



Workplace Relations Amendment Regulations 2006 (No. 4)¹

Select Legislative Instrument 2006 No. 340

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 13 December 2006

P. M. JEFFERY
Governor-General

By His Excellency's Command

KEVIN ANDREWS
Minister for Employment and Workplace Relations

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1 Name of Regulations

These Regulations are the *Workplace Relations Amendment Regulations 2006 (No. 4)*.

2 Commencement

These Regulations commence as follows:

- (a) on the day after these Regulations are registered — regulations 1, 2 and 3 and Schedule 1;
- (b) on 27 March 2007 — Schedule 2.

3 Amendment of *Workplace Relations Regulations 2006*

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

Schedule 1 Amendments commencing after registration

(regulation 3)

Part 1 Amendments relating to training arrangements

[101] Chapter 2, after subregulation 1.2 (6)

insert

Training arrangements

- (7) Subsection 16(1) does not apply to a State or Territory industrial law to the extent that the law provides a remedy that arises from the suspension, cancellation or termination of a training contract or agreement in circumstances that are contrary to a law of a State or Territory relating to training arrangements.

Note **Training arrangement** is defined in section 4 of the Act.

- (8) However, subregulation (7) does not apply to a State or Territory industrial law described in that subregulation to the extent that it relates to the termination of employment that may be harsh, unjust or unreasonable.

[102] Chapter 2, paragraph 1.5 (9) (b)

substitute

- (b) is not prescribed to the extent to which:
- (i) it deals with, or allows arrangements to be made for, the termination of a training contract or a training agreement by a State or Territory training authority; and

- (ii) it provides a remedy that arises from that termination of the training contract or training agreement otherwise than by the State or Territory training authority.

Note **State or Territory training authority** is defined in section 4 of the Act.

Part 2 Amendment relating to protected preserved conditions

[201] Chapter 5, after regulation 2.1

insert

2.2 Protected preserved conditions after termination of preserved State agreement

- (1) This regulation applies if a preserved State agreement is terminated in accordance with clause 21 of Part 2 of Schedule 8 to the Act.
- (2) Each protected preserved condition (within the meaning of subclause 25A (4) of Part 2 of Schedule 8 to the Act) has effect in relation to the employer and the employee who were bound by the preserved State agreement immediately before it was terminated until either of the following occurs:
 - (a) an award comes into operation in relation to the employer and the employee;
 - (b) a workplace agreement comes into operation in relation to the employer and the employee.
- (3) Subregulation (2) does not affect the operation of protected preserved conditions in accordance with clause 25A of Part 2 of Schedule 8 to the Act.
- (4) Parts 6 and 14 of the Act apply to a protected preserved condition mentioned in subregulation (2) as if the protected preserved condition were a preserved State agreement in its operation.

Part 3 Amendments relating to personal/carer's leave

[301] Chapter 2, paragraph 7.1 (6) (da)

omit

and (11F)

insert

, (11F) and (11G)

[302] Chapter 2, after subregulation 7.1 (11F)

insert

- (11G) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave if a workplace agreement or contract of employment that binds the employee permits the employee to take an additional period of personal/carer's leave by forgoing an equivalent amount of pay.

Example

A provision permitting an employee to take 20 days of personal/carer's leave at half pay (where the available entitlement is 10 days of paid personal/carer's leave) would not be less favourable than the Standard.

[303] Chapter 2, paragraph 21.3 (6) (da)

omit

and (11F)

insert

, (11F) and (11G)

[304] Chapter 2, after subregulation 21.3 (11F)*insert*

- (11G) The Standard does not provide a more favourable outcome in respect of paid personal/carer's leave if a provision in an employment agreement binding the employee and the employer permits the employee to take an additional period of personal/carer's leave by forgoing an equivalent amount of pay.

Example

A provision permitting an employee to take 20 days of personal/carer's leave at half pay (where the available entitlement is 10 days of paid personal/carer's leave) would not be less favourable than the Standard.

