

# Workplace Rights Advocate Act 2005

Act No. 100/2005

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Victoria

No. 100 of 2005

## Workplace Rights Advocate Act 2005<sup>†</sup>

[Assented to 7 December 2005]

**The Parliament of Victoria enacts as follows:**

### **1. Purpose**

The main purpose of this Act is to establish the Office of the Workplace Rights Advocate to provide information about, and promote and monitor the development of, fair industrial relations practices in Victoria.

### **2. Commencement**

- (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.

- (2) If a provision referred to in sub-section (1) does not come into operation before 1 March 2006, it comes into operation on that day.

### **3. Definitions**

In this Act—

**"employer"** means a person who employs or engages a worker to perform work;

**"State Services Authority"** means the State Services Authority established by section 37(1) of the **Public Administration Act 2004**;

**"worker"** means a person who performs work under a contract, whether a contract of service or a contract for services;

**"WRA"** means Workplace Rights Advocate appointed under section 4.

### **4. Appointment of Workplace Rights Advocate**

- (1) There is to be appointed a Workplace Rights Advocate.
- (2) The Governor in Council may appoint a person to be the Workplace Rights Advocate.

### **5. Functions and powers of WRA**

- (1) The WRA has the following functions—
- (a) to inform, educate and consult with Victorian workers, employers and their representatives about rights and responsibilities in relation to work-related matters;
  - (b) to facilitate and encourage the fair industrial treatment of workers in Victoria;
  - (c) to promote informed decision-making by Victorian workers and employers;
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- (d) to investigate illegal, unfair or otherwise inappropriate industrial relations practices in Victoria;
  - (e) to make representations to an appropriate person or body in relation to work-related matters;
  - (f) to monitor and report to the Minister and Parliament on industrial relations practices in Victoria;
  - (g) to investigate and report to the Minister on the impact of any aspect of the industrial relations arrangements affecting Victorian workers or employers;
  - (h) to advise the Minister generally about work-related matters;
  - (i) to advise the Minister on the operation of this Act;
  - (j) to request assistance or information from any public entity within the meaning of the **Public Administration Act 2004** and provide information about work-related matters to any such entity at the request of the entity or when the WRA thinks appropriate;
  - (k) any other function conferred on him or her by or under this or any other Act.
- (2) The WRA may carry out his or her functions and exercise his or her powers at the request of the Minister or of any other person or body or on his or her own motion.
- (3) The WRA has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.
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- (4) Without limiting sub-section (3), the WRA may intervene in a proceeding in any court at any time, despite any provision to the contrary made by or under any Act.
- (5) The WRA is responsible to the Secretary to the Department of Innovation, Industry and Regional Development for the general conduct and management of the functions and activities of the WRA and must advise the Secretary in all matters relating to that conduct and management.

#### **6. Terms and conditions of appointment**

- (1) The WRA holds office for a term, not exceeding 3 years, specified in his or her instrument of appointment, and is eligible for reappointment for a term not exceeding 3 years.
  - (2) The Governor in Council may specify the terms and conditions of appointment in the WRA's instrument of appointment.
  - (3) The WRA is entitled to be paid the remuneration and allowances that are fixed from time to time by the Governor in Council.
  - (4) The **Public Administration Act 2004** (other than Part 5 or except in accordance with Part 7 of that Act) does not apply to the WRA in respect of the office of WRA.
  - (5) The WRA ceases to hold office if he or she—
    - (a) becomes an insolvent under administration within the meaning of the Corporations Act; or
    - (b) is convicted of an indictable offence or an offence which, if committed in Victoria, would be an indictable offence.
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- (6) The Governor in Council may remove the WRA from office if he or she has refused, neglected or failed to carry out his or her duties or has demonstrated inefficiency or misbehaviour in carrying out his or her duties.
  - (7) The WRA may at any time resign by writing signed and delivered to the Governor.
  - (8) An act or decision of the WRA is not invalid only because of a defect or irregularity in, or in connection with, his or her appointment.

#### **7. Acting WRA**

- (1) The Minister may appoint an Acting WRA—
    - (a) during a vacancy in the office of the WRA;  
or
    - (b) during any period when the WRA is absent or, for any reason, is unable to perform the functions of the WRA.
  - (2) The Minister may—
    - (a) appoint an Acting WRA for a period not exceeding 6 months;
    - (b) determine the terms and conditions of appointment of the Acting WRA;
    - (c) terminate the appointment of the Acting WRA at any time.
  - (3) An Acting WRA is entitled to receive the remuneration and allowances that the WRA would have been entitled to for performing the duties of office.
  - (4) While a person is acting in the office of the WRA in accordance with sub-section (1), the Acting WRA has all the functions and powers of the WRA.
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- (5) If a person is acting in the office of the WRA in accordance with sub-section (1)(b) and the office becomes vacant while the person is so acting, that person may continue to so act for 6 months after the date on which the vacancy occurred unless—
- (a) the Minister otherwise directs; or
  - (b) the vacancy is filled before the end of that period.
- (6) The validity of anything done by or in relation to a person purporting to act in the office of the WRA under an appointment made under sub-section (1) shall not be called in question on the ground that—
- (a) the occasion for his or her appointment had not arisen; or
  - (b) there is a defect or irregularity in or in connection with his or her appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion for him or her to act had not arisen or had ceased.

