



Fair Work Legislation Amendment Regulations 2009 (No. 2)¹

Select Legislative Instrument 2009 No. 364

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

Dated 14 December 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

JULIA GILLARD
Minister for Employment and Workplace Relations

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1 Name of Regulations

These Regulations are the *Fair Work Legislation Amendment Regulations 2009 (No. 2)*.

2 Commencement

These Regulations commence, or are taken to have commenced, as follows:

- (a) on 1 July 2009 — 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*, as amended by the *Fair Work Legislation Amendment Regulations 2009 (No. 1)*.

4 Amendment of *Fair Work Regulations 2009*

Schedule 2 amends the *Fair Work Regulations 2009*, as amended by the *Fair Work Amendment Regulations 2009 (No. 1)*.

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*, as amended by:

- (a) the *Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulations 2009 (No. 1)*; and
- (b) the *Fair Work Legislation Amendment Regulations 2009 (No. 1)*.

**Schedule 1 Amendments of *Fair Work*
(*State Referral and*
Consequential and Other
Amendments) Regulations
2009**

(regulation 3)

[1] Regulation 3, heading

substitute

3 Amendment of Commonwealth Acts

[2] Before subregulation 3 (2)

insert

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

[3] After subregulation 3 (2)

insert

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

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

[4] **Schedule 1, heading**

substitute

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

(subregulation 3 (2))

[5] **After Schedule 1**

insert

**Schedule 2 Amendments of *Fair Work
(State Referral and
Consequential and Other
Amendments) Act 2009***

(subregulation 3 (3))

[1] **Schedule 5, after item 87**

insert

87A Application of Sex Discrimination Act 1984—item 54

The *Sex Discrimination Act 1984* is prescribed for the purposes of section 116 of the *Workplace Relations Act 1996*, to the extent that that section continues to operate in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, until the later of:

- (a) 31 December 2009; or
- (b) the date (if any) on which the Australian Industrial Relations Commission ceases to exist in accordance with a determination by the Minister under subitem 7(3) of Schedule 18 to the T&C Act.

[2] Schedule 7, after the heading

insert

Part 1—Consequential amendments

[3] Schedule 7, after item 5

insert

Part 2—Application provisions

6 Application of Naval Defence Act 1910—item 4

Subsection 42A(7) of the *Naval Defence Act 1910* applies as if a reference in that subsection to the *Fair Work Act 2009* includes a reference to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

7 Application of Naval Defence Act 1910—item 5

Subsection 42D(3) of the *Naval Defence Act 1910* applies as if a reference in that subsection to the National Employment Standards includes a reference to the Australian Fair Pay and Conditions Standard, to the extent that the Australian Fair Pay and Conditions Standard continues to operate in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

[4] Schedule 8, item 63, substituted paragraph 64 (1) (d)

omit

has not been not approved

insert

has not been approved

[5] **Schedule 8, Part 2, after Division 1**

insert

**Division 1A—Provision relating to the Coal Mining
Industry (Long Service Leave Funding) Act 1992**

**158A Application of Coal Mining Industry (Long Service
Leave Funding) Act 1992—items 86 and 87**

- (1) The definition of *eligible employee* in subsection 4(1) of the *Coal Mining Industry (Long Service Leave Funding) Act 1992* applies as if a reference in that definition to the National Employment Standards includes a reference to the Australian Fair Pay and Conditions Standard, to the extent that the Australian Fair Pay and Conditions Standard continues to operate in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.
- (2) The definition of *industrial authority* in subsection 4(1) of the *Coal Mining Industry (Long Service Leave Funding) Act 1992* applies as if a reference in that definition to Fair Work Australia includes a reference to:
 - (a) the Australian Industrial Relations Commission; and
 - (b) the Workplace Authority Director; and
 - (c) the Employment Advocate;to the extent that they continue to operate in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

[6] Schedule 8, Part 2, after Division 2

insert

Division 2A—Provision relating to the Maternity Leave (Commonwealth Employees) Act 1973

