



Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) 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 25 May 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 (Secure Jobs, Better Pay) 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. | 31 May 2023 |
| 2. Schedule 1, Part 1 | The later of: (a) the start of the day after this instrument is registered; and (b) immediately after the commencement of Part 19 of Schedule 1 to the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> . | 6 June 2023 (paragraph (b) applies) |
| 3. Schedule 1, Parts 2 and 3 | 1 July 2023. | 1 July 2023 |
| 4. Schedule 1, Part 4, Division 1 | The day after this instrument is registered. | 31 May 2023 |
| 5. Schedule 1, Part 4, Division 2 | The later of: (a) immediately after the provisions covered by table item 4; and (b) immediately after the commencement of Part 20 of Schedule 1 to the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> . | 6 June 2023 (paragraph (b) applies) |
| 6. Schedule 1, Parts 5 and 6 | The day after this instrument is registered. | 31 May 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Note: This table relates only to the provisions of this instrument as originally made.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 *Corporations Act 2001*;
- (b) the *Data Availability and Transparency Act 2022*;

-
- (c) the *Fair Work Act 2009*;
 - (d) the *Federal Circuit and Family Court of Australia Act 2021*;
 - (e) the *Federal Safety Commissioner Act 2022*;
 - (f) the *Jury Exemption Act 1965*.

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—Industrial action

Fair Work Regulations 2009

1 Regulation 3.11 (heading)

Repeal the heading, substitute:

3.11 Requirements for protected action ballot agent

2 Subregulation 3.11(1)

Repeal the subregulation, substitute:

- (1) For the purposes of paragraph 444(1D)(c) of the Act, this regulation prescribes requirements that the FWC must be satisfied have been met before a person becomes the protected action ballot agent for a protected action ballot.

Note: The person must also be a fit and proper person to conduct a protected action ballot.

3 Regulation 3.14 (heading)

Repeal the heading, substitute:

3.14 Conduct of protected action ballot—directions about ballot paper

4 Subregulation 5.01(1)

Repeal the subregulation, substitute:

Functions and powers in relation to protected action ballots

- (1) For the purposes of paragraph 625(2)(i) of the Act, each of the following are prescribed functions or powers:
 - (a) giving a copy of a protected action ballot order to a person under section 445 of the Act;
 - (b) conducting a conference in accordance with section 448A of the Act;
 - (c) approving a person as an eligible protected action ballot agent under subsection 468A(2) of the Act;
 - (d) the functions and powers conferred on the FWC by subsections 468A(4) and (5) of the Act (review of eligible protected action ballot agent's approval, and actions on review).

Other functions and powers

Part 2—Enhancing the small claims process

Division 1—Amendments

Federal Court and Federal Circuit and Family Court Regulations 2022

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

Omit “between \$10,000 and \$20,000”, substitute “\$10,000 or more and less than \$50,000”.

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

Insert:

- 212AA Filing of an application under section 539 of the *Fair Work Act 2009* if: \$525
- (a) the applicant indicates that the applicant wants the small claims procedure under section 548 of that Act to apply; and
- (b) the claim is between \$50,000 and \$100,000

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

After “item 212”, insert “or 212AA”.

Division 2—Transitional provisions

Federal Court and Federal Circuit and Family Court Regulations 2022

8 In the appropriate position in Part 5

Insert:

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

Despite anything in subsection 2.20(1), the fee mentioned in item 212AA of the table in Part 2 of Schedule 1 is not to be increased on 1 July 2023.

Part 3—National Construction Industry Forum

Fair Work Regulations 2009

9 After Part 6-4C

Insert:

Part 6-4D—The National Construction Industry Forum

6.07CA Travel allowances—prescribed rates

- (1) For the purposes of subsection 789GZM(2) of the Act, this regulation sets out the rate of travel allowance that a member of the National Construction Industry Forum who is not a Minister or a member of the Parliament is entitled to be paid to attend a meeting of the Forum.

