

Fair Work Australia Amendment Rules 2011(No.1)

Explanatory Statement

Amendment of the Fair Work Australia Rules

(issued by the Authority of the President of Fair Work Australia)

Authority

Section 609 of the *Fair Work Act 2009* (the Act) authorises the making of procedural rules of Fair Work Australia.

Under sub section 609(1) of the *Fair Work Act 2009*, the President of Fair Work Australia (FWA), after consulting the other FWA Members, may, by legislative instrument, make procedural rules in relation to:

- (a) the practice and procedure to be followed by FWA; or
- (b) the conduct of business in relation to matters allowed or required to be dealt with by FWA.

Purpose

A number of amendments have been made to improve the workings of the Rules.

Details

The President of FWA, after consulting the other FWA Members, has made amendments to the Rules to the following effect:

Rule 1 is a formal provision stating the name of the Rules.

Rule 2 provides the date these Rules will commence.

Rule 3 is a formal provision, providing that the *Fair Work Australia Rules 2010* are amended as set out in these Rules.

Schedule 1

[1] Amends paragraph 9(2) (d) to include Express Post as another manner in effecting service of a document by post.

[2] Inserts a new rule for the employer to lodge a response to an unlawful termination application with FWA and to serve it on the applicant within 7 days of being served with the application.

[3] Corrects a typographical error in sub rule 16B.1.

[4] Inserts a new rule in relation to a party wanting to be represented for the purpose of preparing and or lodging any written application (including an originating application) or written submission, corresponding with FWA. The new rule does not override a representative's requirement to seek permission to appear in a conference or hearing under s596.

[5] Inserts a new Form F9A into the Table of Forms in Schedule 1, to be completed by the employer in response to an application for FWA to deal with an unlawful termination dispute

[6] Alters the name of the existing entry for Form F18 in the Table of Forms in Schedule 1 to reflect the amended name.

[7] Omits Form F22, Notice for Employee Organisation to be Covered by Enterprise Agreement, from the Table of Forms in Schedule 1.

[8] Item 3, Form F2 is amended to require the applicant to give a description of the relevant facts and circumstances that support why they thought the dismissal was unfair.

[9] A notice is added to the service requirements of Form F2 informing a respondent served with a Form F2 of the requirement to lodge a Form F3 with FWA and to serve it on the applicant within 14 days.

[10] Amends Form F3 by omitting the italicised words following “Capacity/Position” within the signatory block.

[11] The Service requirements of Form F3 are amended to regulate that the response including any supporting documentation accompanying the response must be lodged with FWA and served on the applicant within 14 days of being served with the Form F2 or in accordance with any instruction given by FWA.

An additional paragraph has been added that clarifies what serving a document means.

[12] Amends the signatory block in Forms F4 by omitting the italicised words following “Capacity/Position”.

[13] Amends the signatory blocks in Forms F5 and F6 by omitting the italicised words following “Capacity/Position”.

[14] Item 2.2 of Form F8 is amended to require the applicant to give a description of the relevant facts and circumstances that support how they say the sections mentioned in 2.1 have been contravened by the actions and conduct of the respondent. The applicant’s response to any reasons for dismissal given by the employer should also be included.

[15] Item 3.2 of Form F8 is amended by requiring the date the applicant was employed and item 5 has been renumbered as item 3.3.

[16] Item 5 of Form F8 is deleted.

[17] Amends the signatory block of Form F8 by omitting the italicised words following “Capacity/Position”.

[18] The Service requirements of Form F8 are amended to reflect that FWA will serve a copy of the Form F8 upon the respondent and that the respondent must serve a response on the applicant within 7 days of being served.

[19] Amends Form F8A by requiring a response from the employer to information contained on the Form F8 and consequential renumbering arising from the additional question.

[20] The signatory block of Form 8A is amended by removing the italicised words following “Capacity/Position”.

[21] Items 3 and 4 of Form F8A have been annotated to indicate that an employer is not required to provide a response if it is concerned that the response may be self-incriminating.

Service requirements have been clarified to show that the response including any supporting documentation must be lodged with FWA and served on the applicant within 7 days of being served with the Form F8 or in accordance with any instruction given by FWA.

An additional paragraph has been added that clarifies what serving a document means.

[22] Amends item 6 of Form F9 by requiring the applicant to give a description of the relevant facts and circumstances that support how they say the sections have been contravened by the actions and conduct of the respondent. The applicant’s response to any reasons for dismissal given by the employer should also be included.

A new item 7 has been inserted that relates to multiple applications and requires the applicant to consider if they cannot make a general protections court application.

[23] The signature block of Form F9 is amended by removing the italicised words following “Capacity/Position”.

[24] Service requirements of Form F9 have been amended to reflect that FWA will be responsible for serving a copy upon the respondent.

A notice is added to the service requirements that inform a respondent, on being served with a Form F9, to serve a response in accordance with Form F9A within 7 days.

[25] Inserts a new Form F9A, Employer’s response to an application for FWA to deal with an unlawful termination dispute that is consistent with the proposed amended Form F8A.

[26] Amends the Service requirements of Form F10 to include that any supporting documentation lodged with the application must also be lodged.

An additional paragraph has been added that clarifies what serving a document means.

[27] Substitutes a new Form F17 incorporating amendments that require the applicant to identify with some specificity the name and employer of the proposed agreement. The amendments also clarify the legislative requirements for approval including the scope of the agreement and whether there was genuine approval; the interaction with the National Employment Standards, whether the agreement has any unlawful terms and specify required terms.

[28] Substitutes a new Form F18 that incorporates the old Form F22, notice under s183 for an employee organisation to be covered by an enterprise agreement and other editing improvements.

Service requirements have been added that involve the declaration being served on the employers to be covered by the agreement and any other relevant bargaining representatives known to the Union after the document is lodged with FWA.

There are two notes following: one being a reference to Rule 9 dealing with service and the other informing an employee organisation that wants to be covered by the agreement of the requirement to lodge the declaration with FWA or gives a notice in accordance with s183, before FWA approves the agreement.

[29] Omits Form F22.

[30] Amends the signature block of Form F47A by removing the italicised words following “Capacity/Position”.

[31] Amends the signature blocks of Forms 47B, 47C and 47D by removing the italicised words following “Capacity/Position”.