



Workplace Relations Amendment Regulations 2008 (No. 1)¹

Select Legislative Instrument 2008 No. 38

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Workplace Relations Act 1996*.

Dated 27 March 2008

P. M. JEFFERY
Governor-General

By His Excellency's Command

JULIA GILLARD
Minister for Employment and Workplace Relations

1 Name of Regulations

These Regulations are the *Workplace Relations Amendment Regulations 2008 (No. 1)*.

2 Commencement

These Regulations commence on the commencement of Schedule 1 to the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.

3 Amendment of *Workplace Relations Regulations 2006*

Schedule 1 amends the *Workplace Relations Regulations 2006*.

Schedule 1 Amendments

(regulation 3)

[1] Chapter 1, regulation 1.3, paragraph (a) of the definition of Act

omit

, as amended by the Work Choices Act

[2] Chapter 2, Part 5, Division 3A

omit

[3] Chapter 2, regulation 5.6, Note

substitute

Note Under subsection 164A (7) of the Act, a workplace agreement official is not authorised to disclose to the Minister information relating to a decision under Division 5A of Part 8 of the Act about whether a particular workplace agreement passes the no-disadvantage test.

[4] Chapter 2, regulation 8.12, heading

substitute

8.12 Witnessing of signatures on ITEAs and variations to ITEAs

[5] Chapter 2, regulation 8.12

omit each mention of

an AWA

insert

an ITEA or a variation to an ITEA

[6] Chapter 2, subregulation 8.12 (2)

omit each mention of

the AWA

insert

the ITEA or the variation

[7] Chapter 2, subregulation 8.13 (5)

omit

[8] Chapter 2, after regulation 8.13

insert

8.13A Signing of variations to workplace agreements

- (1) For paragraph 418 (ea) of the Act, this regulation applies in relation to a variation of a workplace agreement.
- (2) For a variation to any workplace agreement, an employer must obtain the signature of the employer or employers in relation to the variation.

- (3) In addition to subregulation (2), the employer must obtain the following:
- (a) if the workplace agreement that is being varied is an employee collective agreement — the signature of a representative of the employees bound by the variation or a bargaining agent appointed under section 335;
 - (b) if the workplace agreement that is being varied is a union collective agreement — the signature of the organisation or organisations of employees with which the employer made the variation;
 - (c) if the workplace agreement that is being varied is a union greenfields agreement — the signature of the organisation or organisations of employees with which the employer made the variation;
 - (d) if:
 - (i) the workplace agreement that is being varied is an employer greenfields agreement; and
 - (ii) there are employees bound by that agreement; the signature of a representative of the employees bound by the variation or a bargaining agent appointed under section 335.

Note for paragraph (d) The signature of a representative of the employees is required if any employees are employed under the employer greenfields agreement at the time it is varied. If no employees are bound by the employer greenfields agreement at the time it is varied, only the employer or employers need sign the variation (see subregulation (2)).

- (4) For subregulations (2) and (3), a signature to the variation must be accompanied by:
- (a) the full name and address of each person signing the variation in accordance with subregulation (2) or (3); and
 - (b) an explanation of the person's authority to sign the variation.

Note The requirements for the signing of a variation to an ITEA are set out in section 373 of the Act.

- (5) Strict liability applies to the physical elements in subregulations (2) and (3).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

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- (6) Subregulations (2), (3) and (4) are civil remedy provisions.

Note Part 14 sets out provisions dealing with contraventions of civil remedy provisions.

- (7) It is a defence to a contravention of subregulation (2) or (3) that:
- (a) the workplace agreement that is being varied is a collective agreement; and
 - (b) does not include the signature of a person (other than the employer) because of the person's failure or refusal to sign the variation to the agreement.

[9] Chapter 2, Part 10, Division 4

omit

[10] Chapter 2, regulation 21.4

omit

[11] Chapter 5, regulation 2.2, heading

substitute

2.2 Protected preserved conditions where termination of preserved State agreement occurred before Transition to Forward with Fairness Act

[12] Chapter 5, subregulation 2.2 (1)

substitute

- (1) This regulation applies if a preserved State agreement was terminated in accordance with clause 21 of Schedule 8 to the Act before the commencement of Schedule 1 to the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.

[13] Chapter 5, after regulation 2.2

insert

2.3 Outworker conditions under preserved State agreements to continue to have effect for employees subject to workplace agreements or workplace determinations

- (1) Despite subclause 15G (2) of Schedule 8 to the Act, if:
 - (a) a person's employment is subject to a workplace agreement or workplace determination; and
 - (b) but for that agreement or determination, a preserved State agreement would have effect in relation to the person's employment;

the terms of the preserved State agreement have effect to the extent that they are about outworker conditions, despite any terms of the workplace agreement or workplace determination that provide, in a particular respect, a less favourable outcome for that person.

- (2) In this regulation:
outworker conditions has the same meaning as in section 349 of the Act.

Note This regulation is made under clause 30 of Schedule 8 to the Act, and modifies the operation of subclause 15G (2) of Schedule 8 to the Act in relation to the effect of outworker conditions in preserved State agreements which have been replaced by workplace agreements or workplace determinations.

[14] Chapter 5, Part 3, before Division 5

insert

Division 2 Effect and operation of a notional agreement preserving State awards

3.1A Outworker conditions under notional agreements preserving State awards to continue to have effect for employees subject to workplace agreements

- (1) Despite subclause 38A (2) of Schedule 8 to the Act, if:
- (a) a person's employment is subject to a workplace agreement; and
 - (b) but for that agreement, a notional agreement preserving State awards would have effect in relation to the person's employment;

the terms of the notional agreement preserving State awards have effect to the extent that they are about outworker conditions, despite any terms of the workplace agreement or pre-transition workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

- (2) In this regulation:

outworker conditions has the same meaning as in section 349 of the Act.

Note This regulation is made under clause 55 of Schedule 8 to the Act, and modifies the operation of subclause 38 (2) of Schedule 8 to the Act in relation to the effect of outworker conditions in notional agreements preserving State awards which have been replaced by workplace agreements.

[15] Schedule 8, item [3], inserted subclause 2 (2), after paragraph (s)

insert

- (sa) section 576R;

[16] Schedule 8, item [6], inserted subclause 3 (2)*omit*

(i) section 518.

insert

(i) section 518;

(j) section 576R.

[17] Further amendments — references to AWAs

<i>Provision</i>	<i>omit</i>	<i>insert</i>
Chapter 2, Part 5, Division 3, heading	AWA	ITEA
Chapter 2, regulation 5.3, heading	AWA	ITEA
Chapter 2, subregulation 5.3 (1)	AWA	ITEA
Chapter 2, subregulation 8.5 (8B), Note	AWAs	workplace agreements
Chapter 2, subregulation 8.5 (8B), Note	AWA	workplace agreement
Chapter 2, paragraph 8.7 (3) (b)	AWA	ITEA
Chapter 2, subregulation 8.10 (1)	AWA	ITEA
Chapter 2, subregulation 8.13 (2), Note	AWA	ITEA
Chapter 2, subregulation 9.9 (2)	AWA	ITEA
Chapter 2, regulation 9.25, heading	AWA	ITEA
Chapter 2, regulation 14.2, heading	AWA	ITEA

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.