

EXPLANATORY STATEMENT

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

Fair Work Legislation Amendment (Closing Loopholes) Regulations 2024

AUTHORITY

The *Fair Work Legislation Amendment (Closing Loopholes) Regulations 2024* (Instrument) are made under the:

- *Fair Work Act 2009*
- *Fair Work (Registered Organisations) Act 2009*
- *Independent Contractors Act 2006*

Fair Work Act 2009

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

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

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (the Amendment Act) received the Royal Assent on 26 February 2024. Part 16 of Schedule 1 to the Amendment Act amends the FW Act to empower the Fair Work Commission (FWC) to exercise functions and powers that relate to regulated road transport contractors performing work in the road transport industry, including in relation to road transport contractual chains and participants within those chains, and employee-like workers performing digital platform work (together known as ‘regulated workers’). These amendments commence on 26 August 2024.

The new provisions inserted by Part 16 of Schedule 1 to the Amendment Act provide for the regulations to prescribe a range of matters to support the new framework for regulated workers, as described at [Attachment A](#).

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

Fair Work (Registered Organisations) Act 2009

The *Fair Work (Registered Organisations) Act 2009* (RO Act) and accompanying *Fair Work (Registered Organisations) Regulations 2009* (RO Regulations) provide for the registration of employee and employer organisations and regulate them to encourage the efficient management of organisations and high standards of accountability to their members.

Section 359 of the RO Act provides that regulations may be made prescribing all matters required or permitted by the Act or that are necessary or convenient for carrying out or giving effect to the Act. Section 124 of the RO Act, which is included in a Division that regulates the conduct of ballots, provides that the regulations may provide for any other matters relating to giving effect to the withdrawal of constituent parts from amalgamated organisations.

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

Independent Contractors Act 2006

The *Independent Contractors Act 2006* (IC Act) and the accompanying *Independent Contractors Regulation 2016* (IC Regulation) provide for independent contractors to apply to the federal courts to review a services contract on the grounds that it is unfair or harsh. In addition, the IC Act provides for the Commonwealth to cover the field on relevant matters, including the imposition of employment-like obligations on parties to services contracts.

Section 43 of the IC Act provides that the Governor-General may make regulations prescribing matters required or permitted by the IC Act to be so prescribed, or necessary or convenient to be prescribed for the carrying out or giving effect to the IC Act.

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

Acts Interpretation Act 1901

Some of the items in the Instrument are made in contemplation of the commencement of the provisions conferring the power to make the regulations. In these circumstances, the Instrument relies on section 4 of the *Acts Interpretation Act 1901*.

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

EXEMPTIONS FROM SUNSETTING

The regulations amended and inserted by the Instrument in respect of the FW Act and RO Act are not subject to ordinary sunseting processes, pursuant to items 27(e) and 27A of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (Exemption Regulations). Regulations and other like instruments made under the FW Act and RO Act are exempt from sunseting because they form part of an intergovernmental scheme.

The amendments to the IC Regulation are subject to ordinary sunseting processes.

PURPOSE AND OPERATION

The Instrument amends and inserts new provisions into the FW Regulations to:

- set out a non-exhaustive list of the types of conduct constituting serious misconduct in relation to regulated workers;
- exempt the livestock industry, including transporting or otherwise dealing with livestock, from the road transport jurisdictions;
- specify that the Fair Work Commission (FWC) cannot include terms in a road transport minimum standards order (RTMSO) or road transport contractual chain order (RTCCO) relating to matters otherwise comprehensively dealt with by the *Road Traffic (Vehicles) Act 2012* (WA) and the *Traffic Act 1987* (NT);
- prescribe a schedule of costs for unfair deactivation and unfair termination matters;
- prescribe the FWC application fee for unfair deactivation, unfair termination and unfair contract term applications;
- deal with interactions with State and Territory laws for the new regulated workers and road transport contractual chains jurisdictions;
- specify other proceedings that cannot be progressed at the same time as an unfair deactivation or unfair termination proceeding; and
- specify provisions under the *Competition and Consumer Act 2010* that are considered other review proceedings for the purposes of the unfair contract term jurisdiction.

Part 13 of Schedule 1 to the Amendment Act amended provisions of the RO Act that regulate the withdrawal of constituent parts from amalgamations, by repealing amendments made by the *Fair Work (Registered Organisations) Amendment (Withdrawal from Amalgamations) Act 2020* (2020 Amendments). A consequence of this is that a number of references or provisions of the RO Regulations are redundant or require updating. The Instrument:

- repeals or reverses provisions relating to the conduct of a ballot by a ‘designated official’ and their assistants and related matters;
- reverses any amendments relating to attendance ballots arising from the 2020 Amendments;
- reverses any other amendments arising from the 2020 Amendments, including references to constituent parts;
- makes several amendments of a technical or grammatical nature; and
- makes the necessary consequential amendments including to forms.

The Instrument amends the IC Regulation by specifying an additional provision under the Australian Consumer Law (ACL), that is considered an ‘other review proceeding’. The reference to the ACL is a reference to the ACL as applied by the *Competition and Consumer Act 2010* (as a law of the Commonwealth) and as applied as a law of each State and Territory. It further amends the IC Regulation by updating the list of preserved State and Territory laws.

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

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. The amendments to the RO regulations are unlikely to have more than a minor regulatory impact (OIA24-07495). The amendments to the FW Regulations and the IC Regulations are covered by the Impact Analysis Equivalent: Minimum standards and increased access to dispute resolution for independent contractors (OBPR22-2873).

COMMENCEMENT

The provisions of Schedule 1 to the Instrument commence on the later of the day after the Instrument is registered and immediately after the commencement of Part 16 of Schedule 1 to the Amendment Act.

The provisions of Schedule 2 to the Instrument commence on the day after the Instrument is registered.

CONSULTATION

The Department of Employment and Workplace Relations consulted with all states and territories (except Tasmania, which declined to participate in the consultation) under the *Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector*. The department also consulted with the Committee on Industrial Legislation (a subcommittee of the National Workplace Relations Consultative Council, established under the *National Workplace Relations Consultative Act 2002*).

The department also conducted targeted consultations with a range of stakeholders, including unions, employer peaks, digital platforms, road transport organisations and the FWC.

Note: throughout this Explanatory Statement references to the following acts are references to those acts as amended by the Amendment Act:

- FW Act; and
- IC Act.

