

2002-2003-2004

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*As read a third time*

**Workplace Relations Amendment  
(Simplifying Agreement-making) Bill  
2004**

**No.     , 2004**

**A Bill for an Act to amend the *Workplace Relations Act 1996*, and for related purposes**



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1 THIS Bill originated in the House of  
2 Representatives; and, having this day passed,  
3 is now ready for presentation to the Senate  
4 for its concurrence.

5 I.C. HARRIS  
6 *Clerk of the House of Representatives*

7 House of Representatives  
8 11 February 2004  
9

10 **A Bill for an Act to amend the *Workplace Relations***  
11 ***Act 1996, and for related purposes***

12 The Parliament of Australia enacts:

13 **1 Short title**

14 This Act may be cited as the *Workplace Relations Amendment*  
15 *(Simplifying Agreement-making) Act 2004*.

16 **2 Commencement**

17 (1) Each provision of this Act specified in column 1 of the table  
18 commences, or is taken to have commenced, on the day or at the  
19 time specified in column 2 of the table.  
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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	
2. Schedules 1 and 2	A single day to be fixed by Proclamation, subject to subsection (3)	

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1 Note: This table relates only to the provisions of this Act as originally  
2 passed by the Parliament and assented to. It will not be expanded to  
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table is for additional information that is not part  
5 of this Act. This information may be included in any published  
6 version of this Act.

7 (3) If a provision covered by item 2 of the table does not commence  
8 within the period of 6 months beginning on the day on which this  
9 Act receives the Royal Assent, it commences on the first day after  
10 the end of that period.

### 11 3 Schedule(s)

12 Each Act that is specified in a Schedule to this Act is amended or  
13 repealed as set out in the applicable items in the Schedule  
14 concerned, and any other item in a Schedule to this Act has effect  
15 according to its terms.

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## **Schedule 1—AWAs**

### **Part 1—Amendments**

#### ***Workplace Relations Act 1996***

#### **1 Divisions 1, 2, 3, 4, 5 and 6 of Part VID**

Repeal the Divisions, substitute:

#### **Division 1—Preliminary**

#### **Subdivision A—Outline of Part**

##### **170VA Outline of Part**

- (1) This Part deals with the making, approval and operation of:
  - (a) Australian Workplace Agreements (AWAs); and
  - (b) agreements to extend, vary or terminate AWAs (ancillary documents).
- (2) Division 1 contains provisions dealing with the interpretation and scope of this Part.
- (3) Division 2 sets out the requirements for making an AWA.
- (4) Division 3 deals with the approval process for AWAs.
- (5) Division 4 sets out the effect of an AWA on awards, agreements and laws. It also:
  - (a) sets out obligations, breach of which may lead to a civil penalty; and
  - (b) deals with the conduct of industrial action by a party to an AWA during the AWA's period of operation before its nominal expiry date.
- (6) Division 5 deals with agreements to extend or vary AWAs. The Division contains the following Subdivisions:
  - (a) Subdivision A dealing with the making and approval of extension agreements;

- 1 (b) Subdivision B dealing with the making and approval of  
2 variation agreements.
- 3 (7) Division 6 deals with the making and approval of agreements to  
4 terminate AWAs and other mechanisms for terminating AWAs.
- 5 (8) Division 7 deals with enforcement and remedies in relation to  
6 AWAs and ancillary documents.
- 7 (9) Division 8 deals with limited immunity for industrial action.
- 8 (10) Division 9 contains miscellaneous matters in relation to AWAs and  
9 ancillary documents.

## 10 Subdivision B—Interpretation

### 11 170VAA Definitions

12 In this Part, unless the contrary intention appears:

13 *ancillary document* means any of the following:

- 14 (a) a variation agreement;  
15 (b) an extension agreement;  
16 (c) a termination agreement;  
17 (d) a termination notice.

18 *approval notice* means an approval notice issued by the  
19 Employment Advocate or Commission under Division 3, 5 or 6.

20 *approved* means approved under Division 3, 5 or 6 by the  
21 Employment Advocate or Commission.

22 *AWA* has a meaning affected by section 170VAB and subsections  
23 170VCB(9) and 170VEG(8).

24 *AWA date* means the date on which the employer and employee  
25 sign the AWA or, if they sign on different dates, the later of those  
26 dates.

27 *bargaining agent* means a person or group of persons duly  
28 appointed as a bargaining agent under section 170WEA.

29 *constitutional trade or commerce* means trade or commerce:

- 30 (a) between Australia and a place outside Australia; or
-



- 1 (b) between the States; or  
2 (c) within a Territory, between a State and a Territory or  
3 between 2 Territories.

4 ***eligible court*** means any of the following:

- 5 (a) the Federal Court of Australia;  
6 (b) a District, County or Local Court;  
7 (c) a magistrate's court.

8 ***employee*** has a meaning affected by section 170VAB.

9 ***employer*** has a meaning affected by section 170VAB.

10 ***existing employee***, in relation to an AWA, means an employee  
11 who signed the AWA after commencing the employment to which  
12 the AWA relates.

13 ***extension agreement*** means an agreement to extend the nominal  
14 expiry date of an AWA.

