



Fair Work Legislation Amendment Regulations 2009 (No. 1)¹

Select Legislative Instrument 2009 No. 337

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* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Dated 25 November 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

JULIA GILLARD
Minister for Employment and Workplace Relations

Contents

| | | |
|-------------------|--|-----------|
| 1 | Name of Regulations | 3 |
| 2 | Commencement | 3 |
| 3 | Amendment of <i>Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009</i> | 3 |
| 4 | Amendment of <i>Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009</i> | 3 |
| 5 | Amendment of <i>Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009</i> | 3 |
| Schedule 1 | Amendments of <i>Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009</i> commencing on registration | 4 |
| Schedule 2 | Amendment of <i>Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009</i> commencing on 1 January 2010 | 9 |
| Schedule 3 | Amendments of <i>Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009</i> commencing on 1 January 2010 | 12 |

1 Name of Regulations

These Regulations are the *Fair Work Legislation Amendment Regulations 2009 (No. 1)*.

2 Commencement

These Regulations commence as follows:

- (a) on the day after they are registered — regulations 1 to 3 and Schedule 1;
- (b) on 1 January 2010 — the remainder.

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

Schedule 1 amends the *Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009*.

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

Schedule 2 amends the *Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009*.

5 Amendment of *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*

Schedule 3 amends the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*.

**Schedule 1 Amendments of *Fair Work*
(*State Referral and*
Consequential and Other
Amendments) Regulations
2009 commencing on
registration**
(regulation 3)

[1] Regulation 3, heading
substitute

3 Amendments

[2] Subregulation 3 (2)
omit
Schedule 1
insert
Part 1 of Schedule 1

[3] After subregulation 3 (2)
insert

- (3) Part 2 of Schedule 1 amends the *Occupational Health and Safety Act 1991*.
- (4) Part 3 of Schedule 1 amends the *Occupational Health and Safety (Safety Arrangements) Regulations 1991*.
- (5) Part 4 of Schedule 1 amends the *Occupational Health and Safety (Maritime Industry) Act 1993*.
- (6) Part 5 of Schedule 1 amends the *Occupational Health and Safety (Maritime Industry) Regulations 1995*.

-
- (7) Part 6 of Schedule 1 amends the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.
- (8) Part 7 of Schedule 1 amends the *Petroleum (Submerged Lands) (Occupational Health and Safety) Regulations 1993*.

[4] Schedule 1, before item [1]

insert

**Part 1 Builders Labourers' Federation
(Cancellation of Registration —
Consequential Provisions) Act 1986**

[5] After item [16]

insert

Part 2 Occupational Health and Safety Act 1991

[17] Section 5, definition of *reviewing authority*

substitute

reviewing authority means Fair Work Australia, established under section 575 of the *Fair Work Act 2009*.

**Part 3 Occupational Health and Safety (Safety
Arrangements) Regulations 1991**

[18] Schedule 1, Form 1, note 7

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

[19] Schedule 1, Form 2, note 4*omit*

the Australian Industrial Relations Commission

insert

Fair Work Australia

[20] Schedule 1, Form 3, note 3*omit*

the Australian Industrial Relations Commission

insert

Fair Work Australia

[21] Schedule 1, Form 4, note 5*omit*

the Australian Industrial Relations Commission

insert

Fair Work Australia

[22] Schedule 1, Form 5, note 3*omit*

the Australian Industrial Relations Commission

insert

Fair Work Australia

**Part 4 *Occupational Health and Safety (Maritime
Industry) Act 1993***

[23] Section 4, definition of *reviewing authority*

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

**Part 5 *Occupational Health and Safety (Maritime
Industry) Regulations 1995***

[24] Schedule 1, Form 1, note 6

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

[25] Schedule 1, Form 2, note 2

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

[26] Schedule 1, Form 3, note 3

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

[27] Schedule 1, Form 4, notes 4 and 5

omit each mention of

the Australian Industrial Relations Commission

insert

Fair Work Australia

[28] Schedule 1, Form 5, note 4

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

**Schedule 2 Amendment of *Fair Work*
(State Referral and
Consequential and Other
Amendments) Regulations
2009 commencing on
1 January 2010**

(regulation 4)

[1] After Part 5
Insert

**Part 6 *Offshore Petroleum and Greenhouse Gas*
*Storage Act 2006***

[29] Section 694
Substitute

694 Fair Work Australia may exercise powers under mirror provisions

- (1) If the laws of a State or of the Northern Territory confer appropriate powers and functions on Fair Work Australia to do so, Fair Work Australia may deal with appeals against decisions of an OHS inspector under laws or regulations of that State or Territory that substantially correspond to listed OHS laws in respect of which a similar decision can be the subject of an appeal under clause 81 of Schedule 3.
- (2) If the laws of a State or of the Northern Territory confer appropriate powers and functions on Fair Work Australia to do so, Fair Work Australia may deal with the resolution of matters under a law of that State or Territory that substantially corresponds to clause 23 of Schedule 3.

[30] Schedule 3, clause 3, definition of *reviewing authority*

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

**Part 7 *Petroleum (Submerged Lands)*
(Occupational Health and Safety)
*Regulations 1993***

[31] Schedule 1, Form 1, note 5

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

[32] Schedule 1, Form 2, note 4

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

[33] Schedule 1, Form 3, note 3

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

[34] Schedule 1, Form 4, note 3

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

[35] Schedule 1, Form 5, note 5

omit

the Australian Industrial Relations Commission

insert

Fair Work Australia

**Schedule 3 Amendments of *Fair Work*
(*Transitional Provisions and*
Consequential Amendments)
Regulations 2009
commencing on 1 January
2010**

(regulation 5)

[1] Regulation 1.03

omit

In these Regulations:

insert

(1) In these Regulations:

[2] After subregulation 1.03 (1), before the note

insert

(2) In these Regulations, a provision of the Act modified in accordance with regulation 5.12 is referred to as ***modified***.

