

## **EXPLANATORY STATEMENT**

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

*Fair Work Act 2009*

*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*

*Fair Work (Registered Organisations) Act 2009*

*Fair Work Legislation Amendment Regulations 2022*

### **AUTHORITY**

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

- Paragraph 536(2)(c), which will be inserted into the Fair Work Act on 1 February 2023 by the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022*, will provide for the regulations to prescribe information in relation to paid family and domestic violence leave that must not be included in an employee's pay slip.
- Paragraph 625(2)(i) enables regulations to be made to prescribe any function or power of the Fair Work Commission (FWC) that may be delegated by the President and by paragraph 625(3)(c), regulations may prescribe a relevant class.
- Paragraph 671(1)(b) enables regulations to be made prescribing the class of people to whom a power of the FWC General Manager may be delegated.
- Subsection 796(1) empowers the Governor-General with a general and 'necessary or convenient' regulation-making power.

The *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Transitional Act) makes transitional and consequential provisions in relation to the workplace relations framework provided for under the Fair Work Act.

- Section 4 empowers the Governor-General with a general and 'necessary or convenient' regulation-making power.
- Subitem 8(1) of Schedule 2 provides the regulations may modify provisions of the transitional Schedules of this Act.

The *Fair Work (Registered Organisations) Act 2009* (Fair Work (Registered Organisations) Act) regulates registered employer and employee organisations to ensure they are representative of and accountable to their members and are able to operate effectively.

- Section 359 empowers the Governor-General with a general and 'necessary or convenient' regulation-making power.

The *Fair Work Regulations 2009* (Fair Work Regulations), *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (Transitional Regulations) and *Fair Work (Registered Organisations) Regulations 2009* (Registered Organisations Regulations) each support matters of detail within the legislative frameworks contained in the

Fair Work Act, the Transitional Act and the Fair Work (Registered Organisations) Act respectively.

Pursuant to rows 27, 27A and 27B of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, sunseting of legislative instruments does not apply to regulations made under the Fair Work Act, the Transitional Act or the Fair Work (Registered Organisations) Act. Pursuant to section 12, these regulations would not be subject to ordinary sunseting processes.

## **PURPOSE AND OPERATION**

The purpose of the *Fair Work Legislation Amendment Regulations 2022* (Instrument) is to amend the Fair Work Regulations, the Transitional Regulations and the Registered Organisations Regulations to:

- modify information required to be shown, or not to be shown, on employee pay slips
- reflect the abolition of the Australian Building and Construction Commission and the transfer of functions from the Registered Organisations Commission to the FWC
- make a range of updates to FWC delegations and pre-modern award transitional arrangements
- make several minor corrections of an editorial nature.

The Instrument addresses a number of existing regulatory inconsistencies, amends errors and outdated references in the relevant instruments, and also supports recent measures to be implemented by the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* and the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (if enacted).

## **REGULATORY IMPACT**

The Office of Impact Analysis (formerly the Office of Best Practice Regulation (OBPR)) assessed that a Regulation Impact Statement was not required this instrument as the reforms are unlikely to have more than a minor regulatory impact (OBPR references OBPR22- 01668, OBPR22-03620, OBPR22-03233, OBPR22-02596, OBPR22-02653, OBPR22-03637).

## **COMMENCEMENT**

The various Parts and Divisions in the Instrument commence on different days, including upon commencement of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* or Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022.