Statement of Compatibility with Human Rights

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

Fair Work Legislation Amendment (Closing Loopholes) Regulations 2024

The *Fair Work Legislation Amendment (Closing Loopholes) Regulations 2024* (the Instrument) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

Schedule 1 – Regulated Workers

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

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (the Amendment Act) received the Royal Assent on 26 February 2024. Part 16 of Schedule 1 to the Amendment Act amends the FW Act to empower the Fair Work Commission (FWC) to exercise functions and powers that relate to regulated road transport contractors performing work in the road transport industry, including in relation to road transport contractual chains and participants within those chains, and employee-like workers performing digital platform work (together known as ‘regulated workers’). These amendments commence 26 August 2024.

The Instrument amends and inserts new provisions into the FW Regulations to:

- set out a non-exhaustive list of the types of conduct constituting serious misconduct in relation to regulated workers;
- exempt the livestock industry, including transporting or otherwise dealing with livestock, from the road transport jurisdictions;
- specify that the FWC cannot include terms in a road transport minimum standards order (RTMSO) or road transport contractual chain order (RTCCO) relating to matters otherwise comprehensively dealt with by the *Road Traffic (Vehicles) Act 2012* (WA) and the *Traffic Act 1987* (NT);
- prescribe a schedule of costs for unfair deactivation and unfair termination matters;
- prescribe the FWC application fee for unfair deactivation, unfair termination and unfair contract term applications;
- deal with interactions with State and Territory laws for the new regulated workers and road transport contractual chains jurisdictions;
- specify other proceedings that cannot be progressed at the same time as an unfair deactivation or unfair termination proceeding; and
- specify provisions under the *Competition and Consumer Act 2010* that are considered other review proceedings for the purposes of the unfair contract term jurisdiction.

The *Independent Contractors Act 2006* (IC Act), and the *Independent Contractors Regulation 2016* (IC Regulation), allow independent contractors to apply to the federal courts to review a services contract on the grounds that it is unfair or harsh.

The Instrument amends the IC Regulation by specifying an additional provision under the Australian Consumer Law (ACL), that is considered an ‘other review proceeding’. The reference to the ACL is a reference to the ACL as applied by the *Competition and Consumer Act 2010* (as a law of the Commonwealth) and as applied as a law of each State and Territory. It further amends the IC Regulation by updating the list of preserved State and Territory laws.

Schedule 2 – Registered Organisations

The *Fair Work (Registered Organisations) Act 2009* (RO Act) and *Fair Work (Registered Organisations) Regulations 2009* (RO Regulations) provide for the registration of employee and employer organisations and encourage the efficient management of organisations and high standards of accountability to their members.

The purpose of the regulations in Schedule 2 to the Instrument is to amend the RO Regulations to remove provisions that are redundant and make other amendments that are consequential upon the commencement of Part 13 of Schedule 1 to the Amendment Act.

Human rights implications

Schedule 1 – Regulated Workers

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 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 the enjoyment of the highest attainable standard of physical and mental health under Article 12 of the ICESCR;
- the right to a fair hearing under Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).

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.

Article 12 of the ICESCR requires that State Parties to the Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The UN Committee on Economic, Social and Cultural Rights has stated that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, extending to safe and healthy working conditions.

The right to just and favourable conditions of work, as set out in the ICESCR, is not limited to workers within an employment relationship.

Livestock Industry Exclusion

Regulations 1.08A and 1.08B exclude the livestock industry, including transporting or otherwise dealing with livestock, from the definitions of ‘road transport industry’ and when a person is ‘in a road transport contractual chain’ in the FW Act (see sections 15S and 15RA of the FW Act, as amended, respectively). Livestock is defined broadly and covers cattle, sheep, goats, pigs, horses, poultry, emus, ostrich, alpaca, deer, camel and buffalo. This exemption was recommendation 13 of Senator David Pocock (see Senate Standing Committee on Education and Employment, *Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023 [Provisions]* (1 February 2024), p. 160) and is supported by this part of the industry.

Consequently, livestock transport workers are not covered by the provisions in Chapters 3A and 3B of the FW Act, as amended, relating to the road transport industry (e.g. RTCCOs and RTMSOs). As those provisions provide for certain new workplace rights (e.g. the ability to set terms under RTMSOs and RTCCOs), these regulations could be seen to restrict the right to just and favourable working conditions for livestock industry workers, to the extent that such workers may otherwise be covered by the new provisions and associated minimum standards.

However, the exclusion of the livestock industry in this manner reflects the fact that it has not been identified as an industry that is in immediate need for the establishment of additional minimum standards. This is also reflected by the similar approach to exclude the livestock industry from similar State regimes that apply to the road transport industry. Additionally, these workers now have access to a greater range of federal protections following amendments made by the Amendment Act, e.g. many will now have access to the new FWC unfair contracts jurisdiction. As such, this regulation is a justifiable and proportionate limitation on rights in work.

Serious misconduct

The Instrument will promote the right to safe and healthy working conditions and to physical and mental health by clarifying what conduct during a person’s engagement as an employee-like worker or regulated road transport contractor amounts to serious misconduct. The definition of serious misconduct reflects the ordinary meaning of serious misconduct and includes non-exhaustive examples of conduct in subregulations 1.07(4) and (5)

Where serious misconduct is established, certain FW Act protections, including the ability to apply to the FWC for a remedy for unfair deactivation or unfair termination, do not apply. Subregulations 1.07(4) and (5) signal that certain behaviours can be conduct that is serious enough to warrant termination without notice. This will deter employee-like workers from engaging in unsafe and illegal behaviours and clarify for digital labour platforms and road transport business that in the appropriate circumstances they may respond quickly to deactivate or terminate, thereby improving safety in Australian workplaces.

Subregulations 1.07(4) and (5) also do not limit the right not to be unjustly deprived of work. Unsafe and illegal behaviours can already come within the existing definition of serious

misconduct (that is, the ordinary meaning) in the FW Regulations and the non-exhaustive lists of examples are intended to provide clarity and certainty to employee-like workers, regulated road transport contractors, digital labour platforms and road transport businesses.

Right to a fair trial and hearing rights

Article 14(1) of the ICCPR and General Comment 32 by the Human Rights Committee provide everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. One aspect of the right to a fair hearing is the right to access to justice. The cost of engaging in legal processes in the determination of one's rights and obligations under law engages this right.

