



New South Wales

Industrial Relations Amendment (Consequential Provisions) Act 2010 No 35

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Industrial Relations Amendment (Consequential Provisions) Act 2010 No 35

Act No 35, 2010

An Act to amend the *Industrial Relations Act 1996* as a consequence of the enactment of the *Industrial Relations (Commonwealth Powers) Act 2009*; and for other purposes. [Assented to 15 June 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Industrial Relations Amendment (Consequential Provisions) Act 2010*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

[1] Section 9A Employers declared not to be national system employers

Insert after section 9A (2):

- (3) If an eligible employer is declared not to be a national system employer, an industrial instrument (the *transitional State instrument*) is, on the declaration, taken to be established under this Act with the same terms and provisions of any federal industrial instrument that applied to the employees of that employer immediately before the declaration, subject to this section and to any modifications as are necessary or as may be prescribed by the regulations.
- (4) Subject to subsection (5), the transitional State instrument is, depending on the nature of the corresponding federal industrial instrument, taken to be either an award or an enterprise agreement under this Act.
- (5) The Commission may, on the application of the Minister or any party to the transitional State instrument:
 - (a) make a determination as to whether the instrument is to be taken to be an award or an enterprise agreement under this Act, and
 - (b) vary or revoke any term or provision of the instrument if the Commission is satisfied that it is fair and reasonable to do so in the circumstances, and
 - (c) exempt a party to the instrument from any provision of this Act if the Commission is satisfied that it is fair and reasonable to do so in the circumstances.
- (6) If the transitional State instrument provides for any matter, including remuneration or conditions of employment, that does not meet the requirements set out in Division 2 of Part 1 of Chapter 2, the instrument is taken to be modified to the extent necessary to meet those requirements (but only in the case where the instrument is taken to be an award under this Act).
- (7) The transitional State instrument applies (unless earlier rescinded or terminated in accordance with this Act) for a nominal term that ends on the earlier of the following dates, and after that date, applies until rescinded or terminated in accordance with this Act:
 - (a) the end of the day that is 2 years after the relevant eligible employer was declared not to be a national system employer,

- (b) the end of the day that is the expiry date of the corresponding federal industrial instrument.
- (8) The regulations may make provision for or with respect to the application of this Act to transitional State instruments.
- (9) In this section:
 - federal industrial instrument*** means:
 - (a) a fair work instrument under the *Fair Work Act 2009* of the Commonwealth, or
 - (b) a Division 2B State instrument under Schedule 3A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth, or
 - (c) an instrument given continuing effect under Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth, other than the following:
 - (i) an Australian workplace agreement,
 - (ii) a pre-reform Australian workplace agreement,
 - (iii) an individual transitional employment agreement.

[2] Section 28A Definitions

Omit the definition of ***Federal award***. Insert instead:

Federal award means:

- (a) a modern award within the meaning of the *Fair Work Act 2009* of the Commonwealth, or
- (b) a Division 2B State award under Schedule 3A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth.

[3] Section 41 Enterprise agreements prevail over State awards

Omit the note at the end of the section.

[4] Section 48

Omit the section. Insert instead:

48 What is a National decision?

A ***National decision*** is a decision of the Minimum Wage Panel or a Full Bench of Fair Work Australia that generally affects, or is likely to generally affect, the conditions of employment of employees in New South Wales who are subject to the jurisdiction of that panel or body.

[5] Section 83 Application of Part

Omit “the Australian Industrial Relations Commission” from section 83 (1A) (a).

Insert instead “Fair Work Australia”.

[6] Section 83 (1A) (b)

Omit “*Workplace Relations Act 1996*”. Insert instead “*Fair Work Act 2009*”.

[7] Section 83 (5), definition of “Federal award”

Omit the definition. Insert instead:

Federal award means:

- (a) a modern award within the meaning of the *Fair Work Act 2009* of the Commonwealth, or
- (b) a Division 2B State award under Schedule 3A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth.

[8] Section 83 (5), definition of “industrial instrument”

Omit “or other Federal industrial instrument”.

[9] Section 146B Commission may exercise certain dispute resolution functions under federal enterprise agreements

Omit the note at the end of section 146B (1).

[10] Section 146B (8), definition of “federal enterprise agreement”

Omit the definition. Insert instead:

federal enterprise agreement means:

- (a) an enterprise agreement, or
- (b) a preserved State agreement (but only if the nominal term of the agreement has not yet expired),

within the meaning of the federal Act (and includes any workplace agreement within the meaning of the former *Workplace Relations Act 1996* of the Commonwealth that continues in force under the law of the Commonwealth).

[11] Sections 217 (4), 239 (3), 281 and 290

Omit “*Workplace Relations Act 1996*” wherever occurring.

Insert instead “*Fair Work (Registered Organisations) Act 2009*”.

[12] Section 249 Regulations

Omit section 249 (2). Insert instead:

- (2) Any such regulations may deal with any of the matters dealt with in Chapter 7 of the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth in connection with the election of officers of organisations registered under that Act. The regulations may adopt the provisions of that Chapter, with or without modification.

[13] Section 282 Regulations

Omit section 282 (2). Insert instead:

- (2) Any such regulations may deal with any of the matters dealt with in Chapter 8 of the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth in connection with the accounts and audit of organisations registered under that Act. The regulations may adopt the provisions of that Chapter, with or without modification.

[14] Section 283 Regulations

Omit section 283 (2). Insert instead:

- (2) Any such regulations may deal with any of the matters dealt with in Chapter 3 of the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth in connection with the amalgamation of organisations registered under that Act. The regulations may adopt the provisions of that Chapter, with or without modification.

[15] Dictionary

Omit the definition of *Australian Industrial Relations Commission*.

Insert instead in alphabetical order:

Fair Work Australia means Fair Work Australia established under the *Fair Work Act 2009* of the Commonwealth, and includes any successor to that body.

Minimum Wage Panel means the Minimum Wage Panel constituted under the *Fair Work Act 2009* of the Commonwealth, and includes any successor to that panel.

Schedule 2 Amendment of Long Service Leave Act 1955 No 38

Section 4 Long service leave

Omit paragraph (b) from the definition of *Award* in section 4 (13) (a).

Insert instead:

- (b) a modern award in force under the *Fair Work Act 2009* of the Commonwealth, and
- (c) a Division 2B State award under Schedule 3A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth.

[Agreement in principle speech made in Legislative Assembly on 21 May 2010
Second reading speech made in Legislative Council on 8 June 2010]

BY AUTHORITY