



New South Wales

Industrial Relations (General) Regulation 1996

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

Minister for Industrial Relations

Explanatory note

The object of this Regulation is to make provisions required or permitted by the *Industrial Relations Act 1996* in connection with the proposed commencement of that Act on 2 September 1996. The new Regulation deals with the following matters:

- (a) enterprise agreements, including the notification of proposed enterprise agreements (Part 2),
- (b) pay slips and records to be kept by employers (Part 3),
- (c) the Industrial Relations Commission, including provisions relating to members of the Commission, Industrial Committees, expenses of witnesses, Commission fees and the functions of the Industrial Registrar (Part 4),
- (d) industrial organisations, including the seals of organisations and transitional arrangements relating to elections (Part 5),
- (e) public vehicles and carriers, including the procedure for registration or objection to the registration of associations of contract drivers or carriers (Part 6),
- (f) enforcement, including penalty notices for offences (Part 7),

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Explanatory note

- (g) miscellaneous, including matters of a saving or transitional nature (Part 8).

This Regulation is made under the *Industrial Relations Act 1996*, including section 407 (the general regulation-making power) and sections 36, 41, 45, 78, 123, 129, 157, 197, 198, 217, 331, 335, 336, 338, 383 and 396.

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Clause 1 Industrial Relations (General) Regulation 1996

Part 1 Preliminary

Industrial Relations (General) Regulation 1996

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Industrial Relations (General) Regulation 1996*.

2 Commencement

This Regulation commences on the commencement of the *Industrial Relations Act 1996*.

Note. Certain provisions of this Regulation relating to the obligations of employers in relation to pay slips and employers' records do not come into operation until 3 March 1997 (see clauses 6 and 7).

3 Definitions

(1) In this Regulation:

the Act (or the new Act) means the *Industrial Relations Act 1996*.

the 1991 Act means the *Industrial Relations Act 1991*.

Note. Expressions used in this Regulation that are defined in the Act have the meanings given by the Act (see section 11 of the *Interpretation Act 1987*).

(2) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 Enterprise agreements

4 Notification of proposed enterprise agreement to which employees are parties

The Industrial Registrar is to advise, pursuant to section 36 (3) of the Act, the following of a proposed enterprise agreement under which employees are a party that is notified to the Industrial Registrar:

- (a) the secretary or chief executive of each State peak council,
- (b) the secretary or chief executive of any industrial organisation that is a party to an award or enterprise agreement that then applies to the employees for whom the proposed enterprise agreement is to be made.

5 Instruments taken to be awards

Parts 3, 5 and 6 of the *Public Sector Management (General) Regulation 1996* are declared to be an award for the purposes of section 41 of the Act.

Note. Clause 22 (2) deals with the notification of an application for approval of an enterprise agreement. Clause 21 (1) prescribes the fee for making a copy of any document in the register of enterprise agreements.

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Clause 6 Industrial Relations (General) Regulation 1996

Part 3 Pay slips and employers' records
Division 1

Part 3 Pay slips and employers' records

Division 1 Pay slips

6 Particulars of remuneration to be supplied to employees

- (1) For the purposes of section 123 of the Act, the following written particulars are to be supplied by the employer to an employee when remuneration is paid to the employee:
 - (a) the name of the employee,
 - (b) if the remuneration of the employee is set by an industrial instrument—the classification of the employee under that instrument,
 - (c) the date on which the payment was made,
 - (d) the period of employment to which the payment relates,
 - (e) the gross amount of remuneration (including overtime and other payments),
 - (f) the amount paid as overtime or such information as will enable the employee to calculate the amount paid as overtime,
 - (g) the amount deducted for taxation purposes,
 - (h) the amount deducted as employee contributions for superannuation purposes,
 - (i) the particulars of all other deductions,
 - (j) the net amount paid.
- (2) Subclause (1) (b), (c), (d) and (h) does not apply until 3 March 1997,

Note. Section 123 of the Act provides that a failure by the employer to provide the above particulars is an offence punishable by a maximum penalty of 20 penalty units. The section enables an employer, with the approval of the Industrial Registrar, to make different arrangements for the supply of information about remuneration.

