



Workplace Relations Amendment Regulations 2006 (No. 2)¹

Select Legislative Instrument 2006 No. 118

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Workplace Relations Act 1996* and the *Workplace Relations Amendment (Work Choices) Act 2005*.

Dated 1 June 2006

P. M. JEFFERY
Governor-General

By His Excellency's Command

KEVIN ANDREWS
Minister for Employment and Workplace Relations

1 Name of Regulations

These Regulations are the *Workplace Relations Amendment Regulations 2006 (No. 2)*.

2 Commencement

These Regulations commence, or are taken to have commenced, as follows:

- (a) on the reform commencement within the meaning of the *Workplace Relations Amendment (Work Choices) Act 2005* — regulations 1 to 3 and Schedule 1;
- (b) on the day after these Regulations are registered — Schedule 2.

3 Amendment of *Workplace Relations Regulations 2006*

Schedules 1 and 2 amend the *Workplace Relations Regulations 2006*.

Schedule 1 Amendment taken to have commenced on the reform commencement

(regulation 3)

[1] Chapter 7, Part 2, after Division 4

insert

Division 4A Matters relating to Victoria — employees covered by transitional awards or common rules

2.4A Hours of work

- (1) Division 3 of Part 7 of the Act (hours of work) does not apply to the employment of an employee while the employee's employment is subject to a transitional award or a common rule.
- (2) In subregulation (1):
 - common rule* means a common rule that has effect because of Subdivision E of Division 1 of Part 7 of Schedule 6 to the Act.
 - employee* has the meaning given by section 858 of the Act.
 - employment* has the meaning given by section 858 of the Act.
 - transitional award* has the meaning given by clause 2 of Schedule 6 to the Act.
- (3) Subregulation (1) ceases to have effect at the end of the period of 3 years that starts on the reform commencement.

Schedule 2 Amendments commencing on day after registration

(regulation 3)

[1] Chapter 1, regulation 1.3, after definition of *pre-reform Regulations*

insert

section 717 court means an eligible court mentioned in section 717 of the Act.

Note Section 717 of the *Workplace Relations Act 1996* contains the following definition:

eligible court means:

- (a) the Court; or
- (b) the Federal Magistrates Court; or
- (c) a District, County or Local Court; or
- (d) a magistrate's court; or
- (e) the Industrial Relations Court of South Australia; or
- (f) any other State or Territory court that is prescribed by the regulations.

[2] Chapter 2, Part 1, paragraph 1.3 (c)

omit

74

insert

174

[3] Chapter 2, Part 1, subregulation 1.5 (1)

omit

paragraph 17 (2) (b)

insert

subsection 17 (2)

[4] Chapter 2, Part 1, subparagraph 1.5 (6) (b) (ii)

after

within

insert

which

[5] Chapter 2, Part 3, paragraph 3.3 (n)

omit

paragraph (i), (j), (k) or (l)

insert

paragraph (j), (k), (l) or (m)

[6] Chapter 2, Part 7, subregulation 7.1 (4)

substitute

- (4) The Standard does not provide a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) a provision in a workplace agreement or written contract of employment binding the employee and the employer provides for the employer to pay an amount in respect of the employee under a salary sacrifice arrangement; and
 - (b) the employee gives the employer a written election, separate to the workplace agreement or contract of employment, for a salary sacrifice arrangement; and
 - (c) the guarantee of basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act would be satisfied if the payment were instead paid to the employee.

[7] Chapter 2, Part 7, after paragraph 7.1 (6) (d)

insert

- (da) paid personal/carer's leave (but only to the extent to which it is a particular respect for the purposes of subregulations (11A), (11B), (11C) and (11F));

[8] Chapter 2, Part 7, subregulation 7.1 (11), after the example*insert*

- (11A) The Standard provides a more favourable outcome in respect of paid personal/carer's leave if:
- (a) for a workplace agreement or written contract of employment that binds the employee and that provides for an annual amount of paid personal/carer's leave that is not more than the amount provided by the Standard — the employee is entitled to forgo any of that leave in return for an amount of pay or other benefit; or
 - (b) for a workplace agreement or written contract of employment that binds the employee and that provides for an annual amount of paid personal/carer's leave that is greater than the amount provided by the Standard — the employee is entitled to forgo more than the amount by which that leave exceeds the amount provided by the Standard in return for an amount of pay or other benefit.
- (11B) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave if, for a workplace agreement or written contract of employment that binds the employee and that provides for an annual amount of paid personal/carer's leave that is greater than the amount provided by the Standard:
- (a) the employee is entitled to forgo the amount, or less than the amount, by which that leave exceeds the amount provided by the Standard in return for an amount of pay or other benefit; and
 - (b) the provisions of the workplace agreement or written contract of employment for the use of paid personal/carer's leave are consistent with the arrangements in the Standard.

