EXPLANATORY STATEMENT

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

Fair Work Act 2009

Fair Work Amendment (Fixed Term Contracts) Regulations 2026

Authority

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

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

Section 333F of the Act provides, in part, that the Governor-General may make regulations prescribing exceptions that may apply to the limitations on fixed term contracts established by the Act.

In accordance with subsection 33(3) of the *Acts Interpretation Act 1901,* these powers extend to authorising the Governor-General to make instruments for the purpose of amending other instruments.

Legislative context

Section 333E of the Act limits the use of fixed term contracts. The Act prohibits the use of fixed term contracts for the same role beyond 2 years or 2 consecutive contracts (whichever is shorter), including renewals. Section 333F of the Act provides exceptions to the limitations for certain fixed term contracts, including contracts of a kind prescribed by regulations.

Regulation 2.15 of the Principal Regulations prescribes time-limited exceptions to the limitations for certain fixed term contracts for the charity and not-for-profit and medical or health research sectors.

Purpose and Operation

The purpose of the Fair Work Amendment (Fixed Term Contracts) Regulations 2026 (Instrument) is to amend the Principal Regulations to vary existing exceptions to limitations on the use of fixed term contracts for the charity and not-for-profit and medical or health research sectors.

The Instrument would make ongoing the existing time-limited exceptions for these sectors beyond 31 October 2026, subject to some changes to the amount of funding from relevant sources required for an exception to be available.

Consistent with the underlying policy intention of the fixed term contract provisions, the Instrument strengthens safeguards for employees by replacing the current requirement that a

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contract is funded ‘in whole or in part’ by a government, philanthropic or testamentary source, with a requirement that more than 50% of the fixed term contract is funded from one or more of these sources.

The Instrument is necessary to provide certainty to these sectors regarding the ongoing use of fixed term contracts, as the relevant exceptions would otherwise cease to be available after 31 October 2026. Details of the Instrument are set out in Attachment A.

Commencement

The whole of the Instrument commences on 1 November 2026.

Consultation

The Department of Employment and Workplace Relations (the department) undertook consultations to inform a longer-term approach to the arrangements that apply to use of fixed term contracts in the charities and not-for-profit and the medical or health research sectors. Consultation with employer and employee organisations and industry stakeholders took place between December 2025 and February 2026. In addition, the department engaged with relevant government agencies on an ongoing basis, between December 2025 and August 2026.

This consultation played an important role in developing and refining the policy underpinning the Instrument and clarifying stakeholder concerns. The department also drew on data collected from relevant agencies including the Australian Bureau of Statistics, the Australian Charities Not-for-profits Commission and Grant Connect to understand the Instrument’s potential impact on likely affected persons.

The department also undertook formal consultation on a draft legislative instrument with key stakeholders in sectors who will be affected by the Instrument, the members of the Committee on Industrial Legislation (a subcommittee of the National Workplace Relations Consultative Council, established under the *National Workplace Relations Consultative Act 2002*), relevant Commonwealth agencies, and states and territories under the *Intergovernmental Agreement for a National Workplace Relations System for the Private Sector* (formal consultation). Formal consultation was conducted on a confidential basis ‘on the papers’ over 4 business days and sought stakeholder views as to the efficacy of the drafting in giving effect to the Australian Government’s policy. Stakeholder feedback was collated and considered by the department, and informed advice provided to the Minister on the Instrument. Consultation yielded feedback about the appropriateness of the policy settings (for example, whether the exception for certain fixed term contracts should continue to be available and under what conditions), and whether conditions the Instrument would place on funding underpinning certain fixed term contracts are to be satisfied at the commencement of the contract, or throughout the lifetime of the contract.

This feedback was considered by the Minister who was satisfied no further amendments to the drafting were required to give effect to the Australian Government’s policy around the appropriate use of fixed term contracts. In addition, the Explanatory Statement to the Instrument was updated to ensure end users would have clarity as to the policy underpinnings and the practical operation and effect of the Instrument.