15 ***new employee***, in relation to an AWA, means an employee who  
16 signed the AWA before, or at the time of, commencing the  
17 employment to which the AWA relates.

18 ***no-disadvantage test*** means the no-disadvantage test set out in  
19 Part VIE.

20 ***nominal expiry date*** means the nominal expiry date that applies  
21 under section 170VBC.

22 ***party***, in relation to an AWA or ancillary document, means the  
23 employer or employee.

24 ***period of operation***, in relation to an AWA, means the period of  
25 operation as determined under section 170VBD.

26 ***referral notice*** means a referral notice issued by the Employment  
27 Advocate under Division 3 or 5.

28 ***referral protocol*** means:

- 29 (a) the protocol that, immediately before the commencement of  
30 this section, was in force under section 170VPE; or

1 (b) if that protocol has been varied under section 170WKB—that  
2 protocol as so varied.

3 *refusal notice* means a refusal notice issued by the Employment  
4 Advocate or Commission under Division 3, 5 or 6.

5 *State agreement* means an employment agreement made under, or  
6 for the purposes of, a law of a State.

7 *sure* means not having any doubts.

8 *termination agreement* means an agreement to terminate an AWA.

9 *variation agreement* means an agreement to vary an AWA.

10 *verified copy*, in relation to a document, means a copy that is  
11 certified as being a true copy of the document.

## 12 **170VAB Proposed AWAs and ancillary documents—interpretation**

13 (1) So far as the context permits, a reference in this Part to an AWA or  
14 ancillary document includes a reference to a proposed AWA or  
15 ancillary document.

16 (2) In relation to a proposed AWA or ancillary document, a reference  
17 to the employer or employee is a reference to the person who will  
18 be the employer or employee when the AWA or ancillary  
19 document starts to operate.

## 20 **Subdivision C—Scope of this Part etc.**

### 21 **170VAC Scope of this Part**

22 An AWA is of no effect unless at least one of the following applies  
23 at the AWA date:

- 24 (a) the employer is a constitutional corporation;  
25 (b) the employer is the Commonwealth;  
26 (c) the employee’s primary workplace is in a Territory;  
27 (d) the employer is a waterside employer, the employee is a  
28 waterside worker and the employee’s employment is in  
29 connection with constitutional trade or commerce;

- 1 (e) the employee is a maritime employee and the employee's  
2 employment is in connection with constitutional trade or  
3 commerce;  
4 (f) the employee is a flight crew officer and the employee's  
5 employment is in connection with constitutional trade or  
6 commerce.

7 **170VAD Functions of Commission**

- 8 (1) The Commission must, as far as practicable, perform its functions  
9 under this Part in a way that furthers the objects of this Act.  
10 (2) Section 90 does not apply to the performance of functions of the  
11 Commission under this Part.  
12 (3) In performing its functions under this Part, the Commission is not  
13 empowered to act under paragraph 111(1)(g) on the grounds  
14 specified in subparagraph (i), (ii) or (iii) of that paragraph.

15 **170VAE AWAs and ancillary documents only have effect as**  
16 **provided by this Part**

17 An AWA or ancillary document has effect as provided by this Part,  
18 and not otherwise.

19 **Division 2—Making an AWA**

20 **170VB Employer and employee may make an AWA**

- 21 (1) An employer and employee may make a written agreement, called  
22 an Australian workplace agreement (an *AWA*), that deals with  
23 matters pertaining to the relationship between an employer and  
24 employee.  
25 (2) The requirements set out in the following sections must be satisfied  
26 in relation to the AWA:  
27 (a) section 170VBA (making an AWA);  
28 (b) section 170VBB (content of an AWA).  
29 (3) The AWA may be made before commencement of the  
30 employment.

1 **170VBA Making an AWA**

2 (1) An AWA must be signed and dated by the employer and the  
3 employee who are parties to it.

4 (2) The employer must give the employee a copy of the AWA.

5 Note: This section is a civil penalty provision (see section 170VV).

6 (3) Before the employee signs the AWA, the employer must:

7 (a) give the employee a copy of an information statement  
8 prepared by the Employment Advocate (see subsection (4));  
9 and

10 (b) explain the effect of the AWA to the employee.

11 (4) The information statement prepared by the Employment Advocate  
12 for the purposes of paragraph (3)(a) must include information  
13 about the following matters, but may include other information:

14 (a) Commonwealth statutory entitlements;

15 (b) occupational health and safety law;

16 (c) services provided by the Employment Advocate;

17 (d) bargaining agents.

18 Note: For more information on bargaining agents, see section 170WEA.

19 (5) The employee may withdraw his or her consent to the AWA by  
20 giving written notice of the withdrawal of consent to the employer  
21 before the end of the cooling-off period.

22 Note: If the employee withdraws his or her consent to the AWA after the  
23 employer has applied to the Employment Advocate for approval of the  
24 AWA, the employee must also give the Employment Advocate written  
25 notice of the withdrawal of consent (see subsections 170VC(6) and  
26 (7)).

27 (6) The *cooling-off period* is the period of:

28 (a) 5 days after the day on which a new employee signs the  
29 AWA; and

30 (b) 14 days after the day on which an existing employee signs  
31 the AWA.

