



Fair Work Legislation Amendment Regulation 2012 (No. 1)¹

Select Legislative Instrument 2012 No. 321

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the *Occupational Health and Safety (Maritime Industry) Act 1993*.

Dated 6 December 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

WILLIAM RICHARD SHORTEN
Minister for Employment and Workplace Relations

Contents

1	Name of regulation	2
2	Commencement	2
3	Amendment of <i>Fair Work Regulations 2009</i>	2
4	Amendment of <i>Fair Work (Registered Organisations) Regulations 2009</i>	3
5	Amendment of <i>Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009</i>	3
6	Amendment of <i>Occupational Health and Safety (Maritime Industry) Regulations 1995</i>	3
Schedule 1	Amendments of <i>Fair Work Regulations 2009</i>	4
Schedule 2	Amendments of <i>Fair Work (Registered Organisations) Regulations 2009</i>	15
Schedule 3	Amendments of <i>Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009</i>	20
Schedule 4	Amendment of <i>Occupational Health and Safety (Maritime Industry) Regulations 1995</i>	21

1 Name of regulation

This regulation is the *Fair Work Legislation Amendment Regulation 2012 (No. 1)*.

2 Commencement

This regulation commences on the commencement of Schedules 3 to 8 to the *Fair Work Amendment Act 2012*.

3 Amendment of *Fair Work Regulations 2009*

Schedule 1 amends the *Fair Work Regulations 2009*.

4 Amendment of *Fair Work (Registered Organisations) Regulations 2009*

Schedule 2 amends the *Fair Work (Registered Organisations) Regulations 2009*.

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*.

6 Amendment of *Occupational Health and Safety (Maritime Industry) Regulations 1995*

Schedule 4 amends the *Occupational Health and Safety (Maritime Industry) Regulations 1995*.

Schedule 1 Amendments of *Fair Work Regulations 2009*

(section 3)

Part 1 Amendments relating to changes made by *Fair Work Amendment Act 2012* (other than change of name of Fair Work Australia)

[1] Regulation 3.16

substitute

3.16 Protected action ballot papers—form

- (1) For paragraph 455 (1) (a) of the Act, the form of a ballot paper for a protected action ballot that is to be conducted by attendance voting or postal voting is set out in Form 1 of Schedule 3.2.
- (2) For paragraphs 455 (1) (b) and 469 (c) of the Act, a ballot paper for a protected action ballot that is to be conducted by electronic voting must include the information and the content set out in Form 1 of Schedule 3.2.

3.16A Conduct of protected action ballot by electronic voting

- (1) If a protected action ballot is conducted by electronic voting, the protected action ballot agent must ensure that:
 - (a) only employees on the roll of voters are provided with access to the electronic voting system; and
 - (b) each employee to be balloted can vote only once in the ballot; and
 - (c) there is a record of who has voted; and
 - (d) there is no way of identifying how any employee has voted; and

-
- (e) the sum of the votes cast for each proposition and the votes cast against each proposition is the same as the total votes cast.

[2] Subregulation 3.18 (2)

substitute

- (2) The protected action ballot agent for the ballot must:
- (a) for attendance voting or postal voting—issue to each employee who is to be balloted a ballot paper that bears:
 - (i) the agent's initials; or
 - (ii) a facsimile of the agent's initials; and
 - (b) for electronic voting—ensure that the protected action ballot identifies the protected action ballot agent who is authorised to conduct the protected action ballot.
- (2A) For subregulation (2), a ballot paper may be issued to an employee by post, email or electronically.

[3] After subregulation 3.18 (4)

insert

Electronic voting

- (4A) If the ballot is conducted by electronic voting, the protected action ballot agent must, as soon as practicable, issue to each employee who is to be balloted the following:
- (a) instructions that allow the employee to access the relevant electronic voting program, including a unique identifier that allows the employee to access the relevant electronic voting program;
 - (b) information about the closing date for the ballot and the time, on the closing date, by which the protected action ballot agent must receive the employee's vote;
 - (c) any other material that the protected action ballot agent considers to be relevant to the ballot.

Examples of unique identifiers

- 1 A username and password.
- 2 A username and a personal identification number.

