

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment and Workplace Relations

Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023

AUTHORITY

The *Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023* (Instrument) are made under the:

- *Corporations Act 2001*
- *Data Availability and Transparency Act 2022*
- *Fair Work Act 2009*
- *Federal Circuit and Family Court of Australia Act 2021*
- *Federal Safety Commissioner Act 2022*
- *Jury Exemption Act 1965*

Corporations Act 2001

The *Corporations Act 2001* provides for the regulation of corporations and financial services.

In relation to the amendment to subparagraph 5.3A.50(2)(zo)(i) of the Corporations Regulations 2001, section 1364 of the Corporations Act 2001 permits the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed. Section 5.3A.50 of these Regulations are made under subparagraph 451E(5)(b)(i) of the Act, provides that subsection 451E(1) does not apply to a right if it is prescribed by the regulations.

Data Availability and Transparency Act 2022

The *Data Availability and Transparency Act 2022* establishes a data sharing scheme that authorises and regulates controlled access to Commonwealth data with accredited entities, with safeguards in place to manage risk and streamline processes.

Section 134 of the *Data Availability and Transparency Act 2022* permits the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Fair Work Act 2009

The *Fair Work Act 2009* (Fair Work Act), together with the *Fair Work Regulations 2009* (Fair Work Regulations), establishes a national workplace relations system covering the majority of employers and employees in Australia.

Subsection 796(1) of the Fair Work Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Fair Work Act to be prescribed,

or necessary or convenient to be prescribed for carrying out or giving effect to the Fair Work Act.

The Explanation of Provisions at the Attachment sets out additional regulation-making powers for regulations in relation to industrial action, enterprise bargaining and the travel allowance for members of the National Construction Industry Forum (NCIF).

Federal Circuit and Family Court of Australia Act 2021

The *Federal Circuit and Family Court of Australia Act 2021* (FCFCOA Act) provides a framework for the operation of this court and provisions with respect to its jurisdiction.

Section 285 of the FCFCOA Act provides, in part, that the Governor-General may make regulations prescribing the fees payable in respect of proceedings in the Federal Circuit and Family Court of Australia (FCFCOA) and the service and execution of the process of the FCFCOA. They may also provide for the exemption, waiver or refund of those fees.

Federal Safety Commissioner Act 2022

The *Federal Safety Commissioner Act 2022* (FSC Act) is the new name for the *Building and Construction Industry (Improving Productivity) Act 2016* (BCI(IP) Act) following amendments by Part 3 of Schedule 1 to the *Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (SJBPA Act) which abolished the Australian Building and Construction Commission (ABCC) on 6 February 2023.

Subsection 120(4) of the FSC Act enables the Governor-General to make regulations prescribing matters required or permitted by the Act or matters necessary or convenient for carrying out or giving effect to the Act.

Jury Exemption Act 1965

The *Jury Exemption Act 1965* exempts certain Commonwealth employees from liability to serve as jurors in federal, state and territory courts.

Subsection 4(2) of the *Jury Exemption Act 1965* permits the Governor-General to make regulations for or in relation to exempting a Commonwealth employee, or a person included within a class of Commonwealth employees, specified in the regulations from liability to serve as a juror in a Federal court, a court of a State or a court of a Territory.

ACTS INTERPRETATION ACT 1901

Some of the items in the Instrument are made in contemplation of the commencements of its enabling provision. In these circumstances, the Instrument relies on section 4 of the *Acts Interpretation Act 1901*.

Further, where the Instrument repeals or amends another instrument, and there is no express power in the enabling legislation to do so, subsection 33(3) of the *Acts Interpretation Act 1901* is relied upon to amend, modify or repeal the instrument.

EXEMPTIONS FROM SUNSETTING

Pursuant to table item 18(d) in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (Exemption Regulations), the regulation amended by item 41 of the SJBP Regulation will not be subject to ordinary sunseting processes. The *Legislation (Exemptions and Other Matters) Amendment (Sunsetting Exemptions) Regulations 2017* (the Corporations Exemption Amendment) amended the Exemptions Regulations to include as exempt from sunseting the *Corporations Regulations 2001*. The Explanatory Statement to the Corporations Exemption Amendment contains the justification as to why the *Corporations Regulations 2001* should be exempt from sunseting. In short, the *Corporations Regulations 2001* are exempt from sunseting because they form part of an intergovernmental scheme.

Pursuant to table item 27(e) in section 12 of the Exemption Regulations, the regulations amended and inserted by Parts 1, 3, 4 and 6 of Schedule 1 to the SJBP Regulation will not be subject to ordinary sunseting processes. The *Legislation (Exemptions and Other Matters) Amendment (2019 Measures No. 1) Regulations 2019* (Fair Work Exemption Amendment) amended the Exemption Regulations to include as exempt from sunseting a regulation made under the Fair Work Act. The Explanatory Statement to the Fair Work Exemption Amendment contains the justification as to why regulations made under the Fair Work Act should be exempt from sunseting. In short, regulations and other like instruments made under the Fair Work Act are exempt from sunseting because they form part of an intergovernmental scheme.

PURPOSE AND OPERATION

The SJBP Act amends the Fair Work Act and related legislation, including in relation to enterprise bargaining, industrial action, and the monetary cap on amounts that can be awarded in small claims proceedings. Relevantly, the SJBP Act also abolished the ABCC and established the NCIF, a statutory advisory body to advise government on matters relating to work in the building and construction industry.

