

EXPLANATORY STATEMENT

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

Fair Work Act 2009

Fair Work Amendment (Employee Authorised Deductions) Regulations 2023

AUTHORITY

The *Fair Work Act 2009* (the Act) provides a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians. The *Fair Work Regulations 2009* (Fair Work Regulations) address matters of detail within the framework established by the Act.

Subsection 796(1) of the Act empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* (Protecting Worker Entitlements Act) received Royal Assent on 30 June 2023. Schedule 5 of the Protecting Worker Entitlements Act amended the Act to include provisions that expand the circumstances in which employees can authorise employers to make valid deductions from payments due to employees, where the deductions are principally for the employee's benefit. These amendments commence on 30 December 2023. This includes new paragraph 324(2)(aa) of the Act, which permits regulations to prescribe information to be included in written authorisations for deductions.

The *Fair Work Amendment (Employee Authorised Deductions) Regulations 2023* (Instrument) is made before the commencement of paragraph 324(2)(aa) in reliance on section 4 of the *Acts Interpretation Act 1901*, which provides that a power to make a legislative instrument may be exercised prior to the commencement of the provision where the provision has received Royal Assent.

Subsection 326(2) of the Act permits regulations to prescribe circumstances in which a deduction is or is not reasonable for the purposes of subsection 326(1). Paragraph 536(2)(b) of the Act enables regulations to prescribe information to be included in pay slips.

Pursuant to row 27 of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, sunseting of legislative instruments does not apply to regulations made under the Act. Pursuant to section 12, the Instrument will not be subject to ordinary sunseting processes.

The Act specifies no conditions that need to be satisfied before the power to make the Instrument may be exercised.

PURPOSE AND OPERATION

The purpose of the Instrument is to support amendments in the Protecting Worker Entitlements Act, which commence on 30 December 2023 and amend section 324 of the Act to:

- permit employees to authorise employers, in writing, to make regular payroll deductions for amounts that vary from time to time, provided that the deductions are not for the direct or indirect benefit of the employer, and
- provide for the Fair Work Regulations to specify the information which must be included in a written authorisation for a deduction for a specified amount, and multiple or ongoing deductions.

The Instrument amends the Fair Work Regulations to:

- provide for the information which must be included in a written authorisation for a deduction for a specified amount, and multiple or ongoing deductions
- provide that deductions that vary from time to time will not be permitted if they directly or indirectly benefit the employer or a party related to the employer
- provide that an employee's pay slip must include the amount of the deduction and name, or name and number, of the fund or account into which the deduction was paid, and
- other technical amendments that are necessary following the passage of amendments to section 324 of the Act.

The amendments to section 324 in the Act, which the Instrument supports, will reduce administrative burden for employees and employers. This is because, from 30 December 2023, employees will be able to authorise permitted variable payroll deductions and will no longer be required to provide employers with a new written authority on each occasion the amount of an authorised deduction varies.

REGULATORY IMPACT

The Office of Impact Analysis (formerly the Office of Best Practice Regulation (OBPR)) assessed that an Impact Analysis (formerly a Regulation Impact Statement) was not required for this instrument as the reforms are unlikely to have more than a minor regulatory impact (OBPR reference OBPR23-04131).

COMMENCEMENT

The Instrument commences on 30 December 2023.

CONSULTATION

The Department of Employment and Workplace Relations consulted 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 also consulted the Digital Service Providers Australia New Zealand and its payroll provider members.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Fair Work Amendment (Employee Authorised Deductions) Regulations 2023

The *Fair Work Amendment (Employee Authorised Deductions) 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*.

Overview of the Legislative Instrument

The *Fair Work Act 2009* (the Act) provides a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians.

The Instrument amends the *Fair Work Regulations 2009* to:

- provide for the information which must be included in a written authorisation for a deduction for a specified amount, and multiple or ongoing deductions
- provide that deductions that vary from time to time will not be permitted if they directly or indirectly benefit the employer or a party related to the employer
- provide that an employee's pay slip must include the amount of the deduction and name, or name and number, of the fund or account into which the deduction was paid, and
- other technical amendments that are necessary following the passage of amendments to section 324 of the Act.

