



Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulations 2009 (No. 1)¹

Select Legislative Instrument 2009 No. 335

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 25 November 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

JULIA GILLARD
Minister for Employment and Workplace Relations

1 Name of Regulations

These Regulations are the *Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulations 2009 (No. 1)*.

2 Commencement

These Regulations commence 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*.

Schedule 1 Amendments

(regulation 3)

[1] Part 2, after Division 2

insert

Division 3 Application of better off overall test

2.06 Modifications of the Act — better off overall test after end of bridging period if modern award contains transitional provisions

For subitem 8 (1) of Schedule 2 to the Act, Schedule 7 to the Act is modified in accordance with Schedule 2.1.

[2] **After Part 5**

insert

Schedule 2.1 Modification of Schedule 7 to the Act — better off overall test after end of bridging period if modern award contains transitional provisions

(regulation 2.06)

[1] **Schedule 7, after Part 4**

insert

Part 4A Transitional provisions to apply the better off overall test after end of bridging period if modern award contains transitional provisions

20A Application of the better off overall test to the making of enterprise agreements if modern awards contain transitional provisions

- (1) This item applies in relation to:
- (a) an enterprise agreement that is to be assessed under subsection 193 (1) or (3) of the FW Act, for the purpose of determining whether it passes the better off overall test, during the period (the *transitional period*):
 - (i) starting on 1 January 2010; and
 - (ii) ending on 31 December 2014; and

- (b) a modern award that contains a term which makes provision for the transition:
 - (i) from award-based transitional instruments that covered employees immediately before the modern award comes into operation; and
 - (ii) to the terms and conditions of employment of those employees covered by the modern award.
- (2) For the purpose of determining whether the enterprise agreement passes the better off overall test, subsections 193 (1) and (3) of the FW Act apply as if:
 - (a) FWA were required, at the test time under the relevant subsection, to compare the enterprise agreement with:
 - (i) the relevant modern award as it operates at the test time; and
 - (ii) the relevant modern award as it operates on 31 July in each year in the transitional period until the nominal expiry date of the enterprise agreement, that would be the first day of the first full pay period for an employee covered by the enterprise agreement; and
 - (b) FWA were required to assume, at the test time, that the modern award will not be varied before the days mentioned in subparagraph (a) (ii).
- (3) Subsections 193 (1) and (3) of the FW Act also apply as if they provided that:
 - (a) if FWA carries out a comparison in accordance with subsection (2); and
 - (b) for 1 or more of the comparisons, FWA is not satisfied that each of the employees mentioned in subsection 193 (1) or (3) of the FW Act would be better off overall if the enterprise agreement applied to the employee than if the modern award applied to the employee;the enterprise agreement does not pass the better off overall test.

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>.