The purpose of the Instrument is to make amendment to the Fair Work Regulations and other regulations consequential to legislative changes made by the SJBP Act. The Instrument will:

- clarify signature requirements for new bargaining instruments
- amend the prescribed Notice of Employee Representational Rights Form in Schedule 2.1 to the Fair Work Regulations
- prescribe requirements that the Fair Work Commission (FWC) must be satisfied have been met before a person who is not an eligible protected action ballot (PAB) agent is appointed the PAB agent for a PAB
- set out the travel allowance entitlement for certain members of the NCIF
- reflect the abolition of the ABCC and the Registered Organisations Commission and the renaming of the BCI(IP) Act to the FSC Act
- amend the scale of filing fees for small claims proceedings in the Federal Circuit and Family Court of Australia (Division 2) consequential to the increased monetary cap on amounts that can be awarded in small claims proceedings brought under the Fair Work Act.

The Instrument also inserts new provisions into the Fair Work Regulations to facilitate amendments made by the SJBPA Act to the enterprise bargaining and industrial action schemes of the Fair Work Act. The Instrument will:

- clarify how the FWC is to take into account its statement of principles on genuine agreement in cases of certain variations of enterprise agreements
- amend the information set out in Schedule 5.2 to the Fair Work Regulations that the President of the FWC must provide to the Minister
- empower the President of the FWC with the discretion to delegate the:
 - conducting of a conference in accordance with section 448A of the Fair Work Act
 - approval of a person as an eligible PAB agent under subsection 468A(2) of the Act
 - functions and powers conferred on the FWC by subsections 468A(4) and (5) of the Fair Work Act.

Details of the Instrument are set out in the [Attachment](#).

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

REGULATORY IMPACT

The Office of Impact Analysis has advised that an Impact Analysis is not required for this instrument as the reforms are unlikely to have more than a minor regulatory impact (OIA23-04745, OIA23-04581, OBPR22-03217, OIA23-04568, OBPR22-03003).

COMMENCEMENT

The various amendments commence on different days, including upon commencement of the relevant parts of the SJBPA Act.

CONSULTATION

The Department of Employment and Workplace Relations consulted with referring states and territories under the *Intergovernmental Agreement for a National Workplace Relations System for the Private Sector*, and the Committee on Industrial Legislation.

The department separately consulted staff of the Fair Work Commission, the Department of the Treasury, the Department of Finance and the Attorney-General's Department.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023

The *Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023* (Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Instrument amends the *Fair Work Regulations 2009* (Fair Work Regulations) and other regulations to:

- clarify how certain of the matters dealt with in the statement of principles on genuine agreement are to be taken into account for the purpose of variations of single-enterprise agreements
- prescribe signing requirements relating to various bargaining instruments
- amend the prescribed Notice of Employee Representational Rights Form in Schedule 2.1 to the Fair Work Regulations
- amend the information provided in Schedule 5.2 of the Fair Work Regulations that the President of the Fair Work Commission (FWC) must provide to the Minister
- prescribe requirements that the FWC must be satisfied have been met before a person who is not an eligible protected action ballot (PAB) agent is appointed the PAB agent for a PAB.
- empower the President of the FWC with the discretion to delegate certain powers and functions to FWC staff, including:
 - conducting a conference in accordance with section 448A of the *Fair Work Act 2009* (Fair Work Act)
 - approving a person as an eligible PAB agent under section 468A of the Fair Work Act
 - the functions and powers conferred on the FWC by subsections 468A(4) and (5) of the Fair Work Act.
- prescribe the rate of travel allowance payable to eligible members, substitute members and invited participants of the National Construction Industry Forum, to attend Forum meetings
- reflect the abolition of the Australian Building and Construction Commission and the Registered Organisations Commission and the renaming of the *Building and Construction Industry (Improving Productivity) Act 2016* to the *Federal Safety Commissioner Act 2022*
- amend the filing fees for proceedings in the Federal Circuit and Family Court of Australia (Division 2) consequential to the increased monetary cap on amounts that can be awarded in small claims proceedings under the Fair Work Act.

Human rights implications

The definition of ‘human rights’ in the *Human Rights (Parliamentary Scrutiny) Act 2011* relates to the core seven United Nations human rights treaties. The Instrument engages the following rights:

- the right to the enjoyment of just and favourable conditions of work under Articles 6 and 7 of the International Covenant on Economic Social and Cultural Rights (ICESCR)
- the right to freedom of association, including the right to form and join trade unions under Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 8 of the ICESCR.

The content of the right to work, the right to just and favourable conditions of work in the ICCPR can be informed by specific obligations in treaties of the International Labour Organisation (ILO), such as the *Right to Organise and Collective Bargaining Convention 1949 (No. 98)*, that protects the right of employees to collectively bargain for terms and conditions of employment, and the *Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87)*, which provides employer and employee organisations with protection for their organisational autonomy.

Rights to work and rights in work

Article 6 of the ICESCR requires the State Parties to the Covenant to recognise the right to work and to take appropriate steps to safeguard this right. The United Nations Committee on Economic, Social and Cultural Rights has stated that the right to work in Article 6(1) encompasses the need to provide the worker with just and favourable conditions of work.

Article 7 of the ICESCR requires the State Parties to the Covenant to recognise the right of everyone to the enjoyment of just and favourable working conditions.

