

Fair Work Commission Amendment (General Protections Applications and Other Measures) Rule 2014

EXPLANATORY STATEMENT

(issued by the authority of the President of the Fair Work Commission)

Authority

Section 609 of the *Fair Work Act 2009* (the Act) authorises the making of procedural rules of the Fair Work Commission (Commission).

Under section 609 of the Act, after consulting with the other Commission Members, the President of the Commission may, by legislative instrument, make procedural rules in relation to:

- (a) the practice and procedure to be followed by the Commission; or
- (b) the conduct of business in relation to matters allowed or required to be dealt with by the Commission.

Without limiting (a) and (b) above, the procedural rules may provide for the following:

- (a) the requirements for making an application to the Commission;
- (b) the circumstances in which a lawyer or paid agent may make an application or submission to the Commission on behalf of a person who is entitled to make the application or submission;
- (c) the form and manner in which, and the time within which, submissions may or must be made to the Commission;
- (d) the procedural requirements for making decisions of the Commission;
- (e) the form and manner in which the Commission gives directions and notifies persons of things;
- (ea) the requirements for making a notification to the Commission;
- (f) who is notified by the Commission of things;
- (g) the manner in which conferences are to be conducted in relation to applications made under Part 3-1, 3-2 or Part 6-4 (which deal with general protections, unfair dismissal and unlawful termination).

Under subsection 33(3) of the *Acts Interpretation Act 1901* as in force on 25 June 2009, where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed

as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The Act provides for two types of general protections applications to the Commission: applications under section 365 in respect of disputes involving dismissal, and applications under section 372 in respect of other general protections disputes. Previously, both types of applications were made using the same approved Commission form and on occasions it was not clear which type of application was being pursued.

To address this issue, two separate general protections application forms have been introduced. Amendments have been made to the *Fair Work Commission Rules 2013* (the Rules) in consequence of this change.

When an application was made to the Commission to deal with a dispute under section 739 of the Act, the Rules previously required the respondent to lodge a response to the application. To avoid delays in the Commission dealing with such disputes, the Rules have been amended so that the respondent is not required to lodge a response to an application however if any response is lodged it must be in writing.

The Rules have also been amended to clarify when service of certain Commission forms must be complied with.

Consultation on the Amendment Rule

As required by section 609 of the Act, the President consulted with all Members of the Commission concerning the *Fair Work Commission Amendment (General Protections Applications and Other Measures) Rule 2014* (the Amendment Rule). Pursuant to section 17 of the *Legislative Instruments Act 2003*, the President also gave persons who were likely to be affected by the Amendment Rule an opportunity to comment. The President does not believe that the Amendment Rule will have a direct, or a substantial indirect, effect on business, or that it will restrict competition.

On 8 April 2014, the President provided the Members with information about the proposed amendments to the Rules as well as drafts of the new forms (which were the catalyst for the amendments to the Rules) and sought their comments by 17 April 2014.

On 9 April 2014, the President published the draft forms on the Commission's website for public comment by 17 April 2014. On 9 April 2014, a notice requesting comments on the draft forms was sent to subscribers to the Commission's announcement service. On 10 April 2014, a notice requesting comments on the draft forms was also sent to subscribers to the FWC bulletin.

On 29 May 2014, following receipt of feedback on the draft forms from Members and the general public, the President provided Members with a draft of the proposed amendments to the Rules and further drafts of the forms, and sought their comments by 10 June 2014.

On 30 May 2014, the President published the further drafts of the forms on the Commission's website for public comment by 10 June 2014. On 30 May 2014, a notice requesting comments on the further drafts was sent to subscribers to the Commission's

announcement service. On 5 June 2014, a notice requesting comments on the further drafts was sent to subscribers to the FWC bulletin. On 1 August 2014, the President published a draft of the Amendment Rule on the Commission's website for public comment by 8 August 2014.

The President is satisfied that the consultation undertaken was appropriate, having drawn upon the knowledge of persons with expertise in fields that are relevant to the Amendment Rule and having ensured that persons who were likely to be affected by the Amendment Rule had an opportunity to comment.

General

Rule 1 states the name of the Amendment Rule.

Rule 2 provides that the Amendment Rule commences on 1 January 2015.

Rule 3 states that the Amendment Rule is made under the Act.

Rule 4 provides that the Rules are amended as set out in Schedule 1 to the Amendment Rule.

Schedule 1

Clause 1 amends the heading to rule 21 of the Rules to reflect the new title of the Commission's Form F8A.

Clause 2 repeals subrule 36(4) of the Rules (not including the note), and substitutes a new subrule 36(4) which does not require the respondent to lodge a response to an application to the Commission under section 739 of the Act. If any response is lodged to an application it must be in writing.

Clause 3 repeals the service requirement in respect of the Commission's Form F3 in the table in Schedule 1 to the Rules, and substitutes a more precisely worded service requirement.

Clause 4 repeals the title of the Commission's Form F8 in the table in Schedule 1 to the Rules, and substitutes the title of the new Form F8 (General Protections Application involving dismissal).

Clause 5 repeals the description of the sections of the Act and Rules relevant to Form F8 in the table in Schedule 1 to the Rules, and substitutes new wording which omits reference to section 372 of the Act.

Clause 6 repeals the title of the Commission's Form F8A in the table in Schedule 1 to the Rules, and substitutes the new title of the form.

Clause 7 repeals the service requirement in respect of the Commission's Form F8A in the table in Schedule 1 to the Rules, and substitutes a more precisely worded service requirement.

Clause 8 inserts service requirements and other details in respect of the Commission's new Form F8C (General Protections Application not involving dismissal) into the table in Schedule 1 to the Rules.

Clause 9 repeals the service requirement in respect of the Commission's Form F9A in the table in Schedule 1 to the Rules, and substitutes a more precisely worded service requirement.

Clause 10 repeals the service requirement in respect of the Commission's Form F47B in the table in Schedule 1 to the Rules, and substitutes a more precisely worded service requirement.

Clause 11 repeals the service requirement in respect of the Commission's Form F47D in the table in Schedule 1 to the Rules, and substitutes a more precisely worded service requirement.

Clause 12 repeals the service requirement in respect of the Commission's Form F73 in the table in Schedule 1 to the Rules, and substitutes a more precisely worded service requirement.

Clause 13 repeals the service requirement in respect of the Commission's Form F74 in the table in Schedule 1 to the Rules, and substitutes a more precisely worded service requirement.

Statement of Compatibility with Human Rights

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

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This 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* (Cth).

Overview of the Legislative Instrument

The *Fair Work Commission Amendment (General Protections Applications and Other Measures) Rule 2014* (Amendment Rule) is a procedural rule made by the President of the Fair Work Commission under section 609 of the *Fair Work Act 2009*. The Amendment Rule provides for practice and procedure that is to be followed by the Fair Work Commission and the conduct of business in relation to matters allowed or required to be dealt with by the Commission.

Human Rights Implications

The Amendment Rule does not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Rule is compatible with human rights as it does not raise any human rights issues.

Justice Iain Ross AO
President
Fair Work Commission