Example

A full-time employee is entitled to 15 days of paid personal/carer's leave per annum under the terms of a workplace agreement.

As the Standard provides 10 days of paid personal/carer's leave per annum, a provision in the workplace agreement which allows the employee to forgo a maximum of 5 days of paid personal/carer's leave per annum would not be less favourable than the Standard, provided that this does not affect the employee's entitlement under the Standard to take personal/carer's leave as paid sick leave or paid carer's leave.

Note Paid sick leave and paid carer's leave entitlements are referred to in the Act as paid personal/carer's leave (section 244). Under the Act, a full time employee will accrue 10 days of paid personal/carer's leave each year (subsection 246 (2)), of which any amount can be used as sick leave, and of which only 10 days in a 12 month period can be used as carer's leave (subsection 249 (2)).

Paragraph (11B) (b) ensures that cashing out arrangements in a workplace agreement or contract of employment do not affect an employee's entitlement to take paid personal/carer's leave as paid sick leave up to the amount credited to the employee, or paid carer's leave of up to 10 days each year.

- (11C) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave if a workplace agreement or written contract of employment that binds the employee permits accumulated paid personal/carer's leave to be paid out on termination of employment.
- (11D) The Standard provides a more favourable outcome in respect of paid compassionate leave if:
- (a) for a workplace agreement or written contract of employment that binds the employee and that provides for an amount of paid compassionate leave per occasion that is not more than the amount per occasion provided by the Standard — the employee is entitled to forgo any of that leave in return for an amount of pay or other benefit; or
 - (b) for a workplace agreement or written contract of employment that binds the employee and that provides for an amount of paid compassionate leave per occasion that is greater than the amount per occasion provided by the Standard — the employee is entitled to forgo more than the amount per occasion by which that leave exceeds the amount per occasion provided by the Standard in return for an amount of pay or other benefit.

- (11E) The Standard does not provide a more favourable outcome in respect of paid compassionate leave if, for a workplace agreement or written contract of employment that binds the employee and that provides for an amount of paid compassionate leave per occasion that is greater than the amount per occasion provided by the Standard, the employee is entitled to forgo the amount per occasion, or less than the amount per occasion, by which that leave exceeds the amount per occasion provided by the Standard in return for an amount of pay or other benefit.

Note For subregulations 7.1 (11D) and (11E), the Standard provides that full-time employees are entitled to an amount of 2 days of paid compassionate leave per occasion (section 257 of the Act).

- (11F) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave or paid compassionate leave if:
- (a) a provision in a workplace agreement or contract of employment binding the employee and the employer provides for leave of that type to be forgone in return for an amount of pay or other benefit in a manner that is consistent with these Regulations; and
 - (b) the employee gives the employer a written election, separate to the workplace agreement or contract of employment, to forgo leave in return for an amount of pay or other benefit.

[9] Chapter 2, Part 7, after regulation 7.7

insert

Division 4 Annual Leave

7.7A Piece rate employees — basic periodic rate of pay

For section 231 of the Act, the *basic periodic rate of pay* for a piece rate employee is worked out in accordance with the following formula:

$$\text{BPR} = \frac{\text{TA}}{\text{NH}}$$

where:

BPR is the employee's basic periodic rate of pay, expressed as an hourly rate of pay.

TA is the total amount earned by the employee at the employee's basic piece rate of pay during the relevant period.

NH is the total nominal hours worked by the employee during the relevant period.

the relevant period is:

- (a) for an employee who was continuously employed by the employer for a period of 12 months or more immediately before the basic periodic rate of pay is to be worked out — the 12 months before the rate is to be worked out; or
- (b) for an employee who was continuously employed by the employer for a period less than 12 months immediately before the rate of pay is to be worked out — that period.

