Workplace Relations Regulations
(Amendment)

I, THE 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 \( \frac{30}{4} \) April 1997.

\( \frac{\checkmark}{\text{William Deane}} \)

Governor-General

By His Excellency's Command,

\( \frac{\checkmark}{\text{Peter Reith}} \)

Minister for Industrial Relations

1. Commencement
1.1 Regulation 4 commences on 1 July 1997.

[NOTE: The remainder of these Regulations commence on gazettal: see Acts Interpretation Act 1901, s. 48.]
2. Amendment
2.1 The Workplace Relations Regulations are amended as set out in these Regulations.

3. Regulation 30B (Employees excluded from requirements for termination of employment)

[NOTE: The following note should be inserted after subregulation 30B (1):

"[NOTE: The expression 'employee engaged under a contract of employment for a specified period of time' used in paragraph 30B (1) (a) has been addressed in a number of cases before the Industrial Relations Court of Australia, including, in particular, Cooper v Darwin Rugby League Inc (1994) 57 IR 238, Andersen v Umbakumba Community Council (1994) 126 ALR 121, D'Lima v Board of Management, Princess Margaret Hospital of Children (1995-1996) 64 IR 19 and Fisher v Edith Cowan University (unreported judgement of Madgwick J, 12 November 1996, No. WI 1061 of 1996).]"

3.1 Subregulation 30B (2):
Omit "the main", substitute "a substantial".

[NOTE: The following note should be inserted after subregulation 30B (4):

"[NOTE: An employee who is excluded from the provisions of the Act specified in subregulation 30B (1) may still be eligible to apply for a remedy in relation to the termination of employment under a State law]."]
4. New regulation 30BAA

4.1 After regulation 30B, insert:

**Small business employees excluded from requirements for termination of employment**

"30BAA. (1) For subsection 170CC (1) of the Act, an employee is excluded from the operation of:

(a) paragraph 170CE (1) (a) of the Act; and

(b) paragraph 170CE (1) (c) of the Act (to the extent that paragraph 170CE (1) (c) relates to paragraph 170CE (1) (a));

if:

(c) the employee is employed by an employer whose undertaking employs no more than 15 employees at the time when the employer:

(i) gives notice to the employee of termination of the employee’s employment; or

(ii) terminates the employee’s employment; and

(d) the employee was first employed by that employer on or after 1 July 1997; and

(e) the employee has not been employed by the employer:

(i) for more than 12 months; or

(ii) on a regular and systematic basis for a sequence of periods of employment during a period of more than 12 months.

“(2) A casual employee of an employer is an employee of the employer’s undertaking for paragraph (1) (c) only if the casual employee is employed on a regular and systematic basis.

"[NOTE: An employee who is excluded from the provisions of the Act specified in paragraphs 30BAA (1) (a) and (b) may still be eligible to apply for a remedy in relation to the termination of employment under a State law.]"
5. Regulation 30BD (Fee for application to Commission to deal with termination)
5.1 Add at the end:

"(3) A lodgment fee paid by an applicant under subregulation (1), as in force before 30 June 1998, is to be refunded to the applicant if, at least 2 days before the day on which the proceedings are first listed for attention by the Commission, the applicant discontinues the application in accordance with any rules made under section 48 of the Act.

"(4) Subregulations (1) and (2) cease to have effect on 30 June 1998."

6. Regulation 30C (Temporary absence because of illness or injury)

[NOTE: The following note should be inserted after subregulation 30C (3):

"[NOTE: Any finding that an absence is not a temporary absence for paragraph 170CK (2) (a) of the Act, is without prejudice to the rights of an employee whose employment has been terminated by an employer on the basis of such an absence:

(a) to apply to the Commission for relief under subsection 170CE (1), on the ground, or on grounds including the ground, that the termination was harsh, unjust or unreasonable; or

(b) to apply under a law of a State on the ground that the termination was harsh, unjust or unreasonable (however described); in respect of the termination of that employment.]"]
7. Application
7.1 The amendment of subregulation 30B (2) of the Workplace Relations Regulations made by these Regulations applies in relation to terminations of employment occurring on or after the date of commencement of these Regulations, even if the contract referred to in that subregulation was entered into before that date.

NOTES