1 **170VBB Content of AWA**

2 *Must be included*

- 3 (1) The AWA must include the provisions relating to discrimination  
4 that are prescribed by the regulations. If the AWA does not in fact  
5 include those provisions, the AWA is taken to include those  
6 provisions.
- 7 (2) The AWA must include a dispute resolution procedure. If the  
8 AWA does not in fact include a dispute resolution procedure, the  
9 AWA is taken to include the model procedure that is prescribed by  
10 the regulations.
- 11 (3) A dispute resolution procedure that is included in an AWA under  
12 subsection (2), or prescribed by the regulations for the purposes of  
13 subsection (2), may confer powers on the Commission to settle  
14 disputes between the parties to the AWA about the application or  
15 interpretation of the AWA. The Commission may exercise those  
16 powers.

17 *Must not be included*

- 18 (4) The AWA must not include any provisions that prohibit or restrict  
19 disclosure of details of the AWA by either party to another person.
- 20 (5) The AWA must not include any objectionable provisions within  
21 the meaning of section 298Z.

22 **170VBC Nominal expiry date of AWA**

- 23 (1) An AWA may specify a date as its nominal expiry date. The date  
24 cannot be more than 3 years after the AWA date.
- 25 (2) If no date is specified, then the nominal expiry date is the third  
26 anniversary of the AWA date.

27 **170VBD Period of operation of AWA**

- 28 (1) Subject to section 170VCD, an AWA for an employee starts  
29 operating on the later of:  
30 (a) the AWA date; or  
31 (b) the day specified in the AWA as the starting day; or
-

1 (c) if the employee is a new employee—the day the employment  
2 commences.

3 (2) Subject to section 170VCD, an AWA for an employee stops  
4 operating at the earlier of the following times:

5 (a) if no application is made to the Employment Advocate to  
6 approve the AWA within the period of 21 days starting on  
7 the AWA date (or such longer period as the Employment  
8 Advocate allows under subsection 170VC(3))—the start of  
9 the day after the end of that period;

10 (b) the end of the day when a refusal notice is issued in relation  
11 to the AWA;

12 (c) the time when a termination under section 170VFA, 170VFD  
13 or 170VFE takes effect;

14 (d) the time when another AWA between the employer and  
15 employee starts to operate.

16 Note: See also section 170VCA which deals with the effect of the  
17 employee's withdrawal of consent to the AWA, and section 170WKD,  
18 under which an AWA stops operating if the Employment Advocate's  
19 approval of the AWA is revoked.

## 20 **Division 3—Approval of AWAs**

### 21 **170VC Applications for approval of AWAs**

22 (1) An employer must apply, in writing, to the Employment Advocate  
23 for approval of an AWA to which the employer is a party unless  
24 the employee withdraws his or her consent to the AWA before the  
25 end of the cooling-off period referred to in subsection 170VBA(6).

26 (2) The application must be made before the end of the period of 21  
27 days starting on the AWA date.

28 (3) The Employment Advocate may, at any time within that period of  
29 21 days, extend the period for making the application.

30 Note: Section 170VCD sets out the consequences of failure to apply for  
31 approval by the deadline.

32 (4) An application must be accompanied by:

33 (a) a copy of the AWA; and

- 1 (b) any other information that the Employment Advocate  
2 requires, by notice published in the *Gazette*, for the purpose  
3 of performing his or her functions.
- 4 (5) Two or more agreements that have been negotiated collectively  
5 may be included in the same notice of application if the same  
6 employer is a party to all the agreements. The agreements need not  
7 be in the same terms.
- 8 (6) If:
- 9 (a) before the end of the cooling-off period referred to in  
10 subsection 170VBA(6), the employee referred to in  
11 subsection 170VBA(5) withdraws his or her consent to the  
12 AWA; and
- 13 (b) the employer has already applied to the Employment  
14 Advocate under this section for approval of the AWA;  
15 the employee must also give the Employment Advocate written  
16 notice of the withdrawal of consent.
- 17 (7) The employee must lodge the written notice of withdrawal of  
18 consent with the Employment Advocate within 7 days after giving  
19 notice of withdrawal to the employer.
- 20 Note: The employee may give the Employment Advocate this notice after  
21 the end of the cooling-off period under subsection 170VBA(6).

22 **170VCA Consequences for AWA of employee's withdrawal of**  
23 **consent**

- 24 If:
- 25 (a) the employee referred to in subsection 170VBA(5) or  
26 170VC(6) withdraws his or her consent to the AWA before  
27 the end of the cooling-off period referred to in subsection  
28 170VBA(6); and
- 29 (b) apart from this section, the AWA would have already started  
30 to operate;
- 31 the AWA is taken not to have started to operate.

1 **170VCB Employment Advocate or Commission must approve, or**  
2 **refuse to approve, AWA**

3 *Approval if AWA passes the no-disadvantage test etc.*

- 4 (1) The Employment Advocate must approve an AWA if:  
5 (a) the application for approval of the AWA is made in  
6 accordance with section 170VC; and  
7 (b) the AWA satisfies the requirements of section 170VBA; and  
8 (c) the AWA complies with section 170VBB; and  
9 (d) the Employment Advocate is sure that the AWA passes the  
10 no-disadvantage test; and  
11 (e) the Employment Advocate is satisfied that the employee  
12 genuinely consented to making the AWA.

