

South Australia

Fair Work (General) Regulations 2009

under the *Fair Work Act 1994*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Fair Work (General) Regulations 2009*.

3—Interpretation

In these regulations, unless the contrary intention appears—
Act means the *Fair Work Act 1994*.

4—Declared employer for public employees

The following are declared to be employers of public employees for the purposes of paragraph (a) of the definition of *employer* in section 4(1) of the Act:

- (a) in respect of employees of the Lotteries Commission of South Australia—that body;
- (b) in respect of employees of TransAdelaide—that body;
- (c) in respect of other public employees—the person for the time being holding or acting in the position of Chief Executive of the Department of the Premier and Cabinet.

5—Employment excluded from Act

- (1) Pursuant to section 6(b) of the Act, employment which consists of part-time or casual employment performed in or about a private residence is excluded from the ambit of the Act provided that the work is wholly or mainly performed for a domestic purpose.
- (2) In this regulation work is performed for a *domestic purpose* if it is not performed for the purpose of the employer's trade or business.

Part 2—Enterprise agreements

6—Notice to be given by association

- (1) Pursuant to section 75(2)(b) of the Act, an association which proposes to enter into an enterprise agreement on behalf of a group of employees must give notice of that proposal to the group of employees in accordance with this regulation.
- (2) An association acting under subregulation (1) must take reasonable steps to ensure—
 - (a) that a written notice is given to each employee currently constituting the group proposed to be bound by the enterprise agreement; and
 - (b) where practicable, that a written notice is displayed at the employees' workplace.
- (3) A notice prepared under this regulation—
 - (a) must be expressed in plain English; and
 - (b) must state the full name of the association; and
 - (c) must provide the name and the phone number of an officer of the association who can be contacted for further information in relation to the proposed enterprise agreement; and
 - (d) must identify the group of employees who would or might be bound by the proposed enterprise agreement with enough particularity to enable an employee to determine whether or not they are or might be in the group; and
 - (e) must contain a statement advising employees in the group—
 - (i) that if the association is authorised by a majority of the employees constituting the group to negotiate on their behalf, the association may enter into an enterprise agreement under the Act which would bind all members of the group; and

- (ii) that any employee within the group who is a member of the association will be taken to have given an authorisation for the purposes of the Act unless the employee, by written notice to the association, withdraws the authorisation; and
 - (f) must provide details of the means by which an employee within the group who is not a member of the association may give an authorisation to the association for the purposes of the Act; and
 - (g) must be signed by or on behalf of the association.
- (4) The association should, so far as is reasonably practicable, ensure that a notice displayed in a workplace under this regulation is in such languages as are appropriate for a significant number of the employees to whom the notice is addressed.
- (5) If an employee reasonably requests that a notice given to the employee under this regulation be supplied in a language other than English, the association must take reasonable steps to provide the employee with a copy of the notice in the language requested.

7—Notice to be given by employer

- (1) Pursuant to section 76(1) of the Act, an employer must give notice in accordance with this regulation that negotiations for an enterprise agreement are about to begin.¹
- (2) The employer must take reasonable steps to ensure—
- (a) that a written notice is given to each employee currently constituting the group proposed to be bound by the enterprise agreement; and
 - (b) where reasonably practicable, that a written notice, in such languages as are appropriate for a significant number of the employees to whom the notice is addressed, is displayed at the employees' workplace.
- (3) A notice prepared under this regulation—
- (a) must be expressed in plain language; and
 - (b) must include a statement that the employer proposes to begin negotiations on the terms of an enterprise agreement and propose a date and place for the commencement of those negotiations; and
 - (c) must identify the group of employees who would or might be bound by the proposed enterprise agreement with enough particularity to enable an employee to determine whether or not they are or might be in the group; and
 - (d) may outline the employer's proposed procedure for negotiations on the terms of the enterprise agreement, including the anticipated time frame for the negotiations and any proposed consultative arrangements; and
 - (e) may outline matters that the employer proposes to be subject to negotiations for an agreement; and
 - (f) must be signed by or on behalf of the employer; and
 - (g) may take the form of the notice set out in Schedule 1.