Human rights implications

The Instrument engages 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).

Right 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.

The Instrument positively engages the right to just and favourable working conditions by providing a safeguard for employees in that deductions that vary from time to time will not be permitted if they directly or indirectly benefit the employer or a party related to the employer. The Instrument also provides additional safeguards for employees by requiring specific information to be included in a pay slip relating to a deduction, and specific requirements for written authorisations from 30 December 2023 for a deduction for a specified amount, and multiple or ongoing deductions.

Conclusion

The Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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

**FAIR WORK AMENDMENT (EMPLOYEE AUTHORISED DEDUCTIONS)
REGULATIONS 2023**

EXPLANATION OF PROVISIONS

Section 1 - Name

1. This section provides that the title of the Regulations is the *Fair Work Amendment (Employee Authorised Deductions) Regulations 2023*.

Section 2 - Commencement

2. This section provides for the Regulations to commence on 30 December 2023.

Section 3 - Authority

3. This section provides that the *Fair Work Amendment (Employee Authorised Deductions) Regulations 2023* is made under the *Fair Work Act 2009* (the Act).

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

Fair Work Regulations 2009

Item 1 - Before regulation 2.12

5. This item inserts regulation 2.12A in the *Fair Work Regulations 2009* to support paragraph 324(2)(aa) of the Act. Subregulation 2.12A(1) specifies information to be included in a written authorisation for a deduction for a specified amount. Subregulation 2.12A(2) specifies information to be included in a written authorisation for a deduction for multiple or ongoing deductions.
6. Subregulation 2.12A(3) provides that regulation 2.12A does not apply in relation to an authorisation covered by clause 90 of Schedule 1 to the Act. This preserves an authorisation in force before 30 December 2023 which does not satisfy the new requirements in subregulations 2.12A(1) and (2), and is a written authorisation for a deduction made under either paragraph 324(1)(a) of the Act, or purportedly made under paragraph 324(1)(a) for multiple or ongoing deductions for amounts varied from time to time. Such authorisations still need to comply with the high-level

requirements for written authorisations specified in paragraph 324(2)(a) of the Act, which commences on 30 December 2023.

Item 2 - Regulation 2.12 (heading)

7. This item amends the heading in regulation 2.12 to refer to both reasonable and not reasonable deductions.

Item 3 - Regulation 2.12 (after the heading)

8. This item inserts a new subheading, referring to reasonable deductions, in regulation 2.12 to apply to existing subregulations (1) and (2).

Item 4 - At the end of regulation 2.12

9. This item inserts in regulation 2.12 a new subheading and new subregulation 2.12(3) to specify when a deduction is not reasonable for the purposes of subsection 326(1) of the Act.
10. Subsection 326(1) of the Act provides that a term of a modern award, enterprise agreement or contract of employment has no effect to the extent that it permits, or has the effect of permitting, an employer to make a deduction that directly or indirectly benefits the employer or related party and is unreasonable in the circumstances. Subsection 326(2) provides that the Fair Work Regulations may prescribe circumstances in which a deduction referred to in subsection (1) is not reasonable.
11. Subregulation 2.12(3) specifies that a circumstance in which a deduction is not reasonable is that the deduction is for an amount that may be varied from time to time. The effect of this amendment is that a term of a modern award, enterprise agreement or contract of employment has no effect to the extent that it permits, or has the effect of permitting, an employer to make a deduction that directly or indirectly benefits the employer or related party and is an amount that may be varied from time to time. An employee is therefore able to give written authorisation to their employer to make regular payroll deductions for amounts that vary from time to time under paragraph 324(1)(a) of the Act, but not if the deductions are for the direct or indirect benefit of the employer.

Item 5 - Subregulation 3.46(2)

12. This item replaces subregulation 3.46(2) to provide that a pay slip must include the amount of any deduction, in addition to the name, or the name and number, of the fund or account into which the deduction was paid.