

Industrial Relations (Transitional) Regulation 2017

Explanatory notes for SL 2017 No. 25

made under the

Industrial Relations Act 2016

General Outline

Short title

Industrial Relations (Transitional) Regulation 2017 (Transitional Regulation)

Authorising law

Section 1085 of the *Industrial Relations Act 2016* (IR Act 2016).

Policy objectives and the reasons for them

Section 1085 of the IR Act 2016 permits the making of a transitional regulation.

The policy objective of the IR Act 2016 is to provide a framework for the conduct of industrial relations within the State's industrial relations jurisdiction that is fair and balanced and supports the delivery of high-quality services, economic prosperity and social justice for Queenslanders.

The IR Act 2016 is due to commence on proclamation, which is scheduled for 1 March 2017. A regulation is required to give effect to certain provisions in the IR Act 2016. While a comprehensive review of regulation to support the IR Act 2016 is planned for 2017 an interim regulation is required until the new regulation is in place. The nature of matters required in a regulation to support the IR Act 2016 are generally those that provide greater detail or guidance on matters provided for in the Act.

The requirement for an interim regulation was anticipated when the IR Act 2016 was created and section 1085 *Transitional regulation-making power* of that Act was inserted for this purpose. Section 1085(1) permits the making of a transitional regulation about a matter necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act, in this case the *Industrial Relations Act 1999* (IR Act 1999) to the operation of this Act, in this case the IR Act 2016, where the new Act does not make provision or sufficient provision for a matter.

The Transitional Regulation amends the *Industrial Relations Regulation 2011* (IR Regulation 2011), so that the provisions meet the requirements of the IR Act 2016. The majority of amendments to the IR Regulation 2011 involve minor amendment to replace cross-references to provisions in the IR Act 1999 with the relevant provisions in the IR Act 2016. Other amendments make minor changes to reflect amendments to the underpinning legislative provision; to reflect current drafting styles; and to alter a prescribed amount. Examples of these amendments include:

- **Amendment to part 2, sections 4 and 5 (clause 8)**
These sections are omitted and replaced with a new section 4 which reflects a change in the language of the substantive provision, section 297 of the IR Act 2016. The intention of the provision is consistent with existing section 5 of the IR Regulation 2011.
- **Amendments to reflect change in language of substantive legislation from 'certified agreement' to 'proposed bargaining instruments'. (clause 12)**
Amendments are made throughout the regulation, to reflect the references in the IR Act 2016 to 'proposed bargaining instruments', to encompass both 'certified agreements' and 'bargaining awards'.

The Transitional Regulation also contains a provision which amends a cross referencing error in section 1076 of the IR Act 2016. This is a minor amendment which replaces the reference to section 845 of the IR Act 2016 with section 839 of the Act. The amendment is necessary as the Queensland Industrial Relations Commission (QIRC) will need to rely upon this provision in finalise applications currently before it.

An amendment is included to carry forward specific provisions (Chapter 20, Part 20, Division 3) of the IR Act 1999 which may not have had their legislative effect by commencement. These provisions are to issue relevant certified agreements with an earlier nominal expiry date and to provide that the parties to those agreements are taken to be in negotiations so they are free to bargain under the newly varied modern award.

An amendment is also made to include a transitional regulation to amend the current section 123 of the IR Regulation 2011 to lower the timeframe for objections following the declaration of a ballot result for amalgamation from 60 days to 30 days.

Amendments are also made to omit regulations that have been made obsolete as the underpinning legislative provision has not been included in the IR Act 2016 or no longer requires a regulation, for instance:

- **Clause 52 omits part 14A of the regulations:** sections 146A and 146B which extended the nominal expiry dates and provided for wage increases for particular certified agreements, (along with the corresponding schedule 5C, also omitted at clause 54) are not maintained under the transitional regulation, as the substantive provisions were in the IR Act 1999 and have not been included in the IR Act 2016. However, these agreements, their extended nominal expiry dates and wage increases continue in force by virtue of section 998 of the IR Act 2016.

Achievement of policy objectives

The policy objective is achieved by making a transitional regulation which will give effect to certain provisions of the IR Act 2016.

Consistency with policy objectives of authorising law

The Transitional Regulation is consistent with the policy objective of the authorising law.

In accordance with the authorising law (section 1085):

- the Transitional Regulation
- amends the IR Regulation 2011 to facilitate the transition from the operation of the IR Act 1999 to the operation of the IR Act 2016;
- this Regulation will not operate retrospectively; and
- section 3 of this Regulation declares it is a transitional regulation which will expire 1 year after the day of the commencement of section 1085 of the IR Act 2016.

Inconsistency with policy objectives of other legislation

The Transitional Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

There are no specific costs for Government in the implementation of the Transitional Regulation. This Regulation gives effect to certain provisions in the IR Act 2016. Any costs to Government in implementing the IR Act 2016 were set out in the explanatory notes accompanying the *Industrial Relations Bill 2016*.

Consistency with fundamental legislative principles

Issues in relation to the IR Act 2016 which may infringe fundamental legislative principles were raised in the explanatory notes accompanying that *Industrial Relations Bill 2016*. As noted in these explanatory notes, the Act contains a transitional regulation making power to make the Transitional Regulation.

This provision potentially offends the *Legislative Standards Act 1992* (LS Act) at section 4 (5)(a), however the provision is considered necessary to ensure the orderly transition between the legislative frameworks and contains safeguards such as sun-setting of 1 year.

The use of the Transitional Regulation to amend the cross referencing error in section 1076 of the IR Act 2016 also potentially offends section 4 (5)(a) of the LS Act, however this amendment is necessary as the QIRC needs to rely upon the correct provision to finalise matters currently before it.

The Transitional Regulation raises no further issues with regard to fundamental legislative principles.

Consultation

Extensive consultation occurred with all relevant stakeholders prior to the passage of the IR Act 2016. In addition specific consultation on the Transitional Regulation was undertaken with the Queensland Council of Unions (QCU), the Australian Workers Union (AWU), Together Queensland (TQ) and the Local Government Association of Queensland (LGAQ).

Consultation also occurred with the President and Deputy President O'Connor of the Queensland Industrial Relations Commission (QIRC) and staff of the Industrial Registry on the Transitional Regulation.

In accordance with the Queensland Government Guide to Better Regulation, the Queensland Productivity Commission was not consulted in relation to the regulatory proposal. The Office of Industrial Relations applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category (e) – Regulatory proposals that are of a transitional nature).

Results of Consultation

The QCU, AWU, TQ, LGAQ, the President and Deputy President O'Connor of the QIRC and staff of the Industrial Registry have considered the provisions of the Transitional Regulation, no party has objected to the contents of this Regulation.