- (4) If an employee reasonably requests that a notice given to the employee under this regulation be supplied in a language other than English, the employer must take reasonable steps to provide the employee with a copy of the notice in the language requested.
- (5) Two or more employers who may be involved in negotiations on the terms of the same enterprise agreement may, if they think fit, give a notice under this regulation jointly.

Note—

- 1 Under section 76(1) of the Act notice is not required if the agreement is negotiated to settle an industrial dispute, or the Commission determines that there is good reason in the circumstances of the case to exempt the employer from this requirement.

8—Requirements for signing an enterprise agreement

- (1) Pursuant to section 77(1)(g) of the Act, an enterprise agreement must be signed—
 - (a) on behalf of an employer, by—
 - (i) the employer; or
 - (ii) a person duly authorised by the employer to sign on the employer's behalf;
 - (b) on behalf of the employees, by—
 - (i) those employees currently constituting the group proposed to be bound by the enterprise agreement and who approve of the agreement; or
 - (ii) an authorised officer of an association which has been authorised to enter into the agreement on behalf of the employees under section 75(2) of the Act; or
 - (iii) a person duly authorised by those employees currently constituting the group proposed to be bound by the enterprise agreement, and who approve of the agreement, to sign the agreement on their behalf.
- (2) If an enterprise agreement contains a provision authorised under section 77(1)(d) of the Act, the agreement must also be signed by an authorised officer of the association of employees that has been given the right to represent the industrial interests of the employees to the exclusion of another association of employees.

Part 3—Miscellaneous

9—Unfair dismissal

Pursuant to section 105A(2) of the Act, the following classes of employees are excluded from the ambit of Part 6 of Chapter 3 of the Act:

- (a) employees serving a period of probation or a qualifying period of employment, provided that the duration of the period or the maximum duration of the period—
 - (i) is determined in advance; and
 - (ii) is reasonable, having regard to the nature and circumstances of the employment;

- (b) casual employees, except where—
 - (i) the employee has been engaged by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least six months; and
 - (ii) the employee has, or would have had, a reasonable expectation of continuing employment by the employer;
- (c) employees whose conditions of employment are governed by an award, enterprise agreement or contract of employment that makes specific arrangements concerning unfair dismissal that, when considered as a whole, provide protection that is at least equivalent to the protection afforded to employees under Part 6 of Chapter 3 of the Act.

10—Awards relating to disabled workers

- (1) Pursuant to section 113(1)(c) of the Act, the bodies or organisations listed in Schedule 2 are declared to be recognised organisations for the purposes of section 113 of the Act.
- (2) Pursuant to section 113(3) of the Act, an award under section 90 of the Act cannot regulate the wages or salary payable to a person to whom section 113 of the Act applies.
- (3) For the purposes of subregulation (2), wages or salary do not include—
 - (a) amounts payable by way of rates or shift premiums; or
 - (b) amounts payable for overtime; or
 - (c) allowances.

11—Continuous service

- (1) Pursuant to section 1(3) of Schedule 8 of the Act, in ascertaining whether an employee's period of service is continuous the following events or matters are to be disregarded:
 - (a) a—
 - (i) suspension, stand down or other interruption; or
 - (ii) termination,
by the employer of the employee's employment for the purpose of avoiding the employer's obligations under section 1 of Schedule 8 of the Act;
 - (b) an absence from work by the employee on authorised leave;
 - (c) subject to subregulation (2), an absence from work by the employee due to—
 - (i) the employee's illness; or
 - (ii) an accident to the employee;
 - (d) subject to subregulation (3), an absence from work by the employee, if there was reasonable cause for the absence;
 - (e) subject to subregulation (4), an absence from work by the employee due to concerted or collective industrial action;