Note The Act contains the following relevant definitions:

- (a) **piece rate employee** — section 228;
- (b) **nominal hours worked** — section 229;
- (c) **basic piece rate of pay** — section 178.

[10] Chapter 2, Part 8, paragraph 8.3 (1) (a)*substitute*

- (a) a determination made by an Agency Head under subsection 24 (1) of the *Public Service Act 1999*, other than a determination made under that subsection in accordance with regulations made for the purpose of subsection 72 (5) of that Act;

[11] Chapter 2, Part 8, paragraph 8.5 (1) (k)*omit*

authorised by law.

insert

authorised by law;

[12] Chapter 2, Part 8, after paragraph 8.5 (1) (k)*insert*

- (l) the forgoing of paid personal/carer's leave or paid compassionate leave for an amount of pay otherwise than in a manner that would result in a more favourable outcome than the Standard, consistent with these Regulations.

[13] Chapter 2, Part 9, subregulation 9.16 (4)*omit*

paragraphs 9.11 (a) and (b).

insert

paragraphs 9.14 (2) (a) and (b).

[14] Chapter 2, Part 9, regulation 9.21

omit

an agent

insert

a scrutineer

[15] Chapter 2, Part 10, paragraphs 10.3 (3) (a) and (b)

omit each mention of

total quantum

insert

total annual quantum

[16] Chapter 2, Part 10, subregulation 10.3 (3), table of examples, heading

substitute

Examples of comparisons between preserved award terms and the Australian Fair Pay and Conditions Standard for a full-time employee

[17] Chapter 2, Part 10, subregulation 10.3 (3), after the table of examples

insert

- (3A) A reference in the table in subregulation (3) to a period of annual leave or personal/carer's leave is a reference to paid annual leave or personal/carer's leave.

[18] Chapter 2, Part 12, after paragraph 12.6 (1) (a)

insert

- (ab) the amount mentioned in paragraph 19.9 (1) (b);

[19] Chapter 2, Part 12, after paragraph 12.6 (2) (a)*insert*

- (ab) for the amount mentioned in paragraph 19.9 (1) (b) — the last amount published by the Australian Statistician before 1 July 2006 as an estimate (except a preliminary estimate) of the average total weekly earnings (seasonally adjusted) for full-time adult employees of all employees in Australia in a particular month; and

[20] Chapter 2, Part 15, paragraph 15.1 (1) (b)*substitute*

- (b) the **Occupational Health and Safety Act 2004** of Victoria;
- (c) the *Workplace Health and Safety Act 1995* of Queensland;
- (d) the *Occupational Health and Safety Act 1989* of the Australian Capital Territory.

[21] Chapter 2, Part 19, subregulation 19.9 (1)*substitute*

- (1) The record relating to the employee must contain the following:
- (a) the employee's daily starting and finishing times, if an overtime loading may be paid to the employee under:
- (i) a workplace agreement; or
 - (ii) an award; or
 - (iii) a transitional award; or
 - (iv) a pre-reform AWA; or
 - (v) a pre-reform certified agreement; or
 - (vi) a preserved State agreement; or
 - (vii) a notional agreement preserving State awards; or
 - (viii) a contract; or
 - (ix) an employment agreement mentioned in section 887 of the Act; or

-
- (x) a workplace determination mentioned in section 4 of the Act; or
 - (xi) an exceptional matters order mentioned in item 1 of Schedule 7 of the Act; or
 - (xii) a section 170MX award mentioned in item 1 of Schedule 7 of the Act; or
 - (xiii) an old IR agreement mentioned in item 1 of Schedule 7 of the Act;
- (b) the total number of hours worked each day by the employee, being hours that the employee was required or requested to work by the employer, if the employee's base annual salary is less than the greater of the following amounts:
- (i) \$55 000;
 - (ii) on and after 1 July 2007, in relation to the financial year ending on 30 June 2007 and subsequent financial years — the amount worked out by indexing that amount in accordance with regulation 12.6.

Example 1 An employee has a base annual salary of \$70 000. The employee goes on a part-time arrangement, so that the employee actually earns \$40 000 each year. Because the employee's base annual salary has not changed (it remains over \$55 000) records do not need to be kept of that employee's total hours worked in each day.