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Sunsetting

As a regulation made under the Act, the Instrument is exempt from sunsetting pursuant to item 27(e) of the table in regulation 12 of the Legislation (Exemptions and Other Measures) Regulations 2015. The Explanatory Statement to the Legislation (Exemption and Other Matters) Amendment (2019 Measures No. 1) Regulations 2019 provides that instruments made under the Act are exempt from sunsetting because they form part of an intergovernmental scheme.

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STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Fair Work Amendment (Fixed Term Contracts) Regulations 2026

This Disallowable 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 Instrument

The instrument amends the Fair Work Regulations 2009 (Principal Regulations) to vary existing exceptions to limitations on the use of fixed term contracts for the charity and not-for-profit and medical or health research sectors. The exceptions are intended to address funding uncertainty in these sectors while maintaining appropriate safeguards for employees, consistent with the underlying policy intention of the fixed term contracts provisions.

The Instrument is necessary to provide an ongoing solution for use of fixed term contracts in these sectors beyond 31 October 2026.

The Instrument operates to make the existing time-limited exceptions available on an ongoing basis. The Instrument also replaces the existing requirements that a contract must be funded 'in whole or in part' by a government, philanthropic or testamentary source and instead now requires that the contract is funded by more than 50% funding from one or more of these sources.

Human rights implications

The Instrument engages the following rights:

- the right to the enjoyment of just and favourable conditions of work under Articles 6 and 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Right to work and rights in work

Article 6 of the ICESCR requires the State Parties to the Covenant to recognise the right to work and to take appropriate steps to safeguard this right. The United Nations Committee on Economic, Social and Cultural Rights has stated that the right to work in Article 6(1) encompasses the need to provide the worker with just and favourable conditions of work.

Article 7 of the ICESCR requires the State Parties to the Covenant to recognise the right of everyone to the enjoyment of just and favourable working conditions.

The *Fair Work Act 2009* (Act) limits the use of fixed term contracts to promote job security for employees engaged under successive fixed term contracts, while allowing employers to continue to use fixed term contracts for legitimate purposes. The Principal Regulations provide certain exceptions to these limitations for the charity and not-for-profit and medical or health research sectors. The exceptions recognise the ongoing challenges in providing

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secure employment in these sectors arising from their reliance on uncertain or limited funding arrangements.

The Instrument promotes the right to just and favourable work conditions through targeted amendments to the existing exceptions for these sectors in the Principal Regulations. The Instrument provides an enduring solution for these sectors by ensuring availability of the exceptions on an ongoing basis, while strengthening existing safeguards against misuse by requiring a greater proportion of funding from government, philanthropic or testamentary sources to support the relevant fixed term contract.

The Instrument balances the aim of providing secure and, where applicable, permanent work for employees with the uncertain nature of funding in these sectors. The employer bears the evidentiary burden to establish it is entitled to rely on an exception when entering into a fixed term contract that would otherwise not be permitted under the Act.

As such, the Instrument facilitates just terms and conditions of employment, including by protecting the right of employees not to be unfairly deprived of work by ensuring that fixed term contracts are used only where subject to an exception and employees are otherwise entitled to the same rights and entitlements under the Act.

Conclusion

The Instrument is compatible with human rights because it promotes the right to the enjoyment of just and favourable working conditions.

The Hon. Amanda Rishworth MP, Minister for Employment and Workplace Relations

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Attachment A

Fair Work Amendment (Fixed Term Contracts) Regulations 2026

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section states that the title of the Instrument is the *Fair Work Amendment (Fixed Term Contracts) Regulations 2026.*

Section 2: Commencement

2. This section provides for the provisions of the Instrument to commence on 1 November 2026.

Section 3: Authority

3. This section provides that the Instrument is made under the Act.

Section 4: Schedules

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

Schedule 1 – Amendments

Fair Work Regulations 2009

Item [1] – Paragraph 2.15(7)(b)

Item [4] – Paragraph 2.15(9)(b)

5. Subregulations 2.15(7) and 2.15(9) of the Principal Regulations set out exceptions available to certain entities in the charities and not-for-profit and medical and health research sectors respectively.

