

**WORKPLACE RELATIONS AND OTHER LEGISLATION AMENDMENT
(ABOLISHMENT OF INDUSTRIAL RELATIONS COURT) PROCLAMATION 2020**

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

The purpose of the proposed Proclamation is to provide for the formal abolition of the Industrial Relations Court of Australia (Industrial Relations Court) on 1 March 2021.

Item 84 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996* (the Act) provides that the Industrial Relations Court is to be abolished on a day fixed by proclamation when no person held office as a judge of the court. The final Judge of the Court, the Hon Anthony North QC, retired on 11 September 2018.

In 1977, the Federal Court of Australia (Federal Court) was vested with jurisdiction to hear and determine industrial law matters. The *Industrial Relations Reform Act 1993* came into force in March 1994. That Act divested jurisdiction for industrial relations matters from the Federal Court and placed it in a standalone court, the Industrial Relations Court. The Industrial Relations Court had original and appellate jurisdiction and was a superior court of law and equity. In 1996, the Act repealed provisions establishing the Industrial Relations Court and transferred its jurisdiction to the Federal Court.

Item 68 of Schedule 16 to the Act provided that the Industrial Relations Court was to continue in existence subject to other provisions in Part 3 of Schedule 16, including items 72 and 84. Item 72 of Schedule 16 provided that the Chief Justice and Judges were to continue to hold office as if relevant provisions establishing the court in the *Industrial Relations Act 1988* had not been repealed. Item 84 of Schedule 16 provided that the Industrial Relations Court was to be abolished on a day fixed by proclamation when no person held office as a judge of the court.

Staff were transferred to the Federal Court on 25 May 1997, and the last case in the Industrial Relations Court was finalised in the 2005/2006 financial year. As such, it is appropriate for a proclamation to be issued under item 84 of Schedule 16.

Table item 598 of Schedule 1 to the *Amending Acts 1990 to 1999 Repeal Act 2016* repealed the Act. Subsection 3(2) of the *Amending Acts 1990 to 1999 Repeal Act 2016* provided that the continuing operation of application, saving and transitional provisions was not affected. Part 3 of Schedule 16 to the Act (titled Transitional and saving provisions) contains transitional and savings provisions. Therefore, the continuing operation of items 68, 72 and 84, which are in Part 3, was not affected.

The Proclamation would be repealed at the start of 2 March 2021. The reason for this provision is because the Proclamation would have no further operation once the Industrial Relations Court is abolished.

The Proclamation is merely intended to finalise the abolition of the Industrial Relations Court, which has not been in effective operation since 1996. It does not change the current federal courts structure.

DOCUMENTS INCORPORATED BY REFERENCE

There are no documents incorporated by reference.

CONSULTATION

In October 2019, the Industrial Relations Group of the Attorney-General's Department advised there was no sensitivity in abolishing the Industrial Relations Court. There was no further consultation because the proposed Proclamation is merely an administrative change and makes no substantive changes to the current operation of the federal courts structure.

REGULATION IMPACT STATEMENT

The regulatory impact of the new Regulations was assessed through completion of a Regulation Impact Statement (RIS) Preliminary Assessment. On the basis of this assessment, the Office of Best Practice Regulation advised that a RIS was not required (OBPR ID: 43079).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Workplace Relations and Other Legislation Amendment (Abolishment of Industrial Relations Court) Proclamation 2020

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

Overview of the disallowable legislative instrument

The *Workplace Relations and Other Legislation Amendment (Abolishment of Industrial Relations Court) Proclamation 2020* (Proclamation) formally abolishes the Industrial Relations Court of Australia (Industrial Relations Court) on 1 March 2021. The Court ceased effective operation in 1996. Hence this Proclamation tidies up the statute book.

Item 84 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996* (the Act) provides that the Industrial Relations Court of Australia (Industrial Relations Court) is to be abolished on a day fixed by proclamation when no person held office as a judge of the court. The final Judge of the Court, the Hon Anthony North QC, retired on 11 September 2018.

In 1977, the Federal Court of Australia (Federal Court) was vested with jurisdiction to hear and determine industrial law matters. The *Industrial Relations Reform Act 1993* came into force in March 1994. That Act divested jurisdiction for industrial relations matters from the Federal Court and placed it in a standalone court, the Industrial Relations Court. The Industrial Relations Court had original and appellate jurisdiction and was a superior court of law and equity. In 1996, the Act repealed provisions establishing the Industrial Relations Court and transferred its jurisdiction to the Federal Court.

Item 68 of Schedule 16 to the Act provided that the Industrial Relations Court was to continue in existence subject to other provisions in Part 3 of Schedule 16, including items 72 and 84. Item 72 of Schedule 16 provided that the Chief Justice and Judges were to continue to hold office as if relevant provisions establishing the court in *the Industrial Relations Act 1988*

had not been repealed. Item 84 of Schedule 16 provided that the Industrial Relations Court was to be abolished on a day fixed by proclamation when no person held office as a judge of the court.

Table item 598 of Schedule 1 to the *Amending Acts 1990 to 1999 Repeal Act 2016* repealed the Act. Subsection 3(2) of the *Amending Acts 1990 to 1999 Repeal Act 2016* provided that the continuing operation of application, saving and transitional provisions was not affected. Part 3 of Schedule 16 to the Act (titled Transitional and saving provisions) contains transitional and savings provisions, and so the continuing operation of items 68, 72 and 84, which are in Part 3, was not affected.

Staff were transferred to the Federal Court on 25 May 1997, and the last case in the Industrial Relations Court was finalised in the 2005/2006 financial year. As such, it is appropriate for a proclamation to be issued under item 84 of Schedule 16.

Human rights implications

This disallowable legislative instrument does not engage any of the applicable rights or freedoms. This is because it is merely an administrative change and makes no substantive changes to the current federal courts structure, or people's ability to have recourse to the courts for matters that the Court historically exercised jurisdiction over.

Conclusion

This disallowable legislative instrument is compatible with human rights as it does not raise any human rights issues.

NOTES ON SECTIONS

Section 1 – Name

Section 1 provides that the title of the instrument is the *Workplace Relations and Other Legislation Amendment (Abolishment of Industrial Relations Court) Proclamation 2020*.

Section 2 – Commencement

Section 2 provides that the instrument commences on the day after the instrument is registered.

Section 3 – Authority

Section 3 provides that the instrument is made under item 84 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*.

Section 4 – Abolition of the Industrial Relations Court

Section 4 provides that the Industrial Relations Court is to be abolished on 1 March 2021.

Section 5 – Repeal of this instrument

Section 5 provides that the Proclamation is to be repealed at the start of 2 March 2021.