- (f) any other absence from work, unless notice is given under subregulation (5) in relation to that absence.
- (2) Subregulation (1)(c) does not apply to an absence from work unless—
 - (a) if the employee is required by the terms of an award or order of a court or tribunal that has power to fix wages and other terms and conditions of employment, or an agreement certified or approved by such a body, to—
 - (i) notify the employer of an absence from work; and
 - (ii) substantiate the reason for that absence,the employee complies with those terms; or
 - (b) in any other case—the employee informs the employer within 24 hours after the commencement of the absence, or within such longer period as is reasonable in the circumstances, as to—
 - (i) the employee's absence and inability to attend work; and
 - (ii) whether the absence is due to illness or accident; and
 - (iii) the likely duration of the absence.
- (3) Subregulation (1)(d) does not apply to an absence from work unless—
 - (a) if the employee is required by the terms of an award or order of a court or tribunal that has power to fix wages and other terms and conditions of employment, or an agreement certified or approved by such a body, to—
 - (i) notify the employer of an absence from work; and
 - (ii) substantiate the reason for that absence,the employee complies with those terms; or
 - (b) in any other case—the employee informs the employer within 24 hours after the commencement of the absence, or within such longer period as is reasonable in the circumstances, of—
 - (i) the employee's absence and inability to attend work; and
 - (ii) the reason for the absence; and
 - (iii) the likely duration of the absence.
- (4) Subregulation (1)(e) does not apply to an absence from work if the Commission has determined that, for the purpose of determining the employee's entitlement to notice of termination of the employee's employment or to compensation instead of notice, the absence is to be taken as breaking the employee's continuity of service.
- (5) For the purposes of subregulation (1)(f), the employer may give to the employee notice in writing in accordance with subregulation (6) that the absence from work is to be taken as breaking the employee's continuity of service with the employer.
- (6) A notice under subregulation (5) (if any) must be given—
 - (a) by delivering it to the employee personally or posting it to the employee's last known address; and
 - (b) during, or within 14 days after the end of, the period of absence.

- (7) A notice given by an employer under subregulation (5)—
- (a) may be withdrawn by the employer; and
 - (b) if withdrawn, is taken not to have been given.

12—Continuity of industrial arrangements—National Industrial Relations System

- (1) Pursuant to clause 2(1)(b) of Schedule 2 of the Act, the following modifications are made to a federal industrial instrument within the operation of that Schedule (as it applies as an award or enterprise agreement under the Act):
 - (a) a reference to the *Workplace Relations Act 1996* of the Commonwealth or to the *Fair Work Act 2009* of the Commonwealth will be taken to be a reference to the *Fair Work Act 1994*;
 - (b) a reference to the Australian Industrial Relations Commission or to Fair Work Australia will be taken to be a reference to the Industrial Relations Commission of South Australia.
- (2) Pursuant to clause 3(1)(e) of Schedule 2A of the Act—
 - (a) the *Municipal Officers (SA) Award 1998* is excluded from the operation of subclause (1) of clause 3 of that Schedule; and
 - (b) the following modifications are made to a federal industrial instrument within the operation of that Schedule (as it applies as an award or enterprise agreement under the Act):
 - (i) a reference to the *Workplace Relations Act 1996* of the Commonwealth or to the *Fair Work Act 2009* of the Commonwealth will be taken to be a reference to the *Fair Work Act 1994*;
 - (ii) a reference to the Australian Industrial Relations Commission or to Fair Work Australia will be taken to be a reference to the Industrial Relations Commission of South Australia.

Schedule 1—Notice of intention to negotiate enterprise agreement under the *Fair Work Act 1994*

To all employees

- 1 **Take notice** that *(name of employer)* proposes to begin negotiations for an enterprise agreement.
- 2 The—
 - (a) proposed date for commencement of negotiations¹ is:
 - (b) proposed place for commencement of negotiations is:
- 3 It is proposed that the enterprise agreement will bind the following employees: *(insert here the names, categories or classes of employees—the description used should be sufficiently precise to allow employees to determine whether or not they are in the group that the employer proposes will be bound)*

- 4 Employees have the right to be represented in the negotiation of, and in any proceedings for approval of, the enterprise agreement by the Employee Ombudsman, an employee association registered under the Act, or another agent of your choice.²
- 5 Employees to be involved in these negotiations can gain access to copies of the industrial awards which currently regulate their employment in the following manner: *(insert here the name of the relevant award and the proposed method of access to the award in the workplace eg insert the name of a person who employees can contact to examine a copy of the award)*

Award	How to obtain access
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Employees should note that under the *Fair Work Act 1994* your employer is bound to provide you with a copy of your award upon request unless you have previously requested a copy of the award in the last 12 months or your employer has been relieved of the obligation to provide a copy of the award by the Industrial Relations Commission of South Australia.