Requirement for signing guarantee of termination entitlements

Regulation 2.10H prescribes the requirements relating to the signing of a guarantee of termination entitlements given by an employer for employees whose enterprise agreement is terminated because its continued operation would pose a significant threat to the business. The guarantee would in effect preserve redundancy entitlements providing they were more beneficial than would otherwise apply. By supporting this safeguard for employees this consequential amendment positively engages rights to work and rights in work.

Measure clarifying matters dealt with in the statement of principles on genuine agreement

Regulation 2.10A is a technical amendment which clarifies how the FWC must take into account the statement of principles on genuine agreement when determining whether it is satisfied that a variation to an enterprise agreement is genuinely agreed. For a variation, the relevant principles published by the FWC provide guidance for employers about how they can ensure employees have genuinely agreed to the variation, including explaining the terms and their effect, and providing a reasonable opportunity to consider and vote on the variation. The amendment thus positively engages and supports the right to collective bargaining.

Requirements for signing variations relating to supported bargaining agreement, cooperative workplace agreement, single interest employer agreement, multi-employer agreement

Regulations 2.10B, 2.10C, 2.10D, 2.10E, 2.10F and 2.10G prescribe signing requirements consequential to the broader objective of supporting employees' access, via their representatives, to an expanded bargaining framework and the outcomes of collectively bargained terms and conditions. These proposed amendments therefore support and more widely promote the right to collective bargaining.

Other regulations

The remainder of the Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Instrument is compatible with human rights because it promotes the protection of human rights.

The Hon. Tony Burke, Minister for Employment and Industrial Relations

**FAIR WORK LEGISLATION AMENDMENT (SECURE JOBS, BETTER PAY)
REGULATIONS 2023**

EXPLANATION OF PROVISIONS

Section 1 – Name

1. This section provides that the name of the regulation is the *Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023* (Instrument).

Section 2 – Commencement

2. This section provides for commencement of the provisions of the Instrument.

Section 3 – Authority

3. This section provides that the Instrument is made under the following:
 - *Corporations Act 2001*;
 - *Data Availability and Transparency Act 2022*;
 - *Fair Work Act 2009*;
 - *Federal Circuit and Family Court of Australia Act 2021*;
 - *Federal Safety Commissioner Act 2022*;
 - *Jury Exemption Act 1965*.

Section 4 – Schedules

4. This section provides that 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—Industrial action

Fair Work Regulations 2009

Item 1 – Regulation 3.11 (heading)

This item repeals and substitutes the heading of regulation 3.11. This amendment is consequential to amendments made to the Fair Work Act by Part 19 of Schedule 1 to the SJPB Act that remove the status of the Australian Electoral Commission as the default protected action ballot (PAB) agent.

Item 2 – Subregulation 3.11(1)

This item repeals and substitutes subregulation 3.11(1). New subregulation 3.11(1) provides that, for the purposes of paragraph 444(1D)(c) of the Fair Work Act, regulation 3.11 prescribes requirements that the FWC must be satisfied have been met before a person becomes the PAB agent for a PAB. A legislative note alerts the reader that the person must also be a fit and proper person to conduct a PAB.

Item 3 – Regulation 3.14 (heading)

This item repeals and substitutes the heading of regulation 3.14. This amendment is consequential to amendments made to the Fair Work Act by Part 19 of Schedule 1 to the SJPB Act that remove the status of the Australian Electoral Commission as the default PAB agent.

Item 4 – Subregulation 5.01(1)

This item repeals and substitutes subregulation 5.01(1) to allow the President of the FWC to delegate certain FWC functions or powers to the General Manager or to specified staff of the FWC, including:

- giving a copy of a PAB order to a person under section 445 of the Fair Work Act. Section 445 of the Fair Work Act requires the FWC to give a copy of a PAB order to each applicant for the order, the employer of the employees who are to be balloted and the PAB agent for the PAB, as soon as practicable after making the order.
- conducting a conference in accordance with section 448A of the Fair Work Act. Section 448A, which was inserted into the Fair Work Act by the SJPB Act, requires the FWC to make an order directing bargaining representative for a proposed enterprise agreement to attend a conference where the FWC has made a PAB order in relation to the agreement.
- approving a person as an eligible PAB agent under subsection 468A(2) of the Fair Work Act. Subsection 468A(2), which was inserted into the Fair Work Act by the SJPB Act, provides that before a person is approved by the FWC as an eligible PAB agent, the FWC must be satisfied that the person is a fit and proper person to be an eligible PAB agent and meets any other requirements prescribed by the Fair Work Regulations.

- the functions and powers conferred on the FWC by subsections 468A(4) and (5) of the Fair Work Act. Subsections 468A(4) and (5) require the FWC to consider, at least every 3 years after it approves a person as an eligible PAB agent, whether it remains satisfied that the person meets the requirements mentioned in subsection 468A(2) and, if no longer satisfied that they do so, take any action prescribed by the by the Fair Work Regulations and any other action the FWC considers appropriate.

Part 2—Enhancing the small claims process

Division 1 – Amendments

Federal Court and Federal Circuit and Family Court Regulations 2022

On 1 July 2023, the monetary cap for small claims brought under the Fair Work Act, section 548, will increase from \$20,000 to \$100,000: item 651 of Part 24 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*. Items 5 to 8 make consequential changes to the relevant court filing fees set out in Part 2 of Schedule 1 to the *Federal Court and Federal Circuit and Family Court Regulations 2022*.

Item 5 – Part 2 of Schedule 1 (table item 212, column headed “Document or service”, paragraph (b))

Item 212 of Schedule 1 specifies a filing fee of \$425 for the filing of an application under the Fair Work Act, section 539, where the applicant elects the small claims procedure under section 548, and the claim is between \$10,000 and \$20,000.

