EXPLANATORY STATEMENT

Issued by the authority of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations

*Fair Work (Registered Organisations) Act 2009*
Subsection 158A(2)

*Fair Work (Registered Organisations) Declaration 2010*

Amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005* meant that many state system employees and employers became covered by the federal workplace relations system. A system of transitional recognition was established to allow the state registered industrial associations that represented those employees and employers to represent them in the federal system. These state associations are recognised in the federal system as Transitionally Recognised Associations (TRAs). TRAs often have overlapping membership and coverage with federally registered organisations.

Section 158A of the *Fair Work (Registered Organisations) Act 2009* (the Fair Work (Registered Organisations) Act) provides a mechanism to facilitate the transfer of members from TRAs to their counterpart federal organisation. Section 158A allows federal organisations that are considered to be the federal counterpart of a state association to extend their membership eligibility rules to pick up broader coverage of the state association.

- Under section 9A of the Fair Work (Registered Organisations) Act, a state registered association will have a federal counterpart if it is prescribed by the regulations or (if there are no regulations) where the federal body has substantially the same eligibility rules as a state association and a history of integrated operations with the association, or where the state association has purported to function as a branch of the federal body.

Under subsection 158A(1) of the Fair Work (Registered Organisations) Act, the General Manager of Fair Work Australia must consent to an alteration of the eligibility rules of a registered organisation to extend its rules to persons within the eligibility rules of a counterpart association of employers or employees that is registered under a state or territory industrial law, if the General Manager is satisfied:

- that the alteration has been made under the rules of the organisation;
- that the organisation is a federal counterpart of the association;
- that the alteration will not extend the eligibility rules of the organisation beyond those of the association;
- that the alteration will not apply outside the limits of the state or territory for which the association is registered; and
- as to other matters (if any) that are prescribed by the Fair Work (Registered Organisations) Regulations 2009 (the Regulations).

There are currently no other matters prescribed by the Regulations.

Under subsection 158A(2) of the Fair Work (Registered Organisations) Act, such an application must not be made before 1 January 2011, or such later day as the Minister declares in writing.

This instrument declares 1 January 2012 as the date from which applications under s158A(1) may be made.
This later date will allow time to consider whether regulations might be made to prescribe federal and state organisations as counterparts for the purposes of the Fair Work (Registered Organisations) Act, and for appropriate consultation.

The Australian Chamber of Commerce and Industry, The Australian Industry Group, the Australian Council of Trade Unions and state and territory government officials were consulted about the making of this Declaration.