## **CONSULTATION**

The Department consulted with referring states and territories under the *Intergovernmental Agreement for a National Workplace Relations System for the Private Sector*, and the Committee on Industrial Legislation. Other affected stakeholders, including payroll software providers, and Commonwealth agencies such as the Fair Work Ombudsman and the Australian Tax Office were also consulted.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### Fair Work Legislation Amendment Regulations 2022

The *Fair Work Legislation Amendment Regulations 2022* (Instrument) 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 of the Legislative Instrument**

The *Fair Work Act 2009* (Fair Work 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* (Fair Work Regulations) to:

- modify the requirement to include certain information about superannuation contributions on initial pay slips, including to provide employers with the time required to comply with their superannuation obligations with changes made by the *Treasury Laws Amendment (Your Future, Your Super) Act 2021*
- prescribe certain information in relation to paid family and domestic violence leave that must not be included in an employee's pay slip, which could present a danger to employees taking the leave
- update arrangements for the delegation of certain functions and powers of the Fair Work Commission and its General Manager
- remove references to the Australian Building and Construction Commission (ABCC) in two forms relating to entry to premises
- make several minor corrections of an editorial nature.

The Instrument amends the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (Transitional Regulations) to:

- repeal regulations 3A.01 and 3B.02 of the Transitional Regulations, so that pre-modern award transitional arrangements that set minimum entitlements for some apprentices and trainees will come to an end on 1 July 2023.

The Instrument amends the *Fair Work (Registered Organisations) Regulations 2009* (Registered Organisations Regulations) to:

- change references from the Registered Organisations Commissioner to the General Manager of the Fair Work Commission
- remove references to the *Building and Construction Industry (Improving Productivity) Act 2016* (BCI(IP) Act)
- repeal provisions dealing with lodgement of documents with the Registered Organisations Commissioner and remove other provisions that will become obsolete with the transfer of functions from the Registered Organisations Commissioner to the General Manager of the Fair Work Commission
- prescribe Executive Level 2 positions, or equivalent as a class of employees to whom the General Manager of the Fair Work Commission may delegate certain powers or functions in relation to registered organisations.

## **Human rights implications**

The Instrument engages the following human rights:

1. 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); and
2. the right to privacy and reputation under Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR).

When the ILO Convention (No. 190) concerning Violence and Harassment comes into force for Australia, amendments made by the Instrument will engage Australia's commitment under that Convention to mitigate the effects of domestic violence in the world of work.

### 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.

*Repeal of regulations 3A.01 and 3B.02 of the Transitional Regulations.*

The effect of repealing regulation 3A.01 is to remove item 36A of Schedule 3A to the Transitional Act. Trainees and apprentices of non-constitutional corporations to whom transitional arrangements applied are entitled instead to the minimum terms and conditions set out in the relevant modern award. This promotes the right to access just and favourable conditions of work by ensuring that minimum terms and conditions of employment apply uniformly to all employees. It ends an arrangement where some apprentices might be paid less than the minimum wage as set out in their relevant modern award.

### Right to privacy and reputation

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. Privacy guarantees a right to secrecy from the publication of personal information. For interference with privacy not to be arbitrary, it must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Reasonableness in this context incorporates notions of proportionality to the end sought and necessity in the circumstances.

*Pay slip requirements – paid family and domestic violence leave*

The Instrument positively engages the right to privacy by requiring employers not to disclose that an employee has accessed paid family and domestic violence leave on their pay slip. This protects the privacy and reputation of employees in situations where perpetrators of family and domestic violence may have access to the employee pay slips and could become aware that the employee has accessed the leave entitlement from their workplace.

*Other regulations*

The remainder of the amending regulations are technical and do not engage any of the applicable rights or freedoms.

**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 LEGISLATION AMENDMENT REGULATIONS 2022

## EXPLANATION OF PROVISIONS

### Section 1 – Name

1. This section provides that the name of the regulation is the *Fair Work Legislation Amendment Regulations 2022*.

### Section 2 – Commencement

2. This section provides for commencement of the provisions of the Instrument.

### Section 3 – Authority

3. This section provides that the *Fair Work Legislation Amendment Regulations 2022* is made under the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, and the *Fair Work (Registered Organisations) Act 2009*.

### Section 4 – Schedule

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

### **PART 1—PAY SLIP REQUIREMENTS**

#### ***Division 1 – Stapled funds***

##### Fair Work Regulations 2009

#### **Item 1 – Subregulation 3.46(5)**

#### **Item 2 – Paragraph 3.46(5)(b)**

5. These items amend subregulation 3.46(5) and paragraph 3.46(5)(b) to better reflect that employers do not always have a positive obligation to pay superannuation contributions, and better align the paragraph with the legislative intent of the provisions of the *Superannuation Guarantee (Administration) Act 1992*.