This item amends item 212 of Schedule 1, so that the filing fee of \$425 applies to a claim that is \$10,000 or more and less than \$50,000. There is no change to the fee amount.

Item 6 – Part 2 of Schedule 1 (after table item 212)

This item inserts new item 212AA into the table in Schedule 1. It specifies a filling fee of \$525 for the filing of an application under the Fair Work Act, section 539, where the applicant elects the small claims procedure under section 548 and the claim is between \$50,000 and \$100,000. This is a new fee, as the small claims procedure under section 548 will become available for new claims that fall within this range from 1 July 2023.

Item 7 – Part 2 of Schedule 1 (table item 212A, column headed “document or service”)

This item is consequential upon the insertion of new item 212AA into the table in Schedule 1.

Division 2 – Transitional provisions

Federal Court and Federal Circuit and Family Court Regulations 2022

Item 8 – In the appropriate position in Part 5

Division 5.3 – Amendments made by the Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023

5.07 – Transitional provision—annual increase in fees

This item inserts new Division 5.3 in Part 5, so that the \$525 filing fee specified in new item 212AA of Schedule 1 is not subject to automatic indexing under the regulations in the first year of operation.

Part 3—National Construction Industry Forum

Fair Work Regulations 2009

Item 9 – After Part 6-4C

This item inserts new Part 6-4D concerning the National Construction Industry Forum.

Regulation 6.07CA – Travel allowances—prescribed rates

This regulation sets out the travel allowance entitlement for certain persons for the purposes of attending a meeting of the National Construction Industry Forum (the Forum).

Sub-regulation (1) explains that the purpose of this regulation is to set out the rate of travel allowance that members of the Forum (provided they are not Ministers or members of Parliament), substitute members of the Forum and persons invited to participate in meetings of the Forum are entitled to be paid to attend Forum meetings.

Sub-regulations (2) and (3) prescribe the rates of travel allowance as the actual amount that is payable, with the amount not exceeding the amount payable for travel by business class when travelling by air, the rate of \$0.78 per kilometre for travel by the member's private motor vehicle, and the actual amount payable for travel by public transport, taxi or similar means, provided, the latter does not exceed \$300 (which limit applies to the whole of the travel, not each way journey), to attend a meeting. The travel must be for the purposes of attending meetings of the Forum and if part of that travel is not necessary for these purposes, there will be no eligibility to be paid travel allowance for the unnecessary travel.

Sub-regulation (4) prescribes the rates of travel allowance where a member is necessarily absent overnight from the member's principal place of residence to attend a meeting of the Forum. It provides that a member is entitled to travel allowance for each night of absence for accommodation, meals and expenses. This is at the rate actually payable for the travel expenses, but not exceeding the reasonable amount for domestic travel expenses worked out in accordance with Taxation Determination 2022/10, as existing on 1 July 2023, for a person with a salary between \$133,451 and \$237,520. Taxation Determination 2022/10 includes limitations on claims and these limitations apply to claims for travel allowance by members of the Forum. Receipts will be sufficient to establish the actual rate payable for the travel expenses, within the limits of Taxation Determination 2022/10.

The note to sub-item (4) assists the reader in locating Taxation Determination 2022/10, which, in 2023, could be viewed at <https://www.ato.gov.au>.

Item 10 – Part 6-4D

This item renumbers existing Part 6-4D of the Fair Work Regulations as Part 6-4DA. This will maintain consistency between the numbering of the Fair Work Act and the Fair Work Regulations following the insertion of new Part 6-4D concerning the Forum into the Fair Work Act.

Part 4—Enterprise agreements

Division 1 – Amendments commencing day after registration

Fair Work Regulations 2009

Item 11 – After regulation 2.09

This item inserts a new Division 7—Variation and termination of enterprise agreements and a new Subdivision A—Variation of enterprise agreements by employers and employees: general circumstances, into existing Division 7 of Part 2-4 of Chapter 2 after regulation 2.09. New Division 7 and Subdivision A improve the readability of the regulations.

Item 12 – After regulation 2.10

This item inserts new Subdivision D—Termination of enterprise agreements after nominal expiry date and a new regulation 2.10H, into existing Division 7 of Part 2-4 of Chapter 2 after regulation 2.10.

Section 226A is a new provision inserted in the Fair Work Act by the SJBPA Act. New subsection 226A provides for an employer to give an undertaking to guarantee the employer will comply with any terms of a terminated enterprise agreement that, had it continued in operation, would have provided the employee with entitlements that relate to a termination of the employee’s employment in the relevant grounds and are more beneficial than the entitlements under a modern award that covered the employee in relation to the employment at that time (except if the employee was an award or agreement free employee immediately before termination). Regulation 2.10H provides that a guarantee of termination entitlements given by an employer covered by an enterprise agreement must be signed by the employer and must include, for each person who signs the guarantee, the full name and address of the person and an explanation of the person’s authority to sign the guarantee.

Division 2 – Amendments commencing later

Fair Work Regulations 2009

Item 13 – Before Subdivision D of Division 7 of Part 2-4

This item inserts new regulation 2.10A (Approval of variations of enterprise agreements—modification of requirement to take into account statement of principles on genuine agreement) before Subdivision D of Division 7 of Part 2-4. This item also inserts new Subdivisions AA, AB, AC, AD and AE, including new regulations 2.10B, 2.10C, 2.10D,

2.10E, 2.10F and 2.10G, which prescribe the requirements for signing variations in an application to vary an enterprise agreement to add or remove an employer and employees.

