



Fair Work and Other Legislation Amendment Regulations 2023

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 16 March 2023

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 and Other Legislation Amendment Regulations 2023*.

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.	21 March 2023
2. Schedule 1, Part 1, Divisions 1 and 2	The day after this instrument is registered.	21 March 2023
3. Schedule 1, Part 1, Division 3	Immediately after the commencement of the <i>Federal Court and Federal Circuit and Family Court Regulations 2022</i> .	1 April 2023
4. Schedule 1, Parts 2 and 3	The day after this instrument is registered.	21 March 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Note: This table relates only to the provisions of this instrument as originally made.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 *Federal Circuit and Family Court of Australia Act 2021*;
- (d) the *Federal Court Act 1976*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Division 1—Main amendments

Fair Work Regulations 2009

1 In the appropriate position in Chapter 3

Insert:

Part 3-5A—Prohibiting sexual harassment connected with work

Division 3—Dealing with sexual harassment disputes

3.29A Applications for the FWC to deal with sexual harassment disputes—defence members

- (1) This regulation sets out the circumstances in which subsection 527F(3) of the Act does not prevent a person referred to in subsection 527F(2) of the Act from applying for the FWC to make a stop sexual harassment order in relation to a dispute if the aggrieved person in relation to the alleged contravention that is the subject of that dispute was a defence member at the time the contravention allegedly occurred.
- (2) The person is not prevented from making the application if at least one of the respondents in relation to the alleged contravention:
 - (a) was not a defence member at the time the contravention allegedly occurred; or
 - (b) is not a defence member at the time the application is made.
- (3) The person is also not prevented from making the application if a respondent in relation to the alleged contravention was a defence member at the time the contravention allegedly occurred and at least one of the following circumstances exist:
 - (a) in response to a request by the aggrieved person under section 37G of the *Defence Regulation 2016* for a review of a decision made in response to an application for a stop sexual harassment direction under section 37C of those Regulations, either:
 - (i) a stop sexual harassment direction is not issued in relation to that request; or
 - (ii) a stop sexual harassment direction is issued in relation to that request, and the person is dissatisfied with the direction;
 - (b) the person is not eligible to use the process under Part 6A of the *Defence Regulation 2016* to resolve the dispute;
 - (c) the process under Part 6A of the *Defence Regulation 2016* is available to the person to resolve the dispute but is not suitable because:
 - (i) a respondent in relation to the alleged contravention would be involved in conducting the process; and

- (ii) there is no other person that is authorised or empowered under that Part to conduct the process in place of the respondent.

Note: Paragraph (b) may apply, for example, if the person is undertaking a placement in a workplace that is not a Defence workplace.

- (4) In this regulation:

defence member has the same meaning as in the *Defence Force Discipline Act 1982*.

2 Part 6-4B (heading)

Omit “or sexually harassed”.

3 Division 2 of Part 6-4B (heading)

Omit “or sexually harassed”.

Division 2—Court fees (amendments of sunseting instrument)

Federal Court and Federal Circuit and Family Court Regulations 2012

4 After paragraph 2.08(2)(b)

Insert:

- (ba) an appeal from a judgment in relation to an application made by a person under section 539 of the *Fair Work Act 2009* for orders in relation to an alleged contravention of Division 2 of Part 3-5A of that Act;

5 After subsection 2.10(2)

Insert:

- (2A) A fee mentioned in Schedule 1, other than a filing fee mentioned in item 103A or 209A, is not payable in relation to an application under section 539 of the *Fair Work Act 2009* for orders in relation to an alleged contravention of Division 2 of Part 3-5A of that Act.

6 Subsection 2.20(1)

Omit “102 to 104”, substitute “102, 103, 104”.

7 Paragraph 2.20(1B)(a)

Omit “102 to 104”, substitute “102, 103, 104”.

8 Part 1 of Schedule 1 (after table item 103)

Insert:

103A	Filing of an application under section 539 of the <i>Fair Work Act 2009</i> for orders in relation to an alleged contravention of Division 2 of Part 3-5A of that Act	\$77.80
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9 Part 2 of Schedule 1 (after table item 209)

Insert:

209A	Filing of an application under section 539 of the <i>Fair Work Act 2009</i> for orders in relation to an alleged contravention of Division 2 of Part 3-5A of that Act	\$77.80
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Division 3—Court fees (amendments of new instrument)

Federal Court and Federal Circuit and Family Court Regulations 2022

10 After paragraph 2.08(2)(b)

Insert:

- (ba) an appeal from a judgment in relation to an application made by a person under section 539 of the *Fair Work Act 2009* for orders in relation to an alleged contravention of Division 2 of Part 3-5A of that Act;

11 After subsection 2.10(2)

Insert:

- (2A) A fee mentioned in Schedule 1, other than a filing fee mentioned in item 103A or 209A, is not payable in relation to an application under section 539 of the *Fair Work Act 2009* for orders in relation to an alleged contravention of Division 2 of Part 3-5A of that Act.

12 Subsection 2.20(1)

Omit “102 to 104, 107, 124, 201A, 202, 209, 210 and 220”, substitute “102, 103, 104, 107, 124, 202, 209, 210 and 220 or the reduced fee in item 201A”.

13 Part 1 of Schedule 1 (after table item 103)

Insert:

103A	Filing of an application under section 539 of the <i>Fair Work Act 2009</i> for orders in relation to an alleged contravention of Division 2 of Part 3-5A of that Act	\$77.80
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14 Part 2 of Schedule 1 (after table item 209)

Insert:

209A	Filing of an application under section 539 of the <i>Fair Work Act 2009</i> for orders in relation to an alleged contravention of Division 2 of Part 3-5A of that Act	\$77.80
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15 In the appropriate position in Part 5

Insert:

Division 5.2—Amendments made by the Fair Work and Other Legislation Amendment Regulations 2023

5.06 Application provision

The amendments of this instrument made by Division 3 of Part 1 of Schedule 1 to the *Fair Work and Other Legislation Amendment Regulations 2023* apply in relation to the liability of a person to pay any of the following fees:

Schedule 1 Amendments
Part 1 Sexual harassment

- (a) a filing fee for filing a document on or after 1 April 2023;
- (b) a setting down fee for a hearing if the day when the hearing is fixed is on or after 1 April 2023;
- (c) a hearing fee for a hearing day if the day when the hearing day is fixed is on or after 1 April 2023;
- (d) any other fee under this instrument for a document or service provided on or after 1 April 2023.

Part 2—Advertising rates of pay

Fair Work Regulations 2009

16 Regulation 4.03 (paragraph (a) of the definition of *civil remedy provision*)

After “item 29”, insert “or 29AA”.

Part 3—Additional registered organisations enforcement options

Fair Work (Registered Organisations) Regulations 2009

17 Part 9 (heading)

Repeal the heading, substitute:

Part 9—Compliance and enforcement

18 Before regulation 168

Insert:

Division 1—Civil penalties

19 At the end of Part 9

Add:

Division 2—Infringement notices

176AA Provisions subject to an infringement notice

For the purposes of subsection 316A(2) of the Act, each provision listed in the following table is prescribed.

Provisions that are subject to an infringement notice	
Item	Provision
1	Subregulation 38(8)
2	Subregulation 68(8)
3	Subregulation 87(2)
4	Subregulation 87A(2)
5	Paragraph 89(5)(a)
6	Subregulation 97(10)
7	Subregulation 112(2)
8	Subregulation 113(1)
9	Subregulation 145(1)