#### **Item 3 – After subregulation 3.46(5)**

6. This item inserts subregulation 3.46(5A), to resolve inconsistencies arising from the passage of the *Treasury Laws Amendment (Your Future, Your Super) Act 2021*.
7. Sub-regulation 3.46(5A) provides an exemption to the requirement in paragraph 3.46(5)(b) to provide ‘the name, or the name and number, of any fund’ on a pay slip. This exemption only applies where the pay slip is required to be given to an employee within 14 days of the first day on which the employer pays an amount to the employee in relation to the performance of work (that is, the exemption only applies to the first payslip the employee is provided at the start of their employment relationship).
8. Since 1 November 2021, in certain circumstances, employees who have an eligible existing superannuation account are ‘stapled’ to that account and will carry it over to any new employer, regardless of the terms of any award or enterprise agreement. When employees do not make a choice of superannuation fund, section 32R of the *Superannuation Guarantee (Administration) Act 1992* requires an employer (or their agent) to request that the Commissioner of Taxation (by the Australian Taxation Office (ATO)) provides details of an employee’s stapled superannuation fund.
9. In order to disclose an employee’s stapled fund details (including confirming that there is no such fund) to an employer (or their agent), under the Division 355 of Schedule 1 to the *Taxation Administration Act 1953*, an ATO officer has to be satisfied that there is evidence of an employer/employee relationship between the entity making the request and the employee who is the subject of the request.
10. As evidence of the employment relationship, an employer can either provide the ATO with an employee’s Tax File Number (TFN) declaration or evidence of a Single Touch-Payroll (STP) event. An STP event is a report generated by STP-enabled software or other solution, and such an event ordinarily occurs when an employer pays an amount to an employee in relation to the performance of work.
11. The ATO has also confirmed that from 1 January 2022 sending separate TFN declarations to the ATO has been eliminated for many employers, due to the same

information being incorporated within STP events for those employers. This means that, at a practical level, an STP event is the only way for an employer to provide evidence of the employment relationship to the ATO.

12. This item gives employers an opportunity to comply with their pay slip obligations, by providing employers a short grace period in which the employer can issue pay slips to a new employee without naming the employee's superannuation fund if:
  - a. the employee has not notified of a choice of superannuation fund, and
  - b. the employer has otherwise not been able to obtain the employee's stapled superannuation fund details from the ATO.
13. The 14 day timeframe from the date of the first payment for performance of work, generally coupled with the first STP event for an employment relationship, for paragraph 3.46(5A)(a) was chosen on the basis it will provide sufficient time to allow an employer to comply with the stapled fund requirements.

## ***Division 2 – Family and domestic violence leave***

### Fair Work Regulations 2009

#### **Item 4 – Division 3 of Part 3-6 (last paragraph in note to Division heading)**

#### **Item 5 – Regulation 3.46 (heading)**

14. These items make minor technical changes consequential to the amendments to prescribe information in relation to paid family and domestic violence (FDV) leave that must not be included in an employee's pay slip.

#### **Item 6 – After regulation 3.46**

15. This item inserts regulation 3.47, which specifies information relating to paid FDV leave that an employer is prohibited from including on an employee's pay slip.
16. Under regulation 3.47, a pay slip must not specify the following information:
  - a. a statement that an amount paid to an employee has been paid in respect of FDV leave taken by the employee (paragraph 3.47(a))
  - b. a statement that leave taken by an employee has been taken as paid FDV leave (paragraph 3.47(b))
  - c. an employee's paid FDV leave balance (paragraph 3.47(c)).
17. A new note clarifies that an employer can record paid FDV leave on a pay slip as, for example, 'special leave', 'miscellaneous leave' or 'leave–other'.
18. Regulation 3.47 is made under paragraph 536(2)(c) of the Fair Work Act, which was inserted by the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022*.
19. This amendment addresses concerns raised during consultation on that Act that pay slips may record an employee's paid FDV leave entitlement and that this may pose a risk to victim survivors as the perpetrator may have access to the employee's pay slips.
20. By prohibiting employers from including information concerning FDV leave on employees' pay slips, this regulation seeks to improve safety for those accessing FDV

leave and remove ambiguity for employers concerning how to record FDV leave on pay slips.