New subsection 188B(1), which was inserted into the Fair Work Act by the SJPB Act, provides that the FWC must make a statement of principles containing guidance for employers on ensuring that employees have genuinely agreed to an enterprise agreement. Pursuant to subsection 188(1), the FWC must take into account the statement of principles when determining whether it is satisfied that an enterprise agreement had been genuinely agreed by the employees covered by the agreement. Paragraphs 211(3)(c)-(e) modify the operation of the ‘genuine agreement’ rules in section 188 so that the Commission can apply them sensibly in the context of an application for the approval of a variation of an enterprise agreement made under section 210. Subsections 216AD(2), 216CC(2) and 216DD(2) of the Fair Work Act further modify the application of the statement of principles in the context of an application for the approval of a variation of a supported bargaining agreement, a cooperative workplace agreement and a single interest agreement. The Fair Work Act does not include modifications to explain how the FWC should apply the statement of principles when assessing an application for the approval of a variation of an enterprise agreement made under Division 7, Subdivision A.

New regulation 2.10A modifies section 188 of the Fair Work Act for the purpose of the FWC deciding, in the context of an application for the approval of a variation of an enterprise agreement, whether it is satisfied of the matters referred to in paragraph 211(1)(a) of the Fair Work Act. New regulation 2.10A provides that in taking into account the statement of principles made under section 188B of the Fair Work Act:

- the matter mentioned in paragraph 188B(3)(b) of the Fair Work Act is taken to be a matter relating to the capacity of employees to be represented in relation to the proposed variation of the enterprise agreement; and
- the matters mentioned in paragraphs 188B(3)(a), (c), (d) and (e) of the Fair Work Act are taken to be matters relating to the proposed variation of the enterprise agreement.

Paragraph 216AA(2)(a), which was inserted into the Fair Work Act by the SJPB Act, requires that an application for the FWC’s approval of a variation of a supported bargaining agreement to add an employer and employees (with consent) must be accompanied by a signed copy of the variation. New regulation 2.10B makes clear that a variation is a signed copy only if it is signed by both the employer (or someone authorised by the employer to sign on their behalf), and at least one representative of the affected employees. For each person who signs the variation, the full name and address of the person and an explanation of the person’s authority to sign the variation should be included. To streamline the signing process, for example to allow employers who have long standing arrangements relating to signing on their behalf, a person authorised by an employer may sign the variation. Unless the representative of the affected employees is an affected employee, the representative’s signature is not taken to indicate that the representative intends to be bound by the agreement as varied. A legislative note alerts the reader to the requirement in paragraph 216AA(2)(a).

Paragraph 216B(2)(a), which was inserted into the Fair Work Act by the SJPB Act, requires that an application for the FWC’s approval of a variation of a supported bargaining agreement to add an employer and employees (without consent) must be accompanied by a signed copy of the variation proposed by the employee organisation. New regulation 2.10C makes clear that a variation is a signed copy only if it is signed by the employee organisation and includes, for each person who signs the variation, the full name and address of the person

and an explanation of the person's authority to sign the variation. A legislative note alerts the reader to the requirement in paragraph 216B(2)(a).

Paragraph 216CA(2)(a), which was inserted into the Fair Work Act by the SJBPA Act, requires that an application for the FWC's approval of a variation of a cooperative workplace agreement to add an employer and employees must be accompanied by a signed copy of the variation. New regulation 2.10D makes clear that a variation is a signed copy only if it is signed by both the employer (or someone authorised by the employer to sign on their behalf), and at least one representative of the affected employees. For each person who signs the variation, the full name and address of the person and an explanation of the person's authority to sign the variation should be included. To streamline the signing process, for example to allow employers who have long standing arrangements relating to signing on their behalf, a person authorised by an employer may sign the variation. Unless the representative of the affected employees is an affected employee, the representative's signature is not taken to indicate that the representative intends to be bound by the agreement as varied. A legislative note alerts the reader to the requirement in paragraph 216CA(2)(a).

Paragraph 216DA(2)(a), which was inserted into the Fair Work Act by the SJBPA Act, requires that an application for the FWC's approval of a variation of a single interest employer agreement to add an employer and employees (joint variation) must be accompanied by a signed copy of the variation. New regulation 2.10E makes clear that a variation is a signed copy only if it is signed by both the employer (or someone authorised by the employer to sign on their behalf), and at least one representative of the affected employees. For each person who signs the variation, the full name and address of the person and an explanation of the person's authority to sign the variation should be included. To streamline the signing process, for example to allow employers who have long standing arrangements relating to signing on their behalf, a person authorised by an employer may sign the variation. Unless the representative of the affected employees is an affected employee, the representative's signature is not taken to indicate that the representative intends to be bound by the agreement as varied. A legislative note alerts the reader to the requirement in paragraph 216DA(2)(a).

Paragraph 216DB(2)(a), which was inserted into the Fair Work Act by the SJBPA Act, requires that an application by an employee organisation for the FWC's approval of a variation of a single interest employer agreement to add an employer and employees must be accompanied by a signed copy of the variation for which approval is sought. New regulation 2.10F makes clear that a variation is a signed copy only if it is signed by the employee organisation and includes, for each person who signs the variation, the full name and address of the person and an explanation of the person's authority to sign the variation. A legislative note alerts the reader to the requirement in paragraph 216DB(2)(a).