Note: For the right or entitlement of a substitute member of the Forum, or a person invited to participate in a meeting of the Forum, to be paid the same rate of travel allowance to attend meetings of the Forum, see subsections 789GZK(3) and 789GZL(4) of the Act.

Rates of travel allowance for travel

- (2) The rates of travel allowance are as follows:
 - (a) for travel by air—the actual amount that is payable for the travel, but not exceeding the amount that is payable for the travel by business class;
 - (b) for travel by the member’s private motor vehicle—the rate of \$0.78 per kilometre;
 - (c) for travel by public transport, taxi or similar means—the actual amount that is payable for the travel.
- (3) However, the rate of travel allowance covered by paragraph (2)(c) to attend a meeting of the Forum must not exceed \$300.

Rates of travel allowance for overnight stays

- (4) If the member is necessarily absent overnight from the member’s principal place of residence to attend the meeting of the Forum:
 - (a) the member is entitled to travel allowance for each night of absence for accommodation, meals and expenses incidental to the travel (the **travel expenses**); and
 - (b) the rate of that allowance is the actual amount that is payable for the travel expenses, but not exceeding the amount worked out for the travel in accordance with the determination titled *TD 2022/10* (published by the Australian Taxation Office, as existing on 1 July 2023) as the reasonable amount for domestic travel expenses for a person with a salary between \$133,451 and \$237,520.

Note: The determination could in 2023 be viewed on the Australian Taxation Office’s website (<https://www.ato.gov.au>).

10 Part 6-4D

Renumber as Part 6-4DA.

Part 4—Enterprise agreements

Division 1—Amendments commencing day after registration

Fair Work Regulations 2009

11 After regulation 2.09

Insert:

Division 7—Variation and termination of enterprise agreements

Subdivision A—Variation of enterprise agreements by employers and employees: general circumstances

12 After regulation 2.10

Insert:

Subdivision D—Termination of enterprise agreements after nominal expiry date

2.10H Requirements for signing guarantee of termination entitlements

- (1) For the purposes of paragraph 226A(1)(c) of the Act, this regulation prescribes requirements relating to the signing of a guarantee of termination entitlements given by an employer covered by an enterprise agreement.
- (2) The guarantee must be signed by the employer.
- (3) The guarantee must include, for each person who signs the guarantee:
 - (a) the full name and address of the person; and
 - (b) an explanation of the person's authority to sign the guarantee.

Division 2—Amendments commencing later

Fair Work Regulations 2009

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

Insert:

2.10A Approval of variations of enterprise agreements—modification of requirement to take into account statement of principles on genuine agreement

- (1) For the purposes of subsection 211(6) of the Act, section 188 of the Act has effect with the modifications prescribed by this regulation for the purpose of the FWC deciding, in considering an application for the approval of a variation of an enterprise agreement, whether it is satisfied of the matter referred to in paragraph 211(1)(a) of the Act.
- (2) In taking into account the statement of principles made under section 188B of the Act:
 - (a) the matter mentioned in paragraph 188B(3)(b) of the 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
 - (b) the matters mentioned in paragraphs 188B(3)(a), (c), (d) and (e) of the Act are taken to be matters relating to the proposed variation of the enterprise agreement.

Subdivision AA—Variation of supported bargaining agreement to add employer and employees (with consent)

2.10B Requirements for signing variations of supported bargaining agreements to add employer and employees (with consent)

- (1) For the purposes of subsection 216AA(4) of the Act, this regulation prescribes requirements relating to the signing of a variation of a supported bargaining agreement made jointly under section 216A of the Act by the employer who will be covered by the agreement if the variation is approved and the affected employees for the variation.

Note: Paragraph 216AA(2)(a) of the Act requires an application for approval of a variation of a supported bargaining agreement to add an employer and employees to be accompanied by a signed copy of the variation.

- (2) The variation must be signed by the following:
 - (a) the employer or a person authorised by the employer to sign the variation on the employer's behalf;
 - (b) at least 1 representative of the affected employees.
- (3) The variation must include, for each person who signs the variation:
 - (a) the full name and address of the person; and
 - (b) an explanation of the person's authority to sign the variation.