## **PART 2—DELEGATIONS**

### **Fair Work (Registered Organisations) Regulations 2009**

#### **Item 7 – Regulation 181A**

21. This item repeals regulation 181A and substitutes a new regulation.

*181A Delegation by General Manager to staff—prescribed class of employees*

22. This item repeals and replaces regulation 181A, which enables the General Manager to delegate certain functions and powers listed in subsection 343A(3) of the Fair Work (Registered Organisations) Act to ‘State or Territory Service Managers’. The update to the old regulation is necessary as the FWC has advised that the old designation no longer fits the FWC’s staff structure.
23. Under subsection 343A(3) the General Manager can already delegate particular functions and powers under the Fair Work (Registered Organisations) Act to a member of the staff of the FWC who is an SES or Acting SES employee.
24. Regulation 181A expands the persons to whom those functions and powers can be delegated to include members of the staff of the FWC who hold or perform duties of an Executive Level 2 position or an equivalent position,
25. The term ‘SES’ (Senior Executive Service) takes its meaning from the *Public Service Act 1999*; similarly, references to employee classifications (‘Executive Level 2’ etc.) refer to employee classifications within the Australian Public Service under the *Public Service Classification Rules 2000*.
26. The amendment largely maintains the status quo in practice. Depending on the circumstances of each State or Territory locale, there may be a slight expansion in the pool of staff to whom the relevant functions and powers may be delegated in a particular State or Territory office. This is appropriate given the largely administrative or procedural nature of the functions or powers in question. This also gives the FWC greater flexibility to manage workloads and ensure the appropriate allocation of resources across FWC offices which will in turn improve the timeliness with which matters may be dealt with.

### **Fair Work Regulations 2009**

#### **Item 8 – Regulation 5.01A**

27. This item repeals regulation 5.01A and substitutes a new regulation.

*5.01A Delegation by the President of functions or powers of FWC—prescribed class of employees*

28. This item repeals and replaces the schedule of delegations in regulation 5.01A, which enables the President of the FWC to delegate certain functions and powers of the

- FWC referred to in subsection 625(2) (including any function or power prescribed by the regulations under paragraph 625(2)(i) to ‘State or Territory Service Managers’.
29. The amendment substantially maintains the status quo in practice. Depending on the circumstances of each State or Territory locale, there may be a slight expansion in the pool of staff to whom the relevant functions and powers may be delegated in a particular State or Territory office. The amendment also clarifies that the delegation may be made to staff classified below the SES level. This is appropriate given the largely administrative or procedural nature of the functions or powers in question (e.g. publishing functions, processing fee waiver applications etc.). While permit-related powers are more significant, existing safeguards to ensure the powers are exercised at an appropriate level will remain in place.
  30. This gives the FWC greater flexibility to manage workloads and ensure the appropriate allocation of resources across FWC offices which will in turn improve the timeliness with which matters may be dealt with. Existing safeguards remain in place: the legislation limits the kinds of powers that are delegable, and the President of the FWC retains the discretion whether to delegate the relevant powers, and in what circumstances.

#### **Item 9 – Regulation 5.04A**

31. This item repeals regulation 5.04A and substitutes a new regulation.

##### *5.04A Delegation by General Manager to staff*

32. This item repeals and replaces the schedule of delegations in regulation 5.04A, which enables the General Manager of the FWC to delegate their functions and powers under the Fair Work Act. It is necessary for the delegations to be updated for the same reasons given above under item 7. It is also appropriate for the relevant functions and powers to be delegated to staff classified below the SES level, given the largely administrative or procedural nature of the functions and powers involved, and because the General Manager of the FWC retains the discretion to decide whether or not to delegate any particular function or power, and in what circumstances.

