

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 168**

Issued by the authority of the Minister for Employment Participation

*Fair Work (Registered Organisations) Act 2009*

*Workplace Relations (Registration and Accountability of Organisations)  
Amendment Regulations 2009 (No. 1)*

Schedule 1 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (FW (T&C) Act), which received the Royal Assent recently, will repeal the whole of the *Workplace Relations Act 1996* (WR Act), with the exception of Schedules 1 and 10. Clause 3 of Schedule 22 of the FW (T&C) Act will rename those remaining Schedules to the WR Act as the *Fair Work (Registered Organisations) Act 2009* (the Act) when the FW (T&C) Act commences on 1 July 2009.

The Regulations amend the *Workplace Relations (Registration and Accountability of Organisations) Regulations 2003* (WR (RAO) Regulations) to deal with a number of transitional and consequential matters relating to the commencement of the new Fair Work system and the creation of the *Fair Work (Registered Organisations) Act 2009* as stand alone legislation to deal with organisations registered under the Act.

These matters include:

- renaming the WR (RAO) Regulations as the *Fair Work (Registered Organisations) Regulations 2009*;
- replacing references to WR Act institutions and offices with references to FW Act institutions and offices;
- amending definitions and legislative references to bring them into line with definitions and legislative references in the Fair Work legislation; and
- inserting new schedules dealing with transitionally recognised associations and recognised State-registered associations.

Details of the Regulations are included in the Attachment.

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

The Regulations commence on 1 July 2009.

**WORKPLACE RELATIONS (REGISTRATION AND ACCOUNTABILITY OF ORGANISATIONS) AMENDMENT REGULATIONS 2009 (No. 1)**

**Regulation 1 – Name of Regulations**

1. This regulation is a formal provision specifying the name of the Regulations.

**Regulation 2 – Commencement**

2. This regulation specifies when the Regulations commence.

**Regulation 3 – Amendment of *Workplace Relations (Registration and Accountability of Organisations) Regulations 2003***

3. This regulation provides that Schedule 1 to the Regulations amends the *Workplace Relations (Registration and Accountability of Organisations) Regulations 2003* (the Principal Regulations).

**Schedule 1 – Amendments**

**Item 1 – Regulation 1**

4. This item renames the Principal Regulations as the *Fair Work (Registered Organisations) Regulations 2009* (the Regulations).

**Item 2 – Regulation 2, at the foot**

5. This item inserts a note, after regulation 2, highlighting that the Principal Regulations were originally made as the *Workplace Relations (Registration and Accountability of Organisations) Regulations 2003* and that they have been amended as a result of the enactment of the *Fair Work Act 2009* (the FW Act) and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the T&C Act).

**Item 3 – Regulation 3**

6. This item replaces regulation 3 with a new regulation that defines certain terms used in the Regulations.
7. The new regulation also includes a note that makes clear to readers that some words and expressions used in the Principal Regulations have the same meaning as they do in the Act. This note reflects the effect of paragraph 13(1)(b) of the *Legislative Instruments Act 2003*.

**Item 4 – Regulations 7 and 8**

8. This item amends the Principal Regulations by replacing regulations 7 and 8 with new regulations. The item aligns the definitions of employing authority and State industrial authority with equivalent concepts used in the FW Act.

9. New regulation 7 specifies that the bodies prescribed for the definition of employing authority in section 6 of the *Fair Work (Registered Organisations) Act 2009* (the Act) are those bodies that are prescribed for the definition of employing authority in subsection 795(6) of the FW Act.

10. New regulation 8 specifies that a State board, court, tribunal, body or official prescribed for the purpose of paragraph (c) of the definition of prescribed State industrial authority in section 12 of the FW Act is also prescribed for the purposes of the definition of State industrial authority in section 6 of the Act.

**Item 5 – Regulation 20**

11. This item amends the Principal Regulations by replacing regulation 20 with a new regulation that allows a person to inspect certain documents that have been lodged with Fair Work Australia (FWA) under the Act or under the Principal Regulations. Under the FW Act the functions of the Industrial Registry are performed by FWA. This item makes amendments that reflect this change.

