



Queensland

Industrial Relations Regulation 2011

Explanatory Notes for SL 2011 No. 170

made under the

Industrial Relations Act 1999

General outline

Short title

Industrial Relations Regulation 2011.

Authorising law

Section 709 of the *Industrial Relations Act 1999* empowers the Governor in Council to make regulations under this Act.

Policy objectives and the reasons for them

The *Statutory Instruments Act 1992* (SIA) automatically expires subordinate legislation on 1 September first occurring after the 10th anniversary of the day of its making. However where replacement subordinate legislation is being drafted the SIA allows for a regulation to be made exempting the original regulation from expiry. The *Statutory Instruments Amendment Regulation (No 1) 2011*, (SIA Regulation 2011) which is due to commence on 31 August 2011, will exempt a number of Regulations, including Queensland's *Industrial Relations Regulation 2000* (IR Regulation 2000), from expiration.

The IR Regulation 2000 was due to expire on 1 September 2011. This Regulation gives effect to a range of provisions in the *Industrial Relations*

Act 1999 (IR Act). The IR Act cannot operate effectively without a regulation, therefore it is necessary to make a replacement Regulation. The proposed replacement Regulation is due to commence on 15 September 2011.

As a major review of Queensland's industrial relations legislative regime is not being undertaken, it is considered appropriate for the replacement Regulation to mirror the IR Regulation 2000 apart from minor changes to ensure the provisions are up to date, remain consistent with the IR Act and are drafted according to contemporary drafting principles. These changes are limited to:

- correcting drafting errors;
- making consequential amendments;
- making amendments of a machinery nature;
- removing an obsolete provision; and
- increasing the prescribed amount applicable under the IR Act to unfair dismissal applications, notice and severance provisions and unfair contract applications before the Queensland Industrial Relations Commission. This amount is indexed at this time each year to mirror an indexed annual adjustment to the federal specified rate under federal legislation.

Achievement of policy objectives

The policy objective is achieved by making a new regulation to replace the IR Regulation 2000.

Consistency with policy objectives of authorising law

The new regulation is consistent with the main object of the IR Act, which is to provide a framework for industrial relations that supports economic prosperity and social justice.

Inconsistency with policy objectives of other legislation

The new regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The IR Act cannot operate effectively without the IR Regulation 2000, therefore there are no alternative ways of achieving the policy objectives other than replacing the IR Regulation 2000 when it expires.

Benefits and costs of implementation

The benefit of introducing a new regulation is that it provides an opportunity to ensure the instrument is up to date, remains consistent with the IR Act and reflects contemporary drafting principles. There are no new costs associated with the implementation of the new regulation.

Consistency with fundamental legislative principles

Under the IR Regulation 2000, electoral officers in breach of regulations 40 (voters may ask for information about election or ballot) and 42 (ballot security) are not liable for an offence. As it is not proposed to alter arrangements regarding elections for industrial organisations, these provisions will continue in the replacement Regulation.

One of the fundamental principles of the law is that everyone is equal before the law and should therefore be fully liable for their acts or omissions. However, conferral of immunity is considered appropriate in certain situations. For instance, immunity is often conferred on persons carrying out statutory functions. As the immunity afforded electoral officers through the Regulation only applies when carrying out statutory functions, the abovementioned provisions are not considered to be in breach of a fundamental legislative principle.

In addition, these provisions would not prevent an electoral officer from being compelled to perform his/her statutory duties or disciplined for misconduct as an employee. No issues have arisen to date with these regulations.

There are no other breaches to fundamental legislative principles.

Consultation

The IR Act and accompanying Regulation impact upon employees and employers in Queensland's industrial relations jurisdiction, primarily local governments and the Queensland state public sector. The Department of

Justice and Attorney-General (DJAG) wrote to relevant employer and employee organisations representing Queensland's local governments and state public sector advising of the necessity to make a new Regulation and the proposed amendments to the existing IR Regulation 2000. The employer and employee organisations consulted were:

- the Local Government Association of Queensland (LGAQ);
- the Queensland Council of Unions (QCU);
- the Australian Workers Union (AWU); and
- the Queensland Public Sector Union (QPSU).

No stakeholders objected to the proposed Regulation.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

© State of Queensland 2011