



# **Employment and Workplace Relations Amendment Act 2009**

**No. 37, 2009**

**An Act to amend the law relating to compensation  
and social security, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Employment and Workplace Relations Amendment Act 2009**

**No. 37, 2009**

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## **An Act to amend the law relating to compensation and social security, and for other purposes**

[Assented to 3 June 2009]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Employment and Workplace Relations Amendment Act 2009*.

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## 2 Commencement

- (1) Each provision of this Act 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.

| <b>Commencement information</b>   |  |                     |
|---|--|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provision(s)</b>   | <b>Commencement</b>  | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent.   | 3 June 2009         |
| 1A. Schedule 1, items 1 and 2   | 1 July 2009.   | 1 July 2009         |
| 2. Schedule 1, items 3, 4 and 5   | 13 May 2008.   | 13 May 2008         |
| 2A. Schedule 1, items 6 and 7   | The day on which this Act receives the Royal Assent.   | 3 June 2009         |
| 2B. Schedule 1, items 8 to 13   | The day after this Act receives the Royal Assent.  | 4 June 2009         |
| 3. Schedule 2, items 1 to 25  | The day after this Act receives the Royal Assent.  | 4 June 2009         |
| 4. Schedule 2, items 26 to 32   | 1 January 2008.  | 1 January 2008      |
| 5. Schedule 2, items 33 to 41   | The day after this Act receives the Royal Assent.  | 4 June 2009         |
| 6. Schedule 2, item 42  | Immediately after the commencement of item 18 of Schedule 2 to the <i>Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007</i> . | 28 September 2007   |
| 7. Schedule 2, Part 2, Division 1   | The day after this Act receives the Royal Assent.  | 4 June 2009         |
| 8. Schedule 2, Part 2, Division 2   | 1 July 2009.<br>However, if the <i>Social Security Legislation Amendment (Employment Services Reform) Act 2009</i> does not receive the Royal Assent           | 1 July 2009         |

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| <b>Commencement information</b> |  |                     |
|---------------------------------|--|---------------------|
| <b>Column 1</b>                 | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provision(s)</b>             | <b>Commencement</b>  | <b>Date/Details</b> |
|                                 | before 1 July 2009, the provision(s) do not commence at all. |                     |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

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

## Schedule 1—Amendments relating to compensation

### *Safety, Rehabilitation and Compensation Act 1988*

#### **1 Subsection 13(1) (definition of *relevant amount*)**

Omit “subsection 17(3), (4) or (5), paragraph 18(4)(a),”, substitute “paragraph 18(4)(a) or”.

Note: The heading to section 13 is altered by adding at the end “—**Consumer Price Index**”.

#### **2 After section 13**

Insert:

#### **13AA Indexation—Wage Price Index**

##### *Definitions*

(1) In this section:

*index number*, in relation to a quarter, means:

- (a) the Wage Price Index (total hourly rates of pay excluding bonuses/all sectors/all Australia/original) number published by the Australian Statistician in respect of that quarter; or
- (b) if:
  - (i) a series of index numbers is prescribed for the purposes of this paragraph; and
  - (ii) the Australian Statistician publishes an index number in respect of the quarter; and
  - (iii) that index number belongs to the series; that index number.

*relevant amount* means the amount specified in subsection 17(3), (4) or (5).

*relevant year* means:

- (a) the financial year starting on 1 July 2009; or
- (b) a later financial year.

*Indexation*

- (2) If the indexation factor for a relevant year is greater than one, this Act has effect as if for each relevant amount there were substituted, on the first day of that relevant year, an amount calculated by multiplying by that factor:
- (a) if, because of one or more other applications of this section, this Act has effect as if another amount or amounts were substituted for the relevant amount—the substituted amount or the last substituted amount; or
  - (b) in any other case—the relevant amount.

*Indexation factor*

- (3) For the purposes of this section, the ***indexation factor*** for a relevant year is the number calculated, to 3 decimal places, using the formula:

$$\frac{\text{Index number for the reference December quarter}}{\text{Index number for the base December quarter}}$$

where:

***base December quarter*** means the last December quarter before the reference December quarter.

***reference December quarter*** means the last December quarter before the relevant year.

- (4) If the number calculated under subsection (3) for a relevant year would, if it were calculated to 4 decimal places, end with a number greater than 4, the number so calculated is increased by 0.001.

*Other provisions*

- (5) Subject to subsection (6), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number for a quarter in substitution for an index number previously published for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

(6) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for:

- (a) the Wage Price Index; or
- (b) another index;

then, for the purposes of the application of this section after the change took place or takes place, regard is to be had only to the index number published in terms of the new reference base.

