



## **Fair Work (Registered Organisations) Amendment Regulations 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 13 April 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Michaelia Cash  
Minister for Employment

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## 1 Name

This instrument is the *Fair Work (Registered Organisations) Amendment Regulations 2017*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	25 April 2017
2. Schedule 1	At the same time as Schedule 1 to the <i>Fair Work (Registered Organisations) Amendment Act 2016</i> commences.	1 May 2017
3. Schedule 2	At the same time as Schedule 2 to the <i>Fair Work (Registered Organisations) Amendment Act 2016</i> commences.	2 May 2017
4. Schedule 3	At the same time as Schedule 1 to the <i>Fair Work (Registered Organisations) Amendment Act 2016</i> commences.	1 May 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Fair Work (Registered Organisations) Act 2009*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## **Schedule 1—Amendments relating to the Registered Organisations Commissioner**

### ***Fair Work (Registered Organisations) Regulations 2009***

#### **1 Subregulation 3(1) (definition of *authorised*)**

After “the FWC”, insert “or the Commissioner”.

#### **2 Subparagraph 4(1)(b)(ii)**

Omit “General Manager”, substitute “Commissioner”.

#### **3 Before regulation 12**

Insert:

### **Division 1—Preliminary**

#### **4 After regulation 12**

Insert:

### **Division 2—Lodgement of documents with FWC etc.**

#### **5 After regulation 16**

Insert:

### **Division 3—Lodgement of documents with the Commissioner etc.**

#### **16A Lodgement of documents with the Commissioner**

- (1) Any document required under the Act or these Regulations to be lodged with the Commissioner may be lodged by:
  - (a) leaving it with the Commissioner; or
  - (b) properly addressing, prepaying and posting the document; or
  - (c) any electronic or other means authorised in writing by the Commissioner.
- (2) An application or notice lodged with the Commissioner must:
  - (a) if lodged by an organisation—be under the common seal of the organisation or be signed by a person authorised to sign the application or notice; or
  - (b) if lodged by an association or branch—be signed by a person authorised to sign the application or notice; or
  - (c) if lodged by a committee of management—be signed by a member of the committee of management; or
  - (d) if jointly lodged—be signed in accordance with this subregulation by each party to the lodgement; or
  - (e) if lodged by an individual—be signed by the individual.

#### **16B Content of notices of objections lodged with the Commissioner**

A notice of objection lodged with the Commissioner must:

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- (a) state the name and address of the organisation, association or person lodging the notice of objection (the *objector*); and
- (b) state the grounds of objection; and
- (c) set out the particulars of each ground of objection; and
- (d) briefly state the facts the objector relies on for each ground of objection.

### **16C Service of documents**

- (1) Every document lodged with the Commissioner must be endorsed with:
  - (a) the name of the party lodging the document; and
  - (b) an address that may be used as an address for service.
- (2) A document lodged by an association, organisation or person with an electronic address may be endorsed with an electronic address for service.
- (3) A document may be served electronically on an association, organisation or person with an electronic address for service.

### **16D Publication of documents**

- (1) A person who is required under the Act or these Regulations to publish notice of a matter in a specified manner may publish an additional notice of the matter by other reasonable means.
- (2) If the Act or these Regulations require the Commissioner to publish any application or notice in the Gazette or a newspaper, the application or notice must also be published on the Commissioner's website.
- (3) A notice published by the Commissioner in the Gazette, in a newspaper or on Commissioner's website must include the postal address and electronic address of the Commissioner for lodgement and service of documents.
- (4) An application published by the Commissioner in the Gazette, in a newspaper or on the Commissioner's website must be accompanied by a note advising that a copy of the application, and copies of any documents relating to the application, can be obtained from the Commissioner on the request of:
  - (a) any organisation, association, branch, constituent part or reporting unit; or
  - (b) a member of one of those bodies.
- (5) The Commissioner must supply a copy of an application to the organisation, association, branch, constituent part, reporting unit or member as soon as practicable after receiving a request under subregulation (4).
- (6) Unless the Act or these Regulations provide otherwise, a document that is required by this regulation to be published on a website must be published on the website no later than the day the document is required to be published by other means.