Example 2 An employee has a base annual salary of \$45 000. The employee is promoted but the employee's base annual salary does not change. Instead, the employee receives a \$10 000 vehicle allowance. But because the employee's base annual salary remains \$45 000, records still need to be kept of the employee's total hours worked in each day.

(1A) In subregulation (1):

base annual salary, for an employee, means a salary identified as follows:

- (a) if the employee is a full-time employee whose annual salary is specified in a written instrument (including a workplace agreement or a contract), the base annual salary is that annual salary, but not including any of the following:
 - (i) incentive-based payments or bonuses;
 - (ii) loadings;

- (iii) monetary allowances;
- (iv) penalty rates;
- (v) employer contributions for superannuation;
- (vi) any other similar separately identifiable entitlement;
- (b) if the employee is a part-time employee whose annual salary is specified in a written instrument (including a workplace agreement or a contract), the base annual salary is the equivalent annual salary that would be payable if the employee were a full-time employee, but not including any of the matters mentioned in subparagraphs (a) (i) to (v);
- (c) if:
 - (i) the employee does not have an annual salary of the type mentioned in paragraphs (a) or (b); and
 - (ii) the employee is paid at a rate of regular salary during a period;the base annual salary is the annual salary that the employee would earn at that regular rate;
- (d) if:
 - (i) the employee does not have an annual salary of the type mentioned in paragraphs (a) or (b); and
 - (ii) the employee is a piece rate employee or another employee who is not paid at a rate of regular salary during a period;the base annual salary is the employee's annual earnings as reasonably estimated by the employee's employer, but not including any of the matters mentioned in subparagraphs (a) (i) to (v).

Example for a piece rate employee mentioned in paragraph (d)

An employer might use a piece rate employee's earnings over a previous year of employment to reasonably estimate the employee's annual earnings over the subsequent year.

[22] Chapter 2, Part 19, before paragraph 19.12 (1) (a)

insert

- (aa) the employee's nominal hours worked within the meaning of section 229 of the Act;

[23] Chapter 2, Part 19, before paragraph 19.13 (1) (a)

insert

- (aa) the employee's nominal hours worked within the meaning of section 241 of the Act;

[24] Chapter 2, Part 19, regulation 19.24

omit

the Court or the Federal Magistrates Court

insert

a section 717 court

[25] Chapter 2, Part 19, regulation 19.25

omit

The Court or the Federal Magistrates Court

insert

A section 717 court

[26] Chapter 2, Part 19, subregulation 19.28 (3)

omit

Division 2 of Schedule 6

insert

Division 2 of Part 1 of Schedule 6

[27] Chapter 2, Part 19A, regulation 19.41

omit

the Court or the Federal Magistrates Court

insert

a section 717 court

[28] Chapter 2, Part 19A, regulation 19.42*omit*

The Court or the Federal Magistrates Court

insert

A section 717 court

[29] Chapter 2, Part 19B, paragraph 19.47 (1) (h)*omit*

the Court or the Federal Magistrates Court

insert

a section 717 court

[30] Chapter 2, Part 19B, paragraphs 19.48 (a) and (b)*omit*

the Court or the Federal Magistrates Court

insert

the section 717 court

[31] Chapter 2, Part 21, subregulation 21.3 (4)*substitute*

- (4) The Standard does not provide a more favourable outcome in the respect mentioned in subregulation (2) if:
- (a) a provision in a workplace agreement or written contract of employment binding the employee and the employer provides for the employer to pay an amount in respect of the employee under a salary sacrifice arrangement; and
 - (b) the employee gives the employer a written election, separate to the workplace agreement or contract of employment, for a salary sacrifice arrangement; and
 - (c) the guarantee of basic rates of pay in Subdivision B of Division 2 of Part 7 of the Act would be satisfied if the payment were instead paid to the employee.

