

NATIONAL WORKPLACE RELATIONS CONSULTATIVE COUNCIL
REGULATIONS 2020

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industrial Relations

under section 13 of the *National Workplace Relations Consultative Council Act 2002*

PURPOSE AND OPERATION OF THE INSTRUMENT

Section 13 of the *National Workplace Relations Consultative Council Act 2002* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient for carrying out or giving effect to the Act.

The National Workplace Relations Consultative Council (the Council) is a forum for consultation on workplace relations matters of national concern. The Council consists of 15 members including the relevant Australian Government minister, seven members nominated by the Australian Council of Trade Unions and seven employer and industry representatives.

The Council is required by section 11 of the Act to meet at least twice per year and the Council may also establish committees (subsection 12(1)). Some Council and committee members may need to travel interstate to attend meetings.

Subsections 9(1) and 12(2) of the Act state that the regulations may provide for a member of the Council or a member of a committee to receive travelling allowance at a rate specified or identified in the regulations.

The purpose of the *National Workplace Relations Consultative Council Regulations 2020* (the Regulations) is to provide for a member of the Council, and a member of a committee established by the Council, to receive travelling allowance for the purpose of attending Council meetings, Council committee meetings, or where otherwise engaged in legitimate Council business. They are substantially the same as the *National Workplace Relations Consultative Council Regulations 2004* (the sunseting Regulations) which were due to sunset on 1 April 2020. The Regulations repeal and replace the sunseting Regulations.

The Regulations expressly provide for travelling allowance to be paid to:

- members of the Council (section 6)
- a person nominated under subsection 10(1) or (2) of the Act to attend a meeting of the Council in place of a member (section 7)
- a member of a committee established by the Council (section 8).

In addition, section 10A of the Act provides that the Minister may, after consulting the members of the Council, invite a person to attend a meeting or meetings of the Council, and that such a person is entitled to travelling allowance as if he or she was a member. Travelling

allowance for such persons is provided for by the Regulations relating to members of the Council (section 6).

The Regulations set the rate of travelling allowance for members of the Council, persons invited to attend meetings and committee members at the rate applicable to a Tier 2 office holder in the 'official travel determination'. Initially, the relevant rate is that specified in the *Remuneration Tribunal (Official Travel) Determination 2019*. The applicable rate will be adjusted over time by determinations that supersede it. For each payment, the applicable determination is the determination that was in force at the time of travelling.

The Remuneration Tribunal Tier 2 rate is equivalent to the rate members received under the sunseting Regulations.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires the Governor-General to be satisfied that any consultation considered to be appropriate, and that is reasonably practicable to undertake, has been undertaken before making the Regulation. The Secretariat of the Council was consulted about the Regulations and no issues were raised. As the Regulations maintain the status quo, no further consultation was considered necessary.

REGULATION IMPACT STATEMENT

The Office of Best Practice and Regulation (OBPR) has advised that a Regulation Impact Statement is not required. The OBPR reference is ID 25428.

OTHER DETAILS

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

Details of the Regulations are at **Attachment A**.

A statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is at **Attachment B**.

NOTES ON SECTIONS

Section 1 – Name

This section provides that the title of the instrument is the *National Workplace Relations Consultative Council Regulations 2020*.

Section 2 – Commencement

This section provides for the instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the instrument is made under the *National Workplace Relations Consultative Council Act 2002*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed according to the terms set out in the Schedule, and any other item in a Schedule to the instrument has effect according to its terms.

Section 5 – Definitions

This section defines certain terms used in the instrument.

‘Official travel determination’ means the *Remuneration Tribunal (Official Travel) Determination 2019* on commencement and subsequently any determination that supersedes it. This ensures the rates are adjusted appropriately over time.

Section 6 – Travelling allowance for member

This section provides that a Council member is authorised to receive travelling allowance for travel to attend a Council meeting or other travel related to the purposes of the Council.

The rate of travelling allowance is equal to the rate payable to a tier 2 office holder under the official travel determination when the travel takes place.

Section 7 – Travelling allowance for persons nominated to attend meetings

This section provides that a person nominated to attend a meeting of the Council in place of a member is authorised to receive travelling allowance for travel to attend the meeting.

The rate of travelling allowance is equal to the rate payable to a tier 2 office holder under the official travel determination when the travel takes place.

Section 8 – Travelling allowance for members of committees

This section provides that a member of a committee constituted under subsection 12(1) of the Act is authorised to receive travelling allowance for travel to attend a committee meeting or other travel related to the purposes of the committee.

The rate of travelling allowance is equal to the rate payable to a tier 2 office holder under the official travel determination when the travel takes place.

Section 9 – Claims for travelling allowance

This section provides the mechanism for a person entitled to receive travelling allowance under this instrument to make a claim for the allowance.

Schedule 1 – Repeals

Schedule 1 repeals the *National Workplace Relations Consultative Council Regulations 2004*, which the new Regulations will replace.

Statement of Compatibility with Human Rights

Issued by the Minister for Industrial Relations

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

National Workplace Relations Consultative Council Regulations 2020

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

Overview of the Legislative Instrument

The National Workplace Relations Consultative Council (the Council) is a forum established under the *National Workplace Relations Consultative Council Act 2002* (the Act) for consultation on workplace relations matters of national concern. The Council consists of 15 members including the relevant Australian Government minister, seven members nominated by the Australian Council of Trade Unions and seven employer and industry representatives.

The Council is required by section 11 of the Act to meet at least twice per year and the Council may also establish committees (subsection 12(1)). Some Council and committee members may need to travel interstate to attend meetings.

The *National Workplace Relations Consultative Council Regulations 2020* (the Regulations) provide for a member of the National Workplace Relations Consultative Council (the Council), and a member of a committee established by the Council, to receive travelling allowance for the purpose of attending Council meetings, Council committee meetings, or where otherwise engaged in legitimate Council business.

This legislative instrument replaces and is substantially the same as the *National Workplace Relations Consultative Council Regulations 2004* (the sunseting Regulations) which were due to sunset on 1 April 2020.

Human Rights Implications

Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that everyone has the right to the ‘enjoyment of just and favourable conditions of work, which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;

- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Australia principally complies with its obligation under Article 7 of the ICESCR through the workplace relations legislative framework underpinned by the *Fair Work Act 2009* and a system of Commonwealth, state and territory work health and safety laws. The Council functions as a forum for tripartite engagement on national workplace relations policy, its members being the relevant Australian Government minister (as chair) and representatives from employer and employee groups. The importance of tripartite engagement is reflected in a number of International Labour Organization conventions which require states parties to demonstrate that representatives of workers and business are actively engaged and consulted in the development of workplace relations policy.

This legislative instrument facilitates the functioning of the Council and thus indirectly promotes the right to the enjoyment of just and favourable conditions of work stipulated in the ICESCR.

Conclusion

This legislative instrument is compatible with human rights.