

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 113

Issued by the authority of the Minister for Employment and Workplace Relations

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009

Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulations 2010 (No. 2)

The *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the Act) regulates the transition from the federal workplace relations system under the *Workplace Relations Act 1996* (WR Act) to that under the *Fair Work Act 2009* (FW Act).

Section 4 of the Act provides that the Governor General may make regulations prescribing matters required or permitted by this Act to be prescribed.

Item 11 of Schedule 2 to the Act provides for the continued application of the WR Act to conduct that occurred prior to repeal of the WR Act. Item 13 of Schedule 2 to the Act provides that the regulations may modify the operation of the WR Act as it applies under item 11 of Schedule 2 to the Act.

Under the WR Act, it was possible for employees to recover unpaid wages and monetary entitlements using small claims procedures in state and territory (state) magistrates' courts. Small claims procedures provide employees with a low cost, informal jurisdiction in which to pursue monetary claims without the need for legal representation.

The purpose of the Regulations is to amend the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* to modify the operation of the WR Act as it continues to apply under item 11 of Schedule 2 to the Act so that the small claims procedures set out in the FW Act would apply to monetary claims made under certain provisions of the WR Act. The Regulations will not affect the circumstances in which a claim could be made under the WR Act.

The FW Act has expanded the arrangements for making small claims under the WR Act, by increasing the monetary limit on small claims from \$10,000 to \$20,000 and allowing small claims to be made to the Fair Work Division of the Federal Magistrates Court in addition to state magistrate courts.

The Regulations will improve the ability of employees to claim unpaid wages and monetary entitlements accrued under the WR Act by applying the expanded arrangements for making small claims in the FW Act to monetary claims made under the WR Act.

This would also allow breaches that started before commencement of the FW Act and have continued after that date to be dealt with by the relevant court under a single small claims procedure.

The Act does not impose any conditions that need to be satisfied before the power to make the Regulations may be exercised.

An assessment was made under the guidelines issued by the Office of Best Practice Regulation, which indicated that a Regulation Impact Statement was not required.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 July 2010.