



New South Wales

Industrial Relations (General) Amendment (Unfair Dismissal) Regulation 1997

under the
Industrial Relations Act 1996

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Industrial Relations Act 1996*.

JEFFREY SHAW, QC, MLC
Attorney General and Minister for Industrial Relations

Explanatory note

The objects of this Regulation are:

- (a) to provide that employees not covered by industrial instruments (including awards or enterprise agreements) whose annual remuneration exceeds an indexed amount fixed from time to time in accordance with the *Workplace Relations Regulations* of the Commonwealth (currently, \$66,200) are excluded from the unfair dismissal provisions of the Act (the present applicable figure being \$62,200), and
- (b) to extend the categories of other employees exempted from the unfair dismissal provisions of the Act to accord, in the main, with the exclusions under the *Industrial Relations Act 1988* of the Commonwealth before its amendment by the *Workplace Relations and Other Legislation Amendment Act 1996* of the Commonwealth.

This Regulation is made under the *Industrial Relations Act 1996*, including section 83.

1997 No 514

Clause 1 Industrial Relations (General) Amendment (Unfair Dismissal) Regulation 1997

**Industrial Relations (General) Amendment
(Unfair Dismissal) Regulation 1997**

1 Name of Regulation

This Regulation is the *Industrial Relations (General) Amendment (Unfair Dismissal) Regulation 1997*.

2 Commencement

This Regulation commences on 1 October 1997.

3 Amendment of Industrial Relations (General) Regulation 1996

The *Industrial Relations (General) Regulation 1996* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

[1] Part 2A

Insert after Part 2:

Part 2A Unfair dismissals

5A Exemptions from unfair dismissal provisions—maximum annual remuneration of employees for whom employment conditions not set by industrial instrument

- (1) For the purposes of section 83 (1) (b) of the Act, the amount prescribed is:
 - (a) except as provided by paragraph (b)—the specified rate referred to in regulation 30BB of the Workplace Relations Regulations of the Commonwealth from time to time, or
 - (b) that amount as indexed from time to time in accordance with regulation 30BF of those Regulations.

Note. The specified rate referred to in regulation 30BB of the *Workplace Relations Regulations* of the Commonwealth at the date of commencement of the above subclause was \$64,000. As the result of indexation of that amount as at 1 July 1997 in accordance with regulation 30BF of those Regulations, the specified rate became \$66,200. The specified rate is indexed on 1 July each year.

- (2) This clause applies with respect to dismissals occurring on or after the date of commencement of this clause, whether the contracts of employment concerned were entered into before or after that date.
- (3) A change in the amount prescribed in accordance with subclause (1) after the commencement of this clause applies with respect to dismissals occurring on or after the date on which the change occurs, whether the contracts of employment concerned were entered into before or after that date.

5B Other exemptions from unfair dismissal provisions

- (1) For the purposes of section 83 (2) of the Act, the following classes of employees are exempted from Part 6 of Chapter 2 of the Act:
 - (a) employees engaged under a contract of employment for a specified period of time, if the specified period is less than 6 months,
 - (b) employees engaged under a contract of employment for a specific task,
 - (c) employees serving a period of probation or qualifying period, if the duration of the period, or the maximum duration of the period, is determined in advance and either:
 - (i) the period, or the maximum duration, is 3 months or less, or
 - (ii) if the period, or the maximum duration, is more than 3 months — the period, or the maximum duration, is reasonable having regard to the nature and circumstances of the employment,
 - (d) employees engaged on a casual basis for a short period except employees who:
 - (i) are engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months, and
 - (ii) would, but for the dismissal, have had a reasonable expectation of continuing employment with the employer.
- (2) This clause applies only with respect to dismissals under contracts of employment entered into on or after the date of commencement of this clause.