Application fees

New subregulations 3A.03(2) and 3A.07(2) provide if an application is made to the FWC in the financial year starting on 1 July 2024 for unfair deactivation, unfair termination or unfair contract term remedy, the fee is \$87.20.

While the imposition of fees on parties to proceedings may, in some circumstances, prevent their access to justice, a fee of \$87.20 is reasonable in the circumstances and is not high enough to pose a significant barrier for applicants applying to the FWC for remedies under the new amendments to the FW Act. It is also consistent with application fees for other FWC jurisdictions including the unfair dismissal framework for employees. Further, providing access to a low-cost jurisdiction via the FWC would improve access to justice among eligible cohorts of workers and at a lower cost than comparable remedies available via the courts.

Multiple actions

New regulations 6.01A, 6.01B and 6.01C, for the purposes of the definitions of 'other deactivation proceedings' (subsection 734BA(3)) 'other termination proceedings' (subsection 734BB(3)) and 'other review proceedings' (paragraph 734C(3)(b)), specify certain Commonwealth and State laws. These regulations would prevent a person from commencing multiple proceedings in relation to the unfair deactivation from a digital labour platform, unfair termination of a road transport services contract or seeking a remedy for an unfair contract term in a services contract (i.e., 'double dipping').

This may limit the right to a fair hearing because a person is prevented from applying for a remedy for unfair deactivation, unfair termination or unfair contract terms under Chapter 3A of the FW Act if a proceeding under the specified laws is underway.

To the extent that the restriction on multiple actions limits the ability of a person to access remedies under Chapter 3A of the FW Act, it is reasonable and necessary to prevent a worker unfairly obtaining two remedies for the same action and limit the logistical and administrative resources necessary to conduct two sets of proceedings in relation to one action. Additionally, the limitation is confined in scope and therefore proportionate. A person may choose to pursue remedies under either Chapter 3A or one of the specified State laws (not both concurrently). The person can access the State or Commonwealth jurisdiction they may have been prevented from accessing if their initial proceedings under another jurisdiction are discontinued by the applicant or failed for want of jurisdiction.

Schedule 2 – Registered Organisations

The amendments that the Instrument makes to the RO Regulations do not engage human rights as they make amendments of a consequential, minor or technical nature.

Conclusion

The Instrument is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. To the extent that it may limit human rights and freedoms, those limitations are reasonable, necessary, and proportionate in the pursuit of legitimate objectives.

Senator the Hon Murray Watt, Minister for Employment and Workplace Relations

Details of the *Fair Work Legislation Amendment (Closing Loopholes) Regulations 2024*

Section 1 – Name

1. This section provides that the title of the instrument is the *Fair Work Legislation Amendment (Closing Loopholes) Regulations 2024* (the Regulations).

Section 2 – Commencement

2. The table in this section sets out when the provisions of the Regulations commence.

Section 3 – Authority

3. This section specifies that the Regulations are made under the *Fair Work Act 2009* (FW Act), *Fair Work (Registered Organisations) Act 2009* (RO Act) and *Independent Contractors Act 2006* (IC Act).

Section 4 – Schedules

4. This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

Schedule 1—Regulated Workers

Part 1—Road Transport Industry

Fair Work Regulations 2009

Item 1 – After Division 2 of Part 1-2

1.08A Meaning of *in a road transport contractual chain*—exclusion of livestock industry

1.08B Meaning of *road transport industry*—exclusion of livestock industry

5. Item 1 inserts new regulations 1.08A and 1.0B into new Division 3A, Subdivision C, of Part 1-2. These regulations exclude the livestock industry, including transporting or otherwise dealing with livestock, from the definitions of ‘in a road transport contractual chain’ (see section 15RA of the FW Act) and ‘road transport industry’ (see section 15S of the FW Act).
6. Section 15RA of the FW Act provides the definitions of ‘road transport contractual chain’ and when a person is ‘in a road transport contractual chain’. Paragraph 15RA(3)(d) provides that an individual is not in a road transport contractual chain in relation to work performed in an industry prescribed by the regulations for the purposes of the paragraph 15RA(3)(d) of the FW Act.
7. New subregulation 1.08A(1) prescribes the following industries for the purposes of paragraph 15RA(3)(d) of the FW Act:
 - the industry that would comprise the road transport and distribution industry (within the meaning of the Road Transport and Distribution Award 2020 as in force on 1 July 2024), to the extent it relates to transporting or otherwise dealing with livestock covered by subregulation (2), if the references in that award to “livestock” covered all such livestock;
 - the industry that would comprise the private transport industry (within the meaning of the Road Transport (Long Distance Operations) Award 2020 as in force on 1 July 2024) engaged in long distance operations (within the meaning of that award), to the extent it would relate to transporting or otherwise dealing with livestock covered by subregulation (2), if the references in that award to “livestock” covered all such livestock.
8. New subregulation 1.08A(2) provides that the subregulation covers cattle, sheep, goats, pigs, horses, poultry, emus, ostrich, alpaca, deer, camels and buffalo. The effect is to exclude the livestock industry so that transporting or otherwise dealing with (e.g. the handling of) livestock of this type will not fall within the meaning of ‘in a road transport contractual chain’.
9. Section 15S of the FW Act provides the definition of ‘road transport industry’. Paragraphs 15S(1)(a) and (b) define ‘road transport industry’ by reference to, among others, the Road Transport and Distribution Award 2020 and the Road Transport (Long Distance Operations) Award 2020 (with such modifications as are prescribed by regulations).

10. New regulation 1.08B provides that:

- for the purposes of paragraph 15S(1)(a) of the FW Act, the Road Transport and Distribution Award 2020, as in force on 1 July 2024, is taken not to apply in relation to transporting or otherwise dealing with livestock covered by new subregulation 1.08A(2);
- for the purposes of paragraph 15S(1)(b) of the FW Act, the Road Transport (Long Distance Operations) Award 2020, as in force on 1 July 2024, is also taken not to apply in relation to transporting or otherwise dealing with livestock covered by new subregulation 1.08A(2).

11. Again, the effect of new regulation 1.08B is that transporting or otherwise dealing with livestock of the specified type is excluded from the scope of the ‘road transport industry’.

Item 2 – After Chapter 3

12. Item 2 inserts Chapters 3A and 3B into the FW Regulations, providing further terms that must not be included in a road transport minimum standards order (RTMSO) or road transport contractual chain order (RTCCO) made under the new regulated worker provisions.

