

REGULATION IMPACT STATEMENT

BACKGROUND

To establish a simpler, fairer and more flexible national workplace relations system for Australia, the Australian Government (the Government) significantly reformed the *Workplace Relations Act 1996* (WR Act) through the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices Act). The *Workplace Relations Regulations 2006* (Regulations) repealed and replaced the *Workplace Relations Regulations 1996* (the pre-reform Regulations) to accommodate the amendments to the WR Act introduced by the Work Choices Act.

The pre-reform Regulations required employers to keep time and wages records for employees relating to the number of hours worked by an employee during each day and when the employee started and ceased work. However, the pre-reform Regulations applied only in relation to employees covered by specific industrial instruments such as awards, certified agreements and Australian Workplace Agreements.

Under the WR Act as amended by the Work Choices Act, the Australian Fair Pay and Conditions Standard (the Standard) sets out legislative minimum entitlements in relation to wages, maximum ordinary hours of work, annual leave, personal/carer's leave and parental leave. The Standard applies to all employers and employees within the constitutional coverage of the WR Act as amended.

Chapter 2, Part 19 of the Regulations provides for the making, retention and inspection of employee records and the issue of pay slips. The record-keeping requirements apply to all employees and employers within the constitutional coverage of the WR Act.

The record-keeping requirements under the Regulations were designed to promote compliance with the Standard and other industrial instruments by ensuring that appropriate records are made and retained to enable employees and workplace inspectors to access records to ascertain whether an employee has received all of their guaranteed entitlements. In particular, to determine compliance with the hours and wages guarantees, the Regulations require employers to make and retain records that set out the total number of hours worked by an employee during each day, and an employee's daily starting and finishing times.

ISSUE/PROBLEM TO BE ADDRESSED

Despite the Regulations going some way towards improving workplace flexibility while ensuring minimum entitlements are complied with, concerns have been raised by employer groups that the record-keeping requirements under the Regulations are too onerous. In particular, the record-keeping requirements relating to hours worked by an employee have been criticised as incompatible with the work of employees at a senior or managerial level, who may necessarily work flexible and sometimes irregular hours. Prior to the Work Choices Act an employer would often not need to keep records of hours worked by such employees.

OBJECTIVE OF THE REGULATIONS

The Government's objective is to ensure that the minimum entitlements of lower paid workers are protected while ensuring that the record-keeping requirements do not impose an unnecessary regulatory burden.

The record-keeping requirements should be structured to reduce the burden on employers and employees in complying with the Regulations. The Government considers that reduced regulation will contribute to greater productivity.

THE OPTIONS

One option (**Option A**) would be to maintain the status quo and leave in place the current record-keeping requirements, resulting in an unnecessary burden being placed on of employers of managerial and other employees with flexible and irregular hours.

The preferred option (**Option B**) is to amend the Regulations so that employers will be required to keep records relating to:

- the total number of hours worked by an employee where the employees earns an annual salary of less than \$55,000 (this amount will be indexed); and
- daily start and finish times where overtime is payable to the employee under an industrial instrument or a common law contract.

Under this option, where an employee earns \$55,000 or more per year and is engaged under an industrial instrument or common law contract that does not provide for overtime, there will be no requirements on employers to keep records relating to hours worked by that employee.

IMPACT ANALYSIS

Option A – Status Quo

Costs and benefits to business

There is limited benefit to business if the status quo is maintained as the current record-keeping requirements impose a significant burden on employers. Business groups have maintained that the current system is unduly onerous and have called for reduced regulation.

There are costs to business if the current record-keeping requirements are maintained without further amendment. The record-keeping requirements relating to hours worked by an employee impose costs and administrative burdens on employers, and require employment records to be kept for many employees not previously subject to this obligation under the Regulations as they were before the commencement of the Work Choices Act.

Costs and benefits to employees

The current record-keeping requirements provide benefits to employees by imposing an obligation on employers to make and retain records of hours worked by their employees. That obligation is intended to enable employees and workplace inspectors to access records to ascertain whether an employer has met its obligations under the Standard. That includes obligations to meet the guarantee of maximum hours of work (s.226) and the guarantee of basic rates of pay for the employee's guaranteed hours (s.182). Because all new agreements must comply with the Standard, there is a greater need to keep appropriate records to ensure compliance with the Standard.

Retaining the current record-keeping requirements would mean that all employees including managerial employees and those who work flexible and irregular hours will continue to be required to record their daily start and finish times and total hours worked each day.

Costs and benefits to Government

There is only a modest benefit to the Government if the status quo is maintained. While the record-keeping requirements allow a workplace inspector to investigate and, if necessary, prosecute contraventions of the Standard, the requirements may create barriers to further productivity improvements.

The cost of maintaining the current record-keeping requirements without further reform will be a continuing reliance on the system for ensuring compliance with minimum entitlements guaranteed under the Standard. That system would continue to apply to all employees, even though some employees (such as senior managerial employees) may receive pay and conditions well in excess of the statutory safety net which the Standard provides.

Summary

The Government and business favour reducing the burden imposed by the record-keeping requirements to create flexibility and ensure that the record-keeping requirements do not apply more widely than necessary. While some employees may benefit if the status quo is maintained, there may be longer term costs to productivity and employment growth.

Option B – Reduced regulation

Costs and benefits to business

The current record-keeping requirements impose regulatory burdens on business, and require records to be kept for many employees not previously subject to this obligation under the pre-reform regulations.

If the Regulations are amended, the amendment would provide substantial benefits to business by reducing the cost and administrative burden on business. The proposed amendment will provide a balance between ensuring that businesses, are not burdened with 'red tape' and protecting lower paid workers.

Costs and benefits to employees

While the proposed amendment will help reduce the regulatory burden on business, some higher paid employees may find it more difficult to initiate the investigation and prosecution of contraventions of the Standard which relate to the employee's hours of work. In relation to those employees such a prosecution will depend on the facts of the case and the available evidence.

Costs and benefits to the Government

The Government would benefit from ensuring that the record-keeping requirements do not apply more widely than is necessary. The proposed amendment will, among other things, encourage workplace flexibility while ensuring that lower income workers are protected. The amendment will also decrease the regulatory burden on business.

Summary

The result of the proposed amendment would be a reduced regulatory burden on business which will encourage flexibility in the workplace while ensuring that lower income workers are protected.

CONSULTATION

There has been informal consultation with, and representations from, several industry organisations and business groups. Business groups have generally called for a reduction in the regulatory burden on business and in particular in relation to the record-keeping requirements for managerial and highly paid employees.

IMPLEMENTATION AND REVIEW

The proposed amendments require only minor amendments to the Regulations and are to be implemented as soon as practicable. The Department of Employment and Workplace Relations will monitor and evaluate the effect of this legislative change.

Implementation of the amendment will focus on ensuring that the minimum entitlements of workers are protected and publication of the amendment to ensure compliance.

CONCLUSION AND RECOMMENDED OPTION

The underlying principle of the Government's workplace relations reform agenda has been to encourage greater workplace flexibility while ensuring that minimum entitlements, including new entitlements under the Standard, are complied with.

The current record-keeping requirements impose too great a regulatory burden on business.

The amendment proposed in Option B will balance the need to protect lower income workers and guarantee minimum entitlements with the need to ensure that the record-keeping requirements do not apply more widely than necessary and ensure that business is not unduly burdened with 'red tape'.

The recommendation is that Option B be agreed.

