

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2006 No. 51**

Issued by authority of the Minister for Employment and Workplace Relations

*Workplace Relations Act 1996*

*Workplace Relations (Registration and Accountability of Organisations)  
Amendment Regulations 2006 (No. 1)*

The *Workplace Relations Act 1996* (the Act) regulates federal workplace relations. Schedule 1 to the Act - Registration and Accountability of Organisations - (the RAO Schedule) regulates associations representing the industrial interests of employees or employers.

The *Workplace Relations Amendment (Work Choices) Act 2005* (the Work Choices Act) received Royal Assent on 14 December 2005. Among other matters, the Work Choices Act amended the RAO Schedule.

Section 359 of the RAO Schedule provides that the Governor-General may make regulations prescribing all matters required or permitted by the RAO Schedule to be prescribed, or necessary or convenient for carrying out or giving effect to the RAO Schedule.

The Regulations amend the *Workplace Relations (Registration and Accountability of Organisations) Regulations 2003* made under the RAO Schedule. They:

- make technical amendments consequential to amendments made to the Act and the RAO Schedule by the Work Choices Act;
- insert new regulations which would be made under new section 138A of the RAO Schedule to modify the way in which the RAO Schedule applies to an organisation which, before becoming registered, was a State-registered association or transitionally registered association; and
- make a non-technical amendment under section 6 of the RAO Schedule to ensure that a person whose registration as an auditor under the *Corporations Act 2001* has been cancelled cannot be an 'approved auditor' for the purposes of the RAO Schedule.

Details of the Regulations are set out in the [Attachment](#).

On 26 May 2005, the Government announced proposed workplace relations reforms. On 9 October 2005, the Government released a 64-page Work Choices booklet which further explained the proposed legislative reforms.

The *Workplace Relations Amendment (Work Choices) Bill 2005* was introduced in the House of Representatives on 2 November 2005 and was the subject of extensive debate in the Commonwealth Parliament.

Upon introduction, the Bill was immediately referred to the Senate Employment, Workplace Relations and Education Committee for inquiry. The Committee received 202 major submissions, as well as over 5000 small submissions or expressions of interest, and conducted five days of public hearings.

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 commenced on the proclamation of Schedule 5 to the Work Choices Act.

Authority: Section 359 of Schedule 1 to the  
*Workplace Relations Act 1996*

**Details of the proposed *Workplace Relations (Registration and Accountability of Organisations) Amendment Regulations 2006 (No. 1)***

**Regulation 1 – Name of Regulations**

This regulation is a formal provision specifying the short title of these regulations as the *Workplace Relations (Registration and Accountability of Organisations) Amendment Regulations 2006 (No. )*.

**Regulation 2 – Commencement**

This clause provides that these Regulations commence on the commencement of Schedule 5 to the *Workplace Relations Amendment (Work Choices) Act 2005* (the Work Choices Act).

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

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

**Schedule 1 - Amendments**

**Items [1] and [2] – Regulation 4**

Section 6 of Schedule 1 (the RAO Schedule) to the *Workplace Relations Act 1996* (the Act) provides that ‘approved auditor’ has the meaning given to it by the RAO Regulations. ‘Approved auditor’ is defined at regulation 4. Item 2 amends that definition by inserting a new subregulation 4(2), which provides that auditors whose registration has been suspended under the *Corporations Act 2001* are not ‘approved auditors’ for the purposes of the RAO Schedule. This amendment will ensure that auditors whose registration has been suspended are unable to discharge functions for the purposes of the RAO Schedule. Item 1 makes a technical amendment to regulation 4 as a consequence of the amendment made by item 2.

**Item [3] – Paragraph 26(b)**

**Item [26] – Paragraph 111(b)**

Paragraphs 23(2)(b) and 131(3)(b) of the RAO Schedule respectively provide that the RAO Regulations may prescribe persons who may apply to the Federal Court for an order in relation to prohibited conduct in connection with:

- organisations (as dealt with in section 22 of the RAO Schedule) or the formation or registration of a employee association (as dealt with in section 21 of the RAO Schedule); and
- the disamalgamation of an amalgamated organisation (as dealt with in subsection 131(2) of the RAO Schedule).

