

EXPLANATORY STATEMENT

Select Legislative Instrument No. 242, 2013

(Issued by the authority of the Minister for Employment)

Fair Work Act 2009

Safety, Rehabilitation and Compensation Act 1988

Fair Work and Other Legislation Amendment (AusAID) Regulation 2013

Section 796 of the *Fair Work Act 2009* (the Fair Work Act) and section 122 of the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) each provide, in part, that the Governor-General may make regulations prescribing matters required or permitted by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Fair Work Act establishes a statutory framework to govern federal workplace relations.

The SRC Act establishes a statutory framework to govern federal workers compensation.

The Regulation provides for the Commonwealth to act through the Department of Foreign Affairs and Trade (DFAT) in relation to the Australian Civilian Corps for the purposes of the Fair Work Act and the SRC Act following the integration of the Australian Agency for International Development (AusAID) into DFAT.

Subsection 795(1) of the Fair Work Act provides that an employer of a public sector employee in public sector employment must act through an employing authority. This ensures that the Commonwealth acts through relevant Ministers, Agency Heads and other authorised persons in relation public sector employees. Schedule 6.3 to the *Fair Work Regulations 2009* (the Fair Work Regulations) prescribes the employing authority or authorities for each person that is a public sector employee.

Section 4 of the SRC Act includes, as a definition of ‘entity’, a person, body, organisation or group of persons so prescribed. From 22 June 2011, AusAID was prescribed as an entity for the purposes of the SRC Act and the Director-General of AusAID was prescribed as its principal officer. As a result, AusAID and its Director-General were authorised to act on behalf of the Commonwealth in relation to federal workers compensation and associated matters relating to Australian Civilian Corps employees.

Employees of the Australian Civilian Corps are engaged by the Director-General of AusAID under the *Australian Civilian Corps Act 2011* for the purpose of rapid, short-term deployment overseas.

On 1 November 2013, international aid and development became the portfolio responsibility of the Department of Foreign Affairs and Trade (DFAT) and AusAID was integrated into DFAT.

The Regulation:

- prescribes the Secretary of DFAT as the employing authority for employees of the Australian Civilian Corps for the purposes of the Fair Work Act, so that the Secretary of DFAT can act on behalf of the Commonwealth in matters arising under the Fair Work Act in relation to the Australian Civilian Corps;
- prescribes the Secretary of DFAT as the principal officer for the Australian Civilian Corps for the purposes of the SRC Act, so that the Secretary of DFAT can act on behalf of the Commonwealth in matters arising under the SRC Act in relation to the Australian Civilian Corps; and
- repeals an obsolete reference to AusAID as an entity in Schedule 4 to the *Safety, Rehabilitation and Compensation Regulations 2002* (SRC Regulations) on the basis that AusAID no longer employs persons in the Australian Civilian Corps.

Neither the Fair Work Act nor the SRC Act specifies any conditions that need to be satisfied before the power to make the Regulation may be exercised.

Consistent with the requirements of the *Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector*, State and Territory jurisdictions have been consulted in relation to the Regulation.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the Regulation are included in the [Attachment](#).

The Regulation commenced the day after it was registered on the Federal Register of Legislative Instruments.

Details of the *Fair Work and Other Legislation Amendment (AusAID) Regulation 2013*

Section 1 – Name of Regulation

This section sets out the name of the Regulation as the *Fair Work and Other Legislation Amendment (AusAID) Regulation 2013*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

Section 3 - Authority

This section provides that the Regulation is made under the *Fair Work Act 2009* and the *Safety, Rehabilitation and Compensation Act 1988*.

Section 4 – Amendment of *Fair Work Regulations 2009* and *Safety, Rehabilitation and Compensation Regulations 2002*

This section provides that Schedule 1 to the Regulation amends the *Fair Work Regulations 2009* and the *Safety, Rehabilitation and Compensation Regulations 2002*.

Schedule 1 – Amendments

Fair Work Regulations 2009

Item [1] – Schedule 6.3 (note to Schedule heading)

This item repeals and replaces the note to the Schedule heading so that it complies with current drafting conventions.

Item [2] – Schedule 6.3 (table heading)

This item repeals and substitutes the table heading so that it complies with current drafting conventions.

Item [3] – Schedule 6.3 (table item 19)

This item replaces a reference to the Director-General of AusAID with a reference to the Secretary of the Department of Foreign Affairs and Trade as the employing authority for the purposes of the *Fair Work Act 2009*.

It also removes a reference to ‘AusAID employee’ consequential on the change in the employing authority from the Director-General of AusAID to the Secretary of the Department of Foreign Affairs and Trade.

Safety, Rehabilitation and Compensation Regulations 2002

Item [4] – Schedule 4 (table item 12)

This item repeals table item 12 which became obsolete upon the integration of AusAID into the Department of Foreign Affairs and Trade.

Item [5] – Schedule 4 (table item 13)

This item replaces a reference to the Director-General of AusAID as the principal officer for the purposes of the *Safety, Rehabilitation and Compensation Act 1988* with a reference to the Secretary of the Department of Foreign Affairs and Trade.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Fair Work and Other Legislation Amendment (AusAID) Regulation 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of this Legislative Instrument is to amend the *Fair Work Regulations 2009* (Fair Work Regulations) and the *Safety, Rehabilitation and Compensation Regulations 2002* (SRC Regulations) consequential to administrative arrangements orders which integrated the Australian Agency for International Development (AusAID) into the Department of Foreign Affairs and Trade (DFAT).

The Legislative Instrument prescribes the Secretary of DFAT as the employing authority for the purposes of the *Fair Work Act 2009* (Fair Work Act) and as the principal officer for the purposes of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

The Legislative Instrument:

- prescribes the Secretary of DFAT as the employing authority for employees of the Australian Civilian Corps for the purposes of the Fair Work Act;
- prescribes the Secretary of DFAT as the principal officer for the Australian Civilian Corps for the purposes of the SRC Act; and
- repeals an obsolete reference to AusAID as an entity in Schedule 4 to the SRC Regulations.

Human rights implications

The Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Legislative Instrument is compatible with human rights because it does not raise any human rights issues.

Senator The Hon Eric Abetz

Minister for Employment