- (4) 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.

Subdivision AB—Variation of supported bargaining agreement to add employer and employees (without consent)

2.10C Requirements for signing variations of supported bargaining agreements to add employer and employees (without consent)

- (1) For the purposes of subsection 216B(3) of the Act, this regulation prescribes requirements relating to the signing of a variation of a supported bargaining agreement proposed by an employee organisation that is covered by the agreement.

Note: Paragraph 216B(2)(a) of the Act requires an application for approval of a variation of a supported bargaining agreement to add an employer and employees to be accompanied by a signed copy of the variation.

- (2) The variation must be signed by the employee organisation.
- (3) The variation must include, for each person who signs the variation:
- (a) the full name and address of the person; and
 - (b) an explanation of the person's authority to sign the variation.

Subdivision AC—Variation of cooperative workplace agreement to add employer and employees

2.10D Requirements for signing variations of cooperative workplace agreements to add employer and employees

- (1) For the purposes of subsection 216CA(4) of the Act, this regulation prescribes requirements relating to the signing of a variation of a cooperative workplace agreement made jointly under section 216C of the Act by the employer who will be covered by the agreement if the variation is approved and the affected employees for the variation.

Note: Paragraph 216CA(2)(a) of the Act requires an application for approval of a variation of a cooperative workplace agreement to add an employer and employees to be accompanied by a signed copy of the variation.

- (2) The variation must be signed by the following:
- (a) the employer or a person authorised by the employer to sign the variation on the employer's behalf;
 - (b) at least 1 representative of the affected employees.
- (3) The variation must include, for each person who signs the variation:
- (a) the full name and address of the person; and
 - (b) an explanation of the person's authority to sign the variation.
- (4) 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.

Subdivision AD—Variation of single interest employer agreement to add employer and employees

2.10E Requirements for signing variations of single interest employer agreements to add employer and employees (with consent)

- (1) For the purposes of subsection 216DA(4) of the Act, this regulation prescribes requirements relating to the signing of a variation of a single interest employer agreement made jointly under section 216D of the Act by the employer who will be covered by the agreement if the variation is approved and the affected employees for the variation.

Note: Paragraph 216DA(2)(a) of the Act requires an application for approval of a variation of a single interest employer agreement to add an employer and employees to be accompanied by a signed copy of the variation.

- (2) The variation must be signed by the following:
 - (a) the employer or a person authorised by the employer to sign the variation on the employer's behalf;
 - (b) at least 1 representative of the affected employees.
- (3) The variation must include, for each person who signs the variation:
 - (a) the full name and address of the person; and
 - (b) an explanation of the person's authority to sign the variation.
- (4) 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.

2.10F Requirements for signing variations of single interest employer agreements to add employer and employees (without consent)

- (1) For the purposes of subsection 216DB(3) of the Act, this regulation prescribes requirements relating to the signing of a variation of a single interest employer agreement proposed by an employee organisation that is covered by the agreement.

Note: Paragraph 216DB(2)(a) of the Act requires an application for approval of a variation of a single interest employer agreement to add an employer and employees to be accompanied by a signed copy of the variation.

- (2) The variation must be signed by the employee organisation.
- (3) The variation must include, for each person who signs the variation:
 - (a) the full name and address of the person; and
 - (b) an explanation of the person's authority to sign the variation.

Subdivision AE—Variation of multi-enterprise agreement to remove employer and employees

2.10G Requirements for signing variations of multi-enterprise agreements to remove employer and employees (with consent)

- (1) For the purposes of subsection 216EA(4) of the Act, this regulation prescribes requirements relating to the signing of a variation of a multi-enterprise agreement

made jointly under section 216E of the Act by an employer who will cease to be covered by the agreement if the variation is approved and the affected employees for the variation.