3A.02 Further terms that must not be included in a road transport minimum standards order

13. Section 536KM of the FW Act sets out terms that must not be included in any minimum standards order. Subsection 536KN(1) then sets out additional matters that must not be included in an RTMSO. These include matters relating to road transport that are otherwise comprehensively dealt with by:

- the Heavy Vehicle National Law (HVNL) (as set out in the schedule to the *Heavy Vehicle National Law Act 2012* (Qld)); or
- another law of the Commonwealth, a State or Territory (subparagraph 536KN(1)(a)(ii)).

14. Paragraph 536KN(2)(b) provides that the regulations may prescribe one or more laws of the Commonwealth, a State or Territory to which subparagraph 536KN(1)(a)(ii) does, or does not, apply.

15. The HVNL regulates the use of heavy vehicles that have a gross mass of more than 4.5 tonnes. It applies nationally, except for in Western Australia and the Northern Territory. In all jurisdictions where the HVNL applies, legislation is in place that adopts it as a law of the jurisdiction. Currently, in the non-participating jurisdictions, the *Road Traffic (Vehicles) Act 2012* (WA) applies in Western Australia and the *Traffic Act 1987* (NT) in the Northern Territory.

16. New regulation 3A.02 prescribes the following State and Territory laws for the purposes of paragraph 536KN(2)(b) of the FW Act as laws to which subparagraph 536KN(1)(a)(ii) applies:

- the *Road Traffic (Vehicles) Act 2012* (WA);
- the *Traffic Act 1987* (NT).

17. A note to regulation 3A.02 explains that an RTMSO must not include terms about any matters relating to road transport that are comprehensively dealt with by these laws and draws the reader's attention to subparagraph 536KN(1)(a)(ii) of the FW Act.

3B.02 Terms that must not be included in a road transport contractual chain order

18. Regulation 3B.02 is the equivalent of regulation 3A.02 but in respect of RTCCOs. It prescribes the following State and Territory laws as laws to which subparagraph 536PR(2)(a)(ii) of the FW Act applies for the purposes of paragraph 536PR(4)(b):

- the *Road Traffic (Vehicles) Act 2012* (WA);
- the *Traffic Act 1987* (NT).

19. This means that RTCCOs must not include terms about any matters relating to road transport that are comprehensively dealt with by these laws. A note to regulation 3B.02 explains this effect, drawing the reader's attention to subparagraph 536PR(2)(a)(ii) of the FW Act.

Part 2—Unfair deactivation and unfair termination

Fair Work Regulations 2009

Item 3 – Regulation 1.03

20. This item inserts the definition of 'folio' into existing regulation 1.03 of the FW Regulations, which contains definitions. 'Folio' is defined as 72 words.

21. The note signposts that the definition is relevant for Schedule 3.1.

Item 4 – Regulation 1.07

1.07 Meaning of *serious misconduct*

22. This item repeals and substitutes regulation 1.07.

23. Regulation 1.07 of the FW Regulation defines the term 'serious misconduct' for the purposes of section 12 of the FW Act. For employees, the term is used for determining eligibility for notice of termination and redundancy under the National Employment Standards, as well as notification requirements that apply to dismissals of 15 or more employees. For regulated workers, the term is used for determining eligibility to obtain a remedy relating to unfair deactivation and unfair termination. A deactivation or termination that occurs because of 'serious misconduct' will not be unfair (see subsections 546LH(2) and 536LM(2) respectively).

24. Serious misconduct continues to have its ordinary meaning under subregulation 1.07(1).

25. Subregulation 1.07(2) identifies particular kinds of conduct that amount to serious misconduct for employees for the purposes of the FW Act. These examples have been retained from existing regulation 1.07. These are:

- wilful or deliberate behaviour that is inconsistent with the continuation of the contract of employment; and

- conduct that causes serious and imminent risk to the health or safety of a person, or to the employer’s business’s reputation, viability or profitability;
 - theft, fraud, assault, sexual harassment or intoxication (subject to the employee demonstrating that the conduct did not make employment during the notice period unreasonable).
26. Subregulation 1.07(4) identifies particular kinds of conduct that amount to serious misconduct for employee-like workers for the purposes of the FW Act. These are broadly modelled off the employee provisions, with appropriate modifications to reflect the particular characteristics of digital platform work. Serious misconduct of an employee-like worker performing digital platform work through or by means of a digital labour platform, or under a services contract arranged or facilitated through or by means of a digital labour platform includes:
- wilful or deliberate behaviour that is inconsistent with the employee-like worker continuing to perform that work, or the employee-like worker’s continued access to that digital labour platform;
 - conduct that causes serious and imminent risk to the health or safety of a person, or to the reputation, viability or profitability of the digital labour platform operator;
 - engaging in theft, fraud, assault or sexual harassment in the course of performing that work or in relation to accessing that digital labour platform;
 - being intoxicated in the course of performing that work;
 - refusing to carry out a lawful and reasonable instruction that is consistent with the employee-like worker continuing to perform that work or the employee-like worker’s continued access to that digital labour platform.
27. Subregulation 1.07(5) identifies particular kinds of conduct that amount to serious misconduct for regulated road transport contractors for the purposes of the FW Act. As for employee-like workers, these provisions are modelled off the employee provisions with appropriate modifications for the industry. Serious misconduct of a regulated road transport contractor performing work under a services contract includes:
- wilful or deliberate behaviour that is inconsistent with the continuation of the services contract;
 - conduct that causes serious and imminent risk to the health or safety of a person; or the reputation, viability or profitability of a road transport business that is a party to a services contract;
 - engaging in theft, fraud, assault or sexual harassment in the course of performing that work;
 - being intoxicated in the course of performing that work;
 - refusing to carry out a lawful and reasonable instruction that is consistent with the services contract.
28. Subregulation 1.07(6) defines when a person (worker) is taken to be intoxicated for the purposes of the examples of serious misconduct and is similar to the existing definition in the FW Regulations. In particular, a worker is taken to be intoxicated if the person’s faculties are, by reason of the worker being under the influence of intoxicating liquor or a drug (except a drug is administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the worker is unfit to be entrusted with the worker’s duties or with any duty that the worker may be called upon to perform.

Item 5 – Subregulation 3.04(4)

Item 6 – Subregulation 3.08(6)

29. These items repeal the definition of ‘folio’ in subregulations 3.04(4) and 3.08(8), including the notes, consequential to the insertion of a single equivalent definition into Regulation 1.03 (see item 3 above).

