



Fair Work Legislation Amendment Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 08 December 2022

David Hurley
Governor-General

By His Excellency's Command

Tony Burke
Minister for Employment and Workplace Relations

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1 Name

This instrument is the *Fair Work Legislation Amendment Regulations 2022*.

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. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	14 December 2022
2. Schedule 1, Part 1, Division 1	The day after this instrument is registered.	14 December 2022
3. Schedule 1, Part 1, Division 2	1 February 2023.	1 February 2023
4. Schedule 1, Part 2	The day after the end of the period of 4 weeks beginning on the day this instrument is registered.	10 January 2023
5. Schedule 1, Part 3	At the same time as Division 1 of Part 1 of Schedule 1 to the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> commences.	6 March 2023
6. Schedule 1, Part 4	At the same time as Division 1 of Part 3 of Schedule 1 to the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> commences.	7 December 2022
7. Schedule 1, Part 5	The day after this instrument is registered.	14 December 2022
8. Schedule 1, Part 6, Division 1	The day after this instrument is registered.	14 December 2022
9. Schedule 1, Part 6, Division 2	1 July 2023.	1 July 2023

Note: This table relates only to the provisions of this instrument as originally made.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 following:

- (a) the *Fair Work Act 2009*;
- (b) the *Fair Work (Registered Organisations) Act 2009*;
- (c) the *Fair Work (Transitional Provisions and Consequential Amendments) 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

Part 1—Pay slip requirements

Division 1—Stapled funds

Fair Work Regulations 2009

1 Subregulation 3.46(5)

Omit “is required to make superannuation contributions”, substitute “has made, or intends to make, superannuation contributions”.

2 Paragraph 3.46(5)(b)

Omit “is liable to make”, substitute “intends to make”.

3 After subregulation 3.46(5)

Insert:

- (5A) For the purposes of subregulation (5), a pay slip is not required to include the name, or the name and number, of a fund if:
- (a) the pay slip is required to be given to the employee within the period of 14 days commencing on the first day on which the employer pays an amount to the employee in relation to the performance of work; and
 - (b) by the time the pay slip is given to the employee:
 - (i) there is no chosen fund for the employee (within the meaning of Division 4 of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*); and
 - (ii) the Commissioner of Taxation has not notified the employer or the employer’s agent (as applicable), in accordance with section 32R of that Act, of whether the Commissioner is satisfied that there is a stapled fund for the employee or, if the Commissioner is satisfied that there is a stapled fund, of the details of the fund.

Division 2—Family and domestic violence leave

Fair Work Regulations 2009

4 Division 3 of Part 3-6 (last paragraph in note to Division heading)

Omit “Pay slips must include all of the information set out in regulation 3.46”, substitute “Pay slips must include the information set out in regulation 3.46 and must not include the information set out in regulation 3.47”.

5 Regulation 3.46 (heading)

Omit “**content**”, substitute “**information to be included in pay slips**”.

6 After regulation 3.46

Insert:

3.47 Pay slips—information not to be included in pay slips

For the purposes of paragraph 536(2)(c) of the Act, the information in relation to paid family and domestic violence leave that must not be included in a pay slip is:

- (a) a statement that an amount paid to an employee is a payment in respect of the employee's entitlement to paid family and domestic violence leave; and
- (b) a statement that a period of leave taken by the employee has been taken as a period of paid family and domestic violence leave; and
- (c) the balance of an employee's entitlement to paid family and domestic violence leave.

Note: An example of the way in which a statement could be included in a pay slip that an amount is a payment in respect of a particular kind of leave is to state that the amount is paid as special leave, miscellaneous leave or leave—other.

Part 2—Delegations

Fair Work (Registered Organisations) Regulations 2009

7 Regulation 181A

Repeal the regulation, substitute:

181A Delegation by General Manager to staff—prescribed class of employees

For the purposes of subsection 343A(3) of the Act, the class of employees that are members of the staff of the FWC who hold or perform duties of an Executive Level 2 position, or an equivalent position, is prescribed.

Fair Work Regulations 2009

8 Regulation 5.01A

Repeal the regulation, substitute:

5.01A Delegation by the President of functions or powers of FWC—prescribed class of employees

For the purposes of paragraph 625(3)(c) of the Act, the following classes of employees are prescribed:

- (a) APS employees who hold or perform duties of an Executive Level 1 position, or an equivalent position;
- (b) APS employees who hold or perform duties of an Executive Level 2 position, or an equivalent position.

9 Regulation 5.04A

Repeal the regulation, substitute:

5.04A Delegation by General Manager to staff

For the purposes of paragraph 671(1)(b) of the Act, the following classes of employees are prescribed:

- (a) APS employees who hold or perform duties of an Executive Level 1 position, or an equivalent position;
- (b) APS employees who hold or perform duties of an Executive Level 2 position, or an equivalent position.