[4] After subregulation 3.18 (7)*insert**Replacement information—electronic voting*

- (7A) An employee may ask the protected action ballot agent for a replacement of the information provided under subregulation (4A) if:
- (a) the employee did not receive information about how to access the electronic voting system; or
 - (b) the information provided under subregulation (4A) has been lost or destroyed; or
 - (c) the unique identifier provided for under subregulation (4A) did not allow the employee to access the electronic voting system.
- (7B) A request under subregulation (7A) must:
- (a) be received by the protected action ballot agent on or before the closing day for the ballot; and
 - (b) state the reason for the request; and
 - (c) if it is available, be accompanied by evidence that verifies, or tends to verify, the reason given for the request; and
 - (d) include a declaration by the employee that the employee has not voted in the ballot.
- (7C) The protected action ballot agent must give an employee replacement information if the protected action ballot agent is satisfied that:
- (a) the reason for the request is a reason mentioned in subregulation (7A); and
 - (b) the request is in accordance with the requirements mentioned in subregulation (7B); and
 - (c) the employee has not voted in the ballot.

[5] Subregulation 3.18 (8), heading

omit

other voting

insert

attendance voting

[6] Paragraph 3.18 (8) (a)

substitute

(a) an employee is to be balloted by attendance voting; and

[7] Paragraph 3.18 (8) (b)

omit

ballot box,

insert

repository that serves to receive or hold ballot papers,

[8] Paragraph 3.19 (4) (a)

substitute

(a) for an attendance vote or a postal vote—the ballot paper does not bear:

- (i) the initials of the protected action ballot agent; or
- (ii) a facsimile of the agent's initials; or

[9] Paragraph 3.19 (6) (b)

substitute

(b) for an attendance vote or a postal vote—endorse the decision on the ballot paper and initial the endorsement.

[10] Subregulation 3.19 (8)

omit

postal vote,

insert

postal vote or an electronic vote,

[11] Paragraph 3.20 (6) (a)

substitute

- (a) if the ballot is conducted by postal voting or by electronic voting, the scrutineer may be present after the protected action ballot agent has acted under subregulation 3.19 (8) to remove evidence of an employee's identity;

[12] Paragraph 3.20 (6) (b)

omit

by postal voting,

insert

by postal voting or by electronic voting,

[13] After regulation 5.01A

insert

5.01B Appointment of Vice President

For clause 32 of Schedule 3 of the Act, if a person appointed as a Vice President of the FWC under section 626 of the Act was, under item 1 of Schedule 18 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, taken to be a Deputy President of FWA:

- (a) the person has the same rank, status and precedence as a Judge of the Federal Court; and
- (b) to avoid doubt, if the *Judges' Pension Act 1968* applies to the person, that Act continues to apply to the person; and

-
- (c) if the salary payable to the person under section 79 of the *Workplace Relations Act 1996* is more than the salary that would be payable to the person as Vice President under section 637 of the Act—the person is entitled to receive the amount that was payable to the person under section 79 of the *Workplace Relations Act 1996* immediately prior to the appointment; and
- (d) section 639 of the Act does not apply to the person.

[14] Schedule 5.2, Part 1, item 10.2, after paragraph (c)

insert

- (ca) the number of applications dismissed in a quarter under section 399A of the Act; and

[15] Schedule 5.2, Part 1, after item 10.4

insert

- | | | |
|------|--|---|
| 10.5 | The number of costs orders made against a party to a matter in a quarter under section 400A of the Act | as soon as practicable after the end of the quarter |
|------|--|---|

[16] Schedule 5.2, Part 2, item 2.2, after paragraph (c)

insert

- (ca) the number of applications dismissed in a quarter under section 399A of the Act; and

**Part 2 Amendments relating to change of name
of Fair Work Australia to Fair Work
Commission**

[17] Subregulation 2.11 (2)

substitute

- (2) The FWC may make any of the following orders:
- (a) an order to reappoint the employee to the position in which he or she was employed immediately before the termination of his or her employment;
 - (b) an order to appoint the employee to another position for which the terms and conditions of employment are no less favourable than those under which he or she was employed immediately before the termination of his or her employment;
 - (c) any order that the FWC thinks appropriate to maintain continuity of the employee's employment;
 - (d) an order that the employer who terminated the employment of the employee pay the employee an amount for remuneration lost, or likely to have been lost, because of the termination.

[18] Subregulation 3.07 (8)

substitute

- (8) The FWC must repay to the person an amount equal to the fee if:
- (a) the fee has been paid; and
 - (b) the application is subsequently discontinued as mentioned in section 588 of the Act; and
 - (c) the FWC is satisfied that the FWC did not deal with the application in a substantial way before the application was discontinued.