Example

Item 5 of Schedule 4 to the Act is modified by item 1.1 of Schedule 1 and is referred to in these regulations as modified item 5.

[3] Regulation 1.03, after definition of Act

insert

amount of payments, for a retention or redeployment period, means an amount:

(a) for the performance of work during the retention or redeployment period; or

-
- (b) as payment in lieu of the completion of the retention or redeployment period because the employee's employment is terminated due to redundancy by the employer during the retention or redeployment period; or
 - (c) a combination of the amounts mentioned in paragraphs (a) and (b).

Note **retention or redeployment period** has the meaning given by modified item 5 of Schedule 4 to the Act, see item 1.1 of Schedule 1.

[4] Regulation 1.03, after definition of *national system employer*

insert

NES amount means the amount an employee is entitled to be paid by the employee's employer as redundancy pay under section 119 of the FW Act.

Note Section 119 of the FW Act sets out a minimum entitlement to redundancy pay for employees covered by the FW Act.

[5] Regulation 1.03, after definition of *pre-transition collective agreement*

insert

public sector employee means an employee employed in public sector employment.

public sector employment has the meaning given by subsections 795 (4) and (5) of the FW Act, if subregulation 6.08 (5) of the FW Regulations did not exist.

[6] Regulation 1.03, after definition of *redundancy pay application*

insert

relevant enterprise agreement means an enterprise agreement that:

- (a) applies to a public sector employee; and
- (b) is made before 1 January 2010; and

-
- (c) includes provisions about the reduction of the public sector employee's retention or redeployment period by an amount that would be equivalent to the employee's entitlements to redundancy pay under section 119 of the FW Act.

Note 1 For the definition of *enterprise agreement* see section 12 of the FW Act.

Note 2 Section 119 of the FW Act sets out a minimum entitlement to redundancy pay for employees covered by the FW Act.

[7] Part 2, Division 1 heading

substitute

Division 1 Matters about redundancy

[8] After regulation 2.02

insert

2.02A Retention or redeployment period — entitlement to redundancy pay

- (1) For subitem 7 (1) of Schedule 2 to the Act, this regulation:
- (a) does not apply to a public sector employee to whom a relevant enterprise agreement applies; and
 - (b) does apply to a public sector employee:
 - (i) to whom an enterprise agreement in relation to public sector employment made before 1 January 2010 or a transitional instrument in relation to public sector employment applies; and
 - (ii) who is entitled under the enterprise agreement or transitional instrument to enter into a retention or redeployment period; and
 - (iii) who enters into a retention or redeployment period under the enterprise agreement or transitional instrument; and

-
- (iv) whose employment is terminated by the employee's employer due to redundancy during or at the end of the retention or redeployment period and on or after 1 January 2010.
- (2) If the employee is entitled to receive from the employee's employer an amount of payments for the retention or redeployment period that is equal to or greater than the NES amount, the employee is not entitled to the NES amount.
- (3) If the employee is entitled to receive from the employee's employer an amount of payments for the retention or redeployment period that is less than the NES amount, the employee is entitled to the NES amount reduced by the amount of payments the employee was entitled to receive from the employer for the retention or redeployment period.

Note 1 For the definition of **retention or redeployment period** see modified item 5 of Schedule 4 to the Act which is set out in item 1.1 of Schedule 1.

Note 2 For the definition of **transitional instrument** see item 2 of Schedule 2 of the Act.

[9] After regulation 2.05

insert

**2.06 Award-based transitional instruments including
notional agreement preserving State award**

For paragraph 8 (3) (a) of Schedule 2 to the Act, paragraph 36 (a) of Schedule 3 to the Act is modified to the extent necessary to provide that an award-based transitional instrument that is a notional agreement preserving State awards is not to be treated as a modern award for that paragraph if it only includes a term or terms mentioned in subclause 34 (2) of Schedule 8 to the WR Act.

[10] After regulation 5.02*insert***5.02A Annual reports for Australian Industrial Relations
Commission, Australian Industrial Registry and
Workplace Authority**

- (1) For subitem 7 (1) of Schedule 2 to the Act, the General Manager of FWA must prepare:
 - (a) the annual report for the Australian Industrial Relations Commission for the financial year ending on 30 June 2010; and
 - (b) the annual report for the Australian Industrial Registry for the financial year ending on 30 June 2010.
- (2) For subitem 7 (1) of Schedule 2 to the Act, the Fair Work Ombudsman must prepare the annual report for the Workplace Authority for the financial year ending 30 June 2010.

[11] After regulation 5.11*insert***5.12 Modification of Act**

For subitem 8 (1) of Schedule 2 to the Act, subitem 5 of Schedule 4 to the Act is modified as set out in Schedule 1.

[12] **After regulation 5.12**

insert

**Schedule 1 Modification of Act —
redundancy or redeployment**
(regulation 5.12)

1.1 Schedule 4 to the Act, after subitem 5 (4)

insert

(5) In this item:

an entitlement to redundancy pay includes an entitlement for an employee to enter into a retention or redeployment period.

retention or redeployment period means a period of employment (however described) performed by an employee for an employer as an alternative to:

- (a) the employment of the employee being terminated immediately due to redundancy; and
- (b) the employee receiving redundancy pay from the employee's employer.

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>.