## **Division 4—Other matters relating to documents**

### **6 Regulation 17**

After "General Manager", insert ", the Commissioner".

**7 Subregulations 18(1) and (2)**

After “General Manager,”, insert “the Commissioner,”.

**8 Paragraph 20(1)(a)**

Omit “(other than a document lodged under section 236, 237 or 272 of the Act)”.

**9 After subregulation 20(1)**

Insert:

(1A) A person may, after giving reasonable notice, inspect at the Commissioner’s premises:

- (a) a document lodged with the Commissioner under the Act (other than a document lodged under section 236, 237 or 272 or Part 4A of Chapter 11 of the Act); or
- (b) a document lodged with the Commissioner under these Regulations.

**10 Before paragraph 26(a)**

Insert:

- (aa) the Commissioner;

**11 Subregulations 32(1) and 38(5)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**12 Subregulations 68(9), 87(3) and 97(11)**

After “General Manager”, insert “and the Commissioner”.

**13 Before paragraph 111(a)**

Insert:

- (aa) the Commissioner;

**14 Subregulations 112(3) and 113(2)**

After “General Manager”, insert “and the Commissioner”.

**15 Paragraph 125H(3)(a)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**16 Subregulation 131(1)**

Omit “General Manager”, substitute “Commissioner”.

**17 Paragraph 133(1)(d)**

Omit “FWC”, substitute “Commissioner”.

**18 Subregulation 134(1)**

Omit “General Manager”, substitute “Commissioner”.

**19 Paragraph 134(1)(b)**

Omit “FWC”, substitute “Commissioner”.



**20 Subregulation 134(2)**

Omit “General Manager”, substitute “Commissioner”.

**21 Paragraph 135(4)(a)**

Omit “FWC”, substitute “Commissioner”.

**22 Subregulation 136(1)**

Omit “General Manager who is to hear a matter”, substitute “Commissioner”.

**23 Subregulations 136(2) and (3)**

Omit “General Manager”, substitute “Commissioner”.

**24 Paragraph 137(1)(c)**

Omit “FWC”, substitute “Commissioner”.

**25 Subregulation 137(2)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**26 Paragraph 140(3)(a)**

Omit “General Manager”, substitute “Commissioner”.

**27 Subregulations 142(1), 145(2) and 152(2)**

Omit “General Manager”, substitute “Commissioner”.

**28 Subregulation 166(5)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**29 Regulation 167**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**30 Subregulation 171(1)**

Repeal the subregulation, substitute:

*Making applications*

(1) The following persons may apply for an order under this Part:

- (a) the General Manager;
- (b) a person authorised in writing by the General Manager under this paragraph;
- (c) the Commissioner;
- (d) a person authorised in writing by the Commissioner under this paragraph.

**31 Regulation 177**

After “General Manager”, insert “or the Commissioner”.

**32 After regulation 178**

Insert:

### 178A Proceedings before the Commissioner

- (1) In any proceedings before the Commissioner, the Commissioner may exempt a person from compliance with a procedural requirement under the Act or these Regulations if the Commissioner is satisfied that there are special circumstances.
- (2) An exemption under subregulation (1) may be granted:
  - (a) absolutely; or
  - (b) subject to conditions.
- (3) Failure to comply with a procedural requirement for proceedings before the Commissioner does not render the proceedings void but the proceedings may be:
  - (a) set aside, either wholly or in part, as irregular; or
  - (b) amended; or
  - (c) otherwise dealt with as and how the Commissioner thinks fit.

### 33 Subregulation 180(1)

Repeal the subregulation, substitute:

- (1) Any evidence given in any proceedings (the *earlier proceedings*) in relation to a matter under the Act or these Regulations may be used in any subsequent proceedings:
  - (a) before the General Manager in relation to that matter:
    - (i) if the General Manager permits; and
    - (ii) on any terms and conditions determined by the General Manager; or
  - (b) before the Commissioner in relation to that matter:
    - (i) if the Commissioner permits; and
    - (ii) on any terms and conditions determined by the Commissioner.

### 34 Subregulation 180(3)

After “General Manager”, insert “or the Commissioner”.