[32] Chapter 2, Part 21, after paragraph 21.3 (6) (d)*insert*

- (da) paid personal/carer's leave (but only to the extent to which it is a particular respect for the purposes of subregulations (11A), (11B), (11C) and (11F));

[33] Chapter 2, Part 21, subregulation 21.3 (11), after the example*insert*

- (11A) The Standard provides a more favourable outcome in respect of paid personal/carer's leave if:
- (a) for an employment agreement that binds the employee and that provides for an annual amount of paid personal/carer's leave that is not more than the amount provided by the Standard — the employee is entitled to forgo any of that leave in return for an amount of pay or other benefit; or
 - (b) for an employment agreement that binds the employee and that provides for an annual amount of paid personal/carer's leave that is greater than the amount provided by the Standard — the employee is entitled to forgo more than the number of days by which that leave exceeds the amount provided by the Standard in return for an amount of pay or other benefit.
- (11B) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave if, for an employment agreement that binds the employee and that provides for an annual amount of paid personal/carer's leave that is greater than the amount provided by the Standard:
- (a) the employee is entitled to forgo the number of days, or less than the number of days, by which that leave exceeds the amount provided by the Standard in return for an amount of pay or other benefit; and
 - (b) the provisions of the workplace agreement or written contract of employment for the use of paid personal/carer's leave are consistent with the arrangements in the Standard.

Example

A full-time employee is entitled to 15 days of paid personal/carer's leave per annum under the terms of an employment agreement.

As the Standard provides 10 days of paid personal/carer's leave per annum, a provision in the employment agreement which allows the employee to forgo a maximum of 5 days of paid personal/carer's leave per annum would not be less favourable than the Standard, provided that this does not affect the employee's entitlement under the Standard to take personal/carer's leave as paid sick leave or paid carer's leave.

Note Paid sick leave and paid carer's leave entitlements are referred to in the Act as paid personal/carer's leave (section 244). Under the Act, a full time employee will accrue 10 days of paid personal/carer's leave each year (subsection 246 (2)), of which any amount can be used as sick leave, and of which only 10 days in a 12 month period can be used as carer's leave (subsection 249 (2)).

Paragraph (11B) (b) ensures that cashing out arrangements in a workplace agreement or contract of employment do not affect an employee's entitlement to take paid personal/carer's leave as paid sick leave up to the amount credited to the employee, or paid carer's leave of up to 10 days each year.

- (11C) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave if an employment agreement that binds the employee permits accumulated paid personal/carer's leave to be paid out on termination of employment.
- (11D) The Standard provides a more favourable outcome in respect of paid compassionate leave if:
- (a) for an employment agreement that binds the employee and that provides for an amount of paid compassionate leave per occasion that is not more than the amount per occasion provided by the Standard — the employee is entitled to forgo any of that leave in return for an amount of pay or other benefit; or
 - (b) for an employment agreement that binds the employee and that provides for an amount of paid compassionate leave per occasion that is greater than the amount per occasion provided by the Standard — the employee is entitled to forgo more than the amount per occasion by which that leave exceeds the amount per occasion provided by the Standard in return for an amount of pay or other benefit.

- (11E) The Standard does not provide a more favourable outcome in respect of paid compassionate leave if, for an employment agreement that binds the employee and that provides for an amount of paid compassionate leave per occasion that is greater than the amount per occasion provided by the Standard, the employee is entitled to forgo the amount per occasion, or less than the amount per occasion, by which that leave exceeds the amount per occasion provided by the Standard in return for an amount of pay or other benefit.

Note For subregulations 21.3 (11D) and (11E), the Standard provides that full-time employees are entitled to accrue an amount of 2 days of paid compassionate leave per occasion (section 257 of the Act).

- (11F) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave or paid compassionate leave if:
- (a) a provision in an employment agreement binding the employee and the employer provides for leave of that type to be forgone in return for an amount of pay or other benefit in a manner that is consistent with these Regulations; and
 - (b) the employee gives the employer a written election, separate to the employment agreement, to forgo leave in return for an amount of pay or other benefit.

[34] Chapter 3, Part 7, paragraphs 7.4 (3) (a) and (b)

omit each mention of

total quantum

insert

total annual quantum

[35] Chapter 3, Part 7, subregulation 7.4 (3), table of examples, heading

substitute

Examples of comparisons between preserved award terms and the Australian Fair Pay and Conditions Standard for a full-time employee

[36] Chapter 3, Part 7, subregulation 7.4 (3), after the table of examples

insert

- (3A) A reference in the table in subregulation (3) to a period of annual leave or personal/carer's leave is a reference to paid annual leave or personal/carer's leave.

