

# **FAIR ENTITLEMENTS GUARANTEE (INDEXATION OF MAXIMUM WEEKLY WAGE) REGULATIONS 2023**

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Employment and Workplace Relations under section 55 of the *Fair Entitlements Guarantee Act 2012*

### **PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Fair Entitlements Guarantee Act 2012* (the Act) establishes a scheme for the provision of financial assistance (called an ‘advance’) on account of unpaid employment entitlements to former employees where the end of their employment is linked to the liquidation or bankruptcy of their employer.

Division 2 of Part 3 of the Act sets out how a person’s employment entitlements are calculated for the purposes of an advance. This involves working out the basic entitlements for each of the employment entitlements a person is owed, in accordance with the relevant governing instrument, and then applying certain reductions or limits to these amounts, if applicable.

Sections 26 and 27 in Division 2 of Part 3 provide for a ‘maximum weekly wage’ amount, which limits the weekly rate at which an entitlement will be paid to an individual. These sections affect a person’s employment entitlements if their weekly rate of pay, as determined in accordance with the governing instrument for his or her employment (or subsection 27(4)), exceeded the maximum weekly wage rate at the end of his or her employment.

The term ‘maximum weekly wage’ is defined in section 5 of the Act to mean \$2,364; or a figure that is the result of indexation in accordance with the Regulations. Section 5 provides that indexation is to be calculated by reference to estimates of full-time adult average weekly ordinary time earnings published by the Australian Statistician.

The *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulation 2013* (2013 Regulation) provided that the baseline amount for indexation is the most recently indexed iteration of the maximum weekly wage, as defined in section 5 of the Act. For example, the first indexation was applied to the initial maximum weekly wage of \$2,364 on 1 August 2013. This resulted in a new maximum weekly wage of \$2,451. The new maximum weekly wage applied until the next indexation, at which point the new indexed amount became the baseline amount to determine the next maximum weekly wage.

In 2014 the 2013 Regulation was amended by the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Amendment Regulation 2014*, (2014 Regulation) to provide that the maximum weekly wage figure as at 1 August 2013 (\$2,451) continued to apply for an additional four years, with the annual indexation of the maximum weekly wage figure occurring on 1 July 2018.

In 2017 the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Amendment (Continuation of Indexation Pause) Regulations 2017* (2017 Regulations) extended the continuation of the application of the maximum weekly wage figure as at 1 August 2013 for a

further three years. The annual indexation under the 2013 Regulation as amended by the 2017 Regulations commenced on 1 July 2021, with the baseline amount being the 1 August 2013 figure (\$2,451).

The 2013 Regulation sunsets on 1 October 2023. Upon its commencement the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulations 2023* (the Regulations) will continue the annual indexation in the same terms as under the 2013 Regulation.

The Act does not impose any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence the day after registration.

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

## **CONSULTATION**

No consultation was undertaken in the preparation of the Regulations. As the content proposed by the Regulations is defined by the Act - for the maximum weekly wage to be indexed by reference to the full-time adult average weekly ordinary time earnings –public consultation is not necessary under section 17 of the *Legislation Act 2003*. This is because there is no scope for affected persons to meaningfully comment on what is being proposed, other than to object to the introduction of the Regulations. Notwithstanding, the Regulations will merely preserve the status quo established by the 2013 Regulation, it is considered unlikely that persons likely to be affected by the maximum weekly wage would object to indexation. Therefore, consultation was not considered necessary or appropriate for the Regulations. Information regarding the maximum weekly wage rate is provided on the Department of Employment and Workplace Relations' website.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (reference **OBPR22-03284**).

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

A Statement of Compatibility with Human Rights has been completed for the Amending Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the Replacement Regulation is compatible with human rights. A copy of the Statement is at [Attachment B](#).

**The Hon. Tony Burke MP**  
Minister for Employment and Workplace Relations

## **NOTES ON SECTIONS**

### **Section 1 – Name**

This section would provide that the title of the Regulations is the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulations 2023*.

### **Section 2 – Commencement**

This section would provide for the Regulations to commence on the day after registration on the Federal Register of Legislation.

### **Section 3 – Authority**

This section would provide that the Regulations are made under the *Fair Entitlements Guarantee Act 2012*.

### **Section 4 – Schedules**

This section would provide 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.

### **Section 5 – Definitions**

This section provides for *Act*, where used in the Regulations, to mean the *Fair Entitlements Guarantee Act 2012*.

### **Section 6 – Maximum Weekly Wage**

This section sets out the manner of indexing the amounts specified in the definition of ***maximum weekly wage*** in section 5 of the Act.

