

CE301*

Industrial Relations Act 1979

Industrial Relations (General) Amendment Regulations 2002

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Industrial Relations (General) Amendment Regulations 2002*.

2. Commencement

These regulations come into operation on the day on which Parts 7, 8, 9 and 10 of the *Labour Relations Reform Act 2002* comes into operation.

3. The regulations amended

The amendments in these regulations are to the *Industrial Relations (General) Regulations 1997**.

[* *Published in Gazette* , 30 September 1997 at p. 5440-41.]

4. Regulation 3 repealed

Regulation 3 is repealed.

5. Regulation 4 amended

(1) Regulation 4(1) is amended as follows:

- (a) by deleting “time and wages records” in both places where it occurs and inserting instead —
“ employment records ”;
- (b) in paragraph (d) by deleting “the relevant award, order or industrial agreement” and inserting instead —
“ section 49D of the Act ”.

(2) Regulation 4(2) is amended by deleting “time and wages records” and inserting instead —

“ employment records ”.

(3) Regulation 4 is amended by deleting the penalty at the end of the regulation.

6. Regulation 5 repealed

Regulation 5 is repealed.

7. Parts 3, 4 and 5 and Schedules 1 and 2 inserted

At the end of the regulations the following Parts and Schedules are inserted —

“

**Part 3 — Unfair dismissal and contractual
benefit claims**

5. Prescribed amount — section 29AA

- (1) For the purposes of paragraph (b) of the definition of “prescribed amount” in section 29AA(5) of the Act the specified salary is \$90 000, or that amount as affected by indexation in accordance with regulation 6.
- (2) For the purposes of paragraph (b) of the definition of “prescribed amount” in section 29AA(5) of the Act the salary provided for in an employee’s contract of employment is to be worked out as follows —
 - (a) for an employee who was continuously employed by an employer and was not on leave without full pay at any time during the period of 12 months immediately before the dismissal or claim — the greater of —
 - (i) the salary that the employee actually received in that period; and
 - (ii) the salary that the employee was entitled to receive in that period;

- (b) for an employee who was continuously employed by an employer and was on leave without full pay at any time during the period of 12 months immediately before the dismissal or claim — the total of —
- (i) the actual salary received by the employee for the days during that period that the employee was not on leave without full pay; and
 - (ii) for the days that the employee was on leave without full pay an amount worked out using the formula —
- remuneration mentioned in subparagraph (i)
- $$\frac{x \text{ days on leave without full pay}}{\text{days not on leave without full pay;}}$$

or

- (c) for an employee who was continuously employed by an employer for a period less than 12 months immediately before the dismissal or claim — the amount worked out using the formula —
- $$\frac{\text{remuneration received} \times 365}{\text{days employed.}}$$

6. Annual indexation

- (1) This regulation prescribes a formula under which the amount mentioned in regulation 5(1) (the “**indexable amount**”) is to be varied annually by the indexation factor (if any).

- (2) In this regulation —

“**base weekly earnings**” means the last amount published by the Australian Statistician before 1 July 2002 as an estimate (except a preliminary estimate) of the average total weekly earnings (seasonally adjusted) for full-time adult employees of all employees in Australia in a particular month;

“**current weekly earnings**”, in relation to an indexation day, means the last amount published by the Australian Statistician before that day as an estimate (except a preliminary estimate) of the average total weekly earnings (seasonally adjusted) for full-time adult employees of all employees in Australia in a particular month;

“**indexation day**” means 1 July 2003 or 1 July in a later year;

“**indexation factor**”, for an indexation day, means the number, worked out to 3 decimal places, resulting from the following formula —

$$\frac{\text{current weekly earnings average in relation to the indexation day}}{\text{base weekly earnings average}}$$