### 35 Subregulation 180(4)

Repeal the subregulation, substitute:

- (4) If evidence has been given orally, this regulation does not authorise its use in the subsequent proceedings unless:
  - (a) in the case of subsequent proceedings before the General Manager—both:
    - (i) a written record of the evidence is available for the use of the General Manager; and
    - (ii) the General Manager is satisfied the written record is a true record of the evidence; or
  - (b) in the case of subsequent proceedings before the Commissioner—both:
    - (i) a written record of the evidence is available for the use of the Commissioner; and
    - (ii) the Commissioner is satisfied the written record is a true record of the evidence.

### 36 Regulation 181 (heading)

Repeal the heading, substitute:

## **181 General powers of General Manager and Commissioner**

### **37 Paragraph 181(1)(b)**

After “on oath”, insert “or affirmation”.

### **38 After subregulation 181(1)**

Insert:

- (1A) In any proceedings before the Commissioner, the Commissioner, on the application of a party or on the Commissioner’s own motion, may:
- (a) require a person, by summons served on the person, to appear before the Commissioner:
    - (i) to give evidence; and
    - (ii) to produce such books, documents or things as are referred to in the summons for inspection by the Commissioner or by such party as the Commissioner determines; and
  - (b) take evidence on oath or affirmation; and
  - (c) adjourn any matter or hearing; and
  - (d) amend or give leave to amend any application, notice or other document; and
  - (e) extend the time fixed by these Regulations for the lodging of any document or the doing of any act (whether that time has expired or not); and
  - (f) give directions to any party in relation to the service of documents and the manner of service of documents; and
  - (g) order any party to pay any other party such reasonable sum for costs as he or she thinks just.

### **39 Subregulation 181(2)**

Omit “paragraph (1)(a)”, substitute “paragraph (1)(a) or (1A)(a)”.

### **40 At the end of regulation 181**

Add:

- (6) If the Commissioner exercises a power under subregulation (1A) on the application of a party, the Commissioner may make an order for payment of fees or costs relating to the exercise of the power that the Commissioner thinks just.

### **41 Schedule 3 (Form 8)**

Repeal the form, substitute:

## **Form 8—Identity card—staff members to whom certain powers have been delegated**

(regulation 144)

**COMMONWEALTH OF AUSTRALIA**

*Fair Work (Registered Organisations) Act 2009*, paragraph 203(2)(a)

**IDENTITY CARD—STAFF MEMBER**

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I, \*the Commissioner /\*delegate of the Commissioner, acting under subsection 203(1) of the *Fair Work (Registered Organisations) Act 2009*, certify that

whose photograph and signature appear on this card is a member of the staff assisting the Commissioner to whom powers of the Commissioner under section 202 of the Act have been delegated under section 343B of the Act.

.....  
(Signature of staff member)

Dated    20    .

.....  
\*Commissioner  
\*Delegate of Commissioner

\*Omit if inapplicable.

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## Schedule 2—Other amendments relating to the Fair Work (Registered Organisations) Amendment Act 2016

### *Fair Work (Registered Organisations) Regulations 2009*

#### 1 Subregulation 3(1)

Insert:

***designated civil penalty provision*** means:

- (a) a civil penalty provision (see subsection 305(2) of the Act); or
- (b) a civil remedy provision within the meaning of the *Fair Work Act 2009*; or
- (c) a civil remedy provision within the meaning of the *Building and Construction Industry (Improving Productivity) Act 2016*.

***designated offence*** means an offence that is:

- (a) a prescribed offence (see section 212 of the Act); or
- (b) a prescribed offence within the meaning of section 1313 of the *Corporations Act 2001*; or
- (c) an offence against the *Building and Construction Industry (Improving Productivity) Act 2016*.

***government authority*** has the meaning given by subregulation 176M(3).

#### 2 Regulation 4

Repeal the regulation.