Paragraphs 26(b) and 111(b) prescribe such persons. Items 3 and 26 amend these paragraphs by substituting ‘a workplace inspector’ for ‘the Employment Advocate’. These amendments are

consequential to amendments made by the Work Choices Act, which conferred on workplaces inspectors roles previously undertaken by the Employment Advocate in relation to organisations.

**Item [4] – Subparagraph 33(a)(i)**

Item 4 replaces the reference to subsection 187(1) of the Act with a reference to subsection 119(1) of the Act, following the renumbering of the Act by the Work Choices Act.

**Item [6] – Paragraph 83(l)**

**Item [7] – Paragraph 83(m)**

Following amendments made by the Work Choices Act, item 7 deletes paragraph 83(m), as the substance of that paragraph is now contained in paragraph 95(1)(b) of the RAO Schedule. Item 6 makes a technical amendment to paragraph 83(l) as a consequence of the omission of paragraph 83(m).

**Item [5]– Subregulation 80(1), definition of Judge**

**Item [8] – Paragraph 84(1)(a)**

**Item [9] – Paragraph 84(1)(b)**

**Item [10] – Paragraph 84(1)(c)**

**Item [11] – Paragraph 84(2)(a)**

**Item [12] – Paragraph 84(2)(b)**

**Item [13] – Regulation 85**

**Item [14] – Subregulation 86(1)**

**Item [15] – Paragraph 88(2)(a)**

**Item [16] – Subregulation 102(1)**

**Item [17] – Paragraph 102(1)(a)**

**Item [18] – Regulation 103**

**Item [19] – Regulation 103**

**Item [20] – Subregulation 104(1)**

**Item [21] – Subregulation 105(1)**

**Item [22] – Subregulation 105(2)**

**Item [23] – Subregulation 105(3)**

**Item [24] – Subregulation 106(1)**

**Item [25] – Subregulation 106(3)**

The amendments made by item 5 and items 8 to 25 are consequential to amendments made by the Work Choices Act which conferred on the AIRC roles previously undertaken by the Federal Court in relation to the withdrawal from amalgamated organisations of constituent parts of those organisations. They are made under various provisions in Division 2 (Ballots for withdrawal from amalgamated organisations) of Part 3 of Chapter 3 of the RAO Schedule.

Subregulation 80(1) sets out definitions for the purposes of Division 2 of Part 4 of the RAO Regulations. Item 5 omits the definition of ‘Judge’ as that term no longer appears in Division 2 of Part 4 as a result of other amendments discussed below at Items 18 to 20.

Items 8 to 12 consequentially amend regulation 84 by substituting ‘the Commission’ for ‘the Federal Court’ at paragraphs 84(1)(a), 84(1)(b), 84(1)(c), 84(2)(a) and 84(2)(b).

Item 13 substitutes a new regulation 85 for existing regulation 85. New regulation 85 is in the same terms as existing regulation 85 except that the Industrial Registrar will perform the relevant function instead of the Registrar of the Federal Court.

Items 14 to 16 and 21 to 25 amend regulations 86, 88, 102, 105 and 106 by substituting ‘the Commission’ for ‘the Federal Court’.

Item 17 amends regulation 102 by substituting ‘the Rules of the Commission’ for ‘the Federal Court Rules’.

Items 18 to 20 amend regulations 103 and 104 by replacing the words ‘the Federal Court or a Judge’ and ‘the Federal Court or the Judge’ with the words ‘the Commission’.

**Item [27] – Regulations 114A, 114B, 114C and 114D**

This item inserts new regulations 114A, 114B, 114C and 114D into the RAO Regulations. These regulations are made under section 138A, which was inserted into the RAO Schedule by the Work Choices Act. Section 138A provides that regulations may be made modifying the way that Chapter 4 of the RAO Schedule (which deals with the ability of the AIRC to make orders concerning the representation rights of organisations) applies in relation to an organisation that, before being registered, was a State registered association or a transitionally registered association.