Item 7 – After Part 3A-2

30. Item 7 inserts new Part 3A-3, Division 5.

3A.05 Schedule of costs

31. Subsection 536ME(1) of the FW Act, provides that a schedule of costs may be prescribed for items of expenditure likely to be incurred in relation to matters that can be covered by costs orders made under sections 536MB or 536MC, or under section 611 in relation to matters arising under Part 3A-3 of the FW Act (which concerns unfair deactivation and unfair termination).
32. Subregulation 3A.05(1) provides that for section 536ME of the FW Act, the schedule of costs set out in Schedule 3.1 is prescribed.
33. The effect is to prescribe relevant schedule of costs in relation to costs orders against parties, or lawyers and paid agents, in relation to unfair deactivation and unfair termination applications where the representative caused those costs to be incurred:
- because the representative encouraged the person to start, continue or respond to the matter without cause or even though the application had no reasonable prospect of success; or
 - because of an unreasonable act or omission by the representative in connection with the ongoing matter; or
 - the application was vexatious.
34. Subregulation 3A.05(1) provides that a bill of costs must identify, by an item number, each cost and disbursement claimed.
35. This regulation is made under section 610.

Item 8 – Subregulation 6.06(4)

36. Item 8 repeals the definition of ‘folio’ in subregulation 6.06(4), including the note, consequential to the insertion of a single equivalent definition into Regulation 1.03 (see item 3 above).

Item 9 – Schedule 3.1 (note to Schedule heading)

Item 10 – Part 1 of Schedule 3.1 (table items 101 and 102, column headed “Matter for which charge may be made”)

37. These items modify the schedule of costs set out in Schedule 3.1, in accordance with regulation 3A.05, including to provide that an application for unfair deactivation or unfair termination remedy is a matter for which charge may be made.

Part 3—Application fees

Division 1—Main amendments

Fair Work Regulations 2009

Item 11 – Before regulation 3A.04

38. Item 11 inserts new regulation 3A.03 before new regulation 3A.04.

3A.03 Application fees

39. Subsection 536LV(2) of the FW Act provides that the regulations may prescribe a fee for making an application to the FWC for a remedy for unfair deactivation or unfair termination under section 536LU, a method for indexing the fee, and the circumstances in which all or part of the fee may be waived or refunded.

40. Subregulation 3A.03(2) provides that the fee is \$87.20 for applications made in the financial year commencing 1 July 2024. This is the same as the fee for applications to the FWC to deal with unfair dismissal, general protections involving dismissal, general protections not involving dismissal, unlawful termination disputes, orders to stop bullying and orders to stop sexual harassment that occurred before 6 March 2023.

41. The method for indexing the fees annually is set out in new subregulations 3A.03(3)-(6). The method is identical to the method for indexing the fees required to be paid for other applications to the FWC.

42. Subregulation 3A.03(7) provides that no fee is payable if the FWC is satisfied that the person making an application will suffer serious hardship if the person is required to pay the fee.

43. Subregulation 3A.03(8) sets out the circumstances in which the FWC must refund an amount equal to the fee. The FWC must issue a refund where an application is subsequently discontinued in accordance with any procedural rules (see section 588 of the FW Act) and either:

- at that time, the application has not yet been listed for conciliation, conference or hearing; or
- if the application has, at or before that time, been listed for conciliation, conference or hearing, on a specified date or dates – the discontinuance occurs at least 2 days before the date or the earlier of those dates.

Item 12 – After Part 3A-3

44. Item 12 inserts Part 3A-5 after Part 3A-3, including regulation 3A.05.

Regulation 3A.05 Application fees

45. Subsection 536NE(2) of the FW Act provides regulations may prescribe a fee for making an application to the FWC for an unfair contract term remedy under Division 4 of Part 3A-5; a method for indexing the fee; and the circumstances in which all or part of the fee may be waived or refunded.

46. Regulation 3A.05 sets out matters relating to a fee for making an application to the FWC under section 536ND of the FW Act.

47. Subregulation 3A.05(2) provides that the fee is \$87.20 for applications made in the financial year starting on 1 July 2024. This is the same as the fee for applications to the FWC to deal with unfair dismissal, general protections involving dismissal, general protections not involving dismissal, unlawful termination disputes, orders to stop bullying and orders to stop sexual harassment that occurred before 6 March 2023. This fee is also set at the same level as the new fee for an application for an unfair deactivation and unfair termination remedy under section 536LU, outlined in regulation 3A.03 above.

48. The method for indexing the fees annually is set out in new subregulations 3A.05(3)-(6). The method is identical to that of other applications to the FWC.

49. Subregulation 3A.05(7) provides that no fee is payable if the FWC is satisfied that the person making an application will suffer serious hardship if the person is required to pay the fee.

50. Subregulation 3A.05(8) sets out the circumstances in which the FWC must refund an amount equal to the fee the. The FWC must issue a refund where an application is subsequently discontinued in accordance with any procedural rules (see section 588 of the FW Act) and at that time either:

- the application has not yet been listed for a conciliation, conference or hearing; or
- if the application has, at or before that time, been listed for a conciliation, conference or hearing, on a specified date or dates – the discontinuance occurs at least 2 days before the date or the earlier of those dates.

Division 2—Consequential amendments

Fair Work Regulations 2009

Item 13 – Subregulations 3.02(6), 3.03(6) and 3.07(6)

51. Subregulations 3.02(6), 3.03(6) and 3.07(6) provide details about how the indexation factor is to be calculated for the purposes of indexing the yearly application fee for making an application to the FWC under section 365 (Application for FWC to deal with dismissal dispute), 372 (Application for FWC to deal with non-dismissal dispute) or Division 5 of Part 3-2 of the FW Act (Unfair dismissal) respectively.

52. In line with current drafting practice, item 13 omits the term ‘reference base’ (wherever occurring) in these subregulations and substitutes it with ‘index reference period’.

Item 14 – After paragraph 5.01(2)(c)

53. Subregulation 5.01(2) prescribes functions of the FWC that the President may, in writing, delegate to the General Manager, a FWC staff member who is an SES employee or acting SES employee, or a FWC staff member in a prescribed class of employees for the purposes of paragraph 625(2)(i) of the FW Act. Paragraph 625(2)(i) of the FW Act provides that functions or powers may be prescribed by the regulations.