Part 4 Amendments relating to civil remedy provisions**[401] Chapter 2, after subregulation 4.9 (4)***insert*

- (5) Subregulation (2) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[402] Chapter 2, regulation 4.11*substitute***4.11 Application of the *Criminal Code* to civil remedy provisions**

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Part as if those provisions were offences.

[403] Chapter 2, subregulation 8.11 (3), note

substitute

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[404] Chapter 2, subregulation 8.13 (4), note

substitute

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[405] Chapter 2, subregulation 8.14 (4), including the note

substitute

- (4) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[406] Chapter 2, regulation 8.15

substitute

8.15 Application of the *Criminal Code* to civil remedy provisions

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Part as if those provisions were offences.

[407] Chapter 2, subregulation 9.8 (6), including the note

substitute

- (6) Subregulation (4) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[408] Chapter 2, subregulation 9.11 (3), including the note
substitute

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[409] Chapter 2, subregulation 9.22 (7), including the note
substitute

- (3) Subregulation (5) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[410] Chapter 2, regulation 9.26
substitute

9.26 Application of the *Criminal Code* to civil remedy provisions

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Part as if those provisions were offences.

[411] Chapter 2, Part 14, after Division 2
insert

Division 3 General provisions relating to civil remedies

14.3 Standing for civil remedies

- (1) A workplace inspector may apply to:
(a) the Federal Court; or

(b) the Federal Magistrates Court;
for an order for a contravention of a civil remedy provision in Part 4 or 8 of this Chapter.

- (2) A workplace inspector may apply to a section 717 court for an order for a contravention of a civil remedy provision in these Regulations, other than a civil remedy provision in Part 4 or 8 of this Chapter.

14.4 Court may order pecuniary penalty

A court to which regulation 14.3 applies may order a person who contravenes a civil remedy provision in these Regulations to pay a pecuniary penalty of up to the maximum penalty permissible under paragraph 846 (2) (g) of the Act.

14.5 Multiple contraventions of civil remedy provisions

- (1) This regulation applies if:
- (a) a person commits 2 or more contraventions of a civil remedy provision of these Regulations; and
 - (b) each contravention relates to the same action or course of conduct of the person.
- (2) The contraventions are taken, for these Regulations, to be a single contravention of the civil remedy provision.
- (3) However, if:
- (a) a penalty has been imposed on the person in relation to a contravention of a civil remedy provision relating to an action or course of conduct of the person; and
 - (b) the person subsequently commits a contravention of the civil remedy provision relating to the same action or course of conduct;

subregulation (2) does not apply to the contravention mentioned in paragraph (b).

Note The intention of subregulations (2) and (3) is that multiple contraventions of a civil remedy provision, in relation to the same action or course of conduct, will be treated as a single contravention until a penalty is imposed on the person.

Multiple contraventions after that time, in relation to the same action or course of conduct, will be treated as a single, but separate, contravention of the civil remedy provision. If another penalty is imposed, subsequent contraventions will again be treated as a single, but separate, contravention of the civil remedy provision.

14.6 Crown not liable to penalty for contravention of civil remedy provision

Nothing in this Division makes the Crown in right of the Commonwealth, a State or a Territory liable to proceedings for a contravention of a civil remedy provision in these Regulations.

[412] Chapter 2, regulation 19.30

substitute

19.30 Operation of Part

This Part deals with record keeping requirements for outworker records in relation to contract outworkers in the Victorian textile, clothing and footwear industry within the scope of Part 22 of the Act.