13 *Approval if concerns resolved*

- 14 (2) If the Employment Advocate has concerns about whether the  
15 AWA meets the requirements of subsection (1), the Employment  
16 Advocate must give the parties to the AWA an opportunity to:  
17 (a) take any action (including giving undertakings); or  
18 (b) give to the Employment Advocate any information sought by  
19 the Employment Advocate.

20 The Employment Advocate must approve the AWA if satisfied  
21 that, because of the action taken or information given, those  
22 concerns are resolved.

23 *Approval if no disadvantage to parties*

- 24 (3) The Employment Advocate may approve the AWA if:  
25 (a) the only reason for not approving the AWA is that the  
26 Employment Advocate is not satisfied that the requirements  
27 of subsection 170VBA(1) are met; but  
28 (b) he or she is satisfied that the failure to meet those  
29 requirements has not disadvantaged, and will not  
30 disadvantage, either party to the AWA.

31 *Referral to Commission*

- 32 (4) The Employment Advocate must refer the AWA to the  
33 Commission, if:
-



- 1 (a) the Employment Advocate has concerns about whether the  
2 AWA passes the no-disadvantage test; and  
3 (b) those concerns are not resolved by action taken or  
4 information given as mentioned in subsection (2).

5 *Approval if the AWA passes the no-disadvantage test*

- 6 (5) The Commission must approve the AWA if the Commission is  
7 satisfied that:  
8 (a) the AWA passes the no-disadvantage test; or  
9 (b) any action taken (including the giving of undertakings)  
10 resolves any uncertainty as to whether the AWA passes the  
11 no-disadvantage test.

12 *Approval if not contrary to the public interest*

- 13 (6) If the Commission considers that it is not contrary to the public  
14 interest to approve the AWA, it must approve the AWA (whether  
15 or not subsection (5) requires the Commission to approve the  
16 AWA).

17 Note: An example of a case where the Commission may be satisfied that  
18 approving the AWA is not contrary to the public interest could be  
19 where making the AWA is part of a reasonable strategy to deal with a  
20 short-term crisis in, and to assist in the revival of, a business or part of  
21 a business.

22 *Otherwise, approval refused by Commission*

- 23 (7) If the Commission is not required to approve the AWA, the  
24 Commission must refuse to approve it.

25 *Otherwise, approval refused by Employment Advocate*

- 26 (8) If the Employment Advocate is not required to approve the AWA  
27 and does not approve the AWA under subsection (3), the  
28 Employment Advocate must refuse to approve it.

29 *Undertakings*

- 30 (9) An undertaking accepted by the Employment Advocate or by the  
31 Commission is taken to be included in the AWA.

1 **170VCC Employment Advocate or Commission must issue approval**  
2 **or refusal notice**

- 3 (1) If the Employment Advocate approves an AWA, the Employment  
4 Advocate must issue an approval notice to the employer.
- 5 (2) If the Employment Advocate refers an AWA to the Commission,  
6 the Employment Advocate must issue a referral notice to the  
7 employer, advising of the referral.
- 8 (3) If the Employment Advocate refuses to approve an AWA, the  
9 Employment Advocate must issue a refusal notice to the employer.
- 10 (4) The Employment Advocate must also include in an approval notice  
11 a copy of each of the following:  
12 (a) the provisions relating to discrimination referred to in  
13 subsection 170VBB(1) (if they are taken to be included in the  
14 AWA because of that subsection);  
15 (b) the model procedure relating to a dispute resolution  
16 procedure referred to in subsection 170VBB(2) (if it is taken  
17 to be included in the AWA because of that subsection);  
18 (c) a copy of each undertaking (if any) in relation to the AWA  
19 that is taken to be included in the AWA because of  
20 subsection 170VCB(9).
- 21 (5) If the Commission approves an AWA, the Commission must:  
22 (a) issue an approval notice to the employer; and  
23 (b) give a copy of the approval notice to the Employment  
24 Advocate; and  
25 (c) give a copy of the AWA as approved to the Employment  
26 Advocate.
- 27 Note: An undertaking accepted in accordance with an AWA is deemed to  
28 form part of the AWA. Therefore a copy of the undertaking will be  
29 sent to the Employment Advocate under this section.
- 30 (6) If the Commission refuses to approve an AWA, the Commission  
31 must:  
32 (a) issue a refusal notice to the employer; and  
33 (b) give a copy of the refusal notice to the Employment  
34 Advocate.