#### **8. Staff and other assistance**

- (1) There may be employed under Part 3 of the **Public Administration Act 2004** any employees that are necessary for the administration of this Act or to enable the WRA to perform his or her functions and exercise his or her powers.
- (2) The WRA may engage any person to assist him or her in the performance of his or her functions and the exercise of his or her powers.

## **9. Delegation**

The WRA, by instrument in writing, may delegate to any person employed under Part 3 of the **Public Administration Act 2004** any power under this Act, other than this power of delegation.

## **10. Ministerial directions**

The Minister may give written directions to the WRA about the performance of the functions of the WRA except any functions under this or any other Act that are expressed to be not subject to the Minister's direction or control.

## **11. Reporting**

- (1) The WRA must, within 3 months after the end of a financial year, submit a report to the Minister relating to the operation and performance of the WRA as if it were an annual report of operations under Part 7 of the **Financial Management Act 1994**.
- (2) The Minister must cause the report to be laid before each House of the Parliament on or before 31 October each year or, if a House is not then sitting, on the first sitting day of that House after 31 October.

## **12. Victimisation**

- (1) In this section—  
    "**employer**" includes a prospective employer and a former employer;  
    "**worker**" includes a prospective worker and a former worker.
- (2) An employer or other person must not victimise a worker or a person associated with a worker.  
Penalty: 20 penalty units.

- (3) An employer or other person victimises a worker or a person associated with a worker if the employer or other person subjects or threatens to subject the worker or person associated with the worker to any detriment because the worker, or a person associated with the worker, has informed the WRA of any matter or exercised any other power or right that he or she is entitled to exercise under this Act.
- (4) For the purposes of this section, subjecting a worker or other person to a detriment includes doing any one or more of the following—
- (a) terminating the contract under which the worker or other person performs work;
  - (b) injuring the worker or other person in relation to the terms and conditions on which the worker or other person performs work;
  - (c) altering the position of the worker or other person to his or her prejudice;
  - (d) refusing to employ or engage the worker or other person to perform work;
  - (e) discriminating against the worker or other person in the terms or conditions on which he or she is to be employed or engaged to perform work.

### **13. Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
- (a) the development and making by the WRA of codes of practice, whether mandatory or not, relating to recruiting workers or negotiating for, entering into or varying agreements dealing with matters pertaining to the relationship between an employer and worker;
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- (b) providing for a code referred to in paragraph (a) to apply, adopt or incorporate (with or without modification) a standard or other document prepared or published by a body specified in the code, as in force at a particular time or as in force from time to time;
  - (c) requiring employers to give information to the WRA and prescribing the content and manner of giving that information;
  - (d) prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstances;
  - (c) may impose a penalty, not exceeding 20 penalty units, for a contravention of the regulations;
  - (d) may confer a discretionary authority or impose a duty on a specified person or body or specified class of person or body.

#### **14. Review of WRA**

- (1) The State Services Authority must conduct a review of the WRA to determine whether its functions and powers remain appropriate and for this purpose the State Services Authority has all the powers and duties that it would have if it were conducting a special review of the WRA under the **Public Administration Act 2004** at the direction of the Premier.

- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of section 4.

See:  
Act No.  
53/1998.  
Reprint No. 3  
as at  
1 July 2003  
and  
amending  
Act Nos  
18/2003,  
30/2003,  
75/2003,  
10/2004,  
12/2004,  
53/2004,  
99/2004,  
108/2004,  
16/2005,  
18/2005,  
49/2005,  
57/2005 and  
61/2005.  
LawToday:  
www.dms.  
dpc.vic.  
gov.au

**15. Victorian Civil and Administrative Tribunal  
Act 1998—powers of WRA to intervene**

After section 73(2B) of the **Victorian Civil and  
Administrative Tribunal Act 1998** insert—

- "(2C) The Workplace Rights Advocate appointed under the **Workplace Rights Advocate Act 2005** may intervene in a proceeding at any time."

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**ENDNOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 27 October 2005*

*Legislative Council: 23 November 2005*

The long title for the Bill for this Act was "to establish the office of the Workplace Rights Advocate, to amend the **Victorian Civil and Administrative Tribunal Act 1998** and for other purposes."

*Workplace Rights Advocate Act 2005*

*Act No. 100/2005*

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