

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 165**

Issued by the authority of the Minister for Employment Participation

*Fair Work (State Referral and Consequential and Other Amendments) Act 2009*

*Fair Work (State Referral and Consequential and Other Amendments) Regulations  
2009*

The *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* (the Act) enables states to refer power to the Commonwealth to support a national workplace relations system and will consequentially amend a range of Acts.

The purpose of the Regulations is to make a number of consequential amendments to the *Builders Labourers' Federation (Cancellation of Registration - Consequential Provisions) Act 1986* to ensure its consistency with the *Fair Work Act 2009* (FW Act) and the *Fair Work (Registered Organisations) Act 2009* (FW(RO) Act). The Regulations, for example, remove terms and concepts used by the *Workplace Relations Act 1996* (which will be repealed by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* when it commences on 1 July 2009) and replace those references with equivalent terms and concepts used by the FW Act and the FW(RO) Act.

Details of the Regulations are included in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 July 2009, to coincide with the commencement of most of the provisions of the Act.

**FAIR WORK (STATE REFERRAL AND CONSEQUENTIAL AND OTHER AMENDMENTS) REGULATIONS 2009**

**Regulation 1 – Name of Regulations**

1. This regulation provides that these Regulations are to be known as the *Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009* (the Regulations).

**Regulation 2 – Commencement**

2. This regulation provides that the Regulations commence on 1 July 2009.

**Regulation 3 – Amendment of the *Builders Labourers' Federation (Cancellation of Registration – Consequential Provisions) Act 1986***

3. This regulation provides that the Regulations are made under item 2 of Schedule 20 to the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*. It also provides that the Regulations are to amend the *Builders Labourers' Federation (Cancellation of Registration - Consequential Provisions) Act 1986* (the BLF Act). The amendments are set out in Schedule 1 to these Regulations.

**Schedule 1 – Amendments**

**Item 1 – Section 3, definition of *award*, paragraph (a)**

**Item 2 – Section 3, definition of *Commission***

**Item 3 – Section 3, after definition of *Conciliation and Arbitration Act***

**Item 4 – Section 3, definition of *industrial dispute***

**Item 5 – Section 3, definition of *non-registered association*, subparagraph (b)(i)**

**Item 6 – Section 3, definition of *Registration and Accountability of Organisations Schedule***

**Item 7 – Section 3, definition of *Workplace Relations Act***

4. These items amend section 3 of the BLF Act which defines terms used in the legislation. The items amend the meaning of certain terms to ensure that they are consistent with the *Fair Work (Registered Organisations) Act 2009* (the FW (RO) Act) and *Fair Work Act 2009* (the FW Act).

**Item 8 – Subsections 4(3) and (3A)**

5. Subsections 4(3) and 4(3A) of the BLF Act currently make provision for non-registered associations regarding intervention in proceedings before the Australian Industrial Relations Commission (the AIRC). Intervention is not a concept recognised under the FW Act and there is no equivalent concept provided for under that Act.

6. These items remove the references to intervention in these subsections as a result of this change. These amendments are not intended to allow non-registered associations to be granted standing before Fair Work Australia. The item merely removes a now redundant reference.

7. Amendments to the definition of ‘award’ in item 1 ensure that subsection 4(3) of the BLF Act prevents a non-registered association from being party to an award made under the *Conciliation and Arbitration Act 1904* or the *Workplace Relations Act 1996* (the WR Act). It is not necessary for these provisions to also specify a modern award that applies to or covers a non-registered association under the FW Act. This is because modern awards are only capable of applying to or covering registered organisations (see sections 47 and 48 of the FW Act).

**Item 9 – Subsection 4(4)**

**Item 11 – Subsection 4(5)**

8. Section 4 of the BLF Act currently refers to the WR Act and to the Registration and Accountability of Organisations Schedule (the RAO Schedule) both of which were repealed by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. These items replace those references with references to the FW Act and the FW (RO) Act respectively.

**Item 10 – Paragraph 4(4)(b)**

9. Paragraph 4(4)(b) of the BLF Act currently refers to the definition of the ordinary meaning of ‘employer’ contained in the WR Act. This is not a defined concept in the FW Act. By removing the reference to the current WR Act definition, this item will cause the reference to ‘employer’ in paragraph 4(4)(b) to take its ordinary meaning. This ensures that the amended provision continues to have the same effect.

**Item 12 – Sections 5 and 6**

10. This item amends sections 5 and 6 of the BLF Act by omitting terms that are no longer used in the FW(RO) Act and FW Act and replacing them with equivalent terms in that legislation. This item also removes the time limit restricting when a non-registered association could apply to be registered as an organisation that was provide in paragraph 5(1)(a) of the BLF Act. This time limit had expired and no longer had any effect.

**Item 13 – Subsection 7(2)**

**Item 14 – Subsection 7(3)**

**Item 15 – Subsection 7(3)**

**Item 16 – Subsection 7(4)**

11. These items make consequential changes to the BLF Act to reflect the fact that the provisions of the RAO Schedule are now contained in the FW (RO) Act.