The effect of inserting these regulations is to:

- enable the AIRC to convert State representation orders into federal representation orders (regulations 114A, 114B and 114C); and
- avoid, as far as possible, parties recommencing afresh, federally, State demarcation proceedings which were not resolved immediately before the reform commencement (regulation 114D).

Regulation 114A applies in relation to an organisation which:

- was a State-registered association subject to a State demarcation order (paragraph 114A(1)(a));

- became a transitionally registered association (paragraph 114A(1)(b));
- had no demarcation order made in relation to it while transitionally registered that was similar to the State order (subparagraph 114A(1)(c)(i)); and
- has not had a demarcation order made in relation to it since it became an organisation which was similar to the State order (subparagraph 114A(1)(c)(ii)).

Regulation 114B applies in relation to an organisation which:

- was a State-registered association subject to a State demarcation order (paragraph 114B(1)(a));
- did not become a transitionally registered association (paragraph 114B(1)(b)); and
- has not had a demarcation order made in relation to it since it became an organisation which was similar to the State order (paragraph 114B(1)(c)).

In relation to an organisation subject to regulations 114A or 114B, Chapter 4 applies to the organisation as if the Chapter:

- required the AIRC to make a demarcation order to the same effect as the State demarcation order which applied to the organisation (paragraphs 114A(2)(a) and 114B(2)(a)); and
- allowed the AIRC to make the order in the absence of a demarcation dispute (subparagraphs 114A(2)(b)(i) and 114B(2)(b)(i)).

Regulation 114C applies in relation to an organisation which:

- was a State-registered association subject to a State demarcation order (paragraph 114C(1)(a));
- became a transitionally registered association (paragraph 114C(1)(b)); and
- had a demarcation order made in relation to it while transitionally registered that was similar to the State order (paragraph 114C(1)(c)); and
- has not had a demarcation order made in relation to it since it became an organisation which was similar to the State order (paragraph 114C(1)(d)).

In relation to an organisation subject to regulation 114C, Chapter 4 applies to the organisation as if the Chapter:

- required the AIRC to make a demarcation order to the same effect as the order which applied to it while it was a transitionally-registered association (paragraph 114C(2)(a)); and
- allowed the AIRC to make the order in the absence of a demarcation dispute (subparagraph 114C(2)(b)(i)).

Regulations 114A, 114B and 114C also provide that an order made under them may be subject to conditions or limitations (subregulations 114A(3), 114B(3) and 114C(3)). The regulations also provide that the orders:

- may adopt the language of the relevant State order, but with such changes the AIRC considers necessary to reflect the language and content of the Act (paragraphs 114A(3)(a), 114B(3)(a) and 114C(3)(a)); but
- must be the same in substance as the State order (paragraphs 114A(3)(b), 114B(3)(b) and 114C(3)(b)).

Regulation 114D applies to an organisation that was a State-registered association that was a party to proceedings:

- concerning representation rights under a State law (subparagraph 114D(1)(a)(i)); and
- in which no order regarding those rights had been made immediately before the reform commencement (subparagraph 114D(1)(a)(ii)).

Where such an organisation is involved in proceedings before the AIRC concerning the dispute which gave rise to the State proceedings, the AIRC is required to have regard to any evidence given in the State proceedings (subregulation 114D(2)). A note states that the AIRC may treat such evidence as being before the AIRC.

#### **Item [28] – the RAO Schedule, Form 5**

Form 5 records agreements between an organisation and a State union to allow members of the State union, who would otherwise be ineligible to join the organisation, to join the organisation.

This item corrects a typographical error by substituting the word ‘Organisation’ for the word ‘Union’ in the preamble to Form 5.

This amendment to Form 5 is made under subsection 151(1) and section 359 of the RAO Schedule and regulation 117 of the RAO Regulations.