

Industrial Relations and Other Legislation Amendment (Postponement) Regulation 2023

Explanatory notes for SL 2023 No. 143

made under the

Industrial Relations and Other Legislation Amendment Act 2022

General Outline

Short title

Industrial Relations and Other Legislation Amendment (Postponement) Regulation 2023

Authorising law

Section 15DA(3) of the *Acts Interpretation Act 1954*

Section 2 of the *Industrial Relations and Other Legislation Amendment Act 2022*

Policy objectives and the reasons for them

The *Industrial Relations and Other Legislation Amendment Act 2022* (IROLA Act) received Royal Assent on 3 November 2022, and provided that Part 2, Division 3 of the IROLA Act commence on a day to be fixed by proclamation.

Upon commencement, Part 2, Division 3 of the IROLA Act will introduce a new Chapter 10A into the Industrial Relations Act 2016 (the IR Act) which will empower the Queensland Industrial Relations Commission to make determinations to set minimum standards of work for independent courier drivers; make consequential amendments for civil penalty breaches under Chapter 10A; and make updates to the IR Act's Dictionary.

Currently, the *Independent Contractors Act 2006* (Cth) (IC Act) and the *Independent Contractors Regulation 2016* (Cth) (IC Regulation) govern services contracts under which independent couriers are engaged to perform work. These Commonwealth laws 'cover the field' for independent contractors, unless a State or Territory law is exempted.

The Australian Government is investigating industrial reforms, including to consider empowering the Fair Work Commission (FWC) to set minimum standards for workers in 'employee-like' forms of work, and giving the FWC powers to set minimum standards to improve road and transport safety and sustainability.

Given the Australian Government's investigation for legislative reform, the policy rationale of the subordinate legislation is to postpone the automatic commencement of the Part 2, Division 3 provisions in the IROLA Act.

As the provisions are to commence by proclamation, Part 2, Division 3 of the IROLA Act is considered 'postponed law' for the purpose of section 15DA of the *Acts Interpretation Act 1954* (AI Act).

Section 15DA(2) of the AI Act provides that if a law has not commenced within one year of assent, the provisions not commenced will automatically commence on the next day. Section 15DA(3) of the AI Act provides that a regulation may postpone the period before the automatic commencement of a postponed law to not more than two years from the date of assent.

Section 2 of the IROLA Act provides that Part 2, Division 3 commences on a date to be fixed by proclamation.

While all other provisions of the IROLA Act have commenced, these provisions have yet to be proclaimed and, unless delayed, will automatically commence on 4 November 2023.

This regulation postpones the automatic commencement of these provisions to 4 November 2024.

The Department of Education has prepared an Impact Analysis Statement (IAS) and determined that the proposal does not require regulatory impact analysis under the Better Regulation policy as it is machinery in nature. The IAS has been approved by the Acting Director-General and the Minister.

Achievement of policy objectives

To achieve the policy objective, the *Industrial Relations and Other Legislation Amendment (Postponement) Regulation 2023* (Postponement Regulation) will extend the period before the automatic commencement of the relevant provisions to 4 November 2024, being the maximum period allowable under section 15DA(3) of the AI Act.

Consistency with policy objectives of authorising law

The Postponement Regulation is consistent with the policy objectives of the IROLA Act, the IR Act and the AI Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

Given the provisions of the AI Act, the policy objectives can only be achieved by making the Postponement Regulation. These issues cannot be addressed administratively or by other policy means.

Benefits and costs of implementation

The Postponement Regulation will achieve its policy objectives and no appreciable costs have been identified.

Consistency with fundamental legislative principles

The Postponement Regulation is consistent with fundamental legislative principles.

Consultation

Queensland Treasury's Office of Best Practice Regulation was consulted about the Postponement Regulation. In accordance with the Queensland Government Better Regulation Policy, the Postponement Regulation is minor and machinery in nature, and does not impact business, government or the community. As such, the Postponement Regulation is not subject to a further Regulatory Impact Analysis.