Division 2 Employers' records

7 Application

- (1) This Division prescribes, for the purposes of section 129 of the Act:

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- (a) the daily records that an employer must keep in relation to employees of the employer (in addition to records of remuneration paid and hours worked by employees required by section 129 (1) (a)), and
 - (b) the manner and form of keeping daily records required by section 129.
- (2) Clauses 8 (d), (e), (g) and (h), 10 and 11 do not apply until 3 March 1997.

Note. Section 129 of the Act provides that:

- (a) the records are to be kept at the place where the employer carries on business or (with the approval of the Industrial Registrar) at some other place, and
- (b) the Industrial Registrar may approve of different requirements for the manner and form of keeping the records than those prescribed by this Division, and
- (c) the employer must keep the records for a period of at least 6 years, and
- (d) a contravention of section 129 of this Division is an offence punishable by a maximum penalty of 20 penalty units.

8 Content of records—general

The prescribed records relating to an employee must contain the following particulars:

- (a) the full name of the employer,
- (b) the full name of the employee,
- (c) if any conditions of employment of the employee are set by an industrial instrument—the classification of the employee under that instrument,
- (d) whether the employee is employed full-time or part-time,
- (e) whether the employee is employed on a permanent, temporary or casual basis,
- (f) if the employee is an apprentice or trainee within the meaning of the Industrial and Commercial Training Act 1989—the date the person became such an apprentice or trainee,
- (g) the date on which the employee was first employed with the employer,
- (h) if the employee's employment is terminated—the date of termination.

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Clause 9 Industrial Relations (General) Regulation 1996

Part 3 Pay slips and employers' records
Division 2

9 Content of records—remuneration and hours worked

- (1) The prescribed records relating to an employee must contain the following particulars concerning the remuneration paid and hours worked by the employee:
 - (a) if the relevant industrial instrument prescribes the number of hours to be worked per week, day or other period—the number of hours worked by the employee during each such period,
 - (b) if the relevant industrial instrument limits the daily hours of work and provides for the payment of daily overtime—the number of hours worked by the employee during each day and the times of starting and ceasing work,
 - (c) if the relevant industrial instrument prescribes a weekly, daily, hourly or other period rate of remuneration—the rate of remuneration per week, day, hour or other period at which the employee is paid,
 - (d) if the relevant industrial instrument prescribes piece-work—the number and description of pieces made by the employee and the rate per piece at which the employee is paid,
 - (e) the gross amount of remuneration paid to the employee, showing the deductions made from that remuneration,
 - (f) such other particulars as are necessary to show that the requirements of the relevant industrial instrument relating to remuneration paid and hours worked are being complied with.
- (2) In this clause, *remuneration* includes overtime and other payments.

10 Content of records—leave

The prescribed records relating to an employee must contain the following particulars about leave of any kind to which the employee is entitled under the industrial relations legislation or an industrial instrument:

- (a) the leave taken by the employee,
- (b) the employee's entitlement from time to time to that leave,
- (c) accrual of leave.

11 Content of records—superannuation contributions

- (1) The prescribed records relating to an employee must contain the following particulars about any superannuation contributions that the employer must make for the benefit of the employee under an industrial instrument:
 - (a) the amount of the contributions made,
 - (b) the period over which the contributions are made,
 - (c) when the contributions are made,
 - (d) the name of the fund or funds to which the contributions were made,
 - (e) the basis on which the employer became liable to make the contributions (including particulars of any relevant election by the employee).
- (2) The particulars referred to in subclause (1) (a)–(c) are not required in the case of contributions to a defined benefit superannuation fund within the meaning of the *Occupational Superannuation Standards Regulations* of the Commonwealth.

12 Manner and form of keeping records

- (1) The prescribed records must be:
 - (a) in legible form in the English language, or
 - (b) in computerised or other form that is readily accessible and is convertible into a legible form in the English language.
- (2) For the purposes of enabling an inspector or other person to exercise any power conferred by the Act to inspect any records kept in the form referred to in subclause (1) (b), the relevant part of the records are to be converted into legible form in the English language.