[413] Chapter 2, subregulation 19.32 (4)

substitute

- (4) Subregulations (1) and (2) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[414] Chapter 2, subregulation 19.33 (4), at the foot

insert

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[415] Chapter 2, subregulation 19.34 (3), at the foot

insert

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[416] Chapter 2, subregulation 19.35 (3), at the foot

insert

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[417] Chapter 2, subregulation 19.36 (7), at the foot

insert

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[418] Chapter 2, Part 19A, Division 4, heading

substitute

Division 4 Miscellaneous

[419] Chapter 2, subregulation 19.37 (5), at the foot

insert

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[420] Chapter 2, subregulation 19.38 (3), at the foot

insert

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[421] Chapter 2, subregulation 19.39 (5), at the foot

insert

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[422] Chapter 2, subregulation 19.40 (5), at the foot

insert

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

[423] Chapter 2, after regulation 19.40

insert in Division 4

19.40A Application of the *Criminal Code* to civil remedy provisions

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Part as if those provisions were offences.

[424] Chapter 2, Part 19A, Division 5

omit

[425] Chapter 8, subregulation 1.1 (3), including the note

substitute

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of Chapter 2 sets out provisions dealing with contraventions of civil remedy provisions.

[426] Chapter 8, regulation 1.3

substitute

1.3 Application of the *Criminal Code* to civil remedy provisions

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Chapter as if those provisions were offences.

Schedule 2 Amendment commencing on 27 March 2007

(regulation 3)

[1] Chapter 2, Part 19

substitute

Part 19 Records relating to employees and pay slips

Division 1 Preliminary

19.1 Purpose of Part 19

- (1) For sections 836 and 846 of the Act, these Regulations provide for:
 - (a) the making and retention by employers of records relating to the employment of employees; and
 - (b) the inspection of records by workplace inspectors; and
 - (c) the issue of pay slips to employees by employers.
- (2) This Part also provides for transitional matters arising out of the reform commencement.

19.2 Application of Part 19

- (1) This Part applies to:
 - (a) employees and employers within the meaning of subsections 5 (1) and 6 (1) of the Act; and
 - (b) employment within the meaning affected by subsection 7 (1) of the Act.

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- (2) This Part applies as if:
- (a) a reference to an employee were a reference to:
 - (i) an employee within the meaning of section 858 of the Act; and
 - (ii) a transitional employee within the meaning of Schedule 6 to the Act; and
 - (b) a reference to an employer were a reference to:
 - (i) an employer within the meaning of section 858 of the Act; and
 - (ii) a transitional employer within the meaning of Schedule 6 to the Act; and
 - (c) a reference to employment were a reference to:
 - (i) employment within the meaning of section 858 of the Act; and
 - (ii) employment within the meaning of Schedule 6 to the Act.

Note Section 884 of the Act and clause 107C of Schedule 6 to the Act allow regulations made under section 836 of the Act to deal with matters relating to record keeping and pay slips mentioned in that section and Schedule.

19.3 Application of the *Criminal Code* to civil remedy provisions

Unless the contrary intention appears in the Act or these Regulations, Chapter 2 of the *Criminal Code* (other than section 13.2 and Part 2.7) applies to civil remedy provisions in this Part as if those provisions were offences.

Division 2 Rules concerning keeping records

19.4 Obligation to make and keep records relating to employees

- (1) An employer who employs an employee must make, or cause to be made, a record in accordance with Divisions 3 and 4 relating to the employee.

- (2) Subject to regulation 19.15, an employer must keep, or cause to be kept, an entry in a record:
- (a) in the case of a matter of a kind mentioned in regulation 19.8 or paragraph 19.13 (1) (e) — for a continuous period of 7 years after the date on which:
- (i) the entry is changed; or
- (ii) the employee's employment with the employer is terminated;
- whichever happens first; or
- (b) in any other case — for a continuous period of 7 years after the date on which the entry is made.
- (3) Strict liability applies to the physical elements in subregulations (1) and (2).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Subregulations (1) and (2) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.5 Condition of records

- (1) The record relating to the employee must be in a condition that allows a workplace inspector to determine the employee's entitlements and whether the employee is receiving those entitlements.
- (2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.6 Form of records

- (1) The record must be:
- (a) in a legible form in the English language; and

(b) in a form that is readily accessible to a workplace inspector.

- (2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

Division 3 Content of records

19.7 Content requirement for records

The record relating to the employee must contain the matters specified in the provisions of Divisions 3 and 4 of this Part to the extent that they apply to the employee.