[37] Chapter 3, Part 7, paragraphs 7.11 (3) (a) and (b)

omit each mention of

total quantum

insert

total annual quantum

[38] Chapter 3, Part 7, subregulation 7.11 (3), table of examples, heading

substitute

Examples of comparisons between preserved award terms and the Australian Fair Pay and Conditions Standard for a full-time employee

[39] Chapter 3, Part 7, subregulation 7.11 (3), after the table of examples

insert

- (3A) A reference in the table in subregulation (3) to a period of annual leave or personal/carer's leave is a reference to paid annual leave or personal/carer's leave.

[40] Chapter 3, after Part 7*insert***Part 8 Transitional arrangements for parties bound by federal awards — miscellaneous****8.1 Varying or setting aside obligation to pay redundancy pay**

- (1) For subclause 108 (1) of Schedule 6 to the Act, this regulation applies if:
 - (a) a transitional employer would be obliged under a transitional award to pay redundancy pay in relation to the redundancy of a transitional employee; and
 - (b) a term of a transitional award permits the transitional employer to make an application to the Commission to have the obligation to pay redundancy pay in relation to the transitional employee varied or set aside where the transitional employer has obtained alternative employment for the transitional employee.
- (2) The Commission may:
 - (a) receive an application to vary or set aside an obligation to pay redundancy pay; and
 - (b) by order, determine the application if the Commission is satisfied that the alternative employment is acceptable.

Note The acceptability of alternative employment in a particular matter is an objective assessment that requires the Commission to consider matters including pay, hours of work, seniority, workload and other matters particular to the application.

[41] Chapter 5, before Part 3*insert***Part 2 Preserved State agreements****2.1 Varying or setting aside obligation to pay redundancy pay**

- (1) For clause 30 of Schedule 8 to the Act, this regulation applies if:
 - (a) an employer would be obliged under a preserved State agreement to pay redundancy pay in relation to the redundancy of an employee; and
 - (b) a term of a preserved State agreement permits the employer to make an application to the State industrial authority to have the obligation to pay redundancy pay in relation to the employee varied or set aside where the employer has obtained alternative employment for the employee.
- (2) The Commission may:
 - (a) receive an application to vary or set aside an obligation to pay redundancy pay; and
 - (b) by order, determine the application if the Commission is satisfied that the alternative employment is acceptable.

Note 1 The acceptability of alternative employment in a particular matter is an objective assessment that requires the Commission to consider matters including pay, hours of work, seniority, workload and other matters particular to the application.

Note 2 Subclause 15 (1) of Schedule 8 to the Act provides that a function conferred by a preserved collective State agreement on a State industrial authority must not be exercised by that authority from reform commencement. Subclause 15 (2) of Schedule 8 provides that the employer and persons bound by the agreement may agree to confer that function on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

This regulation is made under clause 30 of Schedule 8 to the Act, and modifies subclause 15 (2) of the Act to the extent that the Commission may exercise the function in relation to redundancy pay variation even though:

- (a) the employer and persons bound by the agreement might not agree to the Commission exercising this function; or

-
- (b) the function relates to the resolution of a dispute about the application of the agreement.

[42] Chapter 5, Part 3, paragraphs 3.2 (3) (a) and (b)

omit each mention of

total quantum

insert

total annual quantum

[43] Chapter 5, Part 3, subregulation 3.2 (3), table of examples, heading

substitute

Examples of comparisons between preserved award terms and the Australian Fair Pay and Conditions Standard for a full-time employee

[44] Chapter 5, Part 3, subregulation 3.2 (3), after the table of examples

insert

- (3A) A reference in the table in subregulation (3) to a period of annual leave or personal/carer's leave is a reference to paid annual leave or personal/carer's leave.

[45] Chapter 5, Part 3, after regulation 3.4

insert

3.5 Varying or setting aside obligation to pay redundancy pay

- (1) For clause 55 of Schedule 8 to the Act, this regulation applies if:
- (a) an employer would be obliged under a notional agreement preserving State awards to pay redundancy pay in relation to the redundancy of an employee; and

(b) a term of a notional agreement preserving State awards permits the employer to make an application to the State industrial authority to have the obligation to pay redundancy pay in relation to the employee varied or set aside where the employer has obtained alternative employment for the employee.

(2) The Commission may:

- (a) receive an application to vary or set aside an obligation to pay redundancy pay; and
- (b) by order, determine the application if the Commission is satisfied that the alternative employment is acceptable.

