

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 243

Issued by the authority of the Minister for Employment and Workplace Relations.

Workplace Relations Act 1996

Workplace Relations Amendment Regulations 2008 (No. 3)

Subsection 846(1) of the *Workplace Relations Act 1996* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters that are either required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, clause 7 of Schedule 10 to the Act provides that regulations made for the purposes of the clause may modify how section 19 of Schedule 1 to the Act applies in relation to transitionally registered associations, which are associations registered under State industrial relations systems allowed under the Act to participate in the federal workplace relations system.

The Regulations amend the *Workplace Relations Regulations 2006* (the Principal Regulations) clarifying that the Australian Industrial Relations Commission (the Commission) may grant a transitionally registered association full registration even if it has amended its rules while transitionally registered.

Schedule 1 to the Act provides for the registration of organisations which are then entitled under the Act to represent the industrial interests of employees or employers in the federal workplace relations system. Organisations must meet the criteria for registration in section 19 of Schedule 1. Under Schedule 10, transitionally registered associations can represent employees and employers who were drawn into the federal workplace relations system from State systems by amendments made to the Act by the *Workplace Relations Amendment (Work Choices) Act 2005*.

All transitionally registered associations will cease to be recognised by the Act on 31 December 2009 or a later date prescribed by regulations. Transitionally registered associations must obtain full registration by this date to continue representing their members in the federal system.

The application of section 19 of Schedule 1 to transitionally registered associations is currently modified by the Principal Regulations. Among other things, these modifications require the Commission to refuse full registration to a transitionally registered association if the association's rules do not limit membership to the State in which it was registered before gaining transitional registration (regulation 4.4 of Part 4 of Chapter 6 in the Principal Regulations refers). The effect of this provision is that many transitionally registered associations seeking full registration have been required to insert a State-based membership limit in their rules.

Some already federally registered organisations have sought to oppose applications for full registration by transitionally registered associations. They have argued that any rule changes made by the association (including changes, for example, to comply

with regulation 4.4) prevent the Commission from being able to register the association in the federal workplace relations system. These Regulations clarify that a transitionally registered association is able to make any rule changes while transitionally registered and remain eligible for full registration.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. They commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Regulations have no compliance cost to business or impact on business and individuals or the economy.

No consultations were conducted in relation to the development of these Regulations. They clarify the operation of the Principal Regulations. They are of a minor and technical nature and do not alter existing arrangements.

Details of the *Workplace Relations Amendment Regulations 2008 (No. 3)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Workplace Relations Amendment Regulations 2008 (No. 3)*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of the *Workplace Relations Regulations 2006*

This regulation provides that the *Workplace Relations Regulations 2006* (the Principal Regulations) are amended in accordance with Schedule 1.

Schedule 1 – Amendments

Item [1] – Chapter 6, Part 4, after regulation 4.4

This item inserts new regulation 4.5 in Part 4 of the Principal Regulations.

New regulation 4.5 modifies the way in which section 19 of Schedule 1 to the *Workplace Relations Act 1996* (the Act) applies to transitionally registered associations seeking full registration. The regulation allows the Australian Industrial Relations Commission (the Commission) to grant full federal registration to an association that has amended its rules while transitionally registered.

As a result of differing registration requirements in State industrial relations systems, many transitionally registered associations will need to make changes to their rules to satisfy the requirements of section 19 of Schedule 1 as modified by the Principal Regulations. This new regulation clarifies that any rule change made by an association, including but not limited to changes to enable it to gain full registration, does not require the Commission to refuse to fully register the association.

Illustrative Example

The Model Car Union of South Australia is a transitionally registered association that is keen to obtain full registration under the Act.

Before lodging its application for full registration, the Model Car Union changes its rules in accordance with the requirement of the relevant South Australian legislation. The changes insert a new rule limiting the union's membership to employees in South Australia, update the union's election processes to comply with the requirements of Schedule 1 and remove some obsolete rules. Regulation 4.5 would make clear that the Commission is not prevented from granting the Model Car Union full registration because it has amended its rules while transitionally registered.