13 Transfer of records to successor employers

- (1) This clause applies to the transfer of records kept by an employer (the *former employer*) relating to a transferred employee (as defined in section 101 of the Act) to the successor of the employer (the *new employer*).

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Clause 13 Industrial Relations (General) Regulation 1996

Part 3 Pay slips and employers' records
Division 2

- (2) The former employer must transfer to the new employer all prescribed records relating to the transferred employee that, at the date of transfer, the former employer is required to keep by section 129 of the Act.
- (3) The new employer is to keep those transferred records as if they had been made by the new employer at the time they were made by the former employer.
- (4) The former employer is required to keep a copy of the transferred records for a period of at least 6 years after those records were made.
- (5) The new employer is not required to make records of anything occurring in the course of the transferred employee's employment with the former employer.

Part 4 Industrial Relations Commission

14 Acting President

- (1) This clause applies whenever the President and Vice-President of the Commission are both absent from duty and an Acting President has not been appointed under clause I (2) of Schedule 2 to the Act or, if such an Acting President has been appointed, the Acting President is absent from duty.
- (2) In any such case, the next most senior Deputy President of the Commission who is not absent from duty is the Acting President of the Commission.
- (3) Any such Acting President has the functions of the President and anything done by that Acting President in the exercise of those functions has effect as if it had been done by the President.
- (4) In this clause, absence from duty includes a vacancy in the relevant office.

15 Oaths to be taken by members of Commission

A member of the Commission appointed after the commencement of the Act is to take, on appointment, the oath of allegiance and:

- (a) in the case of a judicial member—the judicial oath, or
- (b) in any other case—the official oath.

16 Regions

For the purposes of section 157 (3) of the Act, the following areas of New South Wales are prescribed as regions of the State:

- (a) the **Hunter Region**—comprising the local government areas of Cessnock, Dungog, Gloucester, Great Lakes, Lake Macquarie, Maitland, Merriwa, Murrurundi, Muswellbrook, Newcastle, Port Stephens, Scone, Singleton and Wyong,

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Clause 16 Industrial Relations (General) Regulation 1996

Part 4 Industrial Relations Commission

- (b) the **Illawarra-South Coast Region**—comprising the local government areas of Kiama, Shellharbour, Shoalhaven and Wollongong.

17 Nominators of Industrial Committees

- (1) For the purposes of section 198 (3) of the Act, the members of an Industrial Committee (other than the Chairperson) are to be appointed by the Industrial Registrar on the nomination of such industrial or other organisations as are determined by the Commission in respect of the Committee.
- (2) The number of members to be nominated by any such organisation is to be determined by the Commission.
- (3) Nominations are to be made within such time, and in accordance with such requirements, as are notified to the organisation concerned by the Industrial Registrar.
- (4) The Commission may, in accordance with section 198 of the Act and this clause, determine that different or alternative members are to be nominated for different matters dealt with by the Industrial Committee.

18 Oaths to be taken by members of Industrial committees

A member of an Industrial Committee (other than a member of the Commission) appointed after the commencement of the Act is to take, on appointment, the official oath.

19 Expenses of persons summonsed

- (1) This clause applies to any summons (however described) for the purposes of the Act that is issued at the request of a party and requires a person to do either or both of the following:
 - (a) attend and give evidence,
 - (b) attend and produce documents or other things.
- (2) Any such person is not required to comply with the summons unless an amount sufficient to meet the reasonable expenses of the person in complying with the summons is paid or tendered to the person at the time of service of the summons or not later than a reasonable time before the day on which the person is required to comply with the summons.

- (3) If the person required to comply with the summons is not a party and, in order to comply with the summons, incurs expense or loss substantially exceeding any amount paid under subclause (2), the Commission may order the party who requested the issue of the summons to pay to the person an amount sufficient to make good the expense or loss.

20 Commission fees

- (1) Schedule 1 sets out the fees to be charged in respect of an item of business of the Commission set out in that Schedule.
- (2) No fee is payable for lodging or filing of any document with the Commission or the Industrial Registrar or for inspecting any document so lodged or filed or any register kept by the Commission or the Industrial Registrar.
- (3) A fee set out in Schedule 1 is not payable by the Minister or by any person acting for or on behalf of the Minister.
- (4) A fee set out in Schedule 1 is not payable by an industrial organisation (unless that Schedule expressly so provides).
- (5) A fee is payable by the person requesting the service at the time the request is made.
- (6) The Industrial Registrar may, on application, waive the payment of all or any part of a fee set out in Schedule 1 if the applicant satisfies the Industrial Registrar that the applicant will suffer financial hardship if required to pay the fee.