- (3) If at any time (whether before or after the commencement of this regulation) the Australian Statistician publishes an estimate of the average total weekly earnings (seasonally adjusted) for full-time adult employees in a particular month in substitution for such an estimate (except a preliminary estimate) previously published by the Australian Statistician for that month, the publication of the later estimate is to be disregarded for the purposes of this regulation.
- (4) Subject to subregulation (5), if, on any indexation day, the indexation factor is greater than 1, then, on and after that day, until a later application of this subregulation, an indexable amount is taken to be replaced by the amount worked out by multiplying the indexable amount by the indexation factor.
- (5) If an amount worked out under subregulation (4) is not \$100, or a multiple of \$100 —
 - (a) if the amount is not \$50, or a multiple of \$50 — it is to be rounded up or down to \$100, or the nearest amount that is a multiple of \$100 as appropriate; or
 - (b) if the amount is \$50, or a multiple of \$50 — it is to be rounded up to \$100, or the next highest amount that is a multiple of \$100 as appropriate.

Part 4 — Trainees

7. Definition of trainee — section 7 of the Act

Persons participating in a traineeship scheme within the meaning of the *Industrial Training Act 1975* are to be treated as trainees for the purposes of the Act.

Part 5 — Fees

6. Interpretation

In this Part —

“**Clerk**” means the Clerk of the Court appointed under section 85(7) of the Act.

7. Fees to be charged

- (1) Subject to the Act and the provisions of these regulations —
 - (a) the fees specified in Schedule 1 are to be charged in respect of the matters before the Commission in relation to which they are specified; and
 - (b) the fees specified in Schedule 2 are to be charged in respect of the matters before the Court in relation to which they are specified
- (2) No fee is payable for any of the following matters —
 - (a) the registration of a treasurer, trustee, secretary or any other officer of an organisation;
 - (b) the cancellation of a certificate of registration;
 - (c) filing of notice of a change of registered office;
 - (d) filing of a warrant to appear as an agent;
 - (e) any document in respect of which a fee is already chargeable under the Act or any other written law;
 - (f) filing of notice of discontinuance of an application.
- (3) The Registrar and the Clerk may determine the means, in addition to cash, by which fees may be paid.

8. Registrar and Clerk may waive certain fees

- (1) The Registrar or a Deputy Registrar may waive a fee referred to in Schedule 1 when the Registrar or Deputy Registrar considers it reasonable to do so.
- (3) The Clerk may waive a fee referred to in Schedule 2 item 9 when the Clerk considers it reasonable to do so.
- (4) The Clerk may waive a fee referred to in Schedule 2 item 10 when permission to do so has been given by the Presiding Judge.

9. Fees paid to Consolidated Fund

All fees received by the Clerk, Registrar or any other officer are to be credited to the Consolidated Fund.

Schedule 1 — Fees to be taken by the Registrar

[r.7]

Item	Matter	Fee \$
1	On filing a claim of harsh, oppressive or unfair dismissal other than by application under section 44 of the Act	50.00

Item	Matter	Fee
		\$
2	For a photographic copy of a transcript of proceedings — for each page	3.00
3	For a search of a record or database of the Commission (other than a search of a proceeding made by or on behalf of a party to the proceeding) — for each name or item in respect of which a search is made	20.00

Schedule 2 — Fees to be taken by the Clerk

Item	Matter	Fee
		\$
		[r.7]
1	For filing an affidavit, statutory declaration or any document not otherwise provided for in this Schedule	1.00
2	For filing an application or notice of motion	5.00
3	For filing a notice of appeal	5.00
4	For sealing an order	1.00
5	On the issue of a Chamber summons or summons to witness	1.50
6	For the issue of a warrant of any kind	2.50
7	For the execution of a warrant of any kind	8.50
8	For every document required to be authenticated by the Clerk or other officer	4.00
9	For every inspection on the same day of one or more documents in the custody of the Clerk	1.00
10	For a photographic copy of the transcript of proceedings — for each page	1.00
11	For a photographic copy of reasons for judgment consisting of not more than 10 pages — for each copy issued to a person not a party to the proceedings or a person, who although a party, did not appear or who was not represented at the proceedings and for each copy in excess of one copy issued to a represented party to the proceedings	2.75
	And for each page in excess of 10	0.20
12	For photographic copies of exhibits or other documents — for each page	0.20

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.