



## **Fair Work Commission Amendment (Entry Permits and Other Measures) Rules 2019**

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I, Iain Ross AO, President of the Fair Work Commission, acting after consultation with the Members of the Fair Work Commission, make the following rules.

Dated 18 July 2019

Iain Ross AO  
President of the Fair Work Commission

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## 1 Name

This instrument is the *Fair Work Commission Amendment (Entry Permits and Other Measures) Rules 2019*.

## 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	1 August 2019.	1 August 2019

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 Commission Rules 2013*

#### 1 Rule 5

Insert:

*Workplace Advice Service* means the free legal assistance program facilitated by the Commission.

#### 2 Rules 11 and 12

Repeal the rules, substitute:

#### 11 Notice—acting, or ceasing to act, for a person in relation to matters before Commission

- (1) Each lawyer or paid agent acting for a person in relation to a matter before the Commission must lodge a notice with the Commission informing the Commission that the lawyer or paid agent acts for the person in the matter.

Note: The notice must be in the approved form—see subrule 8(2).

- (2) Each lawyer or paid agent who ceases to act for a person in relation to a matter before the Commission must lodge a notice with the Commission informing the Commission that the lawyer or paid agent has ceased acting for the person in relation to the matter.

Note: The notice must be in the approved form—see subrule 8(2).

- (3) Subrules (1) and (2) do not apply to:
- (a) a lawyer or paid agent of a person if the person is taken not to be represented by the lawyer or paid agent because of subsection 596(4) of the Act; or
  - (b) a lawyer who provides legal assistance to a person through the Workplace Advice Service.

#### 12 Representation by lawyers and paid agents

- (1) For the purposes of subsection 596(1) of the Act and subject to rule 11, in any matter before the Commission, a person:
- (a) must not, without the permission of the Commission, be represented in the matter by a lawyer or paid agent participating in a conference or hearing relating to the matter; but
  - (b) may otherwise, without the permission of the Commission, be represented by a lawyer or paid agent in the matter.

Note: See subsection 596(4) of the Act for when a person is taken not to be represented by a lawyer or paid agent for the purposes of that section.

- (2) Despite paragraph (1)(a), a person may, without the permission of the Commission, be represented in a matter by a lawyer or paid agent:
- (a) participating in a conference or hearing in relation to the following:
    - (i) a matter arising under Part 2-3 of the Act (modern awards);
    - (ii) a matter arising under Part 2-5 of the Act (workplace determinations);

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- (iii) a matter arising under Part 2-6 of the Act (minimum wages);
  - (iv) a matter arising under section 510 or 512 of the Act (entry permits);  
and
  - (b) participating in a conference conducted by a member of the staff of the Commission, whether or not under delegation, in relation to the following:
    - (i) an application under section 394 of the Act for an unfair dismissal remedy;
    - (ii) an application under section 789FC of the Act for an order under section 789FF of the Act to stop bullying.
  - (3) Despite anything in this rule, the Commission may, in relation to a matter before the Commission, direct that a person is not to be represented in the matter by a lawyer or paid agent except with the permission of the Commission.
  - (4) To avoid doubt, nothing in paragraph (2)(b) is to be taken as permitting a person to be represented in a matter by a lawyer or paid agent participating in a conference before a Commission Member in relation to an application under section 394 or 789FC of the Act without the permission of the Commission.

### **12A Notice—proposed representation in a conference or hearing**

- (1) If:
  - (a) a person proposes to be represented in a matter before the Commission by a lawyer or paid agent participating in a conference or hearing relating to the matter; and
  - (b) the participation requires permission under rule 12;
 the person must lodge a notice with the Commission informing the Commission that the person will seek the Commission’s permission for a lawyer or paid agent to participate in the conference or hearing.
 

Note 1: The notice must be in the approved form—see subrule 8(2).

Note 2: See subsection 596(4) of the Act for when a person is taken not to be represented by a lawyer or paid agent for the purposes of that section.
- (2) The Commission may permit a person to be represented by a lawyer or paid agent in a matter before the Commission even if the person fails to comply with subrule (1).