19.8 Contents of records — general

- (1) The record relating to the employee must contain the following:

- (a) the name of the employer;
- (b) the name of the employee;
- (c) whether the employee's employment is:
 - (i) full-time; or
 - (ii) part-time;
- (d) whether the employee's employment is:
 - (i) permanent; or
 - (ii) temporary; or
 - (iii) casual;
- (e) the date on which the employee's employment began.

- (2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.9 Contents of records — overtime hours worked

- (1) If a penalty rate or loading (however described) must be paid for overtime hours actually worked by an employee, the record relating to the employee must state:
- (a) the number of overtime hours worked by the employee during each day; or
 - (b) when the employee started and ceased working overtime hours.

- (2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.10 Contents of records — reasonable additional hours

- (1) If the employer and employee agree in writing to an averaging of the employee's hours of work under section 226 of the Act, the employer must keep a copy of that agreement.

- (2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.11 Contents of records — pay

- (1) The record relating to the employee must contain details of the rate of remuneration paid to the employee.

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- (2) If the employee is a casual or irregular part-time employee who is guaranteed a basic periodic rate of pay, the record relating to the employee must also contain a record of the hours worked by the employee.
- (3) If the employee is entitled to be paid:
- (a) an incentive-based payment; or
 - (b) a bonus; or
 - (c) a loading; or
 - (d) a penalty rate; or
 - (e) another monetary allowance or separately identifiable entitlement;
- the record relating to the employee must contain details of the payment, bonus, loading, rate, allowance or entitlement.
- (4) The record relating to the employee must also contain details of:
- (a) the gross and net amounts paid to the employee; and
 - (b) any deductions made from the gross amount paid to the employee.
- (5) Strict liability applies to a physical element in subregulations (1), (2), (3) and (4).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (6) Subregulations (1), (2), (3) and (4) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.12 Contents of records — leave

- (1) If the employee is entitled to leave, the record relating to the employee must contain the following details:
- (a) the accrual of that leave;
 - (b) any leave taken by the employee;
 - (c) the balance of the employee's entitlement to that leave from time to time.

- (2) If the employee has elected to forgo an entitlement to take an amount of leave, an employer must keep the following:
- (a) a copy of the employee's written election to forgo the amount of leave;
 - (b) a record of the rate of payment for the amount of leave forgone and when the payment was made.
- (3) Strict liability applies to the physical elements in subregulations (1) and (2).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Subregulations (1) and (2) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.13 Contents of records — superannuation contributions

- (1) If the employer is required to make superannuation contributions for the benefit of the employee, the record relating to the employee must contain the following:
- (a) the amount of the contributions made;
 - (b) the period over which the contributions were made;
 - (c) the dates on which the contributions were made;
 - (d) the name of any fund to which the contributions were made;
 - (e) the basis on which the employer became liable to make the contributions, including:
 - (i) the keeping of a record of any election made by the employee as to the fund to which contributions are to be made; and
 - (ii) the date of any relevant election.

- (2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

- (4) In subregulation (1):

contributions does not include a contribution in respect of a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*) in a defined benefit fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

19.14 Contents of records — termination of employment

- (1) If the employee's employment is terminated, the record relating to the employee must contain the following:
- (a) whether the employment was terminated:
 - (i) by consent; or
 - (ii) by notice; or
 - (iii) summarily; or
 - (iv) in some other manner, specifying the manner;
 - (b) the name of the person who acted to terminate the employment.
- (2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

Division 4 Transmission of business

19.15 Transmission of business

- (1) This regulation applies if:
- (a) a person (the *new employer*) becomes a successor, transmittee or assignee of the whole, or a part, of a business of another person (the *old employer*); and
 - (b) the new employer employs any of the following persons (a *transferring employee*):
 - (i) a transferring employee within the meaning of sections 581 and 582 of the Act;