### **3 Subsection 17(3)**

Omit "\$120,000", substitute "\$400,000".

### **4 Paragraph 17(4)(a)**

Omit "\$120,000", substitute "\$400,000".

### **5 Subsection 17(5)**

Omit "\$40", substitute "\$110".

## **6 Application—compensation for the benefit of dependants**

- (1) The amendments made by items 1 and 2, to the extent that they relate to subsections 17(3) and (4) of the *Safety, Rehabilitation and Compensation Act 1988*, apply in relation to the death of an employee that occurs on or after 1 July 2009.
- (2) The amendments made by items 3 and 4 apply in relation to the death of an employee that occurs on or after 13 May 2008.

## **7 Application—compensation for the benefit of children**

- (1) The amendments made by items 1 and 2, to the extent that they relate to subsection 17(5) of the *Safety, Rehabilitation and Compensation Act 1988*, apply in relation to a payment for a week that begins on or after 1 July 2009.
- (2) The amendment made by item 5 applies in relation to a payment for a week that begins on or after 13 May 2008.

## ***Seafarers Rehabilitation and Compensation Act 1992***

### **8 Subsection 23(1) (definition of *relevant amount*)**

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Omit “29(3), (4) or (5),”.

Note: The heading to section 23 is altered by adding at the end “—**Consumer Price Index**”.

## **9 After section 23**

Insert:

### **23A Indexation—Wage Price Index**

#### *Definitions*

(1) In this section:

***index number***, in relation to a quarter, means:

- (a) the Wage Price Index (total hourly rates of pay excluding bonuses/all sectors/all Australia/original) number published by the Australian Statistician in respect of that quarter; or
- (b) if:
  - (i) a series of index numbers is prescribed for the purposes of this paragraph; and
  - (ii) the Australian Statistician publishes an index number in respect of the quarter; and
  - (iii) that index number belongs to the series;  
that index number.

***relevant amount*** means the amount specified in subsection 29(3), (4) or (5).

***relevant year*** means:

- (a) the financial year starting on 1 July 2009; or
- (b) a later financial year.

#### *Indexation*

- (2) If the indexation factor for a relevant year is greater than one, this Act has effect as if for each relevant amount there were substituted, on the first day of that relevant year, an amount calculated by multiplying by that factor:
  - (a) if, because of one or more other applications of this section, this Act has effect as if another amount or amounts were substituted for the relevant amount—the substituted amount or the last substituted amount; or

(b) in any other case—the relevant amount.

*Indexation factor*

- (3) For the purposes of this section, the *indexation factor* for a relevant year is the number calculated, to 3 decimal places, using the formula:

$$\frac{\text{Index number for the reference December quarter}}{\text{Index number for the base December quarter}}$$

where:

*base December quarter* means the last December quarter before the reference December quarter.

*reference December quarter* means the last December quarter before the relevant year.

- (4) If the number calculated under subsection (3) for a relevant year would, if it were calculated to 4 decimal places, end with a number greater than 4, the number so calculated is increased by 0.001.

*Other provisions*

- (5) Subject to subsection (6), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number for a quarter in substitution for an index number previously published for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.
- (6) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for:
- (a) the Wage Price Index; or
  - (b) another index;
- then, for the purposes of the application of this section after the change took place or takes place, regard is to be had only to the index number published in terms of the new reference base.

**10 Paragraphs 29(3)(a) and (4)(a)**

Omit “\$151,167.84”, substitute “\$412,000”.

**11 Subsection 29(5)**

Omit “\$50.38”, substitute “\$113.30”.

**12 Application—compensation for the benefit of dependants**

- (1) The amendments made by items 8 and 9, to the extent that they relate to subsections 29(3) and (4) of the *Seafarers Rehabilitation and Compensation Act 1992*, apply in relation to the death of an employee that occurs on or after 1 July 2009.
- (2) The amendment made by item 10 applies in relation to the death of an employee that occurs at or after the commencement of this item.

**13 Application—compensation for the benefit of children**

- (1) The amendments made by items 8 and 9, to the extent that they relate to subsection 29(5) of the *Seafarers Rehabilitation and Compensation Act 1992*, apply in relation to a payment for a week that begins on or after 1 July 2009.
- (2) The amendment made by item 11 applies in relation to a payment for a week that begins at or after the commencement of this item.

