



# Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009<sup>1</sup>

Select Legislative Instrument 2009 No. 165

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*.

Dated 29 June 2009

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

MARK ARBIB  
Minister for Employment Participation

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**1 Name of Regulations**

These Regulations are the *Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009*.

**2 Commencement**

These Regulations commence on 1 July 2009.

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

- (1) These Regulations are made for item 2 of Schedule 20 to the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*.

*Note* Under item 2 of Schedule 20 to the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*, the Governor-General may make regulations amending Acts (other than the *Fair Work Act 2009*) being amendments that are consequential on, or that otherwise relate to, the enactment of the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*.

For the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of that item are to be treated as if they had been made by an Act.

- (2) Schedule 1 amends the *Builders Labourers' Federation (Cancellation of Registration—Consequential Provisions) Act 1986*.

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## Schedule 1 Amendments

(regulation 3)

**[1] Section 3, definition of *award*, paragraph (a)**

*after*

Act

*insert*

, as in force immediately before the commencement of the Fair Work Act

**[2] Section 3, definition of *Commission***

*omit*

**[3] Section 3, after definition of *Conciliation and Arbitration Act***

*insert*

*Fair Work Act* means the *Fair Work Act 2009*.

*Fair Work Australia*, or *FWA*, means the body established by section 575 of the Fair Work Act.

*Fair Work (Registered Organisations) Act* means the *Fair Work (Registered Organisations) Act 2009*.

**[4] Section 3, definition of *industrial dispute***

*omit*

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

*substitute*

(i) that is not an organisation within the meaning of the Fair Work (Registered Organisations) Act; and

**[6] Section 3, definition of *Registration and Accountability of Organisations Schedule***

*omit*

**[7] Section 3, definition of *Workplace Relations Act***

*omit*

Schedule 1B

*insert*

Schedule 1

**[8] Subsections 4(3) and (3A)**

*substitute*

- (3) Subject to subsection (3A), a non-registered association:
  - (a) is not capable of being a party to a proceeding before FWA;  
and
  - (b) is not capable of being a party to an award made by FWA.
- (3A) A State association, other than the Building Construction Employees and Builders Labourers' Federation of New South Wales, may make an objection in relation to an amalgamation under section 56 of the Fair Work (Registered Organisations) Act and regulations made under that Act.

**[9] Subsection 4(4)**

*omit*

the Commission does not have any powers under the Workplace Relations Act or the Registration and Accountability of Organisations Schedule

*insert*

FWA does not have any powers under the Fair Work Act or the Fair Work (Registered Organisations) Act

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**[10] Paragraph 4(4)(b)**

*omit*

as defined by subsection 6(2) of the Workplace Relations Act

**[11] Subsection 4(5)**

*substitute*

- (5) Nothing in this section prevents FWA from exercising powers under the Fair Work Act and the Fair Work (Registered Organisations) Act in relation to an industrial dispute in so far as that industrial dispute involves members of an association of employees that is an organisation within the meaning of the Fair Work (Registered Organisations) Act who are also members of a non-registered association.

**[12] Sections 5 and 6**

*substitute*

**5 Registration**

Despite anything in the Fair Work (Registered Organisations) Act, a non-registered association is not entitled to apply to be registered under that Act, and is not entitled to be registered under that Act, unless:

- (a) FWA, on application by the non-registered association, has declared that it is satisfied that:
- (i) if the non-registered association were registered under that Act, the non-registered association would not engage in conduct inimical to the prevention and settlement of industrial disputes by means of conciliation and arbitration; and
  - (ii) the registration of the non-registered association under that Act would not prevent or seriously hinder the achievement of:
    - (A) an object of the Fair Work Act; or
    - (B) Parliament's intention in enacting the Fair Work (Registered Organisations) Act; and

- (b) the requirements of the Fair Work (Registered Organisations) Act, and of the regulations in force under that Act, that would, apart from this section, apply in relation to an application by the non-registered association for registration under that Act have been complied with.

## 6 Powers and procedure of FWA

- (1) The powers of FWA under or by virtue of this Act are exercisable by a Full Bench of FWA.

Note: A Full Bench of FWA is constituted under section 618 of the Fair Work Act.

- (2) The provisions of the Fair Work Act, and of the regulations in force under that Act, with respect to the procedure and powers of FWA in relation to proceedings before it under that Act apply, so far as they are capable of application, in relation to proceedings before FWA under or by virtue of this Act.
- (3) On an application under paragraph 5(a), the Minister and the non-registered association may be represented by counsel or solicitor.

### [13] Subsection 7(2)

*omit*

Registration and Accountability of Organisations Schedule

*insert*

Fair Work (Registered Organisations) Act

### [14] Subsection 7(3)

*omit*

Registration and Accountability of Organisations Schedule

*insert*

Fair Work (Registered Organisations) Act

### [15] Subsection 7(3)

*omit*

section 36 of that Schedule

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*insert*

section 36 of that Act

**[16] Subsection 7(4)**

*omit*

Registration and Accountability of Organisations Schedule

*insert*

Fair Work (Registered Organisations) Act

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.