#### 3 After regulation 159

Insert:

##### 159A Application for registration as an auditor

For the purposes of paragraph 255A(2)(c) of the Act, an application for registration as an auditor made by a person who is not a registered company auditor must contain the following information:

- (a) if the person seeks to satisfy the requirements of subsection 255C(1) of the Act—details about how the person meets those requirements;
- (b) if the person seeks to satisfy the requirements of subsection 255C(2) of the Act—details of the person’s other qualifications and experience that the person considers to be equivalent to the requirements of subsection 255C(1) of the Act;
- (c) if the person seeks to satisfy the requirements of subparagraph 255B(3)(b)(i) of the Act—details about how the person meets those requirements;
- (d) if the person seeks to satisfy the requirements of subparagraph 255B(3)(b)(ii) of the Act—details of the person’s practical experience as prescribed by regulation 159B;
- (e) in relation to any audit work the person has done during at least the previous 5 years—details of:

- (i) the nature of the audit; and
- (ii) the extent of the person's involvement in the audit; and
- (iii) the person's level of responsibility for the audit;
- (f) details of any conviction of the person for a designated offence;
- (g) details of any order made in respect of a contravention by the person of a designated civil penalty provision;
- (h) if the person has been charged with a designated offence, or an application has been made for an order in respect of a contravention by the person of a designated civil penalty provision, and the matter has not been finally dealt with—details of the matter;
- (i) details of any order made under section 307A of the Act disqualifying the person from holding office in an organisation;
- (j) details of any other matter that may be relevant to the Commissioner's assessment of whether the person is capable of performing the duties of an auditor and is a fit and proper person to be registered as an auditor;
- (k) the person's place of residence.

### **159B Practical experience in auditing**

For the purposes of subparagraph 255B(3)(b)(ii) of the Act, either of the following kinds of practical experience in auditing is prescribed:

- (a) during the 5 years immediately before the date of the person's application to be registered, the person has undertaken at least 3,000 hours work in auditing companies or organisations, including at least 750 hours supervising audits of companies or organisations;
- (b) practical experience that the Commissioner considers equivalent to experience referred to in paragraph (a).

### **159C Cancellation and suspension of registration of person as an auditor**

- (1) In accordance with subsection 255G(5) and paragraph 255N(2)(d) of the Act, this regulation makes further provision for and in relation to the suspension of the registration of a person as an auditor, and provision for and in relation to matters relating to the suspension and cancellation of the registration of a person as an auditor.
- (2) The Commissioner may suspend for a specified period the registration of a person as an auditor if the Commissioner becomes aware that:
  - (a) an investigation has begun into whether the person has committed a designated offence or contravened a designated civil penalty provision; or
  - (b) the person has been charged with a designated offence, or an application has been made for an order in respect of a contravention by the person of a designated civil penalty provision, and the matter has not been finally dealt with.

Note: Before making the decision, the Commissioner must give the person an opportunity to be heard (see subregulation (5)). After making the decision, the Commissioner must give notice in accordance with section 255J of the Act.

- (3) The Commissioner may cancel, or suspend for a specified period, the registration of a person as an auditor if the person has ceased to be resident in Australia.

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Note: Before making the decision, the Commissioner must give the person an opportunity to be heard (see subregulation (5)). After making the decision, the Commissioner must give notice in accordance with section 255J of the Act.

- (4) The Commissioner may, in writing, request further information from any person for the purposes of making a decision under subregulation (2) or (3).
- (5) Before making a decision about a person under subregulation (2) or (3), the Commissioner must give the person an opportunity to appear at a hearing before the Commissioner and to make submissions and give evidence to the Commissioner in relation to the matter.

#### **159D Register of auditors**

- (1) In accordance with paragraph 255N(2)(b) of the Act, this regulation makes provision for and in relation to the keeping of a register of auditors.
- (2) The Commissioner must establish and keep a register of auditors.
- (3) The register must include the following details in relation to each person the Commissioner registers as an auditor:
  - (a) the person's name;
  - (b) the registration number allocated to the person by the Commissioner;
  - (c) the day the Commissioner granted the person's application for registration as an auditor;
  - (d) the following elements of the address of the principal place where the person practises as an auditor:
    - (i) city or town;
    - (ii) State or Territory;
    - (iii) postcode;
    - (iv) country;
  - (e) if the person practises as an auditor under the name of a company or firm or under any other name or style other than the person's own name—the name of the company and its ACN, or the name of the firm, or the other name or style;
  - (f) if the person's registration is suspended—the date the suspension took effect and the date it will end;
  - (g) any other details the Commissioner considers appropriate in relation to registered auditors.
- (4) If a person's registration as an auditor is cancelled, the Commissioner must remove the details about the person from the register.
- (5) The Commissioner:
  - (a) must publish the register on the Commissioner's website; and
  - (b) may publish the register, or otherwise make it publicly available, in any other way the Commissioner considers appropriate.