6. Items [1] to [6] make amendments to the circumstances in which the exceptions apply. The amendments make the exception available on an ongoing basis and introduce a new requirement that the performance of work under the relevant fixed term contract must be more than 50% funded by one or more government, philanthropic or testamentary funding sources.

7. As these amendments are mirrored in both subregulation 2.15(7) and (9), the items are dealt with together below.

8. Items [1] and [4] replace the phrases “work that is funded in whole or in part by” in paragraph 2.15(7)(b) and “work that is funded in whole or part by” in 2.15(9)(b) with

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"work that is more than 50% funded by any of the following (or any combination of the following)".

9. The amendments limit the operation of the exceptions so that, among other existing conditions set out in the regulations, the fixed term contract must be related to a position for the performance of work that is more than 50% funded by government, philanthropic or testamentary sources, or a combination of these when considered together.

10. Whether or not a position for the performance of work is funded by more than 50% is to be determined at the time of entering into the contract by reference to the total amount payable under the fixed term contract. This means that an employer seeking to rely on the exception must be satisfied at the time of entering into the contract that the relevant funding will meet the funding threshold for the duration of the contract.

11. These amendments do not alter the other existing conditions set out in subregulations 2.15(7) and (9). An employer seeking to rely on the exceptions must continue to satisfy each of these conditions, including that the work performed under the contract relates to the funded program or project and that the contract end date substantially corresponds with the duration of that program or project. If any condition is not satisfied, the exception will not be available and if entered into the contract may contravene the limitations in section 333E of the Act. Where funding is obtained from multiple sources with different durations, the funding requirement may still be met notwithstanding that one or more funding sources cease before the contract ends.

12. Should a dispute arise, the employer relying on the exception bears the evidential burden of demonstrating it is permitted to rely on an exception to the limitation in section 333E of the Act (subsection 333F(4)).

Item [2] – Subparagraphs 2.15(7)(b)(i) and (ii)

Item [5] – Subparagraphs 2.15(9)(b)(i) and (ii)

13. These items amend subparagraphs 2.15(7)(b)(i) and (ii) and 2.15(9)(b)(i) and (ii) in the Principal Regulations to give effect to the amendments that require the relevant fixed term contract be more than 50% funded by government, philanthropic or testamentary sources (or any combination of these).

Item [3] – Paragraph 2.15 (7)(i)

Item [6] – Paragraph 2.15(9)(j)

14. These items repeal paragraphs 2.15(7)(i) and 2.15(9)(j) of the Principal Regulations and substitute "the contract is entered into on or after 1 November 2024".

15. These amendments ensure the exception continues to be available on an ongoing basis for fixed term contracts entered into after 1 November 2024.

Item [7] – In the appropriate position in Chapter 7

16. This item makes clear that amendments to the funding threshold to require contracts to be more than 50% funded by government, philanthropic or testamentary sources apply in

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relation to fixed term contracts entered into on or after 1 November 2026. The amendments will not affect contracts entered into before 1 November 2026. Contracts entered into on or before 31 October 2026 will continue to be assessed against the exceptions as they existed before the amendments. However, any renewal of those contracts on or after 1 November 2026 must satisfy the new requirements.

17. This item is not intended to alter the existing requirement in subparagraphs 2.15(7)(h) and 2.15(9)(i) of the Principal Regulations that arrangements for the provision of funding to which the contract relates must have come into effect on or after 1 November 2024. Employers can continue to rely on the exceptions for fixed term contracts entered into after 1 November 2026 where the relevant funding arrangements took effect prior to 1 November 2026 (but after 1 November 2024) and all relevant conditions, including the more than 50% funded requirement, are satisfied.

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