1       **170VCD Consequences for AWA of failure to apply for approval,**  
2                               **refusal of approval or referral to the Commission**

- 3               (1) If no application is made for approval of an AWA within the  
4                   period of 21 days after the AWA date, or such longer period as  
5                   allowed by the Employment Advocate under subsection 170VC(3):  
6                   (a) if the AWA has already started operating—the AWA ceases  
7                   to operate after the end of that period; and  
8                   (b) if the AWA has not already started operating—the AWA  
9                   does not start to operate; and  
10                  (c) the Employment Advocate cannot approve the AWA.
- 11               (2) If the Employment Advocate issues a refusal notice in relation to  
12                   an AWA:  
13                   (a) if the AWA has already started operating—the AWA ceases  
14                   operating at the end of the day when the refusal notice is  
15                   issued; and  
16                   (b) if the AWA has not already started operating—the AWA  
17                   does not start to operate; and  
18                   (c) the Employment Advocate cannot approve the AWA.
- 19               (3) If the Employment Advocate refers an AWA to the Commission:  
20                   (a) if the AWA has already started operating—the AWA  
21                   continues to operate; and  
22                   (b) if the AWA has not already started operating—the AWA  
23                   does not start to operate; and  
24                   (c) the Employment Advocate cannot approve the AWA.

25       **170VCE Employer must give copies of documents to employee**

- 26               (1) As soon as practicable after receiving from the Employment  
27                   Advocate or the Commission the approval notice, referral notice or  
28                   refusal notice, the employer must give the employee with whom  
29                   the AWA was made a copy of:  
30                   (a) the notice; and  
31                   (b) any material that is taken to be included in the AWA because  
32                   of subsections 170VBB(1) and (2) and subsection  
33                   170VCB(9).

34               Note:       This subsection is a civil penalty provision (see section 170VV).

- 1 (2) The employer must give the employee any other document  
2 prescribed by the regulations, within the period required by the  
3 regulations.

4 Note: This subsection is a civil penalty provision (see section 170VV).

5 **170VCF Protocol for referring AWAs to the Commission**

6 In deciding whether to refer an AWA to the Commission, the  
7 Employment Advocate must apply the referral protocol.

8 **Division 4—Effect of an AWA**

9 **170VD Effect of AWA on awards and agreements**

- 10 (1) During its period of operation, an AWA operates to the exclusion  
11 of any award that would otherwise apply to the employee's  
12 employment. This subsection has effect subject to subsections (2)  
13 and (3).
- 14 (2) An AWA is of no effect if it is made:  
15 (a) after the commencement of an award that is made under  
16 subsection 170MX(3) and applies to the employee's  
17 employment; and  
18 (b) before the nominal expiry date of the award.
- 19 (3) An AWA does not operate to the exclusion of an exceptional  
20 matters order, but prevails over an exceptional matters order to the  
21 extent of any inconsistency.
- 22 (4) During its period of operation, an AWA operates to the exclusion  
23 of any State award or State agreement that would otherwise apply  
24 to the employee's employment.
- 25 (5) The relationship between an AWA and a certified agreement is as  
26 follows:  
27 (a) a certified agreement prevails over the AWA to the extent of  
28 any inconsistency if:  
29 (i) the certified agreement is in operation at the time the  
30 AWA comes into operation; and

- 1 (ii) the nominal expiry date of the certified agreement is  
2 after the date on which the AWA comes into operation;  
3 and  
4 (iii) the certified agreement does not expressly allow a  
5 subsequent AWA to operate to the exclusion of the  
6 certified agreement or to prevail over the certified  
7 agreement to the extent of any inconsistency;  
8 (b) a certified agreement that comes into operation after the  
9 nominal expiry date of the AWA prevails over the AWA to  
10 the extent of any inconsistency;  
11 (c) in all other cases, the AWA operates to the exclusion of any  
12 certified agreement that would otherwise apply to the  
13 employee's employment.

14 **170VDA Effect of AWA on other laws**

15 *State law*

- 16 (1) Subject to this section, an AWA prevails over conditions of  
17 employment specified in a State law, to the extent of any  
18 inconsistency.
- 19 (2) Provisions in an AWA that deal with the following matters operate  
20 subject to the provisions of any State law that deals with the  
21 matter:  
22 (a) occupational health and safety;  
23 (b) workers' compensation;  
24 (c) apprenticeship;  
25 (d) any other matter prescribed by the regulations.
- 26 (3) If a State law provides protection for an employee against harsh,  
27 unjust or unreasonable termination of employment (however  
28 described in the law), subsection (1) is not intended to affect the  
29 provisions of that law that provide that protection, so far as those  
30 provisions are able to operate concurrently with the AWA.

31 *Prescribed conditions of employment*

- 32 (4) To the extent of any inconsistency, an AWA prevails over  
33 prescribed conditions of employment specified in a  
34 Commonwealth law that is prescribed by the regulations.

1 (5) In this section:

2 *Commonwealth law* means an Act or any regulations or other  
3 instrument made under an Act.

4 *prescribed conditions* means conditions that are identified by the  
5 regulations.

6 *State law* means a law of a State or Territory (including any  
7 regulations or other instrument made under a law of a State or  
8 Territory), but does not include a State award or State agreement.

9 **170VDB Parties must not breach AWA**

10 A party to an AWA must not breach the AWA.

11 Note: This section is a civil penalty provision (see section 170VV).

12 **170VDC Industrial action etc. by party to AWA**

13 (1) During the period of operation of an AWA before its nominal  
14 expiry date, the employee must not engage in industrial action in  
15 relation to the employment to which the AWA relates.