54. Item 14 inserts paragraphs 5.01(2)(ca) and (cb) into subregulation 5.01(2).

55. New paragraph 5.01(2)(ca) provides that for paragraph 625(2)(i) of the FW Act, being satisfied under subregulation 3A.03(7) that a person making an application to the FWC under section 536LU (Application for unfair deactivation or unfair termination remedy) of the FW Act will suffer serious hardship if the person is required to pay the fee for the application, is a prescribed function.

56. New paragraph 5.01(2)(cb) provides that for paragraph 625(2)(i) of the FW Act, being satisfied under subregulation 3A.07(7) that a person making an application to the FWC under section 536ND (Application for unfair contract term remedy) of the FW Act will suffer serious hardship if the person is required to pay the fee for the application, is a prescribed function.

57. The effect of these new paragraphs is that the President may, in writing, delegate to specified people the ability to waive application fees for unfair deactivation, unfair termination and unfair contract term applications where paying the fee would result in an applicant suffering serious hardship.

Item 15 – Subregulation 6.05(6)

Item 16 – Subregulation 6.07A(6)

58. Subregulations 6.05(6) and 6.07A(6) provide details about how the indexation factor is to be calculated for the purposes of indexing the yearly application fee for making an application to the FWC under section 773 (Application for FWC to deal with a dispute) or subsection 789FC(1) of the FW Act (Application for an FWC order to stop bullying), respectively.

59. In line with current drafting practice, items 15 and 16:

- omit the term ‘reference base’ (wherever occurring) and substitute it with ‘index reference period’; and
- insert a reference to ‘period’ after each use of ‘index reference’.

Part 4 —State and Territory laws with continued application

Fair Work Regulation 2009

Item 17 – Before Part 3A-2

60. Item 17 inserts Part 3A-1 before Part 3A-2.

3A.01 Exclusion of certain State and Territory laws

61. Subsection 536JP(1) of the FW Act provides that for the purposes of Chapter 3A, the rights, entitlements, obligations and liabilities of a regulated worker, a regulated business or a party to a services contract are not affected by a law of a State or Territory to the extent that the law would otherwise do one or more of the following:

- take, deem or treat a regulated business or regulated worker to be an employee or an employer for the purposes of a law relating to one or more workplace relations matters;
- confer or impose rights, entitlements, obligations or liabilities on regulated business or regulated worker in relation to matters that, in an employment relationship, would be workplace relations matters; and
- expressly provide for a court, commission or tribunal to do any of the following in relation to a services contract on an unfairness ground:
 - make an order or determination setting aside, voiding or making all or part of the services contract unenforceable; or
 - make an order or determination amending or varying all or part of the services contract.

62. Paragraph 536JP(3)(c) of the FW Act provides that the exclusion of relevant State and Territory laws in subsection 536JP(1) does not apply in relation to the law of a State or Territory that is specified in the regulations, to the extent that the law is so specified.

63. Regulation 3A.01 specifies certain State and Territory laws for the purposes of paragraph 536JP(3)(c) that are not excluded and therefore continue to have effect in relation to regulated workers, regulated businesses and parties to a services contract:

- *Building and Construction Industry Security of Payment Act 1999* (NSW);
- parts of the *Health Services Act 1997* (NSW);
- *Building and Construction Industry Security of Payment Act 2002* (Vic.);
- *Building and Construction Industry Payments Act 2004* (Qld);
- *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- Chapter 10A of the *Industrial Relations Act 2016* (Qld), and any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of that Chapter;
- *Queensland Building and Construction Commission Act 1991* (Qld);
- *Building and Construction Industry (Security of Payment) Act 2021* (WA);
- *Construction Contracts (Former Provisions) Act 2004* (WA);
- *Owner-Drivers (Contracts and Disputes) Act 2007* (WA);
- *Building and Construction Industry Security of Payment Act 2009* (SA);
- *Building and Construction Industry Security of Payment Act 2009* (Tas.);
- *Building and Construction Industry (Security of Payment) Act 2009* (ACT); and

- *Construction Contracts (Security of Payments) Act 2004* (NT).

64. Chapter 10A titled ‘Independent couriers’ will be inserted into the *Industrial Relations Act 2016* (Qld) by clause 66 of the *Industrial Relations and Other Legislation Amendment Act 2022* (Qld) and is due to commence operation on 4 November 2024.

65. A note to this regulation explains that the effect of these specified State and Territory laws on the rights, entitlements, obligations and liabilities of a regulated worker, a regulated business or a party to a services contract is not limited by subsection 536JP(1) of the FW Act.

Item 18 – Before Part 3B-2

66. Item 18 inserts new Part 3B-1 before Part 3B-2.

Regulation 3B.01 Exclusion of certain State and Territory laws

67. Subsection 536NW(1) of the FW Act provides that for the purposes of Chapter 3B, the rights, entitlements, obligations and liabilities of a person in a road transport contractual chain are not affected by a law of a State or Territory to the extent that the law would otherwise do one of the following:

- take, deem or treat the person to be an employee or an employer for the purposes of a law relating to one or more workplace relations matters;
- confer or impose rights, entitlements, obligations or liabilities on the person in relation to matters that, in an employment relationship, would be workplace relations matters;
- expressly provide for a court, commission or tribunal to do any of the following in relation to a services contract on an unfairness ground:
 - make an order or determination setting aside, voiding or making all or part of the services contract enforceable;
 - make an order or determination amending or varying all or part of the services contract.

68. Paragraph 536NW(3)(c) of the FW Act provides that the exclusion in subsection 536NW(1) does not apply in relation to the law of a State or Territory that is specified in the regulations, to the extent that the law is so specified.

69. Regulation 3B.01 specifies certain State and Territory laws for the purposes of paragraph 536NW(3)(c) that are not excluded and therefore continue to have effect in relation to persons in a road transport contractual chain. This is the same list of State and Territory laws as regulation 3A.01, supporting consistency across the statute book.

70. A note explains that the effect of these specified State and Territory laws on the rights, entitlements, obligations and liabilities of a person in a contractual chain is not limited by subsection 536NW(1) of the FW Act.