## **Schedule 2—Amendments relating to social security**

### **Part 1—General amendments**

#### *Social Security Act 1991*

**1 Subsection 5(8A)**

Omit “subsection 37(3)”, substitute “section 37”.

**2 Subsection 5(9)**

Repeal the subsection.

**3 Section 15**

Repeal the section.

**4 Subsection 17(1) (definition of *payment for a period*)**

Repeal the definition.

**5 Subsection 17(3A)**

Repeal the subsection.

**6 Subsection 23(1) (definition of *receive*)**

Omit “(3),”.

**7 Subsection 23(1) (definition of *receive*)**

After “(4),”, insert “(4A) and”.

**8 Subsection 23(1) (definition of *receive*)**

Omit “and (4AB)”.

**9 Subsection 37(3)**

Omit “(3)”.

**10 Paragraph 38B(6)(b)**

Repeal the paragraph, substitute:

- (b) the period was a compliance penalty period that applied to the person in respect of the income support payment; or
- (c) subsection 547AA(1), 615(1) or 771HF(1) applied to the person in respect of the income support payment for the duration of the period.

**11 Subparagraph 408BA(2)(e)(ii)**

Omit “throughout the period, she”.

**12 Subsection 500(1) (note 2)**

Omit “section 1208A”, substitute “section 10 of the *Social Security (International Agreements) Act 1999*”.

**13 Section 500B**

Omit “who is a member of a couple”.

Note: The heading to section 500B is altered by omitting “**affecting member of couple**”.

**14 At the end of Subdivision A of Division 1 of Part 2.14**

Add:

**676A Assurance of support**

A person is not qualified for sickness allowance in respect of a period if the Secretary is satisfied that throughout the period:

- (a) an assurance of support was in force in respect of the person (the *assuree*); and
- (b) the person who gave the assurance of support was willing and able to provide an adequate level of support to the assuree; and
- (c) it was reasonable for the assuree to accept that support.

Note: For *assurance of support* see subsection 23(1).

**15 Paragraph 685(2)(a)**

Omit “that the Secretary has required the person to undertake under section 697”, substitute “that the person is undertaking as mentioned in paragraph 667(3)(b)”.

**16 Subsection 1061EE(6) (paragraph (b) of the definition of fortnightly payment rate)**

Omit “youth allowance, austudy payment,”.

**17 Subsection 1061EE(6) (at the end of the definition of fortnightly payment rate)**

Add:

- ; or (c) in relation to youth allowance—the fortnightly rate of that benefit payable under the Youth Allowance Rate Calculator to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance; or
- (d) in relation to austudy payment—the fortnightly rate of that benefit payable under the Austudy Payment Rate Calculator to the person on the last payday before the application for the advance payment was made, excluding any amount payable by way of remote area allowance.

**18 Subsection 1067G(3)**

Repeal the subsection.

**19 After point 1067G-D1**

Insert:

1067G-D2 If:

- (a) an amount by way of youth disability supplement is to be added to a person’s rate of youth allowance under point 1067G-D1; and
  - (b) the sum of:
    - (i) the person’s maximum basic rate of youth allowance; and
    - (ii) the amount of youth disability supplement;would exceed the maximum basic rate of newstart allowance for a person with a partial capacity to work;
- the rate of youth disability supplement is to be reduced (but not below zero) by the amount of the excess.

Note: For *partial capacity to work*, see section 16B.

**20 Point 1068-A1 (note 1)**

Omit “Step 8”, substitute “step 6”.

**21 Point 1068-A1 (note 3)**

Omit “Step 8 only if the person’s rate of benefit after Step 5 is greater than nil”, substitute “paragraph (c) of step 7 only if the conditions in point 1068-J1 are satisfied”.

**22 Point 1068-B1 (note 4)**

Repeal the note.

**23 Point 1068-B1 (note 5)**

Omit “the other rates”, substitute “the rates in column 3”.

**24 Point 1068-B1 (note 6)**

Repeal the note.

**25 Point 1068-B2**

Omit “1, 2, 3, 4 and 5”, substitute “3, 4, 4A and 4B”.

**26 Paragraph 1070X(1)(b)**

Repeal the paragraph, substitute:

(b) either:

- (i) is receiving a social security benefit the rate of which is increased to take account of rent; or
- (ii) is receiving a designated ABSTUDY payment, or would be receiving such a payment but for the partner’s income.

**27 At the end of subsection 1070X(1)**

Add:

Note 1: See also subsections 23(4A) and (4AA).

Note 2: For *designated ABSTUDY payment*, see subsection (5).

