

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 178**

(Issued by the authority of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations)

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

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

Section 4 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (T&C Act) provides that the Governor-General may make regulations prescribing matters either required or permitted by the T&C Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the T&C Act.

Section 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make regulations the power shall, unless the contrary intention appears, be construed as including a power to repeal, rescind, revoke, amend or vary the regulations.

Item 43 of Schedule 3 to the T&C Act permits regulations to prescribe a work value, pay equity or equal remuneration order of a State industrial tribunal as the source order for a transitional pay equity order (TPEO), and to prescribe employers to whom a TPEO applies. Subitem 8(1) of Schedule 2 to the T&C Act enables regulations to modify the transitional Schedules to that Act.

These Regulations repeal the *Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulations 2011 (No. 1)* (the existing Regulations). The existing Regulations were made on 4 August 2011 and would otherwise commence on 1 October 2011.

The existing Regulations prescribe a 2009 decision of the Queensland Industrial Relations Commission (QIRC) entitled *Queensland Services, Industrial Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (A/2008/5)* (the QIRC decision) as the source order for the TPEO. The existing Regulations also prescribe a list of employers to whom the TPEO applies, and makes arrangements for back payments in accordance with the TPEO to 1 January 2010 in scheduled instalments.

The QIRC decision applied to social and community services (SACS) sector employers in the Queensland industrial relations system (i.e. employers not covered at that time by the federal workplace relations system) and their employees. Following the QIRC decision, the Queensland Government committed an additional \$414 million over four years to a range of employers across the Queensland SACS sector.

With effect from 1 January 2010, the Queensland Parliament referred to the Commonwealth power to extend the *Fair Work Act 2009* (the Fair Work Act) to all private sector employers and their employees otherwise outside its scope.

At the time of the QIRC decision, a number of Queensland SACS sector employers who received supplementary funding from the Queensland Government were respondents to federal transitional awards made under the conciliation and arbitration power of the Constitution (the *Social and Community Services (Queensland) Award 2001* and the *Crisis Assistance Supported Housing (Queensland) Award 1999*). The QIRC decision would have applied to these employers from 27 March 2011 (when transitional awards expired) had Queensland not referred workplace relations matters to the Commonwealth.

The Queensland Government asked the Commonwealth to extend the effect of the QIRC decision to these employers and their employees. Item 43 of Schedule 3 to the T&C Act provided a framework to do this.

The existing Regulations, which are expressed to commence on 1 October 2011, were made to give effect to this request but were subsequently subject to a notice of disallowance motion in the Senate.

The Regulations repeal the existing Regulations before they come into operation, therefore no rights or obligations arise under the existing Regulations.

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

The Regulations commence on the day they are registered on the Federal Register of Legislative Instruments.

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