#### **4 After Part 8**

Insert:

## Part 8A—Conduct of officers and employees (Ch 9)

### 167A Payments made to a related party

For the purposes of subsection 293G(5B) of the Act, \$5,000 is prescribed.

### 167B Revocation of order for alternative disclosure arrangement

For the purposes of paragraph 293H(6)(b) of the Act, the Commissioner must, to give an organisation an opportunity to show cause why an order made under subsection 293H(3) of the Act should not be revoked:

- (a) fix a time and place at which the organisation may appear before the Commissioner to make an oral submission to show cause why the order should not be revoked; and
- (b) give the organisation, not less than 7 days before the time so fixed, a written notice:
  - (i) containing particulars of the time and place fixed under paragraph (a); and
  - (ii) stating the reasons for the proposed revocation; and
  - (iii) notifying the organisation of its entitlement to an opportunity to show cause why the order should not be revoked.

## 5 Before regulation 177

Insert:

### Division 1—Expenses incurred in complying with a notice to attend

#### 176A Application

- (1) This Division is made for the purposes of subsection 337AP(1) of the Act.
- (2) This Division sets out the allowances payable to a person (the *witness*) who is required by a notice given under subsection 335(2) of the Act to attend before:
  - (a) the Commissioner; or
  - (b) a person or body to whom the Commissioner has delegated the conduct of an investigation.

#### 176B Definitions

In this Division:

***public transport*** means any form of passenger transport that is available for use by the public on payment of a fare.

***specified place*** means the place specified in the notice given to the witness under subsection 335(2) of the Act where the witness is to attend.

***Taxation Office Determination*** means the determination that sets out the amounts that the Commissioner of Taxation considers are reasonable for the purposes of the substantiation exception in Subdivision 900-B of the *Income Tax*



*Assessment Act 1997* for domestic travel allowance expenses and reasonable overtime meal allowance expenses.

### **176C Travelling allowance**

- (1) The witness is entitled to a payment (the ***travelling allowance***) towards meeting the expenses that the witness incurs in travelling between the witness's work or residence and the specified place.
- (2) The amount of the travelling allowance is as follows:
  - (a) if it is reasonable for the witness to travel by air—the amount that is payable for economy class air travel;
  - (b) if public transport is available—the amount that the witness actually and properly pays for the public transport;
  - (c) if public transport is not available and the witness travels using their private motor vehicle—the amount calculated at the rate of \$0.74 a kilometre travelled.
- (3) However, the maximum amount payable for the travelling allowance is \$2,000.
- (4) When deciding whether or not public transport is available, regard must be had to whether a public transport system is operating by which the witness could conveniently:
  - (a) travel to the specified place in a reasonable time before the witness's required attendance; and
  - (b) return to the witness's work or residence in a reasonable time after the witness's attendance at the specified place.

### **176D Accommodation allowance**

- (1) The witness is entitled to a payment (the ***accommodation allowance***) towards meeting the expenses that the witness incurs for accommodation when the witness is necessarily absent overnight from the witness's residence to comply with a notice to attend given under subsection 335(2) of the Act.
- (2) The amount of the accommodation allowance is the amount calculated at the accommodation rate specified in the Taxation Office Determination for the lowest salary range.
- (3) The amount must be calculated having regard to:
  - (a) the time of the latest public transport by which the witness could conveniently travel to the specified place in a reasonable time before the witness's required attendance; and
  - (b) the time by which the witness could conveniently return to the witness's work or residence using the earliest public transport in a reasonable time after the witness's attendance at the specified place.

### **176E Attendance allowance**

- (1) The witness is entitled to a payment (the ***attendance allowance***) towards meeting any loss of earnings that the witness incurs when the witness is necessarily absent from the witness's work to comply with a notice to attend given under subsection 335(2) of the Act.

