

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2006 No. 68**

Issued by authority of the Minister for Employment and Workplace Relations

*Workplace Relations Act 1996*

*Workplace Relations Amendment Regulations 2006 (No. 1)*

Section 359 of the *Workplace Relations Act 1996* (the 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.

The purpose of the proposed Regulations is to make amendments to correct technical oversights in the recently made *Workplace Relations Regulations 2006*.

The amendments correct some numbering, and otherwise make technical amendments to provisions dealing with the signing of workplace agreements, civil penalties, and agreements made by contracts of employment for the purpose of the Australian Fair Pay and Conditions Standard.

Details of the Regulations are in the Attachment.

The Regulations would commence on the day after they are registered.

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

## **Details of the *Workplace Relations Amendment Regulations 2006 (No. 1)***

### **Clause 1 – Name of Regulations**

This clause sets out the name of the Regulations as the *Workplace Relations Amendment Regulations 2006 (No 1)*.

### **Clause 2 – Commencement**

This clause provides that these Regulations commence on the day after they are registered.

### **Clause 3 – Amendment of *Workplace Relations Regulations 2006***

This clause provides that Schedule 1 to these Regulations amends the *Workplace Relations Regulations 2006*.

### **Schedule 1 – Amendments**

#### **Item 1 – Chapter 2, Part 4, regulation 4.11**

#### **Item 10 – Chapter 2, Part 8, regulation 8.15**

#### **Item 11 – Chapter 2, Part 9, regulation 9.26**

#### **Item 12 – Chapter 2, Part 19, regulation 19.3**

#### **Item 13 – Chapter 8, regulation 1.3**

These items amend Regulations that contain a number of civil penalties, for example, in relation to workplace agreements (signing of agreements, retaining signed agreements); time and wages records; and compliance by scrutineers with directions from ballot agents for secret ballots for protected action. The Regulations currently provide that Chapter 2 of the Criminal Code applies to the civil penalties as if they are criminal offences.

The reference to Chapter 2 of the Criminal Code is intended to import certain principles integral to the interpretation of civil penalty provisions in the Regulations (for example, the meaning of ‘strict liability’ and ‘recklessness’).

However, some aspects of Chapter 2 of the Criminal Code are not appropriate for civil penalties. The most significant of these is a provision that establishes the criminal standard of proof (i.e. beyond reasonable doubt) for criminal penalties. The reference in the Regulations to Chapter 2 of the Criminal Code unintentionally applies the criminal standard of proof to what would otherwise be a civil burden of proof (i.e. on the balance of probabilities). The amendments will clarify that the criminal burden of proof does not apply to these civil penalties.

The amendments will exclude the standard geographical jurisdiction provisions in the Criminal Code. The *Workplace Relations Act 1996* has extra-territoriality provisions that are different from the standard provisions in the Criminal Code.

The amendments made by these items also clarify that the amended Regulations are subject to any relevant provision in the regulations or the *Workplace Relations Act 1996* that expresses a contrary intention.

**Item 2 – Chapter 2, Part 7, paragraph 7.1(3)(a)**

**Item 3 – Chapter 2, Part 7, subregulation 7.1(3), example, second paragraph**

**Item 4 – Chapter 2, Part 7, paragraph 7.1(4)(a)**

**Item 5 – Chapter 2, Part 7, paragraph 7.1(5)(a)**

Items 2 to 5 would amend paragraph 7.1(3)(a), subregulation 7.1(3), paragraph 7.1(4)(a) and paragraph 7.1(5)(a) to omit the words ‘a workplace agreement or contract of employment’ and replace with a reference to ‘a workplace agreement or a written contract of employment’.

The effect of these amendments would be to ensure that any arrangements made under subregulations 7.1(3)-(5) relating to the wages guarantee of the Australian Fair Pay and Conditions Standard are in writing.

**Item 6 – Chapter 2, Part 8, subregulation 8.13(1)**

This item is a technical amendment. This item would amend subregulation 8.13(1) by removing the reference that “an employer must ensure a workplace agreement includes the signatures of” parties to that agreement. Instead the amended subregulation provides that the employer must “obtain the signatures” of those parties. The intention of the amendment is to emphasise that an employer will only be liable for acts within its control.

**Item 7 – Chapter 2, Part 8, after subregulation 8.13(4)**

This item is a technical amendment. This item would insert a new subregulation 8.13(4A) which provides an employer with a defence to the imposition of a civil penalty for not obtaining the signatures of parties to a collective agreement. This defence applies where the employer does not obtain those signatures because of the person’s failure or refusal to sign the agreement. For example, such a defence would be established where a union does not sign, or refuses to sign, a union collective agreement after it has been approved by a majority of the employees who will be subject to it in accordance with section 340 of the Act.

**Item 8 – Chapter 2, Part 8, subregulation 8.14(2)**

This item is a technical amendment. This item would amend subregulation 8.14(2) to remove the references to a signed workplace agreement.

The effect of this amendment is to ensure that a copy of a workplace agreement can be requested in accordance with regulation 19.20, and depending on the circumstances, that copy may be signed or unsigned by all parties to the agreement. For example, if the workplace agreement is an Australian Workplace Agreement (AWA), the employer will have a copy of that agreement signed by both the employer and the employee. In such circumstances, the employer would provide the person who has requested a copy of that agreement with a copy of the signed AWA. If the workplace agreement is a union collective agreement, which a union made with the employer, but did not sign, the employer would provide the person who has requested a copy of that agreement with a copy signed by the employer.

**Item 9 – Chapter 2, Part 8, after subregulation 8.14(4)**

This item is a technical amendment. This item would insert a new subregulation 8.14(5) which provides an employer with a defence to the imposition of a civil penalty for not retaining a signed copy of a collective agreement. The change is the same as that made by item 7.

**Item 14 - Schedule 8, title**

This item will clarify the scope of Schedule 8 by substituting a more accurately descriptive heading.

**Item 15 – Schedule 8, Part 1, item [3], inserted paragraphs 2(2)(f) to (t)**

**Item 16 – Schedule 8, Part 2, item [6], inserted paragraphs 3(2)(d) and (e)**

**Item 17 – Schedule 8, Part 3, item [9], inserted paragraph 4(2)(p)**

These items are technical amendments which will correct cross referencing.