- (2) The variation must be signed by the following:
 - (a) the employer or a person authorised by the employer to sign the variation on the employer's behalf;
 - (b) at least 1 representative of the affected employees.
- (3) The variation must include, for each person who signs the variation:
 - (a) the full name and address of the person; and
 - (b) an explanation of the person's authority to sign the variation.

14 Schedule 2.1

Omit “an enterprise agreement (*[name of the proposed enterprise agreement]*)”, substitute “a single-enterprise agreement (*[name of the proposed single-enterprise agreement]*)”.

15 Schedule 2.1

Omit “**What is an enterprise**”, substitute “**What is a single-enterprise**”.

16 Schedule 2.1

Omit “An enterprise agreement is an”, substitute “A single-enterprise agreement is an”.

17 Schedule 2.1

Omit “before Fair Work Commission about bargaining for the agreement”, substitute “before the Fair Work Commission that relates to bargaining for the agreement”.

18 Schedule 2.1

Omit “[*If the agreement is not an agreement for which a low-paid authorisation applies—include:*]”.

19 Schedule 2.1

Omit “or you revoke the union's status as your representative” (first occurring).

20 Schedule 2.1

Omit all the words from and including “[*If a low-paid authorisation*]” to and including “that also applied for the authorisation.”.

21 Schedule 2.1

Omit “[*if the employee is covered by an individual agreement-based transitional instrument*]”, substitute “[*If the employee is covered by an individual agreement*]”.

22 Schedule 2.1

Omit all the words from and including “If you are currently covered by” to and including “your individual agreement will terminate).”, substitute:

If you are currently covered by an individual agreement (Australian Workplace Agreement (AWA), pre-reform AWA, individual transitional employment agreement (ITEA), preserved

individual State agreement or individual Division 2B State employment agreement), you may appoint a bargaining representative for the enterprise agreement.

Individual agreements automatically sunset at the end of 6 December 2023, unless an application to extend the agreement is made to the Fair Work Commission.

Individual agreements can also be terminated or a conditional termination can be made (which provides that if an enterprise agreement is approved, it will apply to you and your individual agreement will terminate).

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

Insert:

| | | |
|------|---|---|
| 2.2A | The number of applications for variations of an enterprise agreement made in a quarter under section 216CA of the Act | as soon as practicable after the end of the quarter |
| 2.2B | The number of applications for variations of an enterprise agreement made in a quarter under section 216EA of the Act | as soon as practicable after the end of the quarter |

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

Insert:

| | | |
|------|--|---|
| 2.3A | The number of applications for reconsiderations of an enterprise agreement made in a quarter under section 227A of the Act | as soon as practicable after the end of the quarter |
|------|--|---|

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

Insert:

| | | |
|------|--|---|
| 2.4A | The number of enterprise agreements approved in a quarter under section 186 of the Act with amendments specified under section 191A of the Act | as soon as practicable after the end of the quarter |
|------|--|---|

26 Part 1 of Schedule 5.2 (after table item 2.5)

Insert:

| | | |
|------|--|---|
| 2.5A | The number of single-enterprise agreements approved in a quarter under section 186 of the Act in respect of which an employer gave a notice under subsection 173(1) of the Act | as soon as practicable after the end of the quarter |
|------|--|---|

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

Insert:

| | | |
|------|--|---|
| 2.8 | The number of variations of enterprise agreements made in a quarter under section 218A of the Act | as soon as practicable after the end of the quarter |
| 2.9 | The number of enterprise agreements terminated in a quarter under section 226 of the Act | as soon as practicable after the end of the quarter |
| 2.10 | The number of guarantees given in a quarter under section 226A of the Act in relation to the termination of an enterprise agreement | as soon as practicable after the end of the quarter |
| 2.11 | The number of enterprise agreements amended, or in respect of which undertakings were accepted, in a quarter under section 227B of the Act | as soon as practicable after the end of the quarter |

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

Omit “serious breach declarations”, substitute “intractable bargaining declarations”.

29 Part 1 of Schedule 5.2 (table item 4)

Omit “*Low-paid*”, substitute “*Supported*”.