- (2) The amount of the attendance allowance is the amount (the *usual pay*) that the witness would otherwise have been entitled to receive for performing his or her normal duties during the witness's absence from work to attend the specified place.
- (3) When claiming the attendance allowance, the witness must provide evidence that confirms:
  - (a) the witness's usual pay; and
  - (b) that the witness did not receive the witness's usual pay for the time when the witness was necessarily absent from the witness's work to attend the specified place.

### 176F Legal allowance

- (1) The witness is entitled to a payment (the *legal allowance*) towards meeting the legal costs and disbursements that the witness reasonably incurs for a lawyer to represent the witness at the specified place.
- (2) The amount of the legal allowance is an amount calculated using the costs for general federal law proceedings set out in the *Federal Circuit Court Rules 2001*.

## Division 2—Investigation of protected disclosures

### 176G Discretion not to investigate

- (1) For the purposes of subsection 337CA(2) of the Act, any of the following circumstances are circumstances in which an authorised official (the *investigator*) may decide not to investigate a disclosure, or not to investigate a disclosure further, under Division 3 of Part 4A of Chapter 11 of the Act (the *investigation provisions*):
  - (a) the information does not, to any extent, concern serious disclosable conduct;
  - (b) the disclosure is frivolous or vexatious;
  - (c) the discloser has informed the investigator that the discloser does not wish the investigation to be pursued, and the investigator is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation;
  - (d) it is impracticable for the disclosure to be investigated:
    - (i) because the discloser's contact details have not been disclosed; or
    - (ii) because the discloser refuses or fails, or is unable, to give, for the purposes of the investigation, such information or assistance as the investigator asks the discloser to give; or
    - (iii) because of the age of the information;
  - (e) column 1 of an item of the following table applies to the information, or the disclosable conduct that the information concerns, and any additional condition in column 2 of that item is satisfied.

<b>Information or disclosable conduct that has been or is being dealt with adequately</b>		
<b>Item</b>	<b>Column 1 Information or disclosable conduct</b>	<b>Column 2 Additional condition</b>
1	the information or disclosable conduct is the same, or substantially the same, as information or disclosable conduct that is being or has been investigated under the investigation provisions	none
2	the information or disclosable conduct is the same, or substantially the same, as: (a) information or disclosable conduct that is being or has been investigated under another law of the Commonwealth or the executive power of the Commonwealth; or (b) information included in evidence that has been admitted in a proceeding, or disclosable conduct that is or has been the subject of a proceeding; or (c) information or disclosable conduct that is being or has been dealt with by an authorised official under another process	(a) it would be inappropriate to conduct another investigation at the same time as that other investigation, proceeding or process; or (b) the investigator is reasonably satisfied that, because of that investigation, proceedings or process, investigation under the investigation provisions is not warranted
3	an authorised official has disclosed some or all of the information to a member of an Australian police force or to the Australian Competition and Consumer Commission under section 337CD of the Act	the investigator is reasonably satisfied that there are no matters concerning the disclosure, other than the offence or contravention mentioned in that section, that warrant investigation
4	an authorised official or any other person or body has disclosed the information to another person or body	the investigator is reasonably satisfied that the person or body to whom the information has been disclosed will deal with the information in such a way that further investigation under the investigation provisions is not warranted

- (2) If the investigator decides not to investigate the disclosure, or not to investigate it further, Part 4A of Chapter 11 of the Act does not, by implication, prevent the information from being investigated otherwise than under the investigation provisions.

### **176H Consent to and notice of allocation of handling of disclosure**

- (1) In accordance with subsection 337CC(1) of the Act, this regulation prescribes procedures to be followed and other matters in relation to the allocation of handling of disclosures that qualify for protection under the Act.
- (2) The person to whom a disclosure is made (the *recipient*) must not allocate the handling of a disclosure to an authorised official (other than the recipient) under section 337C of the Act unless the authorised official has consented to the allocation.
- (3) Unless the recipient is, or allocates the disclosure to, the Commissioner, the recipient must inform the Commissioner of the following matters:
- (a) the allocation of the disclosure to the authorised official;

- (b) the information that was disclosed;
  - (c) the suspected disclosable conduct (if any);
  - (d) if the discloser's name is known to the recipient, and the discloser consents to disclosure of his or her name—the discloser's name;
  - (e) if the discloser's contact details are known to the recipient, and the discloser consents to disclosure of the contact details—the discloser's contact details.
- (4) The recipient must inform the discloser of the allocation.
- (5) Subregulation (4) does not apply if contacting the discloser is not reasonably practicable.
- (6) Subregulations (2) to (5) apply, in relation to a subsequent allocation under subsection 337C(3) of the Act of the handling of a disclosure, in the same way as they apply to an initial allocation of the handling of a disclosure.

