as at 1 July 2006 except in the specific circumstances outlined in section 32N of the SGA Act.

Item 9 of Schedule 17 inserts a new subsection 32NA(10) in the SGA Act. This subsection states that an employer is not required to give an employee a standard choice form if the employee is covered by a Notional Agreement Preserving State Awards or a Preserved State Agreement and, before the reform commencement, the employer was required, under a State law, to give an employee a notification that they can choose a fund, and they gave that employee the notification. This avoids the potential for these employers to have to give their employees two forms relating to choosing a fund. This subsection will only apply while the employee is covered by one of those agreements.

Section 5, Schedule 6 of the Work Choices Act

Item 4 of Schedule 1 makes a minor amendment to subparagraph 5(b)(ii) of the *Builders Labourers' Federation (Cancellation of Registration – Consequential Provisions) Act 1986* (the BLF Act), consequent on new section 5 of Schedule 1B to the Workplace Relations Act. The amendment is made to s.5(b)(ii) of the BLF Act, which referred to the “objects” of Schedule 1B of the Workplace Relations Act. Section 5 of the Workplace Relations Act is now headed “Parliament’s intention in enacting this Schedule”.