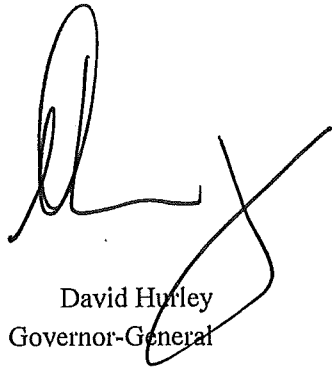




Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020

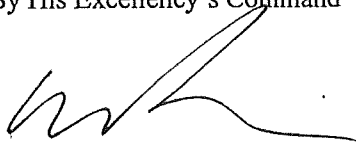
I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 16 April 2020



David Hurley
Governor-General

By His Excellency's Command



Christian Porter
Minister for Industrial Relations

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1 Name

This instrument is the *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Fair Work Act 2009*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Fair Work Regulations 2009

1 After regulation 2.09A

Insert:

2.09B Modification of application of Act—access period for variation of an enterprise agreement

- (1) This regulation is made for the purposes of subsection 211(6) of the Act.
- (2) For the purposes of the FWC deciding whether it is satisfied of the matter referred to in paragraph 211(1)(a) of the Act, subsections 180(2) and (3) of the Act have effect, despite subsection 180(4) of the Act, as if the references in those subsections to the access period were modified to refer to the 1-day period ending immediately before the start of the voting process referred to in subsection 181(1) of the Act.
- (3) This regulation is repealed:
 - (a) at the end of the period of 6 months starting on the day this regulation commences; or
 - (b) if, before the end of the period referred to in paragraph (a), a later time is prescribed by these Regulations—at that later time.

Note: This regulation was inserted by Schedule 1 to the *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020*.

2 In the appropriate position in Chapter 7

Insert:

Part 7-4—Amendments made by the Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020

7.04 Application of amendments—variation of enterprise agreements

- (1) Regulation 2.09B, as inserted by Schedule 1 to the *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020*, applies, for the purposes of the FWC deciding whether it is satisfied of the matter referred to in paragraph 211(1)(a) of the Act, in relation to an access period under subsections 180(2) and (3) of the Act that starts on or after the commencement of that Schedule.
- (2) Despite the repeal of regulation 2.09B under subregulation 2.09B(3), that regulation continues to apply, for the purposes of the FWC deciding whether it is satisfied of the matter referred to in paragraph 211(1)(a) of the Act, in relation to an access period under subsection 180(2) and (3) of the Act that starts before that repeal.

Note: Subregulation 2.09B(3) provides for the repeal of regulation 2.09B 6 months after the commencement of that regulation, or at a later time prescribed by these Regulations.

7.05 Repeal of Part 7-4—6 months after repeal of regulation 2.09B

This Part is repealed at the end of the period of 6 months starting on the day regulation 2.09B is repealed.

EXPLANATORY MEMORANDUM

Minute No 9 of 2020 - Minister for Industrial Relations

Subject - *Fair Work Act 2009*

Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020

The *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020* (the proposed Regulations) would shorten 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, from seven calendar days to one calendar day. Employees will still be required to have genuinely agreed to a variation of an enterprise agreement.

Subsection 796(1) of the *Fair Work Act 2009* (the Act) provides that the Governor-General may make regulations that are required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to the Fair Work Act. Subsection 211(6) of the Act provides that, for the purpose of the FWC deciding whether it is satisfied it must approve a variation, the regulations may prescribe additional modifications of the matters of which the FWC must be satisfied.

Part 2-4 of the Act provides for the making and variation of enterprise agreements between employers and employees. To approve a variation of an enterprise agreement, the Fair Work Commission (FWC) must be satisfied that the employees covered by the agreement have genuinely agreed to the variation.

There are a number of procedural steps that must be met to satisfy this 'genuine agreement' requirement, including that the employer must take all reasonable steps to provide employees with a copy of a proposed variation to the agreement, and any incorporated material, during the seven clear calendar day period before the vote on a proposed variation. This seven day period is referred to as the 'access period'. The employer must also take all reasonable steps to notify employees of the time and place of the vote on the proposed variation, and the voting method, by the start of the 'access period'.

The *Fair Work Regulations 2009* (the Fair Work Regulations) may prescribe modifications to the matters that the FWC must be satisfied of when deciding whether to approve a variation of an enterprise agreement. This includes the procedural steps for 'genuine agreement' and the requirements that must be met in respect of the 'access period'.

The proposed Regulations would shorten the 'access period' for a proposed variation of an enterprise agreement from seven clear calendar days to one clear calendar day. This would significantly reduce the minimum time taken to make a variation of an enterprise agreement.

The proposed Regulations would apply in relation to the 'access period' for a proposed variation of an enterprise agreement that starts on or after the commencement of the Amendment Regulations.

As this is only intended to be a temporary measure to support employers and employees during the current pandemic, the measure will be repealed six months after commencement, or at a later time prescribed by the Fair Work Regulations.

The FWC would have a further six months after the repeal of the measure to consider an application to approve a variation of an enterprise agreement made with a one day 'access period'.

The Government consulted with the referring states and territories under the *Intergovernmental Agreement for a National Workplace Relations System for the Private Sector*.

Details of the proposed Regulations are set out in the Attachment.

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

The proposed Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations would commence the day after registration on the Federal Register of Legislation.

The Minute recommends that the proposed Regulations be made in the form proposed.

Authority: Subsections 211(6) and 796(1)
of the *Fair Work Act 2009*

ATTACHMENT

Details of the proposed *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020*

Section 1 – Name

This section would provide that the title of the instrument is the *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020*.

Section 2 – Commencement

This section would provide for the whole of the instrument to commence the day after it is registered.

Section 3 – Authority

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

Section 4 – Schedules

This section would provide 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 would have effect according to its terms.

Schedule 1 – Amendments

Item 1 – After regulation 2.09A

Item 1 would insert new regulation 2.09B.

Subregulation 2.09B(1) would provide that the regulation is made for the purposes of subsection 211(6) of the Act.

Subregulation 2.09B(2) would provide that for the purposes of approving a variation of an enterprise agreement under paragraph 211(1)(a) of the Act, the requirements in subsection 180(2) and (3) (which concern the requirement for the employer to take all reasonable steps to give employees a copy of a proposed variation to the agreement and incorporated materials, and inform employees of the time and place, and method of voting) have effect despite subsection 180(4) (which concerns the seven-day access period) such that references in those subsections to the access period were modified to refer to the one-day period ending immediately before the start of the voting process referred to in subsection 181(1).

This would effectively shorten the access period for a proposed variation of an enterprise agreement from seven clear calendar days to one clear calendar day.

Subregulation 2.09(3) would provide that regulation 2.09B is repealed six months after the commencement of Schedule 1 of the *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020*, or at a later time prescribed by the Fair Work Regulations.

Item 2 – In the appropriate position in Chapter 7

Item 2 would insert new Part 7-4 in Chapter 7 to provide for the application of the amendments.

Subregulation 7.04(1) would provide that regulation 2.09B applies to an access period under subsections 180(2) and (3) of the Act that starts on or after the commencement of the Schedule, for the purposes of the FWC deciding whether to approve a variation of an enterprise agreement under paragraph 211(1)(a) of the Act.

Subregulation 7.04(2) would provide that regulation 2.09B continues to apply, despite the repeal of regulation 2.09B under regulation 2.09(3), to an application to approve a variation of an enterprise agreement where the access period started before the date regulation 2.09B is repealed.

Regulation 7.05 would provide that Part 7-4 is repealed six months after the day regulation 2.09B is repealed. This would have 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.