**Item 6 – Regulation 33**

12. Regulation 33 of the Principal Regulations sets out the criteria that an organisation must satisfy in order to make an application to FWA for the cancellation of its federal registration. The effect of this item is to remove the existing requirement in subparagraph 33(a)(i) that an organisation obtain approval from a majority of its members to make an application to the Australian Industrial Relations Commission (AIRC) to cancel all terms of all awards binding on it. The AIRC has not bound any organisations to new modern awards as part of its award modernisation process. This requirement will therefore cease to have any effect.

13. This item also makes consequential amendments to the Principal Regulations to replace references to terms and expressions no longer used following the enactment of the FW Act and the T&C Act.

**Item 7 – Subregulation 164(1)**

14. This item makes a technical amendment to subregulation 164(1) of the Principal Regulations to insert a reference to ‘the Act’ that was previously absent from the provision.

**Item 8 – Regulation 181, at the foot**

15. Under subsection 343A(3) of the Act, the General Manager of FWA may delegate certain of his or her powers and functions to an SES employee or an employee who is in a prescribed class of employees. This item inserts a new regulation that prescribes ‘State or Territory Service Managers of FWA’ for the purposes of subsection 343A(3) of the Act.

**Item 9– After subregulation 182(5)**

16. Regulation 182 is a transitional provision. It prescribes information for subsection 272(1) of the RAO Schedule (as modified by clause 46 of Schedule 1 to

the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002* that must be made available to a member of the organisation on request during the period between the commencement of the 2002 Act and the start of the first financial year after the commencement of reporting guidelines made under the RAO Schedule.

17. This item amends the Principal Regulations by inserting a new provision in regulation 182. New subregulation 182(6) will make clear that a reference to the 'RAO Schedule' in regulation 182 is a reference to the former Schedule 1 to the *Workplace Relations Act 1996* (the WR Act). A note underneath the new subregulation would explain that the RAO Schedule was renamed the *Fair Work (Registered Organisations) Act 2009* as part of the implementation of the FW Act. This item ensures that the provision retains its point-in-time reference to Schedule 1 to the WR Act immediately before its repeal by the T&C Act.

#### **Item 10 – After regulation 182**

18. This item amends the Principal Regulations by inserting new Schedules 1 and 2. Schedule 1 contains regulations dealing with transitionally recognised associations (TRAs). Schedule 2 contains regulations dealing with recognised State-registered associations (RSRAs). These new schedules to the Principal Regulations are made for Schedules 1 and 2 of the Act respectively.

#### *New Schedule 1 – Transitionally recognised associations*

19. New Schedule 1 replicates Chapter 6 of the *Workplace Relations Regulations 2006* (the WR Regulations) before its repeal. Remaking these regulations as part of the Principal Regulations is necessary as a result of the commencement of the T&C Act which repeals the regulation-making powers contained in section 846 of the WR Act under which Chapter 6 is made. The repeal of the regulation making power also, in effect, repeals the WR Regulations including Chapter 6.

#### *New Part 1 – Representation rights of transitionally recognised associations of employees*

20. Division 1 of this new Part empowers FWA to make orders about the right of TRAs to represent or not represent the industrial interests of particular classes or groups of employees in circumstances where no prior order of a similar kind was in force.

21. An order can only be made under the Division if a Full Bench of FWA is satisfied of various specified matters (see item 1.1). Those matters include the wishes of employees who are affected by the dispute, the effect of any order on the operations of certain employers and the consequences for any employer, employee, TRA or organisation involved in the dispute of not making an order.

22. An order may be sought by an organisation, a TRA of employees, an employer or the Minister (see item 1.1). Organisations and TRAs must comply with any order made (see item 1.3).

23. Division 2 of this new Part requires FWA to make an order about the right of a TRA to represent or not represent the industrial interests of particular classes or groups of employees in circumstances where a prior order of a similar kind was in force in relation to that State-registered association. Where a prior order was in force (this would usually be an order made in a State industrial relations system) FWA must make an order to the same effect as the State order which applied to the TRA (see item 1.4). An order made under Division 2 may adopt the language of the State order, but with such changes that FWA considers necessary to reflect the language and content of the Act and the FW Act. However, FWA must ensure that the order contains the same content as the State order (see item 1.5).