(This clause need only be completed where employees conditions of employment are currently governed by an award.³)

- 6 Additional information:
(An employer may here, for example, outline the employer's proposed procedure for negotiations on the terms of the enterprise agreement including the anticipated time frame and proposed consultative arrangements, or may outline matters that may, according to the employer's proposals, be subject to negotiations for an agreement or any other appropriate information—add annexure if required)
- 7 Signature of employer or authorised person:
Date:

Notes—

- 1 Under section 76(1) of the Act this date cannot be less than 14 days from the date that this notice is given to employees.
- 2 Under section 76(2) of the Act an employer is required to inform employees of their right to representation in the negotiation and proceedings for approval of an enterprise agreement. Employers should also note that under section 76(3) of the Act an employer who is aware that an employee is a member of a registered association must take reasonable steps to inform the association that negotiations for an enterprise agreement are about to begin.
- 3 Under section 76(4) of the Act an employer is required to ensure that employees have reasonable access to any applicable award.

Schedule 2—Recognised organisations

Organisation or body	Principal location
Autism Association of South Australia Incorporated	262 Marion Road NETLEY SA 5037
Barkuma Incorporated (except for that part known as Personnel Employment (SA) a Division of Barkuma Incorporated)	Level 1, 260 Currie Street ADELAIDE SA 5000

Organisation or body	Principal location
Barossa Enterprises Incorporated	55 Basedow Road TANUNDA SA 5352
Bedford Industries Incorporated	615 Goodwood Road PANORAMA SA 5041
Bordertown Handy Help	63 Farquhar Street BORDERTOWN SA 5268
Finding Workable Solutions Incorporated	44-46 George Main Road VICTOR HARBOR SA 5211
Gambier Contracts Incorporated	3 Eucalypt Drive MT. GAMBIER SA 5290
Heritage Industries Incorporated	Attamurra Road MT. GAMBIER SA 5290
Invicta Services Ltd.	47 King William Street KENT TOWN SA 5067
LEPSH Incorporated	Coronation Place PT. LINCOLN SA 5606
Melaleuca Centre Incorporated	76 Princess Highway MENINGIE SA 5264
Millicent Work Option Centre Incorporated	16-18 George Street MILLICENT SA 5280
Minda Incorporated	King George Avenue BRIGHTON SA 5048
Muscular Dystrophy Association of S.A. Incorporated	36-38 Henley Beach Road MILE END SA 5031
Orana Incorporated	26 Watson Avenue NETLEY SA 5037
Phoenix Society Incorporated	18 Ashwin Parade TORRENSVILLE SA 5031
Product Action Incorporated	64 O.G. Road KLEMZIG SA 5087
Royal Society for the Blind of South Australia Incorporated	254 Angus Street ADELAIDE SA 5000
SA Group Enterprises Incorporated	Mark Oliphant Building Ground Floor, Level 1B (North Wing) Laffer Drive BEDFORD PARK SA 5042
Strathmont Centre	Grand Junction Road OAKDEN SA 5086
Tatiara Treats	63 Farquhar Street BORDERTOWN SA 5268
Wirrawee Incorporated	25 Adgerey Road KADINA SA 5554

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation revoked by principal regulations

The *Fair Work (General) Regulations 2009* revoked the following:

Industrial and Employee Relations (General) Regulations 1994

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2009	52	<i>Gazette 30.4.2009 p1649</i>	1.9.2009: r 2
2009	303	<i>Gazette 17.12.2009 p6368</i>	1.1.2010: r 2
2017	46	<i>Gazette 16.5.2017 p1271</i>	1.7.2017: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2010</i>
Pt 3		
r 12	inserted by 303/2009 r 4	1.1.2010
Sch 3	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2010</i>