- (ii) a transferring transitional employee within the meaning of clauses 72E and 72F of Schedule 6 to the Act;
 - (iii) a transferring employee within the meaning of clauses 5 and 6 of Schedule 9 to the Act.
- (2) Subject to subregulation (3), the old employer must transfer to the new employer all records concerning the transferring employee that, at the time of succession, transmission or assignment, the old employer is required to keep under Divisions 2, 3 and 4.
 - (3) If the old employer is a Commonwealth authority, the old employer only has to provide copies of those records.
 - (4) If the transferring employee becomes an employee of the new employer after the time of transmission, the new employer must request the old employer to provide the new employer with the transferring employee's records.
 - (5) If the old employer receives a request under subregulation (4), the old employer must transfer those records to the new employer.
 - (6) The new employer who receives transferred records must keep the transferred records as if they had been made by the new employer at the time they were made by the old employer.
 - (7) The new employer is not required to make records relating to the transferring employee's employment with the old employer.
 - (8) Strict liability applies to the physical elements in subregulations (2), (4), (5) and (6).
Note For *strict liability*, see section 6.1 of the *Criminal Code*.
 - (9) Subregulations (2), (4), (5) and (6) are civil remedy provisions.
Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

Division 5 Miscellaneous

19.16 Alteration and correction of a record

- (1) Subject to subregulations (2) and (3), an employer must not alter a record, or allow a record to be altered.
- (2) An employer must correct any error in a record as soon as the employer becomes aware of the error.
- (3) An employer who corrects an error in a record must record the nature of the error with the correction.
- (4) Strict liability applies to the physical elements in subregulations (1), (2) and (3).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) Subregulations (1), (2) and (3) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.17 False or misleading entry in a record

- (1) A person must not make, or make use of, an entry in any record required to be kept under Division 2, 3 or 4 if the person does so knowing that the entry is false or misleading.
- (2) Strict liability applies to a physical element in subregulation (1).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.18 Inspection and copying of a record

- (1) An employer must make a copy of a record available, in accordance with subregulations (2) and (3), on request by:
 - (a) the employee, or the former employee, to whom the record relates; or

(b) a workplace inspector.

Note Divisions 4 and 5 of Part 15 of the Act deal with a registered organisation's right to inspect records in relation to employment.

- (2) The employer must make the copy available in a legible form in the English language to the person making the request for inspection and copying.
- (3) The employer must make the copy available:
- (a) if the request is from an employee or former employee and the record is kept at the premises where the employee works or worked — within 3 business days at those premises or by posting a copy of the record to the employee or former employee within 14 days of receiving the request; or
 - (b) if the request is from a workplace inspector — within 3 business days at the employer's business premises or by posting or faxing a copy of the record to the workplace inspector within 14 days of receiving the request.
- (4) Strict liability applies to the physical elements in subregulations (1), (2) and (3).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.19 Information concerning a record

- (1) An employer who has received a request under subregulation 19.18 must tell a person entitled to inspect and copy a record, on request, where records relating to an employee, or a class of employees, are kept.
- (2) The person may interview the employer, or a representative of the employer, at any time during ordinary working hours, about a record made or to be made by the employer.
- (3) The employer must give reasonable assistance to the person in the conduct of the interview.

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- (4) Strict liability applies to the physical elements in subregulation (1) and (3).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) Subregulations (1) and (3) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

Division 6 Pay slips

19.20 Pay slips

- (1) An employer who employs an employee must issue to the employee a written pay slip relating to each payment by the employer of an amount to the employee as remuneration.
- (2) The pay slip:
- (a) must be issued within 1 day of the payment to which the pay slip relates being made to the employee; and
 - (b) may be issued in electronic form or as hard copy.
- (3) The employer must include on a pay slip particulars specified in regulation 19.21.
- (4) Strict liability applies to the physical elements in subregulations (1) to (3).