### 176J Notice of investigation of disclosure

- (1) In accordance with subsection 337CC(2) of the Act, this regulation prescribes procedures to be followed and other matters in relation to investigations under Division 3 of Part 4A of Chapter 11 of the Act (the *investigation provisions*).
- (2) The authorised official to whom the handling of the disclosure is allocated must, as soon as reasonably practicable, inform the discloser of the following (whichever is applicable):
- (a) that the authorised official is required to investigate the disclosure;
  - (b) that the authorised official has decided under subsection 337CA(2) of the Act and regulation 176G not to investigate the disclosure, or not to investigate the disclosure further.
- (3) If paragraph (2)(a) applies, the authorised official must inform the discloser of the estimated length of the investigation.
- (4) If paragraph (2)(b) applies, the authorised official must inform the discloser of:
- (a) the reasons for the decision; and
  - (b) other courses of action that might be available to the discloser under other laws of the Commonwealth.
- (5) Despite paragraph (4)(a), the authorised official may delete from the reasons given to the discloser any reasons that would, if contained in a document, cause the document to be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*.
- (6) Subregulation (2) does not apply if contacting the discloser is not reasonably practicable.
- (7) If:
- (a) the authorised official has decided under subsection 337CA(2) of the Act and regulation 176G not to investigate the disclosure, or not to investigate the disclosure further; and
  - (b) the authorised official is not the Commissioner;
- the authorised official must inform the Commissioner of the decision, and of the reasons for the decision.

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**176K Suspending Part 4A investigation while conducting an investigation under another law**

- (1) In accordance with subsection 337CC(2) of the Act, this regulation prescribes procedures to be followed in relation to investigations under Division 3 of Part 4A of Chapter 11 of the Act (the *investigation provisions*).
- (2) The authorised official conducting an investigation under the investigation provisions of a disclosure that concerns disclosable conduct (the *Part 4A conduct*) must suspend the investigation for any period during which the authorised official reasonably believes that any authorised official is investigating, under:
  - (a) a law of the Commonwealth other than the investigation provisions; or
  - (b) the executive power of the Commonwealth;disclosable conduct that is the same, or substantially the same, as the Part 4A conduct.

**176L Adoption of findings**

- (1) In accordance with subsection 337CC(2) of the Act, this regulation prescribes matters in relation to investigations under Division 3 of Part 4A of Chapter 11 of the Act (the *investigation provisions*).
- (2) The authorised official conducting an investigation under the investigation provisions may, for the purposes of the investigation, adopt a finding set out in the report of:
  - (a) an investigation or inquiry under:
    - (i) a law of the Commonwealth other than the investigation provisions; or
    - (ii) the executive power of the Commonwealth; or
  - (b) another investigation under the investigation provisions;conducted by the authorised official or any other person.

**176M Completion of investigation**

- (1) In accordance with subsection 337CC(2) of the Act, this regulation prescribes procedures to be followed and other matters in relation to investigations under Division 3 of Part 4A of Chapter 11 of the Act (the *investigation provisions*).

*Notice to discloser*

- (2) On completing an investigation under the investigation provisions, the authorised official must, as soon as reasonably practicable and subject to subregulation (4), inform the discloser of the following:
  - (a) that the authorised official has completed the investigation;
  - (b) whichever of the following apply:
    - (i) that the authorised official will be taking further action as a result of the investigation;
    - (ii) that the authorised official has recommended, or will be recommending, that a government authority take action as a result of the investigation, and the name of the authority;

(iii) that the authorised official will not be taking further action, and has not recommended, and will not be recommending, that any government authority take action, as a result of the investigation.

