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Statutory Rules 1994 No. L1

386/

Industrial Relations Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia,
acting with the advice of the Federal Executive Council, make the
following Regulations under the *Industrial Relations Act 1988*.

Dated L 1994.

9 November/

L BILL HAYDEN/
Governor-General

By His Excellency's Command,

L
Minister for Industrial Relations

LAURIE BRERETON/

1. Commencement

1.1 These Regulations commence on 16 November 1994.

2. Amendment

2.1 The Industrial Relations Regulations are amended as set out in these Regulations.

3. Regulation 30A (Interpretation—Division 1)

3.1 Subregulation 30A (1):

Omit the subregulation, substitute:

“(1) In this Division:

‘**authorised leave**’, in relation to an employee, means leave authorised:

- (a) by the employer; or
- (b) by:
 - (i) an award or order of a court or tribunal that has power to fix wages and other terms and conditions of employment; or
 - (ii) an agreement certified or approved by a court or tribunal referred to in subparagraph (i); or
- (c) by the employee’s contract of employment; or
- (d) by a law of the Commonwealth, or of a State or Territory;

‘**daily hire employee**’ means an employee:

- (a) whose employment:
 - (i) is regulated by an award, a State award or an employment agreement; and
 - (ii) under the award, State award or employment agreement is, or is normally, apart from the application to the employee of Division 3 of Part VIA of the Act:
 - (A) terminated at the end of each day or shift; or
 - (B) able to be terminated by the employer on giving to the employee not more than 1 day’s notice; and

- (b) who is working in an industry or occupation which, on 16 November 1994, was subject to an award, State award or employment agreement which provided for the termination of an employee's employment in the circumstances referred to in sub-subparagraph (a) (ii) (A) or (B);

'employment agreement' means an agreement that:

- (a) is entered into under a State law; and
- (b) regulates terms and conditions of a particular kind and application that, if the agreement had not been entered into, could have been regulated by a State arbitrator by compulsory arbitration; and
- (c) prevails over any inconsistent order, award, decision or determination of a State industrial authority; and
- (d) during a particular period, but only during that period, prevents terms and conditions of that kind and application from being regulated by a State arbitrator by compulsory arbitration;

'NETTFORCE' means the body registered by that name under the Corporations Law and having Australian Registered Body Number 065671990;

'State or Territory training authority' means a body authorised by a law or an award of a State or Territory for the purpose of overseeing arrangements for the training of employees;

'trainee' means an employee (other than an apprentice) who is bound by a traineeship agreement;

'traineeship agreement' means an agreement between an employer and an employee that:

- (a) is consistent with the award known as the National Training Wage Interim Award 1994, as in force on 16 November 1994; and
- (b) is registered:
 - (i) with the relevant State or Territory training authority; or
 - (ii) with NETTFORCE; or
 - (iii) under a law of a State or Territory relating to the training of employees."

4. Regulation 30B (Certain employees excluded from requirements for termination of employment)**4.1 Subregulation 30B (1):**

Omit “For”, substitute “Subject to subregulation (2), for”.

4.2 Paragraph 30B (1) (a):

Omit the paragraph, substitute:

“(a) an employee engaged under a contract of employment for a specified period of time, being a contract that was entered into before 16 November 1994;

(aa) an employee engaged under a contract of employment for a specified period of time, being a contract that was entered into on or after 16 November 1994, if the specified period is less than 6 months;”.

4.3 Paragraph 30B (1) (b):

Omit “employees”, substitute “an employee”.

4.4 Paragraph 30B (1) (c):

Omit “employees”, substitute “an employee”.

4.5 Paragraph 30B (1) (d):

Omit “casual employees”, substitute “a casual employee”.

4.6 Subregulation 30B (2):

Omit the subregulation, substitute:

“(2) Subregulation (1) does not apply to an employee engaged:

(a) under a contract of a kind referred to in paragraph (1) (a) or (aa); or

(b) under a contract of a kind referred to in paragraph (1) (b) (being a contract that was entered into on or after 16 November 1994);

if a main purpose of the engagement under a contract of that kind is, or was at the time of the employee’s engagement, to avoid the employer’s obligations under Subdivision B, C, D or E of Division 3 of Part VIA of the Act.”.

4.7 Subregulation 30B (4):

Omit the subregulation.

5. New regulations 30BA, 30BB and 30BC

5.1 After regulation 30B, insert:

Exclusion of trainees

“30BA. (1) For the purposes of section 170CC of the Act, a trainee to whom subregulation (2) applies is excluded from the operation of Subdivisions B, C, D, and E of Division 3 of Part VIA of the Act.

“(2) This subregulation applies to a trainee if the trainee’s employment under a traineeship agreement:

- (a) is for a specified period; or
- (b) is for any other reason limited to the duration of the agreement.

Exclusion of employees under the *Australian Federal Police Act 1979*

“30BB. (1) For the purposes of section 170CC of the Act, an employee who is appointed, employed or otherwise engaged under the *Australian Federal Police Act 1979* is excluded from the operation of Subdivisions B, C, D, and E of Division 3 of Part VIA of the Act.

“(2) This regulation ceases to have effect on 1 January 1996.

