

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment

Subject – *Fair Work Act 2009*

Work Health and Safety Act 2011

Fair Work and Other Legislation Amendment (South Australian Employment Court) Regulations 2017

On 1 July 2017 the Industrial Relations Commission of South Australia and the Industrial Relations Court of South Australia will be abolished and the functions and members of these bodies transferred to the new South Australian Employment Tribunal and the South Australian Employment Court. The transfers are provided for in the *Statutes Amendment (South Australian Employment Tribunal) Act 2016 (SA)* (Statutes Amendment Act).

The *Fair Work and Other Legislation Amendment (South Australian Employment Court) Regulations 2017* (the Regulations) make consequential changes to the *Fair Work Regulations 2009* and the *Work Health and Safety Regulations 2011* to maintain the status quo following this change.

The Regulations maintain the jurisdiction conferred by the *Fair Work Act 2009* on ‘eligible State and Territory courts’ to determine underpayment of wages cases, and on state and territory courts to hear civil matters under the *Work Health and Safety Act 2011*, mainly in relation to the exercise of workplace rights of entry.

The Regulations also continue existing arrangements providing for the dual appointment of members of state industrial authorities to the Fair Work Commission.

These consequential amendments were requested by the South Australian Minister for Industrial Relations and developed in consultation with South Australian government officials. The Minister for Employment also consulted with the states and territories under the Intergovernmental Agreement for a National Workplace Relations System for the Private Sector. As the Regulations are of an administrative nature and do not substantially alter existing arrangements, broader consultation was considered unnecessary.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (OBPR ID: 21990).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

A Statement of Compatibility with Human Rights has been completed for the Regulations, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement’s assessment is that the Regulations are compatible with human rights. A copy of the Statement is attached.

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 (South Australian Employment Court) Regulations 2017

This Disallowable 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 Disallowable Legislative Instrument

On 1 July 2017 the Industrial Relations Commission of South Australia and the Industrial Relations Court of South Australia will be abolished and the functions and members of these bodies transferred to the new South Australian Employment Tribunal and the South Australian Employment Court. The transfers are provided for in the *Statutes Amendment (South Australian Employment Tribunal) Act 2016 (SA)* (Statutes Amendment Act).

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The Regulations maintain the jurisdiction conferred by the *Fair Work Act 2009* (Fair Work Act) on ‘eligible State and Territory courts’ to determine underpayment of wages cases, and on state and territory courts to hear civil matters under the *Work Health and Safety Act 2011* (WHS Act), mainly in relation to the exercise of workplace rights of entry.

The Regulations also continue existing arrangements providing for the dual appointment of members of state industrial authorities to the Fair Work Commission.

Human rights implications

The Regulations engage the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR)).

Article 7 of the ICESCR encompasses a number of elements, including a right to fair wages and equal remuneration, a right to decent living and a right to safe and health working conditions. These rights are underpinned in Australia by the Fair Work Act and WHS Act.

As outlined above, the Regulations maintain access to the specialised South Australian employment court. If the Regulations were not made the range of courts that applicants may access would be narrowed. Providing easy and cost effective access to remedies supports the right to just and favourable conditions of work.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it supports human rights.