Independent Contractors Regulation 2016

Item 19 – After paragraph 6(d)

Item 20 – After paragraph 6(e)

Item 21 – Paragraph 6(f)

71. Regulation 6 of the IC Regulation specifies State and Territory laws that are not excluded under subsection 7(1) of the IC Act to the extent they are specified.
72. Subsection 7(1) of the IC Act excludes the operation of State and Territory laws to the extent that those laws affect, or would affect, the rights, entitlements, obligations or liabilities of a person who is a party to a services contract (as defined in section 5 of that Act).
73. Paragraph 7(2)(c) of the IC Act provides that subsection 7(1) does not apply to a law of a State or Territory that is specified in regulations made for the purposes of the paragraph to the extent that the law is so specified.
74. Items 19 and 20 inserts new paragraphs (da), (db) and (ea) into regulation 6, specifying the following State laws are also not excluded by the IC Act:
- *Building Industry Fairness (Security of Payment) Act 2017* (Qld) ;
 - Chapter 10A of the *Industrial Relations Act 2016* (Qld), and any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of that Chapter; and
 - *Building and Construction Industry (Security of Payment) Act 2021* (WA).
75. As noted above, Chapter 10A titled ‘Independent couriers’ will be inserted into the *Industrial Relations Act 2016* (Qld) by clause 66 of the *Industrial Relations and Other Legislation Amendment Act 2022* (Qld). It is due to commence operation on 4 November 2024. References to the security of payment laws in Queensland and Western Australia also reflect recent reforms in these jurisdictions.
76. Inserting references to the State laws above in regulation 6 also ensures that the same State and Territory laws continue to be preserved under both Chapters 3A and 3B of the FW Act and the IC Act.
77. Item 21 omits “*Construction Contracts Act 2004* (WA)” from paragraph 6(f) of the IC Regulation and substitutes it with “*Construction Contracts (Former Provisions) Act 2004* (WA)”. This substitution reflects the name change to this Western Australian law following recent reforms to security of payment in this jurisdiction.

Part 5 – Review of services contracts

Fair Work Regulations 2009

Item 22 – Before Part 6-2

78. Item 22 inserts Part 6-1 before Part 6-2.

6.01A Limitation on applications for remedy for unfair deactivation – other proceedings in progress

79. Subsections 734BA(1)-(2) of the FW Act prevent a person from commencing proceedings in relation to the deactivation of a person from a digital labour platform if other deactivation proceedings have been commenced, unless those other proceedings have been discontinued or failed for want of jurisdiction.
80. Subsection 734BA(3) of the FW Act defines ‘other deactivation proceedings’ for the purposes of section 734BA as proceedings specified in the regulations.
81. For the purposes of defining ‘other deactivation proceedings’, regulation 6.01A specifies proceedings that are:
- commenced by or on behalf of the person who has been deactivated; and
 - in relation to the deactivation; and
 - commenced under any of the following:
 - Chapter 6 of the *Industrial Relations Act 1996* (NSW), or any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of that Chapter;
 - the *Owner Drivers and Forestry Contractors Act 2005* (Vic.);
 - Chapter 10A of the *Industrial Relations Act 2016* (Qld), or any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of that Chapter;
 - the *Owner-Drivers (Contracts and Disputes) Act 2007* (WA).

6.01B Limitation on application for remedy for unfair termination – other proceedings in progress

82. Subsections 734BB(1)-(2) of the FW Act prevent a person from commencing proceedings in relation the termination of a road transport services contract if other termination proceedings have been commenced, unless those other proceedings have been discontinued or failed for want of jurisdiction.
83. Subsection 734BB(3) of the FW Act defines ‘other termination proceedings’ for the purposes of section 734BB as proceedings specified in the regulations.
84. For the purpose of defining ‘other termination proceedings’, regulation 6.01B specifies proceedings that are:
- commenced by or on behalf of the person who has been terminated in relation to the work performed under the services contract; and
 - in relation to the termination; and
 - commenced under any of the following:
 - Chapter 6 of the *Industrial Relations Act 1996* (NSW), or any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of that Chapter;
 - the *Owner Drivers and Forestry Contractors Act 2005* (Vic.);
 - Chapter 10A of the *Industrial Relations Act 2016* (Qld), or any other provision of that Act to the extent that it relates to, or has effect for, the purposes of, a provision of that Chapter;

- the *Owner-Drivers (Contracts and Disputes) Act 2007* (WA).

6.01C Limitation on application for review of services contracts – other proceedings in progress

85. Subsections 734C(1)-(2) of the FW Act provide that a person must not make an application for review of a services contract on the basis of an unfair contract term if other review proceedings have been commenced in relation to the services contract (and vice versa), unless those other proceedings have been discontinued or failed for want of jurisdiction.

86. Subsection 734C(3) of the FW Act defines other review proceedings for the purposes of section 734C as:

- proceedings under a provision of a law of a State or Territory as mentioned in paragraph 536JP(1)(c) (laws providing for a court, commission or tribunal to make certain orders or determinations in relation to a services contract on an unfairness ground) and that is not affected by the exclusion provisions; or
- proceedings in relation to a services contract under a provision of another law that is specified in the regulations.

87. New regulation 6.01C prescribes sections 20, 21 and 250 of the Australian Consumer Law (ACL) for that purpose.

88. A note to the regulation provides that the reference to the ACL is a reference to the ACL as a law of the Commonwealth and as applied as a law of each State and Territory.

Independent Contractors Regulation 2016

Item 23 – Section 8

89. Section 14 of the IC Act provides that an unfair contracts application cannot be made if other review proceedings have been brought in relation to the services contract, unless those other proceedings have been discontinued or failed for want of jurisdiction.

90. Section 8 of the IC Regulation is made under paragraph 14(3)(b) of the IC Act which enables the making of regulations to prescribe Commonwealth, State or Territory laws as ‘other review proceedings’ for the purposes of section 14 of the IC Act. The effect of section 8 is to prevent a person from making an unfair contracts application under section 12 of the IC Act when they have sought a similar remedy under the prescribed law.

91. Section 8 of the IC Regulation prescribes sections 20 and 21 of the ACL for that purpose. Item 23 updates that section, inserting a reference to section 250 of the ACL (declarations relating to unfair contract terms in consumer contracts and small business contracts) to prevent double dipping between the ACL, FW Act and IC Act.

Schedule 2 – Registered Organisations

Fair Work (Registered Organisations) Regulations 2009

Item 1 – Subregulation 80(1)

Item 3 – Regulation 83

92. Item 1 inserts a definition of ‘amalgamation day’ into subregulation 80(1), which reflects the definition used in the RO Act and will appear in regulation 83 (as amended by item 3).

93. The amendments made by the Amendment Act to the RO Act: limited the kinds of constituent parts which may withdraw from an amalgamated organisation, repealed requirements regarding proposed rules and names and changed the matters that must be taken into when apportioning assets and liabilities between the organisations following a de-amalgamation.