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

Insert:

| | | |
|-------|--|---|
| 4.1AA | The number of applications for variations of a supported bargaining agreement made in a quarter under section 216AA of the Act | as soon as practicable after the end of the quarter |
| 4.1AB | The number of applications for variations of a supported bargaining agreement made in a quarter under section 216B of the Act | as soon as practicable after the end of the quarter |

31 Part 1 of Schedule 5.2 (table item 4.1)

Omit “low-paid”, substitute “supported bargaining”.

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

Insert:

| | | |
|------|--|---|
| 4.1A | The number of applications for variations of a supported bargaining authorisation made in a quarter under section 244 of the Act | as soon as practicable after the end of the quarter |
|------|--|---|

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

Omit “low-paid”, substitute “supported bargaining”.

34 Part 1 of Schedule 5.2 (table item 5)

Omit “*authorisations*”, substitute “*bargaining*”.

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

Insert:

Schedule 1 Amendments

Part 4 Enterprise agreements

| | | |
|------|---|---|
| 5.1A | The number of applications for variations of single interest employer agreements made in a quarter under section 216DA of the Act | as soon as practicable after the end of the quarter |
|------|---|---|

| | | |
|------|---|---|
| 5.1B | The number of applications for variations of single interest employer agreements made in a quarter under section 216DB of the Act | as soon as practicable after the end of the quarter |
|------|---|---|

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

Insert:

| | | |
|------|--|---|
| 5.2A | The number of applications for variations of single interest employer authorisations to add an employer's name to the authorisation made in a quarter under section 251 of the Act | as soon as practicable after the end of the quarter |
|------|--|---|

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

Insert:

| | | |
|------|---|---|
| 5.5A | 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 Act | as soon as practicable after the end of the quarter |
|------|---|---|

38 Part 1 of Schedule 5.2 (table items 6.1 to 6.4)

Repeal the items.

39 Part 1 of Schedule 5.2 (table item 6.6)

Omit "bargaining related", substitute "intractable bargaining".

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

Omit "low-paid", substitute "supported".

Part 5—Abolition of the Australian Building and Construction Commission

Division 1—Consequential amendments

Corporations Regulations 2001

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

Omit “*Building and Construction Industry (Improving Productivity) Act 2016*”, substitute “*Federal Safety Commissioner Act 2022*”.

Data Availability and Transparency Regulations 2022

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

Repeal the item, substitute:

Building and Construction Industry (Improving Productivity) Act 2016

section 106, as that section continues to apply in accordance with item 330 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*

Jury Exemption Regulations 2019

43 Paragraphs 10(e) and (f)

Repeal the paragraphs.

Division 2—Repeals

Building and Construction Industry (Improving Productivity) Regulations 2017

44 The whole of the instrument

Repeal the instrument.

Part 6—Application and transitional provisions

Fair Work Regulations 2009

45 In the appropriate position in Chapter 7

Insert:

Part 7-5—Amendments made by the Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023

7.07 Definitions for this Part

In this Part:

amending instrument means the *Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023*.

7.08 Application of amendments—requirements for President to provide information to Minister

- (1) For the quarter in which Division 2 of Part 4 of Schedule 1 to the amending instrument (the *amending Division*) commences, table items 3.2, 3.7, 4.1, 4.2, 4.3, 6.6 and 15.1 of Part 1 of Schedule 5.2 apply both:
 - (a) as in force immediately before the commencement of the amending Division; and
 - (b) as amended by the amending Division.
- (2) Despite the repeal of table items 6.1 to 6.4 of Part 1 of Schedule 5.2 by the amending Division, those items, as in force immediately before the commencement of the amending Division, apply in relation to the quarter in which the amending Division commences.

7.09 Application of amendments—notice of employee representational rights

The amendments of Schedule 2.1 made by Division 2 of Part 4 of Schedule 1 to the amending instrument apply in relation to a notice of employee representational rights given under subsection 173(1) of the Act after the commencement of that Division.