[19] Subregulation 3.08 (2)*substitute*

- (2) The FWC may allow the costs of briefing more than one counsel only if the FWC certifies that the attendance is necessary.

[20] Schedule 3.1, item 1109, column 2*omit*

An attendance at FWA, an FWA conference or chambers for hearing with counsel (where FWA considers such attendance is necessary):

insert

An attendance at the FWC, an FWC conference or chambers for hearing with counsel (where the FWC considers such attendance is necessary):

[21] Schedule 3.1, item 1112*substitute*

- | | | |
|------|--|--|
| 1112 | An attendance by a solicitor at the FWC or chambers for the hearing of an application or appeal, or In conference with counsel, at a distance of more than 50 kilometres from his or her place of business, if it is neither appropriate nor proper for an agent to attend | The FWC may allow an amount that the FWC considers reasonable, not exceeding \$ 309, for each day of absence from the place of business (except a Saturday, Sunday or public holiday |
|------|--|--|

[22] Schedule 3.1, item 1201, column 3*substitute*

The FWC may allow an amount the FWC considers reasonable in the circumstances of the case

[23] Schedule 6.1, subclause (5)

substitute

- (5) The Fair Work Commission may deal with the dispute in 2 stages:
- (a) the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - (b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

[24] Further amendments—Fair Work Commission

The following provisions are amended by omitting each mention of ‘Fair Work Australia’ and inserting ‘Fair Work Commission’:

- Part 5-1, heading
- Schedule 2.1
- Schedule 3.2
- Schedule 3.3
- Schedule 6.1 (except subclause (5)).

[25] Further amendments—FWC

The following provisions are amended by omitting each mention of ‘FWA’ and inserting ‘FWC’:

- regulation 1.16
- regulation 2.06A, heading
- regulation 2.07, heading
- regulation 2.10, heading
- regulation 3.11, heading
- Part 5-1, Division 5, heading
- regulation 5.01, heading

-
- regulation 5.01A, heading
 - regulation 5.03.

[26] Further amendments—FWC’s

The following provision is amended by omitting each mention of ‘FWA’s’ and inserting ‘FWC’s’:

- Part 2-4, Division 8, heading.

[27] Further amendments—the FWC

The following provisions are amended by omitting each mention of ‘FWA’ and inserting ‘the FWC’:

- subregulation 2.11 (1)
- subregulations 3.02 (1) and (7)
- subregulations 3.03 (1) and (7)
- paragraphs 3.04 (2) (a) and (b)
- subregulation 3.05 (6)
- subregulations 3.07 (1) and (7)
- regulation 3.08 (except subregulation (2))
- regulation 3.11 (except the heading)
- regulation 3.12
- regulation 3.13
- regulation 3.15
- regulation 3.17
- subregulation 5.01 (2)
- regulation 5.01A (except the heading)
- regulation 5.04
- regulation 5.04A
- subregulations 6.05 (1) and (7)
- regulation 6.06
- Schedule 3.1 (except items 1109, 1112 and 1201)
- Schedule 5.2.

[28] Further amendments—The FWC

The following provisions are amended by omitting each mention of 'FWA' and inserting 'The FWC':

- subregulation 3.02 (8)
- subregulation 3.03 (8)
- subregulation 6.05 (8).

**Schedule 2 Amendments of *Fair Work*
(Registered Organisations)
*Regulations 2009***

(section 4)

[1] Subregulation 23 (3)

substitute

- (3) The FWC may allow an objector to amend a notice of objection if:
- (a) a further application is made; and
 - (b) the objector satisfies the FWC that the objector has further grounds for objection arising from the application mentioned in paragraph (a).

[2] Subregulation 36 (2)

substitute

- (2) The FWC must make appropriate inquiries by letters sent by post to:
- (a) the organisation at its office; and
 - (b) the members of the committee of management of the organisation as last known to the FWC at their postal addresses as last known to the FWC.

[3] Subregulation 114D (2), note

substitute

Note The FWC may treat the evidence which was laid before the State tribunal as being before the FWC.

[4] Paragraph 120 (2) (a)

omit

the Industrial Registry,

insert

the FWC,

[5] Subregulation 124 (3)

substitute

- (3) The FWC may allow an objector to amend a notice of objection if:
- (a) a further application is made; and
 - (b) the objector satisfies the FWC that the objector has further grounds for objection arising from the application mentioned in paragraph (a).