94. Item 3 makes a corresponding amendment to the RO Regulations, so that detailed requirements for an outline for the purposes of paragraph 95(1)(c) of the RO Act are updated to reflect current legislative requirements for de-amalgamations.

Item 2 – Subregulation 80(1) (definition of assisting official)

Item 5 – Regulation 85 (heading)

Item 6 – Subregulation 85(1)

Item 7 – Subregulations 85(2) and (3)

Item 8 – Regulation 86 (heading)

Item 9 – Subregulation 86(1)

Item 10 – Subregulation 86(2)

Item 11 – Regulation 87 (heading)

Item 12 – Regulation 87A

Item 13 – Regulation 88 (heading)

Item 14 – Paragraph 88(3)(a)

Item 15 – Regulation 89 (heading)

Item 16 – Subregulation 89(1)

Item 17 – Subregulation 89(1)

Item 18 – Subregulation 89(2)

Item 19 – Subregulation 89(2B)

Item 20 – Subregulation 89(6)

Item 21 – Subregulation 89(6)

Item 22 – Regulation 90 (heading)

Item 23 – Regulation 90

Item 24 – Regulation 90

Item 25 – Regulation 90A (heading)

Item 26 – Regulation 91 (heading)

Item 28 – Subregulation 91(1)

Item 29 – Subparagraph 91(1)(a)(i)

Item 30 – Paragraph 91(1)(b)

Item 31 – Paragraph 91(1)(d)

Item 33 – Subregulation 91(2)

Item 34 – Paragraph 91(2)(b)

Item 35 – Regulation 93 (heading)

Item 37 – Subregulation 93(1)

Item 38 – Subregulation 93(1)

Item 39 – Paragraph 93(2)(a)

Item 40 – Subregulation 93(3)

Item 41 – Regulation 94 (heading)

Item 44 – Paragraph 94(2)(d)

Item 45 – Regulations 94A to 94F

Item 46 – Regulation 95 (heading)

Item 47 – Regulation 95

Item 48 – Regulation 96 (heading)

Item 49 – Subregulation 96(1)

Item 50 – Subregulation 96(1A)

Item 51 – Subregulation 96(2)

Item 52 – Subparagraph 96(3)(a)(i)

Item 56 – Subregulations 96(4), (5) and (6)

Item 57 – Regulation 97 (heading)

Item 61 – Subregulation 97(6)

Item 62 – Subregulation 97(6)

Item 63 – Subregulation 97(7)

Item 64 – Subregulation 97(8)

Item 65 – Subregulation 97(9)

Item 66 – Subregulation 97(11)

Item 67 – Subregulation 97(11)

Item 68 – Regulation 98 (heading)

Item 71 – Paragraph 98(1)(b)

Item 73 – Paragraphs 98(1)(e), (f) and (g)

Item 74 – Subregulation 98(2)

Item 75 – Subregulation 98(2A)

Item 76 – Subregulation 98(3)

Item 77 – Regulation 100

Item 78 – Subregulation 101(1)

Item 79 – Subregulation 101(2)

Item 80 – Subparagraphs 102(1)(b)(iii) and (iv)

Item 83 – Regulation 113 (heading)

Item 84 – Subregulation 113(1)

Item 85 – Subregulation 113(2)

Item 86 – Subparagraph 114(a)(i)

Item 87 – Paragraph 114(aa)

Item 88 – Paragraph 114(b)

Item 89 – Paragraph 168(2)(ca)

Item 90 – Paragraph 168(2)(d)

Item 91 – Subregulation 171(1)

Item 92 – Subregulation 171(1A)

Item 93 – Regulation 176AA (table item 4)

95. The Amendment Act repealed measures in the RO Act that enabled ballots for the withdrawal from amalgamated organisations to be conducted by a ‘designated official’ in certain circumstances.

96. These items make corresponding amendments to the RO Regulations, to remove the now-redundant references to such officials and their assistants and provisions which relate to such persons and processes.

Item 4 – Paragraphs 84(1)(a) and (2)(a)

Item 26 – Regulation 91 (heading)

Item 27 – Subregulation 91(1A)

Item 32 – Subregulation 91(1) (note)

Item 35 – Regulation 93 (heading)

Item 36 – Subregulation 93(1A)

Item 41 – Regulation 94 (heading)

Item 42 – Subregulation 94(1A)

Item 43 – Subregulation 94(1)

Item 45 – Regulations 94A to 94F

Item 53 – Paragraph 96(3)(d)

Item 54 – Paragraph 96(3)(d)

Item 55 – Paragraph 96(3)(e)

Item 58 – Paragraph 97(5)(a)

Item 59 – Paragraph 97(5)(aa)

Item 60 – Paragraphs 97(5)(ab) and (ac)

Item 70 – Paragraph 98(1)(b)

Item 72 – Paragraphs 98(1)(ba) and (bb)

Item 86 – Subparagraph 114(a)(i)

97. The Amendment Act repealed provisions of the RO Act that enabled ballots for the withdrawal from an amalgamated organisation to be conducted by attendance in certain circumstances.

98. These items make corresponding amendments to the RO Regulations to remove references to such ballots and make the necessary consequential changes.

Item 69 – Subregulation 98(1)

99. This item makes a style change, so that the provision is drafted consistently with modern drafting practice.

Item 81 – Paragraph 107(5)(c)

100. The Amendment Act repealed a provision of the RO Act that imposed requirements for proposed names and rules for organisations following a de-amalgamation. This item removes a cross-reference to the now-repealed provision (that is, old section 95A of the RO Act, as it was immediately before commencement of Part 13 of Schedule 1 to the Amendment Act).

Item 82 – After regulation 110

101. This item adds a paragraph to the regulation, to specify the relevant regulation-making power and provide that a notice given to the relevant applicant under subsection 111(10) of the RO Act must be given by notifying the relevant constituent member nominated by the applicant under paragraph 82(c) of the RO Regulations.

Item 94 – Schedule 3 (Form 2)

Item 95 – Schedule 3 (Form 4)

102. This item amends the specified forms, to reverse any changes that were made as a result of the 2020 Amendments (that is, that were also repealed by the Amendment Act).

Item 96 – At the end of the instrument

103. This item is a transitional measure, that allows for the continued operation of the pre-reform RO Regulations in the specified circumstances.