16 Note: This subsection is a civil penalty provision (see section 170VV).

17 (2) During the period of operation of an AWA before its nominal  
18 expiry date, the employer must not lock out the employee for the  
19 purpose of supporting or advancing claims in respect of the  
20 employee's employment.

21 Note: This subsection is a civil penalty provision (see section 170VV).

22 **170VDD Employer's successor and AWA to which employer is a  
23 party**

24 (1) If:

25 (a) an employee who is a party to an AWA becomes an  
26 employee of a new employer because the new employer is a  
27 successor to the whole or any part of the previous employer's  
28 business or undertaking; and

29 (b) at the succession time at least one of the following applies:

30 (i) the new employer is a constitutional corporation;

31 (ii) the new employer is the Commonwealth;

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- 1 (iii) the employee's primary workplace is in a Territory;  
2 (iv) the new employer is a waterside employer, the  
3 employee is a waterside worker and the employee's  
4 employment is in connection with constitutional trade or  
5 commerce;  
6 (v) the employee is a maritime employee and the  
7 employee's employment is in connection with  
8 constitutional trade or commerce;  
9 (vi) the employee is a flight crew officer and the employee's  
10 employment is in connection with constitutional trade or  
11 commerce;

12 then the new employer replaces the previous employer as a party to  
13 the AWA from the succession time.

14 (2) The succession does not affect the rights and obligations of the  
15 previous employer that arose before the succession.

16 (3) In this section:

17 *successor* means a successor, transmittee or assignee.

## 18 **Division 5—Extending or varying an AWA**

### 19 **Subdivision A—Extension agreements**

#### 20 **170VE Agreement to extend AWA's nominal expiry date**

- 21 (1) An employer and employee may make a written agreement that  
22 extends the nominal expiry date of an AWA to which they are  
23 parties. The extended date cannot be more than 3 years after the  
24 AWA date.
- 25 (2) An extension agreement may only be made before the nominal  
26 expiry date of the AWA.
- 27 (3) An extension agreement is made when it is signed and dated by the  
28 employer and the employee who are parties to it.
- 29 (4) The employee may withdraw his or her consent to the extension  
30 agreement by giving written notice of the withdrawal of consent to  
31 the employer before the end of the cooling-off period.

1 Note: If the employee withdraws his or her consent to the extension  
2 agreement after the employer has applied to the Employment  
3 Advocate for approval of the extension agreement, the employee must  
4 also give the Employment Advocate written notice of the withdrawal  
5 of consent (see subsections 170VEA(4) and (5)).

6 (5) The *cooling-off period* is the period of 14 days after the day on  
7 which the employee signs the agreement.

8 (6) Subject to section 170VEC, the extension agreement takes effect  
9 on the day on which the employer and the employee sign the  
10 agreement or, if they sign on different days, the later of those days.

### 11 **170VEA Application for approval of extension agreement**

12 (1) An employer must apply, in writing, to the Employment Advocate  
13 for approval of an extension agreement to which the employer is a  
14 party. An application for approval must be made within the period  
15 of 21 days starting on the day when the agreement takes effect.

16 Note: Subsection 170VEC(1) sets out the consequences of failure to apply  
17 for approval before the end of that period.

18 (2) An application must be accompanied by:  
19 (a) a copy of the extension agreement; and  
20 (b) any other information that the Employment Advocate  
21 requires, by notice published in the *Gazette*, for the purpose  
22 of performing his or her functions.

23 (3) Two or more extension agreements that have been negotiated  
24 collectively may be included in the same notice of application if  
25 the same employer is a party to all the agreements. The agreements  
26 need not be in the same terms.

27 (4) If:  
28 (a) before the end of the cooling-off period referred to in  
29 subsection 170VE(5) the employee referred to in subsection  
30 170VE(4) withdraws his or her consent to the extension  
31 agreement; and  
32 (b) the employer has already applied to the Employment  
33 Advocate under this section for approval of the extension  
34 agreement;  
35 the employee must also give the Employment Advocate written  
36 notice of the withdrawal of consent.

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- 1 (5) The employee must lodge the written notice of withdrawal of  
2 consent with the Employment Advocate within 7 days after giving  
3 notice of withdrawal to the employer.

4 Note: The employee may give the Employment Advocate this notice after  
5 the end of the cooling-off period under subsection 170VE(5).

6 **170VEB Employment Advocate must approve, or refuse to approve,  
7 extension agreement**

8 *Approval if sections 170VE and 170VEA satisfied*

- 9 (1) The Employment Advocate must approve the extension agreement  
10 if:  
11 (a) the application for approval of the extension agreement is  
12 made in accordance with section 170VEA; and  
13 (b) the extension agreement satisfies the requirements of  
14 section 170VE; and  
15 (c) the Employment Advocate is satisfied that the employee  
16 genuinely consented to making the extension agreement.

17 *Approval if no disadvantage to parties*

- 18 (2) The Employment Advocate may approve the extension agreement  
19 if:  
20 (a) the only reason for not approving the extension agreement is  
21 that the Employment Advocate is not satisfied that the  
22 requirements of subsection 170VE(3) are met; but  
23 (b) he or she is satisfied that the failure to meet those  
24 requirements has not disadvantaged, and will not  
25 disadvantage, either party to the AWA.

