

EXPLANATORY STATEMENT

(Issued by the authority of the Fair Work Ombudsman)

Fair Work Act 2009

Direction to Inspectors

Background

By reason of subsection 700(1) of the *Fair Work Act 2009* (**FW Act**), the Fair Work Ombudsman is empowered to appoint Fair Work Inspectors.

Under subsection 704(1) of the FW Act, Fair Work Inspectors, in the performance of their functions or the exercise of their powers as Fair Work Inspectors, are required to comply with directions made by the Fair Work Ombudsman.

Prior to the enactment of the FW Act, Part 6 of the *Workplace Relations Act 1996* (**WR Act**) contained provisions relating to the appointment of workplace inspectors. Under Part 6 of the WR Act, workplace inspectors were required, in the exercise of powers and the performing of functions, to comply with directions made by the Workplace Ombudsman under Legislative Instrument F2007L02341. By reason of the repeal of Part 6 of the WR Act by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, the Workplace Ombudsman no longer has that power.

These Directions will revoke and replace Legislative Instrument F2007L02341 to reflect the repeal of the WR Act, the enactment of the FW Act and the creation of the Office of the Fair Work Ombudsman as a Statutory Agency.

Consultation

No consultation was undertaken pursuant to section 17 of the *Legislative Instruments Act 2003* because these Directions are unlikely to have a direct or substantial indirect, effect on business and are unlikely to restrict competition. The Directions are technical in nature and do not substantially alter existing arrangements.

Notes on clauses

Clause 1

This clause specifies when the Directions will commence. The Directions will commence on the day that they are registered on the Federal Register of Legislative Instruments.

Clause 2

This clause is a formal definitions provision. It provides definitions for commonly used words and phrases in the Directions. The Directions no longer defines 'SES officer'.

Clause 3

This clause applies to litigation action commenced or intervened in by Fair Work Inspectors. The clause requires Fair Work Inspectors, before commencing or intervening in litigation, to comply with relevant Guidance Notes, be satisfied that there is sufficient evidence and it is the public interest to commence litigation, and obtain the consent of the Fair Work Ombudsman or an authorised member of the staff of the Office of the Fair Workplace Ombudsman.