24. An organisation, a TRA, an employer or the Minister may apply for an order under this Division of new Part 1 (see item 1.4). Organisations and TRAs must comply with any order made (see item 1.6).

25. Division 3 of the new Part applies to a TRA that was a State-registered association that was a party to proceedings concerning representation rights under a State law in which no order regarding those rights had been made immediately before the reform commencement. 'Reform commencement' is defined in the Act to mean the date on which the *Workplace Relations Amendment (Work Choices) Act 2005* commenced. Where such a TRA is involved in proceedings before FWA concerning the dispute which gave rise to the State proceedings, FWA is required to have regard to any evidence given in the State proceedings.

*New Part 2 – Cancellation of transitional recognition*

26. New Part 2 of Schedule 1 makes provision for subsection 5(5) of Schedule 1 to the Act which relates to the cancellation by FWA of the recognition of State-registered associations as TRAs.

27. Item 1.8 sets out the content requirements that must be met when a TRA applies to cancel its own transitional recognition under paragraph 5(5)(a) of Schedule 1 to the Act. Item 1.9 provides, for the purposes of subparagraph 5(5)(b)(i) of Schedule 1 to the Act, when FWA will be satisfied that an association was recognised by mistake. Item 1.10 provides, for the purposes of subparagraph 5(5)(b)(ii) of Schedule 1 to the Act, when FWA will be satisfied an association is no longer a State-registered association.

*New Part 3 – Modification of the Act for transitionally recognised associations*

28. New Part 3 of Schedule 1 provides the way in which section 19 of the Act applies to TRAs. Section 19 sets out the criteria for registration of employer and employee associations, other than enterprise associations. Paragraph 19(1)(j) and subsections 19(2) and 19(3) constitute what is generally referred to as the 'more conveniently belong to rule' which limits the capacity of associations to register under the Act if there is already an organisation:

- to which the members of the association could more conveniently belong; and
- that would more effectively represent those members.

29. In order to ensure that the more conveniently belong to rule does not apply in relation to TRAs seeking registration as an organisation, item 1.12 of Schedule 1 provides that paragraph 19(1)(j) and subsections 19(2) and 19(3) do not apply to TRAs that apply for registration under the Act.

30. Item 1.13 requires FWA to apply section 19 as though it required the application by a TRA to be refused if its 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 TRA.

31. Item 1.14 clarifies that any rule change made by an association, including but not limited to changes to enable it to gain full registration under the Act, does not require FWA to refuse to fully register the association as a TRA.

*New Schedule 2 – Recognised State-registered associations*

32. Under Schedule 2 to the Act, State-registered associations that have no federal counterpart and that are registered under a law of a State that is prescribed in the regulations can apply to the General Manager for recognition in the federal system as a recognised State-registered association (an RSRA).

33. Clause 3 of Schedule 2 to the Act provides for the cancellation of recognition of RSRAs in certain circumstances. Item 10 inserts new Schedule 2 to the Principal Regulations, which contain provisions that are made for clause 3.

*Item 2.1 – Form of application to FWA for cancellation of recognition of State-registered association*

34. This item provides that an application by an RSRA under paragraph 3(5)(a) of Schedule 2 to the Act to cancel its federal recognition must be in writing, state the grounds on which the cancellation is sought and be made by an officer of the association authorised to make the application.

*Item 2.2 – Cancellation of recognition by FWA – State-registered association recognised by mistake*

35. This item provides that FWA will be satisfied that an RSRA was recognised by mistake if, after giving the association an opportunity to be heard, FWA considers that the association did not satisfy subclause 1(1) of Schedule 2 to the Act at the time the association was granted federal recognition. Subclause 1(1) sets out the criteria for recognition as an RSRA under Schedule 2 to the Act.

*Item 2.3 – Cancellation of recognition by FWA – recognised State-registered association no longer State-registered association*

36. This item provides that FWA will be satisfied that an RSRA is no longer a State-registered association if, after giving the association an opportunity to be heard, it considers that the RSRA is no longer registered under applicable State industrial relations legislation.