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) Subregulations (1) to (3) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.21 Contents of pay slips

- (1) For subregulation 19.20 (3), the following particulars are specified:
- (a) the name of the employer;
 - (b) the name of the employee;
 - (c) the date on which the payment to which the pay slip relates was made;

- (d) the period to which that pay slip relates;
- (e) if the employee is paid at an hourly rate of pay:
 - (i) the ordinary hourly rate; and
 - (ii) the number of hours in that period for which the employee was employed at that rate; and
 - (iii) the amount of the payment made at that rate;
- (f) if the employee is paid at an annual rate of pay — that rate as at the latest date to which the payment relates;
- (g) the gross amount of the payment;
- (h) the net amount of the payment;
- (i) any amount paid that is an incentive-based payment, bonus, loading, monetary allowance, penalty rate or other separately identifiable entitlement the employee has;
- (j) the details in respect of each amount deducted from the gross amount of the payment including the name, or the name and number, of the fund or account into which the deduction was paid;
- (k) if the employer is required to make superannuation contributions for the benefit of the employee:
 - (i) the amount of each contribution that the employer has made for the benefit of the employee during the period to which the pay slip relates, and the name of any fund to which that contribution was made; or
 - (ii) the amounts of contributions that the employer is liable to make in relation to the period to which the pay slip relates, and the name of any fund to which those contributions will be made.

(2) In subregulation (1):

contributions does not include a contribution in respect of a defined benefit interest (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*) in a defined benefit fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

Division 7 Transitional provisions

19.22 Effect of repeal of pre-reform Regulations

- (1) The repeal of Parts 9A and 9B of the pre-reform Regulations is taken not to affect:
 - (a) a right under those Parts which had accrued before the reform commencement; or
 - (b) a cause of action under those Parts which had not been finally determined before the reform commencement.
- (2) Despite the repeal of Parts IV and 9A of the pre-reform Regulations, those provisions are taken to continue to apply to the extent necessary to ensure that:
 - (a) the penalty provisions specified in Part 9A of the pre-reform Regulations continue to apply in relation to a failure to make or keep a record that was required to be kept under that Part; and
 - (b) a record that was required to be kept for a period of time under that Part is retained for the relevant period of time; and
 - (c) a workplace inspector has the powers set out in Part IV of the pre-reform Regulations in respect of the offence provisions specified in Part 9A of the pre-reform Regulations.
- (3) Despite the repeal of Parts IV and 9B of the pre-reform Regulations, those provisions are taken to continue to apply to the extent necessary to ensure that:
 - (a) the penalty provisions specified in Part 9B of the pre-reform Regulations continue to apply in relation to a failure to issue pay slips as provided for in that Part; and
 - (b) a workplace inspector has the powers set out in Part IV of the pre-reform Regulations in respect of the offence provisions in Part 9B of the pre-reform Regulations.

19.23 Application of provisions after transitional award ceases to operate

- (1) After the transitional award ceases to be in force, Parts IV and 9A of the pre-reform Regulations are taken to continue to apply to the extent necessary to ensure that:
 - (a) a record that was required to be kept for a period of time under that Part of the pre-reform Regulations is retained for the relevant period of time; and
 - (b) the penalty provisions specified in Part 9A of the pre-reform Regulations continue to apply in relation to:
 - (i) records made under that Part; and
 - (ii) a failure to keep those records as provided for in that Part; and
 - (c) a workplace inspector has the powers set out in Part IV of the pre-reform Regulations in respect of the offence provisions specified in Part 9A of the pre-reform Regulations.
- (2) After the transitional award ceases to be in force, Parts IV and 9B of the pre-reform Regulations are taken to continue to apply to the extent necessary to ensure that:
 - (a) the penalty provisions specified in Part 9B of the pre-reform Regulations continue to apply in relation to pay slips; and
 - (b) a workplace inspector has the powers set out in Part IV of the pre-reform Regulations in respect of the offence provisions specified in Part 9B of the pre-reform Regulations.
- (3) In this regulation, *transitional award* has the meaning given in Division 2 of Part 1 of Schedule 6 to the Act.

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.