Section 216EA, which was inserted into the Fair Work Act by the SJBPA Act, deals with applications for the FWC's approval of a variation of a multi-enterprise agreement to remove an employer and employees with consent. New regulation 2.10G provides that the variation must be signed by the employer (or someone authorised by the employer to sign on their behalf), and at least one representative of the affected employees. For each person who signs the variation, the full name and address of the person and an explanation of the person's authority to sign the variation should be included. To streamline the signing process, for example to allow employers who have long standing arrangements relating to signing on their behalf, a person authorised by an employer may sign the variation.

Item 14 – Schedule 2.1

Item 15 – Schedule 2.1

Item 16 – Schedule 2.1

Section 173 of the Fair Work Act requires an employer that will be covered by a proposed enterprise agreement to take all reasonable steps to give notice of the right to be represented by a bargaining representative to each employee who will be covered by the agreement and is employed at the notification time for the agreement. Section 173 of the Fair Work Act, as amended by the SJBPA Act, limits the requirement to issue a notice of employee representational rights (Notice) to bargaining for a single-enterprise agreement (which is not a greenfields agreement). These items make consequential amendments to the language used in the Notice to replace references to “enterprise agreement” and “an enterprise” with references to “single-enterprise agreement” and “a single-enterprise”. These amendments ensure the content of the Notice accurately reflects the circumstances in which an employer is required to issue a Notice.

Item 17 – Schedule 2.1

This item omits the words “before Fair Work Commission about bargaining for the agreement” in Schedule 2.1 and substitutes the words “before the Fair Work Commission that relates to bargaining for the agreement”. This amendment is a technical correction.

Item 18 – Schedule 2.1

Item 19 – Schedule 2.1

Item 20 – Schedule 2.1

Part 20 of Schedule 1 to the SJBPA Act reforms the low-paid bargaining provisions in Division 9 of Part 2-4 of the Fair Work Act and creates the supported bargaining stream. These items omit from Schedule 2.1:

- the sentence “[*If the agreement is not an agreement for which a low-paid authorisation applies—include:*]”
- the words “or you revoke the union’s status as your representative” (first occurring)
- all the words from and including “[*If a low-paid authorisation*” to and including “that also applied for the authorisation.”

These amendments are consequential to the replacement of the low-paid bargaining stream with the supported bargaining stream and the requirement in section 173 of the Fair Work Act to issue a notice of employee representational rights in bargaining for a single-enterprise agreement (other than a greenfields agreement).

Item 21 – Schedule 2.1

Item 22 – Schedule 2.1

Item 21 omits from Schedule 2.1 the words “*[if the employee is covered by an individual agreement-based transitional instrument]*” and substitute them with “*[If the employee is covered by an individual agreement]*”.

Item 22 omits from Schedule 2.1 all of the words from and including “If you are currently covered by” to and including “your individual agreement will terminate).” and substitutes a new paragraph that also includes among the list of individual agreements references to ‘pre-reform AWA’, and ‘individual Division 2B State employment agreement’. The new paragraph also replaces references to the nominal expiry date and conditional termination of an existing individual agreement with an explanation of the new sunseting arrangements for these instruments.

These amendments ensure a comprehensive list of individual agreements is included in the notice of employee representational rights and reflect amendments made by Part 13 of the SJBPA Act that provide for the sunseting of all remaining agreement-based transitional instruments, Division 2B State employment agreements and enterprise agreements made during the ‘bridging period’.

Item 23 – Part 1 of Schedule 5.2 (after table item 2.2)

Item 24 – Part 1 of Schedule 5.2 (after table item 2.3)

Item 25 – Part 1 of Schedule 5.2 (after table item 2.4)

Item 26 – Part 1 of Schedule 5.2 (after table items 2.5)

Item 27 – Part 1 of Schedule 5.2 (after table item 2.7)

Item 28 – Part 1 of Schedule 5.2 (table items 3.2 and 3.7)

Item 29 – Part 1 of Schedule 5.2 (table item 4)

Item 30 – Part 1 of Schedule 5.2 (before table item 4.1)

Item 31 – Part 1 of Schedule 5.2 (table item 4.1)

Item 32 – Part 1 of Schedule 5.2 (after table item 4.1)

Item 33 – Part 1 of Schedule 5.2 (table items 4.2 and 4.3)

Item 34 – Part 1 of Schedule 5.2 (table item 5)

Item 35 – Part 1 of Schedule 5.2 (after table item 5.1)

Item 36 – Part 1 of Schedule 5.2 (after table item 5.2)

Item 37 – Part 1 of Schedule 5.2 (after table item 5.5)

Item 38 – Part 1 of Schedule 5.2 (table items 6.1 and 6.4)

Item 39 – Part 1 of Schedule 5.2 (table item 6.6)

Item 40 – Part 1 of Schedule 5.2 (table item 15.1, column headed “This information or copy of a document...”, paragraph (o))

These items are amendments to Schedule 5.2 of the Regulations which, together with regulation 5.04, specifies information and documents that must be provided by the President of the FWC to the Minister and to the Fair Work Ombudsman.