26 *Approval notice etc.*

- 27 (3) If the Employment Advocate approves an extension agreement, the  
28 Employment Advocate must:  
29 (a) issue an approval notice to the employer; and  
30 (b) give a copy of the extension agreement as approved to the  
31 employer.

1 *Refusal of approval and refusal notice*

- 2 (4) If the Employment Advocate is not required to approve the  
3 extension agreement and does not approve the extension agreement  
4 under subsection (2), the Employment Advocate must:  
5 (a) refuse to approve the extension agreement; and  
6 (b) issue a refusal notice to the employer.

7 Note: Subsection 170VEC(2) sets out the consequences of the issuing of a  
8 refusal notice.

9 *Employer must give certain documents to employee*

- 10 (5) As soon as practicable after receiving from the Employment  
11 Advocate the approval notice or refusal notice, the employer must  
12 give the employee with whom the extension agreement was made a  
13 copy of:  
14 (a) the notice; and  
15 (b) the extension agreement (if it was approved).

16 Note: This subsection is a civil penalty provision (see section 170VV).

- 17 (6) The employer must give the employee any other document  
18 prescribed by the regulations, within the period required by the  
19 regulations.

20 Note: This subsection is a civil penalty provision (see section 170VV).

21 **170VEC Consequences for extension agreement of failure to apply**  
22 **for approval or refusal of approval**

- 23 (1) If no application is made for approval of an extension agreement  
24 within the period of 21 days starting on the day when the  
25 agreement took effect:  
26 (a) the extension agreement ceases to have effect after the end of  
27 that period; and  
28 (b) the Employment Advocate cannot approve the extension  
29 agreement.
- 30 (2) If the Employment Advocate issues a refusal notice in relation to  
31 the extension agreement, the extension agreement ceases to have  
32 effect at the end of the day when the refusal notice is issued.

1 Note: An extension agreement also ceases to have effect if the Employment  
2 Advocate's approval of the extension agreement is revoked under  
3 section 170WKD.

## 4 **Subdivision B—Variation agreements**

### 5 **170VED Agreement to vary an AWA**

6 (1) An employer and employee may make a written agreement varying  
7 an AWA. A variation agreement is made when it is signed and  
8 dated by the employer and the employee who are parties to it.

9 Note: A variation agreement may vary the AWA's nominal expiry date.  
10 However, the extended date cannot be more than 3 years after the  
11 AWA date (see sections 170VBC and 170VE).

12 (2) The employee may withdraw his or her consent to the variation  
13 agreement by giving written notice of the withdrawal of consent to  
14 the employer before the end of the cooling-off period.

15 Note: If the employee withdraws his or her consent to the variation  
16 agreement after the employer has applied to the Employment  
17 Advocate for approval of the variation agreement, the employee must  
18 also give the Employment Advocate written notice of the withdrawal  
19 of consent (see subsections 170VEE(5) and (6)).

20 (3) The *cooling-off period* is the period of 14 days after the day on  
21 which the employee signs the agreement.

22 (4) Subject to sections 170VEF and 170VEJ, the variation agreement  
23 takes effect on:

24 (a) the day on which the employer and employee sign the  
25 variation agreement, or if they sign on different days, the  
26 later of those days; and

27 (b) if a day is specified in the variation agreement as the date of  
28 effect and that day is later than the day under paragraph (a)—  
29 the day specified in the agreement.

30 (5) Sections 170VBA and 170VBB apply to the AWA as varied in the  
31 same way as those sections apply to the original AWA.

### 32 **170VEE Applications for approval of variation agreements**

33 (1) An employer must apply, in writing, to the Employment Advocate  
34 for approval of a variation agreement to which the employer is a  
35 party unless the employee withdraws his or her consent to the

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- 1 variation agreement before the end of the cooling-off period  
2 referred to in subsection 170VED(3).
- 3 (2) An application for approval must be made within the period of 21  
4 days starting on:  
5 (a) the day on which the employer and the employee sign the  
6 variation agreement; or  
7 (b) if they sign on different days—the later of those days.
- 8 Note: Subsection 170VEJ(1) sets out the consequences of failure to apply  
9 for approval by the deadline.
- 10 (3) An application must be accompanied by:  
11 (a) a copy of the variation agreement; and  
12 (b) any other information that the Employment Advocate  
13 requires, by notice published in the *Gazette*, for the purpose  
14 of performing his or her functions.
- 15 (4) Two or more variation agreements that have been negotiated  
16 collectively may be included in the same notice of application if  
17 the same employer is a party to all the agreements. The agreements  
18 need not be in the same terms.
- 19 (5) If:  
20 (a) before the end of the cooling-off period referred to in  
21 subsection 170VED(3) the employee referred to in  
22 subsection 170VED(2) withdraws his or her consent to the  
23 variation agreement; and  
24 (b) the employer has already applied to the Employment  
25 Advocate under this section for approval of the variation  
26 agreement;  
27 the employee must also give the Employment Advocate written  
28 notice of the withdrawal of consent.
- 29 (6) The employee must lodge the written notice of withdrawal of  
30 consent with the Employment Advocate within 7 days after giving  
31 notice of withdrawal to the employer.
- 32 Note: The employee may give the Employment Advocate this notice after  
33 the end of the cooling-off period under subsection 170VED(3).