### **PART 3—ABOLITION OF THE REGISTERED ORGANISATIONS COMMISSION**

#### **Fair Work (Registered Organisations) Regulations 2009**

33. The Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 would abolish the Registered Organisations Commission (ROC) and Registered Organisations Commissioner role, moving functions to the General Manager of the FWC.
34. This Part amends references to ‘Commission’ and ‘Commissioner’ in the Registered Organisations Regulations to effect the transfer of functions to the General Manager of the FWC. It also repeals provisions of the Registered Organisations Regulations which will be made obsolete by the abolition of the ROC.

**Item 10: Subregulation 3(1) (definition of *authorised*)**

35. This item makes a technical amendment to remove a reference to the Registered Organisations Commissioner.

**Item 11 – Division 3 of Part 2**

36. This item repeals the division relating to the lodgement of documents with the Registered Organisations Commissioner. Division 2 of Part 2 provides for the lodgement of documents with the Fair Work Commission and caters for lodgements of documents following the abolition of the ROC.

**Item 12 – Regulation 17**

**Item 13 – Subregulations 18(1) and (2)**

37. This item makes technical amendments that remove references to the Registered Organisations Commissioner.

**Item 14 – Paragraph 20(1)(a)**

**Item 15 – Subregulation 20(1A)**

38. These items repeal subregulation 20(1A) in relation to inspecting documents at the premises of the Registered Organisations Commissioner and make a consequential amendment to paragraph 20(1)(a) to replicate the restriction on viewing some documents lodged with the FWC that is currently in subregulation 20(1A).

**Item 16 – Paragraph 26(aa)**

**Item 17 – Subregulation 68(9)**

**Item 18 – Subregulation 87(3)**

**Item 19 – Subregulation 87A(3)**

**Item 20 – Subregulation 89(6)**

**Item 21 – Subregulation 97(11)**

**Item 22 – Paragraph 111(aa)**

**Item 23 – Subregulation 112(3)**

**Item 24 – Subregulation 113(2)**

**Item 25 – Subregulation 131(1)**

**Item 26 – Paragraph 133(1)(c)**

**Item 27 – Paragraph 133(1)(d)**

**Item 28 – Regulation 134**

**Item 30 – Regulation 136**

**Item 32 – Subregulation 137(2)**

**Item 33 – Paragraph 140(3)(a)**

**Item 34 – Subregulation 142(1)**

**Item 35 – Subregulation 145(2)**

**Item 36 – Subregulation 152(2)**

**Item 37 – Paragraph 159A(j)**

**Item 38 – Paragraph 159B(b)**

**Item 39 – Subregulations 159C(2) to (5)**

**Item 40 – Subregulations 159D(2) to (4)**

**Item 42 – Subregulation 166(5)**

**Item 44 – Regulation 167**

**Item 45 – Regulation 167B**

**Item 46 – Paragraph 171(1)(b)**

**Item 47 – Paragraphs 171(1)(c) and (d)**

**Item 48 – Subregulation 171(1A)**

**Item 49 – Paragraphs 176A(2)(a) and (b)**

**Item 50 – Subregulation 176H(3)**

**Item 51 – Subregulation 176J(7)**

**Item 52 – Regulation 177**

**Item 54 – Subregulation 180(1)**

**Item 55 – Subregulation 180(3)**

**Item 56 – Subregulation 180(4)**

**Item 57 – Regulation 181 (heading)**

**Item 58 – Subregulation 181(1A)**

**Item 59 – Subregulation 181(2)**

**Item 60 – Subregulation 181(6)**

**Item 61 – Schedule 3 (Form 8)**

39. These items remove references to the Registered Organisations Commissioner or replace those references with references to the FWC General Manager, as the case may be.
40. The amendments made by items 26 and 27 are consequential to the replacement of the reference to the Registered Organisations Commissioner by a reference to the FWC General Manager in subregulation 131(1) made by item 25.