Item 23 inserts new items 2.2A and 2.2B in the table in Part 1 of Schedule 5.2, which require the President to provide information to the Minister regarding the number of applications made in a quarter under sections 216CA and 216EA of the Fair Work Act. Sections 216CA and 216EA are new provisions included in the Fair Work Act by the SJBPA Act. These sections set out the application process for the FWC’s approval of a variation of a cooperative workplace agreement to add an employer that was not covered by the agreement and the application process for the FWC’s approval of a variation of a multi-enterprise agreement to remove an employer and employees with consent.

Item 24 inserts new item 2.3A in the table in Part 1 of Schedule 5.2, which requires the President to provide information to the Minister about the number of applications made in a quarter under section 227A of the Fair Work Act. Section 227A is a new provision included in the Fair Work Act by the SJBPA Act, and concerns an application for the FWC to reconsider whether an enterprise agreement passes the better off overall test.

Item 25 inserts new item 2.4A in the table in Part 1 of Schedule 5.2, which require the President to provide information to the Minister about the number of enterprise agreements approved in a quarter under section 186 of the Fair Work Act with amendments specified under section 191A of the Fair Work Act. Section 191A is a new provision included in the Fair Work Act by the SJBPA Act and enables the FWC to approve an enterprise agreement with amendments in certain circumstances.

Item 26 inserts new item 2.5A in the table in Part 1 of Schedule 5.2, which require the President to provide information to the Minister about the number of single-enterprise agreements approved in a quarter under section 186 of the Fair Work Act in respect of which an employer gave a notice under subsection 173(1) of the Fair Work Act. Section 173(1), as amended by the SJBPA Act, provides that an employer that will be covered by a proposed single-enterprise agreement (other than a greenfields agreement) must take all reasonable steps to give notice of the right to be represented by a bargaining representative to each employee who will be covered by the agreement and is employed at the notification time for the agreement.

Item 27 inserts new items 2.8, 2.9, 2.10 and 2.11 in the table in Part 1 of Schedule 5.2, which require the President to provide information to the Minister about:

- the number of variations of enterprise agreements made in a quarter under section 218A of the Fair Work Act
- the number of enterprise agreements terminated in a quarter under section 226 of the Fair Work Act
- the number of guarantees given in a quarter under section 226A of the Fair Work Act in relation to the termination of an enterprise agreement

- the number of enterprise agreements amended, or in respect of which undertakings were accepted, in a quarter under section 227B of the Fair Work Act.

Sections 218A and 227B are new provisions included in the Fair Work Act by the SJPB Act. Section 218A empowers the FWC to vary an enterprise agreement to correct or amend an obvious error, defect or irregularity. Section 227B requires the FWC to reconsider whether an enterprise agreement passes the better off overall test in specified circumstances. The SJPB Act repealed and replaced section 226 of the Fair Work Act with new sections 226 and 226A. New section 226 sets out when the FWC must (upon application section 225) terminate an enterprise agreement that has nominally expired. New section 226A deals with a guarantee of termination entitlements.

Item 28 omits the reference to “serious breach declarations” in table items 3.2 and 3.7 in Part 1 of Schedule 5.2 and substitutes the words “intractable bargaining declarations”. This amendment is consequential to amendments made by Part 18 of Schedule 1 to the SJPB Act, which repeal the existing provisions relating to serious breach declarations and insert new intractable bargaining provisions.

Item 29 omits the reference to “*Low-paid*” in table item 4.1 in Part 1 of Schedule 5.2 and substitutes the word “*Supported*”. Similarly, items 31 and 33 omit references to “low-paid” in table items 4.1, 4.2 and 4.3 in Part 1 of Schedule 5.2 and substitute the words “supported bargaining”. These amendments are consequential to amendments made by Part 20 of Schedule 1 to the SJPB Act which reform the low-paid bargaining provisions in Division 9 of Part 2-4 of the Fair Work Act and create the supported bargaining stream.

Item 30 inserts new items 4.1AA and 4.1AB in the table in Part 1 in Schedule 5.2, which requires the President to provide information to the Minister about the number of applications made in a quarter under sections 216AA and 216B of the Fair Work Act. Sections 216AA and 216B are new provisions included in the Fair Work Act by the SJPB Act. Section 216AA requires that an employer who is seeking to be covered by a supported bargaining agreement must apply to the FWC for approval of the variation. Section 216B provides that an employee organisation that is covered by a supported bargaining agreement may apply to the FWC for a variation of the agreement that has the effect that an employer that was not covered by the agreement will be covered by it.

Item 32 inserts new item 4.1A in the table in Part 1 of Schedule 5.2, which requires the President to provide information to the Minister about the number of applications made in a quarter under section 244 of the Fair Work Act. Section 244, as amended by the SJPB Act, permits an employer specified in a supported bargaining authorisation to apply to the FWC for a variation of the authorisation to remove the employer’s name from the authorisation.

Item 34 omits the word “*authorisations*” in item 5 in the table in Part 1 of Schedule 5.2 and substitutes the word “*bargaining*”. This amendment is consequential to amendments made by Part 21 of Schedule 1 to the SJPB Act which amends Division 10 of Part 2-4 of the Fair Work Act to remove unnecessary limitations on access to single interest employer authorisations and simplifies the process for obtaining them.

Item 35 inserts new items 5.1A and 5.1B in the table in Part 1 in Schedule 5.2, which requires the President to provide information to the Minister about the number of applications made in a quarter under sections 216DA and 216DB of the Fair Work Act. Sections 216DA and

216DB are new provisions included in the Fair Work Act by the SJBPA Act. Section 216DA provides that if a joint variation of a single interest employer agreement is made under section 216D, the employer to be covered by the agreement must apply to the FWC for approval of the variation. Section 216DB permits an employee organisation that is covered by an existing single interest employer agreement to apply to the FWC for approval of a variation of that agreement. Such a variation has the effect of extending the coverage of the single interest employer agreement to a new employer and the affected employees.