### **3 After rule 17**

Insert:

### **17A Statutory declarations and notifications by employers that are partnerships**

- If an employer is a partnership, the obligation:
- (a) under rules 24, 25 and 26 for an employer to lodge a statutory declaration;  
and
  - (b) under rule 40 for an employer to notify employees who are covered by an enterprise agreement;
- is imposed on each partner, but may be discharged by:
- (c) any of the partners; or
  - (d) an officer or authorised employee of the partnership.

**4 Subrule 24(1)**

Omit “to be”.

**5 Subrule 24(1)**

Omit “by an officer or authorised employee”, substitute “by the employer or by an officer or authorised employee of the employer”.

**6 Subrule 24(1) (note 2)**

Omit “will be”, substitute “is”.

**7 Subrule 24(5)**

Omit all the words from and including “accompanied by” to and including “the agreement.”, substitute:

accompanied:

- (a) by a statutory declaration by each employer, or by an officer or authorised employee of each employer, that is covered by the agreement; and
- (b) by a statutory declaration by an officer or authorised employee of each relevant employee organisation that is covered by the agreement.

**8 Subrule 24(5B)**

Omit “made by an officer or authorised employee of each employer”, substitute “by each employer, or by an officer or authorised employee of each employer,”.

**9 Subrule 25(1)**

Omit “(1)”.

**10 Paragraph 25(1)(a)**

Omit “by an officer or authorised employee of each employer”, substitute “by each employer, or by an officer or authorised employee of each employer,”.

**11 Paragraph 25(1)(b)**

Omit “that is a bargaining representative for the variation agreement”, substitute “covered by the agreement”.

**12 Subrule 25(2)**

Repeal the subrule.

**13 Subrules 26(1) and (2)**

Omit “declaration made by”, insert “declaration by the applicant or”.

**14 Paragraph 31(1)(b)**

After “applicant”, insert “, or by an officer or authorised employee of the applicant,”.

**15 After rule 34**

Insert:



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**34A Application for an order for access to non-member records**

- (1) This rule applies if an application under section 483AA of the Act for an order in relation to non-member records is served on an occupier or affected employer.
- (2) At the time the application is served on the occupier or affected employer, it must be accompanied by a notice that sets out the effect of subrule (3).
- (3) The occupier or affected employer must, within 24 hours after being served with the application:
  - (a) display the application at the occupier's or the affected employer's premises at a location where notices to employees are generally displayed; or
  - (b) make a copy of the application available to employees through the usual means that are adopted by the occupier or affected employer for communicating with employees.

**16 Rule 40**

Omit "will be covered by an enterprise agreement must notify employees who will be", substitute "is covered by an enterprise agreement must notify employees who are".

**17 After Part 6**

Insert:

**Part 6A—Access to documents****40A Access to certain applications and statutory declarations**

Subject to an order of the Commission under subsection 593(3) or 594(1) of the Act, the Commission may, on application by any person, provide the person with access to the following:

- (a) the application and each statutory declaration mentioned in subrule 24(1);
- (b) the application and each statutory declaration mentioned in subrule 24(5);
- (c) the application mentioned in subrule 24(5A) and each statutory declaration mentioned in subrule 24(5B);
- (d) the application mentioned in section 210 of the Act and each statutory declaration mentioned in subrule 25(1) that must accompany the application;
- (e) the application mentioned in section 222 of the Act and the statutory declaration mentioned in subrule 26(1) that must accompany the application;
- (f) the application mentioned in section 225 of the Act and the statutory declaration mentioned in subrule 26(2) that must accompany the application.

**18 Before subrule 51(1)**

Insert:

*Entry permits*

**19 Subrule 51(1)**

Omit “person”, substitute “official”.