Part 3—Abolition of the Registered Organisations Commission

Fair Work (Registered Organisations) Regulations 2009

10 Subregulation 3(1) (definition of *authorised*)

Omit “or the Commissioner”.

11 Division 3 of Part 2

Repeal the Division.

12 Regulation 17

Omit “, the Commissioner”.

13 Subregulations 18(1) and (2)

Omit “, the Commissioner”.

14 Paragraph 20(1)(a)

After “the Act”, insert “(other than a document lodged under section 236, 237 or 272 or Part 4A of Chapter 11 of the Act)”.

15 Subregulation 20(1A)

Repeal the subregulation.

16 Paragraph 26(aa)

Omit “Commissioner”, substitute “General Manager”.

17 Subregulation 68(9)

Omit “and the Commissioner”.

18 Subregulation 87(3)

Omit “and the Commissioner”.

19 Subregulation 87A(3)

Omit “and the Commissioner”.

20 Subregulation 89(6)

Omit “and the Commissioner”.

21 Subregulation 97(11)

Omit “and the Commissioner”.

22 Paragraph 111(aa)

Omit “Commissioner”, substitute “General Manager”.

23 Subregulation 112(3)

Omit “and the Commissioner”.

24 Subregulation 113(2)

Omit “and the Commissioner”.

25 Subregulation 131(1)

Omit “Commissioner”, substitute “General Manager”.

26 Paragraph 133(1)(c)

Omit “application; and”, substitute “application.”.

27 Paragraph 133(1)(d)

Repeal the paragraph.

28 Regulation 134

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

29 Paragraph 135(4)(a)

Omit “Commissioner”, substitute “FWC”.

30 Regulation 136

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

31 Paragraph 137(1)(c)

Omit “Commissioner”, substitute “FWC”.

32 Subregulation 137(2)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

33 Paragraph 140(3)(a)

Omit “Commissioner”, substitute “General Manager”.

34 Subregulation 142(1)

Omit “Commissioner”, substitute “General Manager”.

35 Subregulation 145(2)

Omit “Commissioner”, substitute “General Manager”.

36 Subregulation 152(2)

Omit “Commissioner”, substitute “General Manager”.

37 Paragraph 159A(j)

Omit “Commissioner’s”, substitute “General Manager’s”.

38 Paragraph 159B(b)

Omit “Commissioner”, substitute “General Manager”.

39 Subregulations 159C(2) to (5)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

40 Subregulations 159D(2) to (4)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

41 Subregulation 159D(5)

Repeal the subregulation, substitute:

(5) The General Manager:

- (a) must publish the register on the FWC website; and
- (b) may publish the register, or otherwise make it publicly available, in any other way the General Manager considers appropriate.

42 Subregulation 166(5)

Omit “Commissioner, under”, substitute “General Manager, under”.

43 Subparagraph 166(5)(b)(i)

Repeal the subparagraph, substitute:

- (i) if the application was made by the General Manager—be delivered by hand at, or sent by prepaid post to, the FWC; or

44 Regulation 167

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

45 Regulation 167B

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

46 Paragraph 171(1)(b)

Omit “paragraph;”, substitute “paragraph.”.

47 Paragraphs 171(1)(c) and (d)

Repeal the paragraphs.

48 Subregulation 171(1A)

Repeal the subregulation, substitute:

- (1A) Paragraph (1)(b) does not apply if the civil penalty provision mentioned in paragraph 168(2)(ca), (d) or (f) relates to a direction or authorisation by a designated official.

49 Paragraphs 176A(2)(a) and (b)

Omit “Commissioner”, substitute “General Manager”.

50 Subregulation 176H(3)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

51 Subregulation 176J(7)

Omit “Commissioner” (wherever occurring), substitute “General Manager”.

52 Regulation 177

Omit “or the Commissioner”.

53 Regulation 178A

Repeal the regulation.

54 Subregulation 180(1)

Repeal the subregulation, substitute:

- (1) Any evidence given in any proceedings (the *earlier proceedings*) in relation to a matter under the Act or these Regulations may be used in any subsequent proceedings before the General Manager in relation to that matter:
 - (a) if the General Manager permits; and
 - (b) on any terms and conditions determined by the General Manager.

55 Subregulation 180(3)

Omit “or the Commissioner”.

56 Subregulation 180(4)

Repeal the subregulation, substitute:

- (4) If evidence has been given orally, this regulation does not authorise its use in the subsequent proceedings before the General Manager unless both:
 - (a) a written record of the evidence is available for the use of the General Manager; and
 - (b) the General Manager is satisfied the written record is a true record of the evidence.

57 Regulation 181 (heading)

Omit “and Commissioner”.

58 Subregulation 181(1A)

Repeal the subregulation.