[6] Schedule 1, subclause 1.7 (2), note 1

substitute

Note 1 The FWC may treat the evidence that was before the State tribunal as being before the FWC.

[7] Further amendments—FWC

The following provisions are amended by omitting each mention of ‘FWA’ and inserting ‘FWC’:

- subregulation 3 (1), note
- regulation 13, heading
- regulation 14, heading
- regulation 179, heading
- Schedule 1, clause 1.8, heading
- Schedule 1, clause 1.9, heading
- Schedule 1, clause 1.10, heading
- Schedule 2, clause 2.1, heading
- Schedule 2, clause 2.2, heading

-
- Schedule 2, clause 2.3, heading
 - Schedule 2, clause 2.4, heading
 - Schedule 3

[8] Further amendments—the FWC

The following provisions are amended by omitting each mention of ‘FWA’ and inserting ‘the FWC’:

- subregulation 3 (1) (except the note)
- regulation 13 (except the heading)
- regulation 14 (except the heading)
- regulation 15
- regulation 16
- regulation 20
- regulation 21
- subregulation 24 (3)
- regulation 25
- regulation 27
- regulation 28
- regulation 32
- regulation 33
- subregulations 34 (1), (4) and (5)
- regulation 35
- regulation 36 (except subregulation (2))
- regulation 39
- regulation 40
- regulation 43
- regulation 45
- regulation 46
- regulation 49
- regulation 51
- subregulations 52 (2) and (4)
- regulation 53
- regulation 55

-
- regulation 59
 - regulation 60
 - regulation 78
 - regulation 84
 - regulation 86
 - regulation 88
 - regulation 102
 - regulation 103
 - regulation 104
 - regulation 106
 - regulation 114A
 - regulation 114B
 - regulation 114C
 - regulation 114D (except the note)
 - regulation 115
 - regulation 116
 - regulation 119
 - regulation 120
 - regulation 121
 - regulation 123
 - regulation 124 (except subregulation (3))
 - regulation 125B
 - regulation 125D
 - regulation 125F
 - regulation 126
 - regulation 127
 - regulation 128
 - regulation 129
 - regulation 133
 - regulation 134
 - regulation 135
 - regulation 137
 - regulation 153
 - regulation 155

-
- regulation 157
 - regulation 179 (except the heading)
 - regulation 181A
 - Schedule 1, subclauses 1.1 (1), (4) and (5), 1.4 (1) and 1.5 (2)
 - Schedule 1, clauses 1.13 and 1.14
 - Schedule 2, clauses 2.3 and 2.4 (except the headings)

[9] Further amendments—The FWC

The following provisions are amended by omitting each mention of ‘FWA’ and inserting ‘The FWC’:

- subregulation 23 (3)
- subregulations 24 (1) and (2)
- subregulations 34 (3), (7) and (8)
- subregulations 52 (1) and (3)
- regulation 105
- regulation 125
- Schedule 1, subclauses 1.1 (2) and (3)
- Schedule 1, clause 1.2
- Schedule 1, subclauses 1.4 (2) and (3)
- Schedule 1, subclause 1.7 (2)

[10] Further amendments—FWC’s

The following provision is amended by omitting each mention of ‘FWA’s’ and inserting ‘FWC’s’:

- regulation 16

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

(section 5)

[1] Further amendments—Fair Work Commission

The following provision is amended by omitting each mention of ‘Fair Work Australia’ and inserting ‘the Fair Work Commission’:

- regulation 3A.02

[2] Further amendments—FWC

The following provision is amended by omitting each mention of ‘FWA’ and inserting ‘FWC’:

- regulation 3.03B, heading

[3] Further amendments—*FWC*

The following provisions are amended by omitting each mention of ‘*FWA*’ and inserting ‘*FWC*’:

- regulation 2.01, note 2
- regulation 2.02, note 3

[4] Further amendments—the FWC

The following provision is amended by omitting each mention of ‘FWA’ and inserting ‘the FWC’:

- regulation 2.01 (except note 2)

Schedule 4 *Amendment of Occupational Health and Safety (Maritime Industry) Regulations 1995*

(section 6)

[1] Further amendments—Fair Work Commission

The following provision is amended by omitting each mention of ‘Fair Work Australia’ and inserting ‘the Fair Work Commission’:

- Schedule

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.