159A Application of Maternity Leave (Commonwealth Employees) Act 1973—item 101

Section 8 of the *Maternity Leave (Commonwealth Employees) Act 1973* applies as if a reference in that section to section 84 of the *Fair Work Act 2009* includes a reference to sections 280 and 281 of the *Workplace Relations Act 1996*, to the extent that those sections continue to operate in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

[7] Schedule 8, Part 2, after Division 3

insert

Division 4—Provisions relating to the Seafarers Rehabilitation and Compensation Act 1992

162 Application of Seafarers Rehabilitation and Compensation Act 1992—items 117, 119, 120 and 121

The following provisions of the *Seafarers Rehabilitation and Compensation Act 1992* apply as if a reference in those provisions to the National Employment Standards includes a reference to the Australian Fair Pay and Conditions Standard, to the extent that the Australian Fair Pay and Conditions Standard continues to operate in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*:

- (a) subsection 13(2);
- (b) subsection 13(5);
- (c) paragraph 13(6)(b);
- (d) paragraph 31(14)(a).

Division 5—Provisions relating to the Social Security Act 1991

163 Application of Social Security Act 1991—item 143

Paragraph 1061PB(2)(a) of the *Social Security Act 1991* applies as if a reference in that paragraph to the National Employment Standards includes a reference to the Australian Fair Pay and Conditions Standard, to the extent that the Australian Fair Pay and Conditions Standard continues to operate in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

[8] Schedule 19, after the heading

insert

Part 1—Consequential amendments

[9] Schedule 19, after item 8

insert

Part 2—Application provision

9 Application of items 1 to 4

The following provisions of the *Military Rehabilitation and Compensation Act 2004*:

- (a) note 1 to subsection 89(3);
- (b) note 1 to subsection 132(2);
- (c) paragraph 178(a);
- (d) section 179;

apply as if a reference in those provisions to the national minimum wage order includes a reference to:

- (e) the standard federal minimum wage, to the extent that the standard federal minimum wage continues to operate as a transitional standard federal minimum wage in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; and

-
- (f) special federal minimum wages, to the extent that special federal minimum wages continue to operate as a transitional special federal minimum wage in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; and
 - (g) the transitional national minimum wage order, within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Schedule 2 **Amendments of *Fair Work Regulations 2009***

(regulation 4)

[1] Paragraph 1.13 (a)

substitute

- (a) a law dealing with the suspension, cancellation or termination of a training contract;
- (aa) a law dealing with the suspension, cancellation or termination of a contract of employment that is:
 - (i) associated with a training contract; and
 - (ii) entered into as part of a training arrangement;

[2] Regulation 1.15B, definition of *licensed ship*, paragraph (c)

substitute

- (c) which engages in the coasting trade under the licence.

[3] Regulation 1.15B, definition of *permit ship*, paragraph (c)

substitute

- (c) which carries passengers or cargo under the permit.

[4] Regulations 1.15D and 1.15E*substitute***1.15D Modification of application of Act — ships engaged in innocent passage**

For section 32 of the Act, the Act does not apply in relation to all the waters of the sea on the landward side of the outer limits of the territorial sea of Australia, including such waters within the limits of a State or Territory to the extent to which its application would be inconsistent with a right of innocent passage or transit passage being exercised by a ship other than:

- (a) a ship that is operated under a licence under the *Navigation Act 1912*:
 - (i) in force on 1 January 2010; or
 - (ii) issued on or after 1 January 2010; or
- (b) a ship that is operated under a continuing voyage permit issued under section 286 of the *Navigation Act 1912* on or after 1 January 2010; or
- (c) a ship:
 - (i) that is operated under a single voyage permit issued under section 286 of the *Navigation Act 1912* on or after 1 January 2010; and
 - (ii) for which 2 or more other single voyage permits have been issued under that section in the period of 12 months before the current permit is issued; or
- (d) a ship:
 - (i) that is operated under a single voyage permit issued under section 286 of the *Navigation Act 1912* on or after 1 January 2010; and
 - (ii) for which a continuous voyage permit has been issued under that section in the period of 15 months before the current permit is issued; or
- (e) a majority Australian-crewed ship.

