



Fair Work Amendment (Fixed Term Contracts) 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 23 November 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 Amendment (Fixed Term Contracts) 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. The whole of this instrument	At the same time as Part 10 of Schedule 1 to the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> commences.	6 December 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Note: This table relates only to the provisions of this instrument as originally made.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 *Fair Work Act 2009*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Fair Work Regulations 2009

1 Regulation 1.03

Insert:

high performance sport: see subregulation 2.15(4).

performance support professional: see subregulation 2.15(2).

2 After subregulation 2.13(1)

Insert:

Note: For the high income threshold for the purposes of subsection 333F(2) of the Act (about exceptions to fixed term contract limitations), see regulation 2.14.

3 At the end of Part 2-9 of Chapter 2

Add:

Division 5—Fixed term contracts

2.14 Limitations on fixed term contracts—high income threshold exception

- (1) For the purposes of subsection 333F(2) of the Act, the high income threshold for that year for an employee (the *engaged employee*) mentioned in paragraph 333F(2)(a) or (b) of the Act is taken to be the amount worked out under subregulation (2).
- (2) The amount is to be worked out as follows:
 - (a) begin with the number of hours that, under the terms of the contract mentioned in subsection 333F(2) of the Act, the engaged employee is required to work in that year;
 - (b) divide that number of hours by the number of hours that a full-time employee would work in that year (rounding to 3 decimal places, and rounding up if the fourth decimal place is 5 or more);
 - (c) multiply the result of paragraph (b) by the high income threshold, for the financial year in which the contract is entered into, worked out under regulation 2.13.
- (3) A number of hours referred to in paragraph (2)(a) or (b) may include a part of an hour.
- (4) For the purposes of paragraph (2)(b), assume the number of hours that a full-time employee would work is:
 - (a) if an enterprise agreement or a modern award applies to the engaged employee at the time the contract is entered into—the number of hours that a full-time employee is required to work under the enterprise agreement or modern award; or
 - (b) if paragraph (a) does not apply—the number of hours of work of any other full-time employees of the employer employed in the same position as (or in a position that is comparable to) the position of the engaged employee; or

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- (c) if the number of hours cannot be worked out under paragraph (a) or (b)—
38 hours per week.

2.15 Contracts to which limitations on fixed term contracts do not apply

Organised sport

- (1) For the purposes of paragraph 333F(1)(i) of the Act, a contract entered into by a person and an employee is prescribed if:
- (a) the employee is engaged under the contract to primarily perform work as:
 - (i) an athlete participating in an organised sport; or
 - (ii) a coach for an athlete participating in an organised sport; or
 - (iii) another kind of performance support professional for an athlete participating in an organised sport; or
 - (iv) a match official for an organised sport; or
 - (v) a performance support professional for a match official for an organised sport; and
 - (b) the person is:
 - (i) a National Sporting Organisation or a National Sporting Organisation for People with Disability recognised by the Australian Sports Commission; or
 - (ii) the governing body for an organised sport in a State or a Territory; or
 - (iii) if the governing bodies for an organised sport in a State or a Territory are split between metropolitan and non-metropolitan areas—the governing body for the non- metropolitan areas; or
 - (iv) a body conducting a State or Territory level competition for an organised sport; or
 - (v) a member of, or a person otherwise affiliated with, an Organisation or body referred to in subparagraph (i), (ii), (iii) or (iv); and
 - (c) the contract is entered into:
 - (i) on or after 6 December 2023; and
 - (ii) before 1 July 2024.
- (2) A **performance support professional** is a person whose work primarily involves direct support or assessment of:
- (a) an athlete’s participation in an organised sport; or
 - (b) the performance of a match official for an organised sport.

High performance sport—international event organising bodies

- (3) For the purposes of paragraph 333F(1)(i) of the Act, a contract entered into by a person and an employee is prescribed if:
- (a) the employee is engaged under the contract to perform work that primarily involves direct support of the administration or organisation of a particular international event for a high performance sport; and
 - (b) the international event is not regularly held in Australia; and
 - (c) either:
 - (i) the international organising body or the international event has granted the person the right to host the particular international event; or

- (ii) the person is seeking to be granted the right to host the particular international event by the international organising body for the international event; and
 - (d) the person is:
 - (i) the international organising body for the international event; or
 - (ii) the Australian organising body for the international event; or
 - (iii) the Australian organising body for the particular international event; and
 - (e) the contract is entered into:
 - (i) on or after 6 December 2023; and
 - (ii) before 1 July 2024.
- (4) A **high performance sport** is:
- (a) the part of a sport that is performed at the elite level by athletes; or
 - (b) the part of a sport that is performed at the elite level by athletes with disability.

Live performance industry employees

- (5) For the purposes of paragraph 333F(1)(i) of the Act, a contract entered into by a person and an employee is prescribed if:
- (a) at the time the contract is entered into, the employee is covered by the *Live Performance Award 2020*; and
 - (b) the contract is entered into:
 - (i) on or after 6 December 2023; and
 - (ii) before 1 July 2024; and
 - (c) the identifiable period (see paragraph 333E(1)(b) of the Act) at the end of which the contract will terminate is not greater than 12 months.

Higher education employees

- (6) For the purposes of paragraph 333F(1)(i) of the Act, a contract entered into by a person and an employee is prescribed if:
- (a) at the time the contract is entered into, the employee is covered by the *Higher Education Industry—Academic Staff—Award 2020* or the *Higher Education Industry—General Staff—Award 2020*; and
 - (b) the contract is entered into:
 - (i) on or after 6 December 2023; and
 - (ii) before 1 July 2024.

Non-government funded—philanthropic entities

- (7) For the purposes of subparagraph 333F(1)(f)(i) of the Act, funding is prescribed if:
- (a) the funding is either:
 - (i) provided by an entity (a **philanthropic entity**) registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act; or

- (ii) provided as a testamentary gift or testamentary contribution to a philanthropic entity for a charitable purpose (within the meaning of the *Charities Act 2013*) of the philanthropic entity; and
- (b) the person who entered into the contract with the employee is not an associated entity of the philanthropic entity; and
- (c) the contract is entered into:
 - (i) on or after 6 December 2023; and
 - (ii) before 1 July 2024.