



## **Fair Work Amendment (Casual Loading Offset) Regulations 2018**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 13 December 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Kelly O'Dwyer  
Minister for Jobs and Industrial Relations

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## 1 Name

This instrument is the *Fair Work Amendment (Casual Loading Offset) Regulations 2018*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information        |  |                  |
|---------------------------------|--|------------------|
| Column 1                        | Column 2                                     | Column 3         |
| Provisions                      | Commencement                                 | Date/Details     |
| 1. The whole of this instrument | The day after this instrument is registered. | 18 December 2018 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Fair Work Act 2009*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Fair Work Regulations 2009*

#### 1 At the end of Division 13 of Part 2-2

Add:

##### 2.03A Claims to offset certain amounts

- (1) This regulation applies if:
  - (a) a person is employed by an employer on the basis that the person is a casual employee; and
  - (b) the employer pays the person an amount (the **loading amount**) that is clearly identifiable as an amount paid to compensate the person for not having one or more relevant NES entitlements during a period (the **employment period**); and
  - (c) during all or some of the employment period, the person was in fact an employee other than a casual employee for the purposes of the National Employment Standards; and
  - (d) the person makes a claim to be paid an amount in lieu of one or more of the relevant NES entitlements.

Note 1: This regulation is intended to apply if the person has been mistakenly classified as a casual employee during all or some of the employment period.

Note 2: For the purposes of paragraph (b), examples of where it may be clearly identifiable that an amount is paid to compensate the person for not having one or more relevant NES entitlements include in correspondence, pay slips, contracts and relevant industrial instruments.

- (2) To avoid doubt, the employer may make a claim to have the loading amount taken into account in determining any amount payable by the employer to the person in lieu of one or more relevant NES entitlements.
- (3) This regulation does not affect the matters to which a court may otherwise have regard, at law or in equity, in determining an employer's claim to have the loading amount taken into account.
- (4) A reference in this regulation to a **relevant NES entitlement** is a reference to an entitlement under the National Employment Standards that casual employees do not have.

#### 2 In the appropriate position in Chapter 7

Insert:

### **Part 7-3—Amendments made by the Fair Work Amendment (Casual Loading Offset) Regulations 2018**

#### 7.03 Application of amendments—claims to offset certain amounts

Regulation 2.03A, as added by Schedule 1 to the *Fair Work Amendment (Casual Loading Offset) Regulations 2018*, applies in relation to employment periods that

occur (whether wholly or partly) before, on or after the commencement of that Schedule.