1.15E Extension of Act to the exclusive economic zone and the continental shelf — ships

- (1) For subsection 33 (3) of the Act, the Act is extended to and in relation to a ship:
 - (a) that is a licensed ship in the exclusive economic zone or the waters above the continental shelf; and
 - (b) for which the licence:
 - (i) was in force on 1 January 2010; or
 - (ii) is issued on or after 1 January 2010.
- (2) For subsection 33 (3) of the Act, the Act is extended to and in relation to a ship:
 - (a) that is a permit ship in the exclusive economic zone or the waters above the continental shelf; and
 - (b) for which a continuing voyage permit is issued under section 286 of the *Navigation Act 1912* on or after 1 January 2010.
- (3) For subsection 33 (3) of the Act, the Act is extended to and in relation to a ship:
 - (a) that is a permit ship in the exclusive economic zone or the waters above the continental shelf; and
 - (b) for which:
 - (i) a single voyage permit is issued under section 286 of the *Navigation Act 1912* on or after 1 January 2010; and
 - (ii) 2 or more other single voyage permits have been issued under that section in the period of 12 months before the current permit is issued.
- (4) For subsection 33 (3) of the Act, the Act is extended to and in relation to a ship:
 - (a) that is a permit ship in the exclusive economic zone or the waters above the continental shelf; and
 - (b) for which:
 - (i) a single voyage permit is issued under section 286 of the *Navigation Act 1912* on or after 1 January 2010; and

- (ii) a continuous voyage permit has been issued under that section in the period of 15 months before the current permit is issued.
- (5) For subsection 33 (3) of the Act, the Act is extended to and in relation to a majority Australian-crewed ship in the exclusive economic zone or the waters above the continental shelf.

Note The extension of this Act to licensed ships, permit ships and majority Australian-crewed ships in the exclusive economic zone and the waters above the continental shelf (including provisions relating to compliance and enforcement, administration and right of entry by reason of the extension of the rest of the Act, so far as it relates to the specified provisions) is subject to:

- (a) Australia's international obligations relating to foreign ships; and
- (b) the concurrent jurisdiction of a foreign State.

Schedule 3 **Amendments of *Fair Work*
(*Transitional Provisions and*
Consequential Amendments)
*Regulations 2009***
(regulation 5)

- [1] **Regulation 2.06 (headed “Award-based transitional
instruments including notional agreement preserving
State award”)**

renumber as regulation 2.05A

- [2] **After Part 3**

insert

Part 3B **Transitional provisions for
Schedule 5 to Act (modern
awards (other than modern
enterprise awards and State
reference public sector
modern awards))**

3B.01 Modern awards

For subitem 8 (1) of Schedule 2 to the Act, Schedule 5 to the
Act is modified by inserting the following Part after Part 3.

Part 4—Modern awards

14 Variation of modern award

- (1) FWA may make an order varying a modern award if FWA considers that the variation is necessary to give effect to the award modernisation request as it was in effect immediately before 1 January 2010.
 - (2) However, FWA may make the order only:
 - (a) if:
 - (i) the Australian Industrial Relations Commission had received an application before 1 January 2010 to vary a modern award to give effect to the award modernisation request; and
 - (ii) the Commission did not make a decision on the application before 1 January 2010; or
 - (b) on its own initiative.
 - (3) For subitem (2):
 - (a) FWA must have regard to the terms of the award modernisation request and the matters to which the Commission was required to have regard, immediately before 1 January 2010, in conducting the award modernisation process; and
 - (b) FWA must have regard to submissions made to the Commission during the award modernisation process, if FWA considers that it is appropriate to do so.
- Note: For the purpose of making the variation, FWA may inform itself in such manner as it considers appropriate. FWA will be able to seek, and have regard to, new submissions.
- (4) Subitems (1) to (3) cease to have effect at the end of 31 March 2010.

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>.