**28 Paragraph 1070X(2)(b)**

Repeal the paragraph, substitute:

(b) either:

- (i) is receiving a social security benefit the rate of which is increased to take account of rent; or

- (ii) is receiving a designated ABSTUDY payment, or would be receiving such a payment but for the partner's income.

**29 At the end of subsection 1070X(2)**

Add:

Note 1: See also subsections 23(4A) and (4AA).

Note 2: For *designated ABSTUDY payment*, see subsection (5).

**30 Paragraph 1070X(3)(b)**

Repeal the paragraph, substitute:

(b) either:

- (i) is receiving a social security benefit the rate of which is increased to take account of rent; or
- (ii) is receiving a designated ABSTUDY payment, or would be receiving such a payment but for the partner's income.

**31 At the end of subsection 1070X(3)**

Add:

Note 1: See also subsections 23(4A) and (4AA).

Note 2: For *designated ABSTUDY payment*, see subsection (5).

**32 At the end of section 1070X**

Add:

*Austudy Payment Rate Calculator*

- (4) If the rate of a person's social security payment is to be calculated in accordance with the Austudy Payment Rate Calculator, the person's partner has a rent increased benefit if the partner:
  - (a) is living with the person in their home; and
  - (b) either:
    - (i) is receiving a social security benefit the rate of which is increased to take account of rent; or
    - (ii) is receiving a designated ABSTUDY payment, or would be receiving such a payment but for the partner's income.

Note 1: See also subsections 23(4A) and (4AA).

Note 2: For *designated ABSTUDY payment*, see subsection (5).

*Designated ABSTUDY payment*

- (5) For the purposes of this section, a *designated ABSTUDY payment* is a payment under the scheme known as the ABSTUDY scheme:
- (a) the rate of which is increased to take account of rent; and
  - (b) that includes an amount identified as living allowance.

**33 Subsection 1188F(7)**

Omit “occurs”, substitute “does not fall”.

**34 Section 1190 (table item 3)**

Repeal the item.

*Social Security (Administration) Act 1999*

**35 Subsection 18(2)**

Omit “for which special employment advance is not payable”, substitute “for which the entitlement is not payable”.

*Social Security (International Agreements) Act 1999*

**36 Paragraph 10(1)(d)**

Omit “but for the operation of”, substitute “if the following provisions had not been enacted”.

**37 Subparagraph 10(1)(d)(i)**

Omit “or” (last occurring).

**38 Subparagraph 10(1)(d)(ii)**

Omit “Act to the extent that it requires a person to have been in Australia for the period specified in the subparagraph; or”, substitute “Act”.

**39 Paragraph 10(1)(e)**

Repeal the paragraph, substitute:

- (e) in determining whether the person is qualified for parenting payment, assume that the provisions referred to in paragraph (d) had not been enacted; and

**40 Paragraph 10(2)(c)**

Omit “but for the operation of subparagraph 500(1)(d)(ii) of the *Social Security Act 1991* to the extent it requires a person to have been in Australia for the period specified in the subparagraph”, substitute “if subparagraph 500(1)(d)(ii) of the *Social Security Act 1991* had not been enacted”.

**41 Paragraph 10(2)(d)**

Repeal the paragraph, substitute:

- (d) in determining whether the person is qualified for parenting payment, assume that subparagraph 500(1)(d)(ii) of the *Social Security Act 1991* had not been enacted; and

***Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007***

**42 Item 18 of Schedule 2**

Repeal the item, substitute:

**18 Application**

The amendments made by items 13 to 17 of this Schedule apply in relation to the calculation of the daily rate of Austudy payment for each of the following days:

- (a) 1 January 2008;
- (b) a later day.

**Part 2—Amendments relating to the requirement to  
apply for job vacancies**

**Division 1—Amendments commencing on the day after  
Royal Assent**

*Social Security Act 1991*

**43 Paragraph 541A(g)**

Omit “subsection 541C(1)”, substitute “subsection 550A(1)”.

**44 Paragraph 541A(h)**

Omit “subsection 541C(2)”, substitute “subsection 550A(2)”.

**Division 2—Amendments commencing on 1 July 2009**

*Social Security Act 1991*

**45 Paragraph 541A(g)**

Omit “subsection 550A(1)”, substitute “subsection 42F(1) of the  
Administration Act”.

**46 Paragraph 541A(h)**

Omit “subsection 550A(2)”, substitute “subsection 42F(2) of the  
Administration Act”.

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*[Minister's second reading speech made in—  
House of Representatives on 3 December 2008  
Senate on 13 February 2009]*

(221/08)