21 Fee for copying from registers

- (1) For the purposes of section 45 (4) of the Act, the prescribed fee for making a copy of any document kept in the register of enterprise agreements is:
 - (a) \$10, or
 - (b) \$2 for each page copied,whichever is the greater.

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Clause 21 Industrial Relations (General) Regulation 1996

Part 4 Industrial Relations Commission

- (2) The fee for making a copy of any copy of a part-time agreement kept by the Industrial Registrar under section 78 of the Act is:
 - (a) \$10, or
 - (b) \$2 for each page copied,whichever is the greater.
- (3) For the purposes of section 331 (4) of the Act, the prescribed fee for making a copy of any document kept in the register of contract agreements is:
 - (a) \$10, or
 - (b) \$2 for each page copied,whichever is the greater.
- (4) A fee under this clause is not payable by any person authorised by the Director-General of the Department of Industrial Relations or authorised by the President of the Anti-Discrimination Board.

22 Functions of Industrial Registrar

- (1) The Industrial Registrar may exercise the following functions in connection with any matter before the Industrial Registrar:
 - (a) subject to the Act, determine his or her own procedure in the matter,
 - (b) issue a summons under section 165 of the Act for the purposes of dealing with the matter,
 - (c) adjourn proceedings in the matter to any time and place,
 - (d) make any amendments to the proceedings in the matter that the Industrial Registrar considers necessary in the interests of justice,
 - (e) conduct proceedings in the matter publicly or, if the Industrial Registrar considers it necessary, privately,
 - (f) require the presentation of the respective cases of the parties in the matter to be limited to the periods of time that the Industrial Registrar determines are reasonably necessary for the fair and adequate presentation of the cases,

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- (g) require evidence or argument in the matter to be presented in writing and decide on the matters on which the Industrial Registrar will hear oral evidence or argument,
 - (h) dismiss at any stage any proceedings in the matter if the Industrial Registrar considers the proceedings are frivolous or vexatious,
 - (i) notify any person or body of proceedings in or other aspect of the matter if the Industrial Registrar considers that the person or body may be affected by the matter.
- (2) The Industrial Registrar has, in connection with proceedings for the approval of an enterprise agreement or contract agreement, the function of notifying the persons or bodies who may be entitled to appear or be represented in the proceedings that the agreement has been lodged for approval.
- (3) The functions conferred by this clause are in addition to any functions delegated to the Industrial Registrar by the Commission or conferred on the Industrial Registrar by the Act, by the regulations or by the rules of the Commission.

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Clause 23 Industrial Relations (General) Regulation 1996

Part 5 Industrial organisations

Part 5 Industrial organisations

23 Copies of certificates of registration

The Industrial Registrar may issue to an industrial organisation a copy of the certificate of registration previously issued to it under section 221 (3) of the Act.

24 Rules to provide for seal of organisation

The rules of a State organisation must provide for a seal of the organisation to be kept by a member of the committee of management of the organisation and to be affixed to a document only with the authority of at least 2 members of that committee.

25 Rules for elections—State and Federal organisations

- (1) For the purposes of section 239 (1) (a) of the Act, the membership of a State branch of a Federal organisation and the membership of a State organisation registered under Chapter 5 of the Act is substantially similar if the Industrial Registrar is satisfied that the membership would be substantially similar but for the fact that persons employed in the Australian Capital Territory are members of the State branch of the Federal organisation.
- (2) For the purposes of section 239 (1) (b) of the Act, the rules of a State branch of a Federal organisation comply substantially with the requirements relating to election of the holders of offices under the Act if the Industrial Registrar is satisfied that the rules would comply substantially with those rules but for the fact that the rules cover persons employed in the Australian Capital Territory.

