

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 39

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

Workplace Relations Act 1996

Workplace Relations Amendment Regulations 2008 (No. 2)

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 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 clause 7 may modify how section 19 of Schedule 1 to the Act applies in relation to an association that is a transitionally registered association.

Schedule 1 to the Act provides for the registration of organisations which are then entitled to represent the industrial interests under the Act of employees or employers covered by the federal workplace relations system. The Act also allows some associations registered under the State industrial relations systems to participate in the federal workplace relations system. Under Schedule 10, these associations (known as transitionally registered associations) can represent the industrial interests of employees and employers who have been drawn into the federal workplace relations system from State systems by amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*. However, registration as a transitionally registered association will expire in 2009. To continue to represent members in the federal system after that time, transitionally registered associations must obtain full registration as an organisation under Schedule 1.

State registered associations are inherently limited to representing members in their own jurisdiction. However, where a State registered association becomes a transitionally registered association and successfully seeks full registration, it gains the ability to operate across Australia. This means it can potentially enhance both the scope of its coverage and subsequently its membership. As transitionally registered associations move into the federal system, they come into direct competition with existing organisations. This competition may lead to widespread workplace disruptions and cause undue disturbance to existing representation arrangements.

These Regulations limit the ability of transitionally registered associations to broaden their scope of coverage beyond the State in which they were registered immediately before becoming a transitionally registered association. This ensures the representation rights of State associations are not expanded as a result of their entry into the federal workplace relations system and minimises the risk of representation disputes.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Details of the *Workplace Relations Amendment Regulations 2008 (No. 2)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Workplace Relations Amendment Regulations 2008 (No. 2)*.

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, Regulation 4.3, heading

This item substitutes a new heading for Regulation 4.3. This change is consequential on the additional criteria for registration inserted by Item 2.

Item [2] – Chapter 6, Part 4, after Regulation 4.3

This item inserts Regulation 4.4.

Regulation 4.4 modifies the application of section 19 of Schedule 1 to the Act to a transitionally registered association when seeking full registration. The provision requires the Australian Industrial Relations Commission to apply section 19 as though it required the application by a transitionally registered association to be refused if their rules do not specifically limit its geographical coverage to employees and employers located in the State in which it was registered immediately prior to it becoming a transitionally registered association.

A consequence of the previous approach is that a transitionally registered association had the potential to enhance the scope of its coverage and compete for membership with existing organisations. The regulation amends the operation of the system of registration which allowed a transitionally registered association gaining full registration to represent employees and employers beyond the State in which it was originally registered.

The absence of any further tests or limitations on the coverage of a transitionally registered association has meant that it may have had a broader geographical coverage than it had as a State registered association, where its coverage was inherently limited by the jurisdiction. This situation had the ability to undermine the current representation framework and any existing demarcation orders which set out

representation rights of employer and employee associations. This had the potential to lead to widespread workplace disruptions.

The sole purpose of the regulation is to limit the geographical coverage of an organisation that was a transitionally registered association to the State in which it was initially registered. To that extent, it allows the organisation to represent the same class of members in the federal system as it could formerly represent in the State system from which it originated.

Illustrative Example

The Model Car Union of Tasmania had several of its members transfer in to the federal workplace relations system as a result of the Work Choices legislation. In early April of 2006 it became registered as a transitionally registered association so that it could continue to represent its members now in the federal system. The Model Car Union is now seeking to become a fully registered association in the federal system.

This regulation requires the Commission to refuse the Model Car Union's application for full registration unless its rules provide that it is eligible to represent only employees in Tasmania. The requirement to limit membership to Tasmania arises because this is the State in which the Model Car Union was registered as a State registered union immediately before its registration as a transitionally registered association.