*Item 2.4 – Cancellation of recognition by FWA – recognised State-registered association contravened State or Territory industrial law*

37. This item provides that FWA can cancel the federal recognition of an RSRA where it is satisfied that the RSRA has contravened a State or Territory law, the contravention constitutes serious misconduct and that to cancel the recognition of the RSRA would not be unjust in the circumstances. When considering whether it would be unjust to cancel an RSRA's recognition, this item requires FWA to have regard to various specified matters.

**Item 11 – Schedule 1, the heading**

38. This item amends the Principal Regulations by renumbering the heading of Schedule 1 as Schedule 3. Schedule 3 contains the Forms required to be used for the making of applications under the Principal Regulations. This Schedule has been renumbered as a result of the new Schedules inserted by item 10.

**Item 12 – Schedule 3, Form 1**

**Item 13 – Schedule 3, Form 1**

**Item 14 – Schedule 3, Form 1**

**Item 15 – Schedule 3, Form 1**

**Item 16 – Schedule 3, Form 2**

**Item 17 – Schedule 3, Form 2**

**Item 18 – Schedule 3, Form 3**

**Item 19 – Schedule 3, Form 3**

**Item 20 – Schedule 3, Forms 4, 5, 6 and 7**

**Item 21 – Schedule 3, Form 7**

**Item 22 – Schedule 3, Form 7**

**Item 23 – Schedule 3, Form 7**

**Item 24 – Schedule 3, Form 8**

**Item 25 – Schedule 3, Form 8**

**Item 26 – Schedule 3, Form 8**

**Item 27 – Schedule 3, Form 8**

**Item 28 – Schedule 3, Form 8**

39. These items amend the Principal Regulations by omitting references to terms or expressions in Forms 1 to 8 that will no longer be used in the new system. These

items will also amend the Forms to take account of changes that are a result of the creation of stand alone legislation to deal with registered organisations.

**Item 29 – Further amendments – references to the RAO schedule**

40. This item amends various regulations in the Principal Regulations by omitting references to ‘the RAO Schedule’ and substituting ‘the Act’. The item also changes references to ‘that Schedule’ to refer to ‘the Act’. These changes are a result of the creation of stand alone legislation to deal with registered organisations.

**Item 30 – Further amendments – references to the Act**

41. This item amends various regulations in the Principal Regulations by omitting references to ‘the Act’ and substituting references to the ‘*Fair Work Act 2009*’. These changes are a result of the creation of stand alone legislation to deal with registered organisations.

**Item 31 – Further amendments – references to the Commission or Industrial Registrar**

42. This item amends the Principal Regulations by omitting all references to ‘the Commission or Industrial Registrar’ and substituting references to ‘FWA or the General Manager’. This amendment will ensure that the provisions of the Regulations are consistent with the provisions of the Act and the FW Act.

**Item 32 – Further amendments – references to the Commission, Industrial Registry and Registry**

43. Under the FW Act, the powers and functions that were previously exercised by the Commission and the Australian Industrial Registry are now exercised by FWA. This item amends the Principal Regulations by omitting all references to the AIRC, Industrial Registry and Registry and substituting references to FWA. These amendments ensure that the Principal Regulations are consistent with the provisions of the Act and the FW Act.

**Item 33 – Further amendments – references to Rules of Commission**

44. This item amends the Principal Regulations by omitting all references to ‘Rules of the Commission’ and substituting references to ‘Procedural Rules’. These amendments ensure that these Regulations adopt concepts consistent with those used in the FW Act.

**Item 34 – Further amendments – references to the Industrial Registrar or Registrar**

45. Under the T&C Act, powers and functions that were previously exercised by the Industrial Registrar and Deputy Registrars under Schedule 1 to the WR Act are conferred on the General Manager of FWA. This item amends the Principal Regulations to reflect this change.



**Item 35 – Further amendments – references to workplace inspector**

46. Under the FW Act, the position of Workplace Inspector has been replaced by the position of Fair Work Inspector. This item amends the Principal Regulations to reflect this change

**Item 36 – Further amendments – references to transitionally registered association**

47. The T&C Act replaced the concept of ‘transitionally registered association’ with ‘transitionally recognised association’. This item amends the Principal Regulations to reflect this change.