26 Rules for elections—exemptions by Industrial Registrar

An opportunity by an industrial organisation to be heard for the purposes of section 240 (6) and (7) of the Act is to be given by notifying the organisation of the Industrial Registrar's intention to take the relevant action and by allowing the organisation at least 14 days after the notice is given in which to show cause why the action should not be taken.

27 Regulation of industrial organisations (other than State organisations)

In accordance with section 291 of the Act, the provisions of section 280 of the Act (Organisations to notify particulars of loans, grants and donations) apply to industrial organisations that are not State organisations.

28 Former non-industrial organisations

- (1) The repeal of the 1991 Act does not affect the continuity of any non-industrial organisation under that Act that is not a registered industrial organisation under the new Act on that repeal.
- (2) If any such non-industrial organisation was incorporated under the 1991 Act, the following provisions apply on the repeal of that Act:
 - (a) the organisation ceases to be a body corporate under that Act, but does not cease to be an unincorporated organisation,
 - (b) the property of the incorporated organisation is the property of the unincorporated organisation and is required to be held and applied for the purposes of the organisation under the rules of the organisation so far as they can still be carried out or observed.

29 Transitional provisions relating to elections

- (1) This clause applies until the regulations under the Act otherwise provide.
- (2) The provisions of sections 442–451 of the 1991 Act (and the regulations under those provisions) apply to a State organisation as regulations made under section 249 of the Act.

Note. Section 282 (3) of the Act makes transitional provision for the application of the provisions of the 1991 Act and regulations relating to accounts and audit of organisations until new regulations are made. Section 283 (3) of the Act makes transitional provision for the application of the provisions of the 1991 Act and regulations relating to amalgamation of organisations until new regulations are made.

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Clause 30 Industrial Relations (General) Regulation 1996

Part 6 Public vehicles and carriers

Part 6 Public vehicles and carriers

30 Publication of application for registration of association of contract drivers or carriers

Notice of an application under section 335 of the Act is to be published in a newspaper circulating throughout New South Wales within 14 days after the lodging of the application.

31 Objection against registration of association of contract drivers or carriers

For the purposes of section 336 of the Act, a person who objects to the granting of an application under section 335 of the Act must serve the notice of objection on the Industrial Registrar within 28 days after the notice of the application is duly published by the Industrial Registrar in a newspaper circulating throughout the State.

32 Withdrawal of registration of associations at request of members

- (1) An application for a certificate of withdrawal of registration of an association under section 338 of the Act:
 - (a) is to be made by a majority of the members of the governing body of the association or by a majority of the members of the association, and
 - (b) is not to be made until the applicants have given at least 14 days' written notice of their intention to apply for the certificate to all financial members of the association at their last known places of residence or business.
- (2) An application for such a certificate may not be made if:
 - (a) it is contrary to the rules of the association, or
 - (b) proceedings have been duly instituted within the association to prevent the making of the application.

Part 7 Enforcement

33 Penalty notices

For the purposes of section 396 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 2 is declared to be a penalty notice offence, and
- (b) the prescribed penalty for such an offence is the amount specified in Column 3 of Schedule 2.

34 Short descriptions

- (1) For the purposes of section 145B of the *Justices Act 1902*, the prescribed expression for an offence created by a provision specified in Column 1 of Schedule 2 is:
 - (a) the expression specified in Column 2 of that Schedule, or
 - (b) if a choice of words is indicated in that expression, the words remaining after the omission of the words irrelevant to the offence.
- (2) For the purposes of any proceedings for an offence created by a provision specified in Column 1 of Schedule 2, the prescribed expression for the offence is taken to relate to the offence created by the provision, as the provision was in force when the offence is alleged to have been committed.
- (3) The amendment or repeal of a prescribed expression does not affect the validity of any information, complaint, summons, warrant, notice, order or other document in which the expression is used.
- (4) Subclause (3) applies to any information, complaint, summons, warrant, notice, order or other document (whether issued, given or made before or after the amendment or repeal) that relates to an offence alleged to have been committed before the amendment or repeal.