- (3) Each of the following is a **government authority**:
- (a) the Commonwealth, a State or a Territory;
  - (b) an authority of the Commonwealth, a State or a Territory.
- (4) Subregulation (2) does not apply if contacting the discloser is not reasonably practicable.

*Report*

- (5) On completing an investigation under the investigation provisions, the authorised official must prepare a report of the investigation.
- (6) The report must set out:
- (a) the matters considered in the course of the investigation; and
  - (b) the duration of the investigation; and
  - (c) the authorised official's findings (if any); and
  - (d) the action (if any) that has been, is being, or is recommended to be, taken; and
  - (e) any claims made about, and any evidence of, detrimental action taken against the discloser, and any response to those claims and that evidence.
- (7) The authorised official must, within 30 days after preparing the report under subregulation (5), give a copy of the report to another person or body if the report sets out action that is recommended to be taken by the other person or body.
- (8) The authorised official may delete from a copy of the report given to a person or body under subregulation (7) any material:
- (a) that is likely to enable the identification of the discloser or another person; or
  - (b) the inclusion of which would:
    - (i) result in the copy being a document that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*; or
    - (ii) contravene a designated publication restriction.

### **Division 3—Other matters**

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## **Schedule 3—Minor technical amendments**

### ***Fair Work (Registered Organisations) Regulations 2009***

#### **1 Regulation 10 (heading)**

Repeal the heading, substitute:

#### **10 Prescribed State (Ch 11, Pt 7)**

#### **2 Regulation 11**

Omit “*Industrial and Employee Relations Act 1994 (SA)*”, substitute “*Fair Work Act 1994 (SA)*”.

#### **3 Paragraph 17(a)**

After “disk”, insert “or other storage device”.

#### **4 Subregulation 18(1) (at the end of example 2)**

Add “or other storage device”.

#### **5 Subregulation 23(1)**

Omit “FWA”, substitute “the FWC”.

#### **6 Paragraph 23(2)(b)**

Omit “FWA”, substitute “the FWC”.

#### **7 Subregulation 23(4)**

Omit “FWA”, substitute “the FWC”.

#### **8 Paragraph 23(5)(a)**

Omit “FWA”, substitute “the FWC”.

#### **9 Regulation 42 (heading)**

Repeal the heading, substitute:

#### **42 Application for ballot not conducted under section 65 of the Act (s 47(1))**

#### **10 Paragraphs 69(1)(c) and (i)**

Omit “RAO Schedule”, substitute “Act”.

#### **11 Subregulation 69(4)**

Omit “RAO Schedule”, substitute “Act”.

#### **12 Regulation 114A (heading)**

Repeal the heading, substitute:

**114A Representation rights of former State-registered association subject to demarcation order—transitional recognition without demarcation order and no previous order under Chapter 4 of the Act (section 138A)**

**13 Subregulations 114E(2), (3) and (4) and 114F(2), (3) and (4)**

Omit “FWA” (wherever occurring), substitute “the FWC”.

**14 Subregulations 133(1) and 135(1)**

Omit “RAO Schedule”, substitute “Act”.

**15 Subregulation 152(2)**

Omit “amalgamation”, substitute “exemption”.

**16 Paragraph 163(1)(a)**

Omit “*Industrial and Employee Relations Act 1994 (SA)*”, substitute “*Fair Work Act 1994 (SA)*”.

**17 Paragraph 1.7(1)(b) of Schedule 1**

Omit “FWA”, substitute “the FWC”.

**18 Subclause 1.7A(1) of Schedule 1**

Omit “FWA”, substitute “the FWC”.

**19 Subclause 1.7A(2) of Schedule 1**

Omit “FWA”, substitute “The FWC”.

**20 Subclause 1.7A(3) of Schedule 1**

Omit “FWA” (wherever occurring), substitute “the FWC”.

**21 Subclause 1.7A(4) of Schedule 1**

Omit “FWA”, substitute “The FWC”.

**22 Clauses 1.8, 1.9 and 1.10 of Schedule 1**

Omit “FWA”, substitute “the FWC”.

**23 Clause 2.1 of Schedule 2**

Omit “FWA”, substitute “the FWC”.

**24 Clause 2.2 of Schedule 2**

Omit “FWA” (wherever occurring), substitute “the FWC”.