



Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulations 2011 (No. 2)¹

Select Legislative Instrument 2011 No. 153

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 (Transitional Provisions and Consequential Amendments) Act 2009*.

Dated 17 August 2011

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS EVANS
Minister for Tertiary Education, Skills, Jobs and Workplace
Relations

1 Name of Regulations

These Regulations are the *Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulations 2011 (No. 2)*.

2 Commencement

These Regulations are taken to have commenced on 1 January 2010.

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

Schedule 1 amends the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*, as amended by the *Fair Work Legislation Amendment Regulations 2009 (No. 3)*.

Schedule 1 Amendments

(regulation 3)

[1] After regulation 3.04

insert

3.05 Transitional instruments not to cover certain employers and employees

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

‘(3A) However, if:

- (a) an employer (an *excluded employer*) has ceased to be a national system employer under subsection 14 (2) of the FW Act; and

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- (b) a State industrial law includes transitional arrangements that provide for a State industrial instrument to cover (however described):
 - (i) excluded employers in that State; and
 - (ii) employees of the excluded employers (the *excluded employees*); and
 - (c) the State industrial instrument would not cover (however described) the excluded employer and the excluded employees because of the operation of a transitional instrument; and
 - (d) when the State industrial instrument would first cover (however described) the excluded employer and the excluded employees but for the operation of the transitional instrument, the terms and conditions that would apply to the excluded employees under the State industrial instrument would be substantially similar to the terms and conditions in the transitional instrument;

the transitional instrument does not cover the excluded employer and the excluded employees, and can never again cover them.

Note 1: The terms and conditions may be varied or revoked by a State industrial order.

Note 2: The transitional arrangements may provide that minimum entitlements provided for by a State industrial law are to be read into the State industrial instrument.

- (3B) The transitional instrument mentioned in subitem (3A) does not cover the excluded employer and excluded employees on and after the later of:
 - (a) the day on which the endorsement of a declaration that the employer is not to be a national system employer commences; and
 - (b) the day on which the transitional arrangements provide for the State industrial instrument to start to cover (however described) the excluded employer and the excluded employees.’

[2] **After Part 4**

insert

**Part 4A Transitional provisions for
Schedule 20 to Act (WR Act
transitional awards etc)**

**4A.01 Continuing Schedule 6 instruments not to cover
certain employers and employees**

For subitem 8 (1) of Schedule 2 to the Act, Schedule 20 to the Act is modified by adding the following subitems at the end of item 1.

(4) However, if:

- (a) an employer (an *excluded employer*) has ceased to be a national system employer under subsection 14 (2) of the FW Act; and
- (b) a State industrial law includes transitional arrangements that provide for a State industrial instrument to cover (however described):
 - (i) excluded employers in that State; and
 - (ii) employees of the excluded employers (the *excluded employees*); and
- (c) the State industrial instrument would not cover (however described) the excluded employer and the excluded employees because of the operation of a continuing Schedule 6 instrument; and
- (d) when the State industrial instrument would first cover (however described) the excluded employer and the excluded employees but for the operation of the continuing Schedule 6 instrument, the terms and conditions that would apply to the excluded employees under the State industrial instrument would be substantially similar to the terms and conditions in the continuing Schedule 6 instrument;

the continuing Schedule 6 instrument does not cover the excluded employer and the excluded employees, and can never again cover them.

Note 1: The terms and conditions may be varied or revoked by a State industrial order.

Note 2: The transitional arrangements may provide that minimum entitlements provided for by a State industrial law are to be read into the State industrial instrument.

- (5) The continuing Schedule 6 instrument mentioned in subitem (4) does not cover the excluded employer and excluded employees on and after the later of:
- (a) the day on which the endorsement of a declaration that the employer is not to be a national system employer commences; and
 - (b) the day on which the transitional arrangements provide for the State industrial instrument to start to cover (however described) the excluded employer and the excluded employees.’

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>.