

**FAIR WORK AMENDMENT (VARIATION OF ENTERPRISE AGREEMENTS
NO. 2) REGULATIONS 2020**

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General
under subsection 211(6) of the *Fair Work Act 2009*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020* (the Repeal Regulations) repeal amendments made by the *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020* (the Regulations).

The Regulations modified the period that employees must have access to a copy of a proposed variation of an enterprise agreement, and before which employees must be notified of the details of the vote on the variation (the ‘access period’), from seven days to one day.

This measure is repealed with the effect that the ‘access period’ for a proposed variation of an enterprise agreement is no longer modified and will revert to the previous period of seven days.

The repeal of the Regulations follows a review which found that a majority of employers had continued to provide a notice period well in excess of the minimum timeframe permitted by the Regulations and that the reduced timeframe introduced by the Regulations was rarely necessary.

Taking into account the review’s findings, and views expressed to the Attorney-General, it is considered appropriate to bring forward the repeal date of the Regulations. The Attorney-General is satisfied that appropriate consultation was undertaken prior to the repeal of the measure.

The repeal of the measure will not affect variations to enterprise agreements made in accordance with the Regulations before the repeal date, including those that have been agreed to by employees before the repeal date but not yet approved by the Fair Work Commission (FWC).

The FWC has a further six months after the repeal date to determine an application to approve a variation of an enterprise agreement made with a shortened ‘access period’ that occurred before the repeal date.

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

The Repeal Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and commence the day after they are registered on the Federal Register of Legislation.

REGULATION IMPACT STATEMENT

An exemption from Regulation Impact Statement requirements has been granted by the Prime Minister for measures related to the Australian Government's response to the COVID-19 pandemic.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

The *Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020* (the Repeal Regulations) are 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

The Repeal Regulations repeal amendments made by the *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020*, which modified the period that employees must have access to a copy of a proposed variation of an enterprise agreement, and before which employees must be notified of the details of the vote on the variation (the 'access period'), from seven days to one day. This measure was intended to be a time-limited change to enable employers and their employees to quickly respond to issues that may arise in response to COVID-19.

Human Rights Implications

The Regulations are compatible with human rights as the Regulations do not engage any of the applicable rights or freedoms and do not raise any human rights issues.

NOTES ON SECTIONS

Section 1 – Name

This section provides that the title of the instrument is the *Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020*.

Section 2 – Commencement

This section provides that the whole of the instrument will commence the day after it is registered.

Section 3 – Authority

This section provides that the instrument is made under the *Fair Work Act 2009* (the Act).

Section 4 – Schedules

This section provides that each instrument 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 this instrument will have effect according to its terms.

SCHEDULE 1 – Amendments

Item 1 – Regulation 2.09B

Item 1 repeals regulation 2.09B.

Item 2 –Part 7-4 (heading)

Item 2 repeals and substitutes the heading of Part 7-4 in Chapter 7.

Items 3 and 4 – Subregulation 7.04(2)

Item 3 omits “under subregulation 2.09B(3)” and substitutes it with “by Schedule 1 to the *Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020*”.

Item 4 omits “subsection 180(2) and (3) of the Act that starts before that repeal” and substitutes it with “subsections 180(2) and (3) of the Act that starts before the commencement of that Schedule”.

These amendments make clear that regulation 2.09B is repealed by Schedule 1 to the proposed Regulations, and ensure that the FWC can determine an application to approve a variation of an enterprise agreement that was made in relation to an access period that started before the commencement of Schedule 1 to the proposed Regulations.

Item 5 – Subregulation 7.04(2)(note)

Item 5 repeals the note at subregulation 7.04(2).

Item 6 – Regulation 7.05

Item 6 makes clear that Part 7-4 is repealed at the end of the period of 6 months starting on the day Schedule 1 to the proposed Regulations commences. This has the effect of providing the FWC with a further six months after the repeal of regulation 2.09B to consider an application to approve a variation of an enterprise agreement made with a one day access period pursuant to regulation 2.09B.