This section would provide that the maximum weekly wage for the year starting on 1 July 2022 is \$2,585. The figure for the maximum weekly wage for the year starting on 1 July 2022 is derived from previous indexation under the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulation 2013*. The initial indexed rate of \$2,451.00 occurred on 1 August 2013 calculated in accordance with paragraph (b) of the definition of ***maximum weekly wage*** in section 5 of the Act. The *maximum weekly wage* increased under the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulation 2013* to \$2,529.00 from 1 July 2021 and to \$2,585.00 from 1 July 2022. The method of calculation of the indexed amount has not changed from that provided by the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulation 2013*.

Section 7 – Saving provision—indexation of maximum weekly wage in accordance with the repealed *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulation 2013*.

This provides that repeal of the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulation 2013* by Schedule 1 does not affect the indexation, in accordance with that instrument before its repeal, of an amount specified in the definition of **maximum weekly wage** in section 5 of the Act.

Schedule 1 – Repeal of the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulation 2013*

**Item [1] – The whole of the instrument**

The item repeals the whole of the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulation 2013*.

**Statement of Compatibility with Human Rights**

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

***Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulations 2023***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The *Fair Entitlements Guarantee Act 2012* (the Act) establishes a scheme for the provision of financial assistance (called an ‘advance’) on account of unpaid employment entitlements to former employees where the end of their employment is linked to the liquidation or bankruptcy of their employer.

Division 2 of Part 3 of the Act sets out how a person’s employment entitlements are calculated for the purposes of an advance. This involves working out the basic entitlements for each of the employment entitlements a person is owed, in accordance with the relevant governing instrument, and then applying certain reductions or limits to these amounts, if applicable.

Sections 26 and 27 in Division 2 of Part 3 provide for a ‘maximum weekly wage cap’, which effectively limits the weekly rate at which an entitlement will be paid to an individual. These sections affect a person’s employment entitlements if their weekly rate of pay, as determined in accordance with the governing instrument for his or her employment (or subsection 27(4)), exceeded the maximum weekly wage rate at the end of his or her employment.

The term ‘maximum weekly wage’ is defined in section 5 of the Act to mean \$2,364 or the result of indexation of that figure in accordance with the regulations. Section 5 provides that indexing is to be done by reference to estimates of full-time adult average weekly ordinary time earnings published by the Australian Statistician.

The *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulations 2023* (the Regulations) provides for the continued annual indexation of the ‘maximum weekly wage’ figure in accordance with section 5 of the Act. The Regulations repeal and replace the *Fair Entitlements Guarantee (Indexation of Maximum Weekly Wage) Regulation 2013*, which previously provided for annual indexation in accordance with section 5 of the Act, and was due to sunset on 1 October 2023. Indexation will occur annually on 1 July.

**Human Rights Implications**

## ***Right to Social Security***

Article 9 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR) provides that, ‘the States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.’ The Committee on Economic, Social and Cultural Rights has stated that the right to social security encompasses the right to access benefits, whether in cash or in kind, without discrimination in order to secure protection from lack of work-related income caused by unemployment.<sup>1</sup>

The Act establishes an assistance scheme, which is intended to operate as a safety net for persons whose employment has ended due to the liquidation or bankruptcy of their employer. This safety net could be characterised as ‘social insurance’ because it ensures that employees’ unpaid entitlements are met when their employer becomes insolvent. It therefore seeks to protect individuals from lack of work-related income due to unemployment, and in this way, promotes the right to social security.

Reflecting its nature as a safety net for individuals, the Act contains limits on the amount of unpaid entitlements that individuals are to be advanced, including through the application of a ‘maximum weekly wage cap’ to limit the weekly rate at which an entitlement will be paid. When the weekly rate under the employee’s governing instrument is greater than the ‘maximum weekly wage cap’ a claimant’s advance will not cover all of that weekly rate, however it is considered that the provisions strike an appropriate balance in terms of the safety net provided. In addition the person’s right to pursue the remaining amount in the winding up or bankruptcy process is not affected.

The Regulations ensure that the maximum weekly wage cap increases in line with the designated full-time adult average weekly ordinary time earnings as published by the Australian Statistician. Indexation is necessary to ensure that the relevant wage caps continue to give effect to the intention that the scheme be a ‘safety net’ and it is considered that indexing the maximum weekly wage by reference to the designated full-time adult average weekly ordinary time earnings is appropriate in this context.

## **Conclusion**

The Legislative Instrument is compatible with human rights.

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<sup>1</sup> Committee on Economic, Social and Cultural Rights, *General Comment 19, The Right to Social Security*, U.N. Doc. E/C.12/GC/19 (2008)