Note 1 The acceptability of alternative employment in a particular matter is an objective assessment that requires the Commission to consider matters including pay, hours of work, seniority, workload and other matters particular to the application.

Note 2 Subclause 35 (1) of Schedule 8 to the Act provides that a function conferred by a notional agreement preserving State awards on a State industrial authority must not be exercised by that authority from reform commencement. Subclause 35 (2) of Schedule 8 provides that the employer and persons bound by the notional agreement may agree to confer that function on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

This regulation is made under clause 55 of Schedule 8 to the Act and modifies subclause 35 (2) of Schedule 8 to the Act to the extent that the Commission may exercise the function in relation to redundancy pay variation even though:

- (a) the employer and persons bound by the agreement might not agree to the Commission exercising this function; or
- (b) the function relates to the resolution of a dispute about the application of the agreement.

[46] Chapter 7, Part 2, after Division 2*insert***Division 2A Matters referred by Victoria****2.2A Additional effect of Act — exclusion of Victorian laws under section 898**

- (1) Subsection 898 (1) of the Act does not apply in relation to a law of Victoria so far as that law deals with a matter mentioned in section 5 of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria.

Note Part 15 of the Act (Right of entry) sets prerequisites for a trade union representative to enter premises for a purpose connected with occupational health and safety under a prescribed law of a State or Territory.

The prerequisites may apply to entry to premises in Victoria as set out in section 755 of the Act, and are not affected by the non-application of subsection 898 (1) of the Act to a Victorian law that deals with a matter in section 5 of the **Commonwealth Powers (Industrial Relations) Act 1996** (Vic) (which matters include occupational health and safety).

- (2) Subsection 898 (1) of the Act does not apply in relation to a law of Victoria so far as that law:
- (a) deals with the promotion of EEO, and is neither a State or Territory industrial law nor contained in such a law; or
 - (b) is a law that deals with any of the matters (*non-excluded matters*) mentioned in subregulation (3).
- (3) The non-excluded matters are:
- (a) matters relating to outworkers (including entry of a representative of a trade union to premises for a purpose connected with outworkers); and
 - (b) child labour; and
 - (c) the method of payment of wages or salaries; and
 - (d) the frequency of the payment of wages and salaries; and
 - (e) industrial action (within the ordinary meaning of the expression) affecting an essential service; and
 - (f) attendance for service on a jury; and

- (g) the regulation of any of the following:
- (i) associations of employees;
 - (ii) associations of employers;
 - (iii) members of an association of employees or of an association of employers.

[47] Chapter 7, Part 2, paragraph 2.14 (a)

omit

criminal proceedings; or

insert

proceedings; or

[48] Chapter 7, Part 2, paragraph 2.14 (b)

omit

criminal prosecution;

insert

prosecution;

[49] Chapter 7, Part 2, regulation 2.14, at the foot

insert

Note Paragraph 169 (1) (b) of the Act provides that the powers of a workplace inspector under section 169 may be exercised for the purpose of a provision of the regulations that confers powers or functions on inspectors.

[50] Chapter 7, Part 2, subregulation 2.19 (3)

omit

[51] Chapter 7, Part 2, after Division 16

insert

Division 18 Redundancy pay obligations**2.24 Varying or setting aside obligation to pay redundancy pay**

- (1) This regulation applies if:
 - (a) an employer would be obliged under a pre-reform award to pay redundancy pay in relation to the redundancy of an employee; and
 - (b) a term of a pre-reform award permits the employer to make an application to the Commission to have the obligation to pay redundancy pay in relation to the employee varied or set aside where the employer has obtained alternative employment for the employee.
- (2) The Commission may:
 - (a) receive an application to vary or set aside an obligation to pay redundancy pay; and
 - (b) by order, determine the application if the Commission is satisfied that the alternative employment is acceptable.

Note The acceptability of alternative employment in a particular matter is an objective assessment that requires the Commission to consider matters including pay, hours of work, seniority, workload and other matters particular to the application.

- (3) This regulation ceases to have effect at the end of the period of 12 months starting on the day on which this regulation commences.

[52] Schedule 1, Form 2, note

omit

14 days

insert

7 days

[53] Schedule 4, item 8, column 2

omit

for a secret ballot for the suspension or termination of a bargaining period under Division 4 of Part 9

insert

for the suspension or termination of a bargaining period under Division 2 of Part 9

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.