Item 36 inserts new item 5.2A in the table in Part 1 of Schedule 5.2, which require the President to provide information to the Minister about the number of applications made in quarter under section 251 of the Fair Work Act. Item 37 inserts new item 5.5A in the table in Part 1 of Schedule 5.2, which requires the President to provide information to the Minister about the number of single interest employer authorisations varied to add an employer's name to the authorisation in a quarter under section 251 of the Fair Work Act. Section 251 of the Fair Work Act, which was repealed and substituted by the SJBPA Act, deals with applications to the FWC for a variation of a single interest employer authorisation to remove an employer's name from the authorisation.

Item 38 repeals items 6.1 and 6.4 in the table in Part 1 in Schedule 5.2, which require the President to provide information to the Minister about the number of applications for consent low-paid determinations made in a quarter under section 260 of the Fair Work Act and the number of special low-paid workplace determinations made in a quarter under section 262 of the Fair Work Act. These amendments are consequential to amendments made by Part 20 of Schedule 1 to the SJBPA Act which replace existing provisions relating to low-paid workplace determinations with provisions relating to the new supported bargaining stream.

Item 39 omits the reference to “bargaining related” in item 6.6 in the table in Part 1 in Schedule 5.2 and substitutes the words “intractable bargaining”. This amendment is consequential to amendments made by Part 18 of Schedule 1 of the SJBPA Act that reform the bargaining related workplace determination provisions in Division 4 of Part 2-5 of the Fair Work Act.

Item 40 omits the reference to “low-paid” in table item 15.1, column headed “This information or copy of a document ...”, paragraph (o) in Part 1 of Schedule 5.2 and substitutes the word “supported”. This amendment is consequential to amendments made by Part 20 of Schedule 1 to the SJBPA Act which reform the low-paid bargaining provisions in Division 9 of Part 2-4 of the Fair Work Act and create the supported bargaining stream.

Part 5— Abolition of the Australian Building And Construction Commission

This Part will make consequential amendments to reflect the following changes made by Parts 1 and 3 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs Better Pay) Act 2022* (SJBPA Act):

- Abolishing the ABCC (and the positions of its officeholders).
- Repealing provisions of BCI(IP) Act related to the ABCC.
- Renaming the BCI(IP) Act to the FSC Act.

- Abolishing the Registered Organisations Commission (and the positions of its officeholders).

Division 1 – Consequential amendments

Corporations Regulations 2001

Item 41 – Subparagraph 5.3A.50(2)(zo)(i)

This item amends subparagraph 5.3.A.50(2)(zo)(i) of the *Corporations Regulations 2001* to replace the redundant reference to the BCI(IP) Act with the FSC Act. Subsection 451E(1) of the *Corporations Act 2001* provides, with specified exceptions, a stay on enforcing rights. Section 5.3A.50 is made under subparagraph 451E(5)(b)(i) of the *Corporations Act 2001* which provides that subsection 451E(1) does not apply to a right if it is prescribed by the regulations for the purpose of that subparagraph.

Data Availability and Transparency Regulations 2022

Item 42 – Section 5 (table item dealing with the *Building and Construction Industry (Improving Productivity) Act 2016*)

This item amends section 5 (table item dealing with the BCI(IP) Act) in the *Data Availability and Transparency Regulations 2022* by repealing this item and substituting with a reference to section 106 of the BCI(IP) Act, as it continues to apply in accordance with item 330 of Schedule 1 to the SJBPA Act.

Jury Exemption Regulations 2019

Item 43 – Paragraphs 10(e) and (f)

This item repeals paragraphs 10(e) and (f) of the *Jury Exemption Regulations 2019* (Jury Exemption Regulations).

Paragraph 10 of the Jury Exemption Regulations exempt certain Commonwealth officials from jury service, including offices that are abolished by the SJBPA Act; in particular the Registered Organisations Commissioner (paragraph 10(e)) and a Deputy Australian Building and Construction Commissioner (paragraph 10(f)).

Division 2 – Repeals

Building and Construction Industry (Improving Productivity) Regulations 2017

Item 44 – The whole of the instrument

This item of the Regulation repeals the entire instrument, that being the *Building and Construction Industry (Improving Productivity) Regulations 2017* (BCI(IP) Regulations).

The BCI(IP) Regulations prescribe certain matters relating to the ABCC’s examination notice regime. As the provisions establishing the examination notice regime have been repealed, the BCI(IP) Regulations are redundant and should be repealed.

Part 6—Application and transitional provisions

Fair Work Regulations 2009

Item 45 – In the appropriate position in Chapter 7

This item inserts the heading Part 7-5—Amendments made by the Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023. It inserts regulation 7.07 to include the definition of ‘amending instrument’, regulation 7.08, which is an application provision in relation to requirements for the FWC President to provide information to the Minister, and regulation 7.09, which is an application provision in relation to the amendments to the notice of employee representational rights (the Notice). The effect of new regulation 7.09 is that there will be a new Notice that will replace the current version on and from 6 June 2023. The amendments made by the amending instrument will only apply to Notices that are given to employees on and from 6 June 2023. Notices that were issued in accordance with the requirements of the Fair Work Act before 6 June 2023 will not be affected by these amendments.