**Item 29 – Paragraph 135(4)(a)**

**Item 31 – Paragraph 137(1)(c)**

41. These items make technical amendments that remove references to the Registered Organisations Commissioner and replace them with references to the FWC.

**Item 41 – Subregulation 159D(5)**

**Item 43 – Subparagraph 166(5)(b)(i)**

42. These items make technical amendments that remove references to the Registered Organisations Commissioner and the office of the Commissioner and replace them with references to the General Manager and the FWC.

**Item 53 – Regulation 178A**

43. This item repeals an obsolete regulation to remove references to proceedings before the Registered Organisations Commissioner.

**PART 4—ABOLITION OF THE AUSTRALIAN BUILDING AND CONSTRUCTION COMMISSION**

**Fair Work (Registered Organisations) Regulations 2009**

44. The Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 would abolish the ABCC and ABC Commissioner role and significantly amend the BCI(IP) Act.
45. Consequentially, this Part removes references to the BCI(IP) Act in the Registered Organisations Regulations.

**Item 62 – Subregulation 3(1) (paragraph (b) of the definition of designated civil penalty provision)**

**Item 63 – Subregulation 3(1) (paragraph (c) of the definition of designated civil penalty provision)**

**Item 64 – Subregulation 3(1) (paragraph (b) of the definition of designated offence)**

### **Item 65 – Subregulation 3(1) (paragraph (c) of the definition of designated offence)**

46. These items amend the definitions of ‘designated civil remedy provision’ and ‘designated offence’ in subregulation 3(1) to remove references to the BCI(IP) Act. They are consequential to Division 1 of Part 3 of Schedule 1 to the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 that will repeal the civil remedy and offence provisions in the BCI(IP) Act that are relevant to these definitions.

## **PART 5—UNFAIR DISMISSAL**

### Fair Work Regulations 2009

#### **Item 66 – Paragraph 3.07(8)**

47. This item repeals and replaces subregulation 3.07(8). The subregulation sets out the circumstances in which the application fee must be refunded in an unfair dismissal application. The FWC is required to refund the application fee where the application is subsequently discontinued (see section 588 of the Act) and at that time either:
- a. the application has not been listed for any of a conciliation, conference or hearing; or
  - b. if the application has been listed for any of a conciliation, conference or hearing, on a specified date, the discontinuance occurs at least 2 days before that date.
48. The subregulation mirrors existing application fee refund regulations under the general protections provisions in Part 3-1 of the Fair Work Act. The chapeau would be altered in accordance with updated drafting standards and is otherwise not intended to have any change in effect.
49. This amendment is intended to align all fee refund regulations and clarifies the situations in which the Fair Work Commission must issue a fee refund for unfair dismissal applications.

## **PART 6—OTHER AMENDMENTS**

### *Division 1—Amendments commencing day after registration*

### Fair Work Regulations 2009

#### **Item 67 – Regulation 3.45**

50. This item makes a technical amendment to correct a drafting error referring to subsection 536(2)(b) of the Fair Work Act instead of subsection 536(2)(a).

#### **Item 68 – Paragraph 5.01(2)(d)**

51. This item makes a technical amendment to correct a drafting error referring to subsection 773(2), which does not exist.

#### **Item 69 – Regulation 6.03A (heading)**

**Item 70 – Regulation 6.03A**

**Item 71 – Paragraph 6.03A(a)**

**Item 72 – Paragraphs 6.03A(b) to (d)**

52. These items make technical amendments that correct existing drafting errors referring to FWA in place of the FWC.

**Item 73 – Schedule 3.3 (Form 2)**

**Item 74 – Schedule 3.3 (Form 3)**

53. These items amend Schedule 3.3 to remove references to contacting the ABCC for further information about the rights and obligations that apply in relation to entry rights under the Fair Work Act. This amendment recognises that from 10 November 2022, the ABCC's role in relation to the Fair Work Act (including providing advice and assistance in relation to that Act) ceased, and that Division 2 of Part 3 of Schedule 1 to the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 would abolish the ABCC.

