



# Employment Relations Authority Amendment Regulations 2004

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 6th day of December 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to section 237 of the Employment Relations Act 2000, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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### Regulations

#### 1 Title

- (1) These regulations are the Employment Relations Authority Amendment Regulations 2004.

- (2) In these regulations, the Employment Relations Authority Regulations 2000<sup>1</sup> are called “the principal regulations”.

<sup>1</sup> SR 2000/186

## **2 Commencement**

These regulations come into force on 10 December 2004.

## **3 Interpretation**

Regulation 3(1) of the principal regulations is amended by inserting, in its appropriate alphabetical order, the following definition:

“**overseas party** means a party—

“(a) who is to be served out of New Zealand; or

“(b) who has been served out of New Zealand”.

## **4 Commencement of investigation**

Regulation 9(a) of the principal regulations is amended by omitting the word “filed”, and substituting the word “lodged”.

## **5 New regulations 19A and 19B inserted**

The principal regulations are amended by inserting, after regulation 19, the following regulations:

### **“19A Service outside New Zealand**

“(1) This regulation applies when the Authority gives an applicant leave under clause 4A(a) of Schedule 2 of the Act to serve an application on an overseas party.

“(2) The overseas party may lodge and serve—

“(a) an objection to the Authority’s jurisdiction in the proceedings; or

“(b) a statement in reply.

“(3) An overseas party lodging and serving under subclause (2) must do so within 1 of the following times:

“(a) for a party served within the Commonwealth of Australia, 30 clear days after the date of service on the party; or

“(b) for a party served elsewhere, 50 clear days after the date of service on the party; or

“(c) wherever the party is served, the time specified by the Authority in an order made under subclause (4).

- “(4) The Authority may make an order varying the time for an overseas party to lodge an objection or a statement.
- “(5) An application that the Authority has given leave to serve on the overseas party must be accompanied when served by a notice in form 8.
- “(6) Regulations 15 to 19 apply to service on the overseas party, with any necessary modifications.

**“19B Authority may decline jurisdiction**

- “(1) The Authority may decline to hear and determine proceedings in which there is an overseas party if it is satisfied that—
  - “(a) it is more appropriate for the matter to be resolved in a place outside New Zealand; and
  - “(b) the applicant will have a fair opportunity in the place to make the applicant’s case; and
  - “(c) the applicant will receive proper justice in the place; and
  - “(d) the respondent will suffer unfair disadvantage if the proceedings are heard in New Zealand.
- “(2) This regulation does not limit any rule of law.”

**6 Schedule 1 amended**

- (1) The list of forms at the start of Schedule 1 of the principal regulations is amended by adding the following reference:  
Form 8 Notice accompanying application served outside  
New Zealand
  - (2) Schedule 1 of the principal regulations is amended by adding the form 8 set out in the Schedule.
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r 6

**Schedule**  
**New form 8 added to Schedule 1 of**  
**principal regulations**

r 19A

Form 8  
Notice accompanying application served outside  
New Zealand

*Schedule 2, clause 4A, Employment Relations Act 2000*

- 1 The applicant named in the attached application has commenced proceedings against you by making an application to the Employment Relations Authority.
- 2 Even though you are outside New Zealand, the Authority may hear and determine these proceedings. It may do so if the proceedings come within its jurisdiction. The grounds on which the applicant says that the proceedings come within the Authority's jurisdiction are set out in the application.
- 3 Even if the proceedings come within the Authority's jurisdiction, it may decide not to hear and determine them. It may do so if it is satisfied that it is more appropriate for the matter to be resolved in a place outside New Zealand, that the applicant will have a fair opportunity in the place to make the applicant's case, that the applicant will receive proper justice in the place, and that the respondent will suffer unfair disadvantage if the proceedings are heard in New Zealand.
- 4 The notice to you on the application tells you that, if you want to respond to the application, you must lodge 2 copies of a statement in reply within 30 (*or 50 or the appropriate number if the Authority has varied the time*) days after the date of the service of the application on you.
- 5 However, you may want to say that the proceedings do not come within the Authority's jurisdiction or that, even if they do, the Authority should decide not to hear and determine them. If so, you do not lodge a statement in reply. Instead, you lodge an objection to the Authority's jurisdiction. You must

Form 8—*continued*

do this within 30 (*or 50 or the appropriate number if the Authority has varied the time*) days after the date of the service of the application on you.

Diane Morcom,  
Clerk of the Executive Council.

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**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 10 December 2004, provide the procedural rules for the service overseas of documents in proceedings before the Employment Relations Authority.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 9 December 2004.

These regulations are administered in the Department of Labour.

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