**20 After subrule 51(1)**

Insert:

- (1A) For the purposes of deciding, as mentioned in subsection 513(1) of the Act, whether the official is a fit and proper person, the Commission may require the official to provide to the Commission:
- (a) a current national police certificate issued by the Australian Federal Police, or by a police force of a State or Territory, in respect of the official; or
  - (b) an authorisation signed by the official authorising the Commission to apply for such a certificate in respect of the official (together with all relevant details in relation to the official required to be included in such an application).
- (1B) The Commission may, before it considers the application, publish all of the following on the Commission’s website:
- (a) the name of:
    - (i) the organisation applying for the entry permit; and
    - (ii) the official of the organisation who is to hold the permit;
  - (b) that the organisation has applied for the entry permit to be issued to the official;
  - (c) that submissions may be made to the Commission, within the specified time, as to whether the official is a fit and proper person to be issued with the entry permit.

*WHS entry permits*

**21 At the end of subrules 53(2) and 54(2)**

Add “and, unless the order has been published on the Commission’s website, upon every other party in the matter”.

**22 At the end of Part 12**

Add:

**63 Application of amendments made by the *Fair Work Commission Amendment (Entry Permits and Other Measures) Rules 2019***

(1) In this rule:

***amending Rules*** means the *Fair Work Commission Amendment (Entry Permits and Other Measures) Rules 2019*.

***commencement day*** means the day the amending Rules commence.

(2) Rules 11, 12 and 12A, as inserted by the amending Rules, apply in relation to matters that are started in the Commission on or after the commencement day.

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- (3) Rule 34A, as inserted by the amending Rules, applies in relation to applications under section 483AA of the Act that are made on or after the commencement day.
  - (4) Rule 40A, as inserted by the amending Rules, applies in relation to applications and statutory declarations mentioned in that rule that were made before, on or after the commencement day.
  - (5) Subrules 51(1A) and (1B), as inserted by the amending Rules, apply in relation to applications under section 512 of the Act that were made before, on or after the commencement day.
  - (6) The amendments of Schedule 1 to these Rules made by the amending Rules apply in relation to applications made on or after the commencement day.

**23 Clause 1 of Schedule 1 (cell at table item dealing with F9, column 3)**

Repeal the cell, substitute:

Application for the  
Commission to deal with  
an unlawful termination  
dispute

**24 Clause 1 of Schedule 1 (cell at table item dealing with F9A, column 3)**

Repeal the cell, substitute:

Employer's response to  
an application for the  
Commission to deal with  
an unlawful termination  
dispute

**25 Clause 1 of Schedule 1 (cell at table item dealing with F12, column 3)**

Repeal the cell, substitute:

Application for the  
Commission to deal with  
a right of entry dispute

**26 Clause 1 of Schedule 1 (cell at table item dealing with F13, column 3)**

Repeal the cell, substitute:

Application for the  
Commission to deal with  
a stand down dispute

**27 Clause 1 of Schedule 1 (table item dealing with F16, column 6)**

Omit "will be", substitute "is".

**28 Clause 1 of Schedule 1 (cell at table item dealing with F17, column 5)**

Repeal the cell, substitute:

Employer

**29 Clause 1 of Schedule 1 (table item dealing with F17, column 6)**

Omit “will be”, substitute “is”.

**30 Clause 1 of Schedule 1 (cell at table item dealing with F18, column 5)**

Repeal the cell, substitute:

Employee organisation

**31 Clause 1 of Schedule 1 (table item dealing with F18, column 6)**

Omit “will be”, substitute “is”.

**32 Clause 1 of Schedule 1 (cell at table item dealing with F18A, column 3)**

Repeal the cell, substitute:

Statutory declaration of  
employee bargaining  
representative in relation  
to an application for  
approval of an enterprise  
agreement (other than a  
greenfields agreement)

**33 Clause 1 of Schedule 1 (cell at table item dealing with F18A, column 5)**

Repeal the cell, substitute:

Employee bargaining  
representative

**34 Clause 1 of Schedule 1 (table item dealing with F18A, column 6)**

Omit “will be”, substitute “is”.

**35 Clause 1 of Schedule 1 (table item dealing with F19, column 6)**

Omit “will be”, substitute “is”.