**Item 75 – Schedule 3.3 (Form 3)**

**Item 76 – Schedule 3.3 (Form 4)**

**Item 77 – Schedule 6.1, clause (4) of the model term**

**Item 78 – Schedule 6.1, clause (5) of the model term (note)**

**Item 79 – Schedule 6.1, clause (7) of the model term**

54. These items make technical amendments that correct existing drafting errors.

**Item 80 – Schedule 6.1A, clause (4) of the model term**

**Item 81 – Schedule 6.1A, clause (5) of the model term**

**Item 82 – Schedule 6.1A, paragraphs (5)(a) and (b) of the model term**

**Item 83 – Schedule 6.1A, clause (5) of the model term (note)**

**Item 84 – Schedule 6.1A, clause (7) of the model term**

55. These items make technical amendments that correct existing drafting errors referring to FWA in place of the FWC.

***Division 2—Amendments commencing 1 July 2023***

**Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009**

**Item 85 – Regulations 3A.01 and 3B.02**

56. This item repeals regulations 3A.01 and 3B.02 of the Transitional Regulations.
57. Regulation 3A.01 modified the Transitional Act by inserting Part 4A into Schedule 3A to that Act.
- a. Part 4A set out transitional arrangements preserving Division 2B state awards:
    - i. providing for minimum terms and conditions for trainees and apprentices employed by non-constitutional corporations, where that award provided for competency-based wage progression or a tools allowance (item 36A of Schedule 3A to the Transitional Act); and
    - ii. setting minimum terms and conditions for employees participating in the then-extant Queensland programs known as the Community Jobs Plan and Green Army (item 36B of Schedule 3A to the Transitional Act).
58. The effect of repealing regulation 3A.01 is to remove item 36A of Schedule 3A to the Transitional Act. Trainees and apprentices of non-constitutional corporations to whom transitional arrangements applied are entitled instead to the minimum terms and conditions set out in the relevant modern award.
59. The repeal also removes item 36B, which is of no effect, from the face of the Transitional Regulations. That item ceased to apply at the end of 1 June 2012 (item 36B(7) of Schedule 3A to the Transitional Act).
60. Regulation 3B.02 modified the Transitional Act by inserting Part 15 of Schedule 5 to that Act.
- a. Part 15 preserved transitional arrangements (being notional agreements preserving state awards (NAPSAs) that set wages and conditions based on state awards for certain apprentices employed by constitutional corporations in Queensland (items 15, 16 and 17 of Schedule 5 to the Transitional Act).
61. Item 20 of Schedule 3 to the Transitional Act provides that a NAPSA terminates on 1 January 2014, unless a regulation is made to extend the date. No such regulation was made, and as such, NAPSAs of the kind referred to in regulation 3B.02 terminated on that date. As such, the regulation is of no effect. This was confirmed by the Full Federal Court decision in *All Trades Queensland Pty Limited v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 189 (27 November 2017). Trainees and apprentice employees whose minimum terms and conditions were set under a NAPSA in reliance on regulation 3B.02 are instead, from 1 January 2014, entitled to the minimum terms and conditions set out in the relevant modern award.
62. Repealing regulation 3B.02 removes it from the face of the Transitional Regulations, reducing confusion and making clear that it no longer has work to do.
63. Following the repeal of these regulations, no further transitional arrangements apply to these employees. The repeal reduces complexity in determining wages and conditions for trainee and apprentice employees and establishes a level playing field.
64. The repeal takes effect on 1 July 2023, which provides employers who are currently employing trainee and apprentice employees in accordance with arrangements

preserved by regulation 3A.01 with ample notice to comply with the relevant modern award.