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Clause 35 Industrial Relations (General) Regulation 1996

Part 7 Enforcement

35 Appeals, stated cases etc from Local Court to Full Bench of the Commission in Court Session

For the purposes of section 197 (3) of the Act, the application of the provisions of the *Justices Act 1902* and related matters are subject to the provisions of the rules of the Commission relating to those matters (including any transitional rules that apply by virtue of the Act or the regulations).

Part 8 Miscellaneous

36 Industrial Magistrate—civil procedure

- (1) For the purposes of section 383 of the Act, the provisions of the Act, the regulations and rules of the Commission as to the practice and procedure of the Commission in Court Session (except in criminal proceedings) apply, with all necessary modifications, to proceedings before the Chief Industrial Magistrate or other Industrial Magistrate.
- (2) Without limiting subclause (1), the Chief Industrial Magistrate or other Industrial Magistrate may hear evidence orally or by affidavit and may hear evidence whether or not notice to call the evidence has been given. However, if the interests of justice so require, a witness is to be called to give oral evidence instead of evidence by affidavit.
- (3) This clause does not apply to proceedings for an offence or to proceedings under section 357 of the Act for a civil penalty for a contravention of an industrial instrument.

39 Savings with respect to arbitrators under Public Hospitals Act 1929

- (1) In this clause:
arbitrator means a person appointed as an arbitrator under Part 5C of the *Public Hospitals Act 1929* (Visiting medical officers).
- (2) The enactment of the new Act does not affect:
 - (a) the appointment of an arbitrator holding office on the commencement of that Act, or
 - (b) any proceedings pending, on the Commencement of that Act, before an arbitrator under Part 5C of the *Public Hospitals Act 1929* or anything done by an arbitrator before that commencement.
- (3) A reference in Part 5C of the *Public Hospitals Act 1929* to:
 - (a) the Industrial Commission of New South Wales or a member of that Commission is to be read as a reference to the Industrial Relations Commission or a member of that Commission, or

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Clause 37 Industrial Relations (General) Regulation 1996

Part 8 Miscellaneous

- (b) the Industrial Commission in court session is to be read as a reference to a Full Bench of the Industrial Relations Commission, or
- (c) section 57 of the *Industrial Arbitration Act 1940* is to be read as a reference to Part 3 of Chapter 2 of the new Act, or
- (d) section 14 (8) (b) of the *Industrial Arbitration Act 1940* is to be read as a reference to section 187 of the new Act.

38 Savings with respect to Contract of Carriage Tribunal

- (1) A Contract of Carriage Tribunal established under Part 5A of Chapter 6 of the 1991 Act and in existence immediately before the repeal of the 1991 Act is taken to have been established under the new Act.
- (2) The person constituting the Tribunal on the repeal of the 1991 Act is taken to constitute the Tribunal under the new Act.
- (3) Proceedings pending before the Tribunal on the repeal of the 1991 Act are to be continued as if they were pending under the new Act.

Schedule 1 Fees for business of Commission

(Clause 20)

1	To open or keep open an office (or part of an office) of the Industrial Registry:	
	(a) on a Saturday, Sunday or public holiday (except the day after Easter Monday)	\$385
	(b) on any other day:	
	(i) before 9 am or after 4.30 pm.....	\$385
	(ii) between 9 am and 9.30 am or 4 pm and 4.30 pm.....	\$40
2	Making a copy of any document, per page	\$2
	minimum fee	\$10

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Schedule 2 Penalty notice offences

Schedule 2 Penalty notice offences

(Clause 33)

Column 1	Column 2	Column 3
Provision	Short description	Penalty
Section 67 (2)	not preserve parental leave records/documents/ notices	\$200
Section 78 (1)	not retain part-time work agreement	\$200
Section 78 (2)	not give copy of agreement to employee	\$200
Section 78 (3)	not send copy of agreement to Industrial Registrar	\$200
Section 123 (1)	fail to supply prescribed payment particulars	\$200
Section 129 (6)	contravene Act/regulations re daily records	\$200
Section 341 (5)	not return certificate for cancellation	\$200
Section 360 (1)	advertise in contravention of industrial agreement	\$200
Section 360 (2)	not disclose name and address of advertiser	\$200
Section 361 (1)	not exhibit industrial instrument	\$200
Section 387 (2)	not comply with requirement of inspector	\$200