59 Subregulation 181(2)

Omit “him or her for the purposes of paragraph (1)(a) or (1A)(a)”, substitute “the person for the purposes of paragraph (1)(a)”.

60 Subregulation 181(6)

Repeal the subregulation.

61 Schedule 3 (Form 8)

Repeal the form, substitute:

Form 8—Identity card—staff members to whom certain powers have been delegated

(regulation 144.)

COMMONWEALTH OF AUSTRALIA

Fair Work (Registered Organisations) Act 2009, paragraph 203(2)(a)

Schedule 1 Amendments

Part 3 Abolition of the Registered Organisations Commission

IDENTITY CARD—STAFF MEMBER

I, *the General Manager /*delegate of the General Manager, acting under subsection 203(1) of the *Fair Work (Registered Organisations) Act 2009*, certify that

whose photograph and signature appear on this card is a member of the staff assisting the General Manager to whom powers of the General Manager under section 202 of the Act have been delegated under section 343A of the Act.

.....
(Signature of staff member)

Dated 20 .

.....
*General Manager
*Delegate of the General Manager

**Omit if inapplicable.*

Part 4—Abolition of the Australian Building and Construction Commission

Fair Work (Registered Organisations) Regulations 2009

62 Subregulation 3(1) (paragraph (b) of the definition of *designated civil penalty provision*)

Omit “2009; or”, substitute “2009.”.

63 Subregulation 3(1) (paragraph (c) of the definition of *designated civil penalty provision*)

Repeal the paragraph.

64 Subregulation 3(1) (paragraph (b) of the definition of *designated offence*)

Omit “2001; or”, substitute “2001.”.

65 Subregulation 3(1) (paragraph (c) of the definition of *designated offence*)

Repeal the paragraph.

Part 5—Unfair dismissal

Fair Work Regulations 2009

66 Subregulation 3.07(8)

Repeal the subregulation, substitute:

Circumstances in which fee may be refunded

- (8) For the purposes of paragraph 395(2)(c) of the Act, a circumstance in which the FWC must refund an amount equal to the fee paid by a person for the application is that:
- (a) the application is subsequently discontinued under section 588 of the Act; and
 - (b) either:
 - (i) at the time of that discontinuance, the application has not been listed for a conciliation, conference or hearing; or
 - (ii) if the application has been listed for a conciliation, conference or hearing, on or from a specified date—that discontinuance occurs at least 2 days before that date.

Part 6—Other amendments

Division 1—Amendments commencing day after registration

Fair Work Regulations 2009

67 Regulation 3.45

Omit “536(2)(b)”, substitute “536(2)(a)”.

68 Paragraph 5.01(2)(d)

Omit “subsection 773(2)”, substitute “section 773”.

69 Regulation 6.03A (heading)

Omit “FWA”, substitute “FWC”.

70 Regulation 6.03A

Omit “FWA” (first occurring), substitute “the FWC”.

71 Paragraph 6.03A(a)

Omit “FWA’s”, substitute “the FWC’s”.

72 Paragraphs 6.03A(b) to (d)

Omit “FWA”, substitute “the FWC”.

73 Schedule 3.3 (Form 2)

Omit “or the Australian Building and Construction Commission (tel: 1800 003 338)”.

74 Schedule 3.3 (Form 3)

Before “Fair Work Commission”, insert “the”.

75 Schedule 3.3 (Form 3)

Omit “or the Australian Building and Construction Commission (tel: 1800 003 338)”.

76 Schedule 3.3 (Form 4)

Before “Fair Work Commission” (wherever occurring), insert “the”.

77 Schedule 6.1, clause (4) of the model term

Before “Fair Work Commission”, insert “the”.

78 Schedule 6.1, clause (5) of the model term (note)

Before “Fair Work Commission” (wherever occurring), insert “the”.

79 Schedule 6.1, clause (7) of the model term

Before “Fair Work Commission”, insert “the”.

80 Schedule 6.1A, clause (4) of the model term

Omit “Fair Work Australia”, substitute “the Fair Work Commission”.

81 Schedule 6.1A, clause (5) of the model term

Omit “Fair Work Australia may deal”, substitute “The Fair Work Commission may deal”.

82 Schedule 6.1A, paragraphs (5)(a) and (b) of the model term

Omit “Fair Work Australia” (wherever occurring), substitute “the Fair Work Commission”.

83 Schedule 6.1A, clause (5) of the model term (note)

Omit “Fair Work Australia” (wherever occurring), substitute “the Fair Work Commission”.

84 Schedule 6.1A, clause (7) of the model term

Omit “Fair Work Australia”, substitute “the Fair Work Commission”.

Division 2—Amendments commencing 1 July 2023

***Fair Work (Transitional Provisions and Consequential Amendments)
Regulations 2009***

85 Regulations 3A.01 and 3B.02

Repeal the regulations.