Exclusion of certain casual etc. employees

“30BC. (1) For the purposes of section 170CC of the Act, the following employees are excluded from the operation of sections 170DB, 170DD and 170EF and Subdivisions D and E of Division 3 of Part VIA of the Act:

- (a) a casual employee other than a casual employee engaged for a short period within the meaning of subregulation 30B (3);
- (b) a daily hire employee:

- (i) who is performing work in the building and construction industry; or
- (ii) who is performing work in the meat industry in, or in connection with, the slaughter of livestock;
- (c) subject to subregulation (2), an employee engaged under a contract of employment for a specified period of time, being a contract that was entered into on or after 16 November 1994, if the specified period is 6 months or more;
- (d) an employee whose employment is regulated by Schedule X (Marine Cooks, Marine Stewards and Seamen's Engagement System Schedule) of the award known as the Maritime Industry Seagoing Award 1983, as in force on 16 November 1994.

“(2) Subregulation (1) does not apply to an employee engaged under a contract of a kind referred to in paragraph (1) (c) if a main purpose of the engagement under a contract of that kind is, or was at the time of the employee's engagement, to avoid the employer's obligations under section 170DB, 170DD or 170EF, or Subdivision D or E of Division 3 of Part VIA, of the Act.

“(3) For the purposes of section 170CC of the Act, a weekly hire employee who is performing work in, or in connection with, the meat industry, is excluded from the operation of sections 170DB, 170DD and 170EF and Subdivisions D and E of Division 3 of Part VIA of the Act in relation to a termination of the employee's employment solely because of seasonal factors.

“(4) In this regulation, ‘**work in the building and construction industry**’ includes work in, or in connection with, the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures.”.

6. New regulation 30DA

6.1 After regulation 30D, insert in Division 1:

Formula for annual indexation of certain amounts

“30DA. (1) For the purposes of section 170EI of the Act, this regulation sets out a formula for the annual indexation of each of the following amounts (the ‘**indexable amounts**’):

- (a) the amount stated in paragraph 170CD (2) (a) of the Act;
- (b) the amount stated in paragraph 170EE (4) (a) of the Act.

“(2) In this regulation:

‘base weekly earnings average’ means the last amount published by the Australian Statistician before 1 July 1994 as an estimate (other than a preliminary estimate) of the average total weekly earnings (seasonally adjusted) of all employees in Australia for a particular month;

‘current weekly earnings average’, in relation to an indexation day, means the last amount published by the Australian Statistician before that day as an estimate (other than a preliminary estimate) of the average total weekly earnings (seasonally adjusted) of all employees in Australia for a particular month;

‘indexation day’ means 1 July 1995 or 1 July in a later year;

‘indexation factor’, in relation to an indexation day, means the number worked out to 3 decimal places using the following formula:

$$\frac{\text{current weekly earnings average in relation to that indexation day}}{\text{base weekly earnings average}}$$

“(3) If at any time (whether before or after the commencement of this regulation) the Australian Statistician publishes an estimate of the average total weekly earnings (seasonally adjusted) of all employees in Australia for a particular month in substitution for such an estimate (other than a preliminary estimate) previously published by the Australian Statistician for that month, the publication of the later estimate is to be disregarded for the purposes of this regulation.

“(4) Subject to subregulation (5), if on any indexation day the indexation factor is greater than 1, then, on and after that day, until a later application of this subregulation, each indexable amount is taken to be replaced by the amount worked out by multiplying the indexable amount by the indexation factor.

“(5) If an amount worked out under subregulation (4) is not a multiple of \$100:

- (a) if the amount is not a multiple of \$50—it is to be rounded up or down to the nearest amount that is a multiple of \$100; or
- (b) if the amount is a multiple of \$50—it is to be rounded up to the next highest amount that is a multiple of \$100.”.

7. New regulation 32AA**7.1 Insert in Part 6A, before regulation 32A:****Recovery of wages etc.—small claims procedure**

“32AA. (1) For the purposes of paragraph 179C (b) of the Act, the manner in which a person indicates that he or she wants a small claims procedure to apply to an action that the person starts in a magistrate’s court is:

(a) by:

(i) endorsing the papers initiating the action with a statement that the person wants a small claims procedure to apply to the action; or

(ii) lodging with the magistrate’s court a paper that identifies the action and states that the person wants a small claims procedure to apply to the action; and

(b) by giving a copy of the papers initiating the action, together with a copy of the paper (if any) mentioned in subparagraph (a) (ii), to every other party to the action.

“(2) Subregulation (1) does not apply to an action that a person starts in a magistrate’s court if rules of court relating to that court prescribe the manner in which the person indicates that he or she wants a small claims procedure to apply to the action.”

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on L 1994. 11 ~~11~~ November
2. Statutory Rules 1989 No. 12 as amended by 1989 Nos. 107 and 288; 1990 Nos. 328 and 461; 1991 Nos. 9, 11, 73, 137 and 366; 1992 Nos. 81, 139, 158, 232, 274, 339, 351, 357, 435 and 436; 1993 Nos. 22, 23, 41, 61, 128 and 330; 1994 Nos. 68, 79, 185, 200, 244 and 287.