**36 Clause 1 of Schedule 1 (cell at table item dealing with F20, column 7)**

Repeal the cell, substitute:

As soon as practicable  
after lodgment with the  
Commission

**37 Clause 1 of Schedule 1 (cell at table item dealing with F21, column 3)**

Repeal the cell, substitute:

Statutory declaration of

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an employee  
organisation in relation  
to an application for  
approval of a greenfields  
agreement made under  
subsection 182(3) of the  
Act

**38 Clause 1 of Schedule 1 (cell at table item dealing with F21, column 7)**

Repeal the cell, substitute:

As soon as practicable  
after lodgment with the  
Commission

**39 Clause 1 of Schedule 1 (cell at table item dealing with F21B, column 7)**

Repeal the cell, substitute:

As soon as practicable  
after lodgment with the  
Commission

**40 Clause 1 of Schedule 1 (cell at table item dealing with F21C, column 3)**

Repeal the cell, substitute:

Statutory declaration of  
an employee  
organisation in relation  
to an application for  
approval of a greenfields  
agreement made under  
subsection 182(4) of the  
Act

**41 Clause 1 of Schedule 1 (cell at table item dealing with F21C, column 5)**

Repeal the cell, substitute:

Employee organisation

**42 Clause 1 of Schedule 1 (cell at table item dealing with F23, column 3)**

Repeal the cell, substitute:

Application for approval  
of variation of an  
enterprise agreement

**43 Clause 1 of Schedule 1 (cell at table item dealing with F23, column 6)**

Repeal the cell, substitute:

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Each employer and each  
employee organisation  
that is covered by the  
enterprise agreement

**44 Clause 1 of Schedule 1 (cell at table item dealing with F23A, column 3)**

Repeal the cell, substitute:

Employer's statutory  
declaration in support of  
a variation of an  
enterprise agreement

**45 Clause 1 of Schedule 1 (cell at table item dealing with F23A, column 7)**

Repeal the cell, substitute:

As soon as practicable  
after lodgment with the  
Commission

**46 Clause 1 of Schedule 1 (cell at table item dealing with F23B, column 3)**

Repeal the cell, substitute:

Statutory declaration of  
employee organisation in  
relation to variation of an  
enterprise agreement

**47 Clause 1 of Schedule 1 (cell at table item dealing with F23B, column 7)**

Repeal the cell, substitute:

As soon as practicable  
after lodgment with the  
Commission

**48 Clause 1 of Schedule 1 (cell at table item dealing with F24, column 3)**

Repeal the cell, substitute:

Application for  
termination of an  
enterprise agreement by  
agreement

**49 Clause 1 of Schedule 1 (cell at table item dealing with F24A, column 3)**

Repeal the cell, substitute:

Statutory declaration in support of termination of an enterprise agreement

**50 Clause 1 of Schedule 1 (cell at table item dealing with F24A, column 7)**

Repeal the cell, substitute:

As soon as practicable after lodgment with the Commission

**51 Clause 1 of Schedule 1 (cell at table item dealing with F24B, column 3)**

Repeal the cell, substitute:

Application for termination of an enterprise agreement after the nominal expiry date

**52 Clause 1 of Schedule 1 (cell at table item dealing with F24C, column 3)**

Repeal the cell, substitute:

Statutory declaration in relation to termination of an enterprise agreement after the nominal expiry date

**53 Clause 1 of Schedule 1 (cell at table item dealing with F24C, column 7)**

Repeal the cell, substitute:

As soon as practicable after lodgment with the Commission

**54 Clause 1 of Schedule 1 (cell at table item dealing with F25, column 3)**

Repeal the cell, substitute:

Application to vary a transitional instrument to remove an ambiguity or

uncertainty

**55 Clause 1 of Schedule 1 (cell at table item dealing with F28, column 3)**

Repeal the cell, substitute:

Application for  
termination of collective  
agreement-based  
transitional instrument

**56 Clause 1 of Schedule 1 (cell at table item dealing with F29, column 3)**

Repeal the cell, substitute:

Application to terminate  
a transitional instrument

**57 Clause 1 of Schedule 1 (cell at table item dealing with F37, column 3)**

Repeal the cell, substitute:

Application for an order  
for suspension or  
termination of protected  
industrial action

**58 Clause 1 of Schedule 1 (cell at table item dealing with F38, column 3)**

Repeal the cell, substitute:

Application for an order  
for extension of a  
suspension of protected  
industrial action

**59 Clause 1 of Schedule 1 (cell at table item dealing with F40, column 3)**

Repeal the cell, substitute:

Application for orders in  
relation to a transfer of  
business

**60 Clause 1 of Schedule 1 (cell at table item dealing with F40A, column 3)**

Repeal the cell, substitute:

Application for orders in  
relation to a transfer of  
business

**61 Clause 1 of Schedule 1 (after table item dealing with F41A)**

Insert:



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F43	Right of entry	Application for an order for access to non-member records	Section 483 AA of the Act	Applicant	Subject to an order of the Commission, each occupier and affected employer in relation to which orders are sought	Subject to an order of the Commission, as soon as practicable after lodgment with the Commission
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**62 Clause 1 of Schedule 1 (cell at table item dealing with F46, column 7)**

Repeal the cell, substitute:

As soon as practicable after lodgment with the Commission

**63 Clause 1 of Schedule 1 (cell at table item dealing with F47, column 3)**

Repeal the cell, substitute:

Application to vary an award-based transitional instrument

**64 Clause 1 of Schedule 1 (cell at table item dealing with F47B, column 3)**

Repeal the cell, substitute:

Response to an application for a take-home pay order (individual employee/outworker)

**65 Clause 1 of Schedule 1 (cell at table item dealing with F47D, column 3)**

Repeal the cell, substitute:

Response to an application for a take-home pay order (multiple employees/outworkers)

**66 Clause 1 of Schedule 1 (cell at table item dealing with F47E, column 3)**

Repeal the cell, substitute:

Statutory declaration in support of a take-home pay order (multiple

employees/outworkers)

**67 Clause 1 of Schedule 1 (cell at table item dealing with F47E, column 7)**

Repeal the cell, substitute:

As soon as practicable  
after lodgment with the  
Commission

**68 Clause 1 of Schedule 1 (after table item dealing with F50)**

Insert:

F51	Procedural	Application for an order requiring a person to attend before the Commission	Rule 53	Applicant	Subject to an order of the Commission, the person who is required to attend before the Commission and, unless the application has been published on the Commission's website, every other party in the matter	Subject to an order of the Commission, as soon as practicable after lodgment with the Commission
F52	Procedural	Application for an order for production of documents, records or information to the Commission	Rule 54	Applicant	Subject to an order of the Commission, the person who is required to produce the documents, records or information and, unless the application has been published on the Commission's website, every other party in the matter	Subject to an order of the Commission, as soon as practicable after lodgment with the Commission

**69 Clause 1 of Schedule 1 (cell at table item dealing with F53, column 3)**

Repeal the cell, substitute:

Notice that lawyer or  
paid agent acts for a  
person

**70 Clause 1 of Schedule 1 (cell at table item dealing with F53, column 6)**

Repeal the cell, substitute:

All parties to the matter  
other than the person for  
whom the lawyer or paid  
agent is acting

**71 Clause 1 of Schedule 1 (after table item dealing with F53)**

Insert:

F53A	Procedural	Notice that a person will seek permission for lawyer or paid agent to participate in a conference or hearing	Subsection 596(2) of the Act and rule 12A	Person lodging the notice	All parties to the matter other than the person seeking permission	As soon as practicable after lodgment with the Commission
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**72 Clause 1 of Schedule 1 (cell at table item dealing with F54, column 3)**

Repeal the cell, substitute:

Notice that lawyer or  
paid agent has ceased to  
act for a person

**73 Clause 1 of Schedule 1 (cell at table item dealing with F54, column 6)**

Repeal the cell, substitute:

All parties to the matter  
other than the person for  
whom the lawyer or paid  
agent previously acted