1 **170VEF Consequences for variation agreement of employee's**  
2 **withdrawal of consent**

3 If:

- 4 (a) an employee referred to in subsection 170VED(2) withdraws  
5 his or her consent to the variation agreement before the end  
6 of the cooling-off period referred to in subsection  
7 170VED(3); and  
8 (b) apart from this section, the variation agreement would  
9 already have taken effect;  
10 the variation agreement is taken not to have taken effect.

11 **170VEG Employment Advocate or Commission must approve, or**  
12 **refuse to approve, variation agreement**

13 *Approval if AWA, as varied, passes the no-disadvantage test etc.*

- 14 (1) The Employment Advocate must approve a variation agreement if:  
15 (a) the application for approval of the variation agreement is  
16 made in accordance with section 170VEE; and  
17 (b) the variation agreement satisfies the requirements of  
18 section 170VBA as it applies to those agreements; and  
19 (c) the AWA as varied complies with section 170VBB as it  
20 applies to variation agreements; and  
21 (d) the Employment Advocate is sure that the AWA, as varied,  
22 passes the no-disadvantage test; and  
23 (e) the Employment Advocate is satisfied that the employee  
24 genuinely consented to making the variation agreement.

25 *Approval if concerns resolved*

- 26 (2) If the Employment Advocate has concerns about whether the  
27 AWA meets the requirements of subsection (1), the Employment  
28 Advocate must give the parties to the AWA an opportunity to:  
29 (a) take any action (including giving undertakings); or  
30 (b) give to the Employment Advocate any information sought by  
31 the Employment Advocate.

32 The Employment Advocate must approve the AWA if satisfied  
33 that, because of the action taken or information given, those  
34 concerns are resolved.

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*Approval if no disadvantage to parties*

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- (3) The Employment Advocate may approve the variation agreement if:

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(a) the only reason for not approving the variation agreement is that the Employment Advocate is not satisfied that the requirements of subsection 170VBA(1) (as it applies to the variation agreement) are met in all respects; but

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(b) he or she is satisfied that the failure to meet those requirements has not disadvantaged, and will not disadvantage, either party to the AWA.

11

*Referral to Commission*

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- (4) The Employment Advocate must refer the variation agreement to the Commission, if:

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(a) the Employment Advocate has concerns about whether the variation agreement passes the no-disadvantage test; and

(b) those concerns are not resolved by action taken or information given as mentioned in subsection (2).

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*Approval if not contrary to public interest*

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- (5) The Commission must approve the variation agreement if the Commission:

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(a) is satisfied that the variation agreement passes the no-disadvantage test; or

(b) is satisfied that any action taken (including the giving of undertakings) resolves any uncertainty as to whether the variation agreement passes the no-disadvantage test.

(c) is not satisfied that the variation agreement passes the no-disadvantage test, but is satisfied that it is not contrary to the public interest to approve the variation agreement.

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Note: An example of a case where the Commission may be satisfied that approving the variation agreement is not contrary to the public interest could be where making the variation agreement is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, a business or part of a business.

1                    *Otherwise, approval refused by Commission*

2                    (6) If the Commission does not approve the variation agreement under  
3                    subsection (5), the Commission must refuse to approve it.

4                    *Otherwise, approval refused by Employment Advocate*

5                    (7) If the Employment Advocate is not required to approve the  
6                    variation agreement and does not approve the variation agreement  
7                    under subsection (3), the Employment Advocate must refuse to  
8                    approve it.

9                    *Undertakings*

10                  (8) An undertaking accepted by the Employment Advocate or by the  
11                  Commission is taken to be included in the AWA as varied.

12                  **170VEH Employment Advocate and Commission must issue**  
13                  **approval, referral or refusal notice**

14                  (1) If the Employment Advocate approves a variation agreement, the  
15                  Employment Advocate must:

- 16                          (a) issue an approval notice to the employer; and  
17                          (b) give a copy of the variation agreement as approved to the  
18                          employer.

19                  (2) If the Employment Advocate refers a variation agreement to the  
20                  Commission, the Employment Advocate must issue a referral  
21                  notice to the employer, advising of the referral.

22                  (3) If the Employment Advocate refuses to approve a variation  
23                  agreement, the Employment Advocate must issue a refusal notice  
24                  to the employer.

25                  Note:            Subsection 170VEJ(2) sets out the consequences of the issuing of a  
26                  refusal notice.

27                  (4) If the Commission approves a variation agreement, the  
28                  Commission must:

- 29                          (a) issue an approval notice to the employer; and  
30                          (b) give a copy of the variation agreement as approved to the  
31                          employer; and

1 (c) give a copy of the approval notice to the Employment  
2 Advocate.

3 Note: An undertaking accepted in accordance with an AWA is deemed to  
4 form part of the AWA. Therefore a copy of the undertaking will be  
5 sent to the Employment Advocate under this section.

6 (5) If the Commission refuses to approve a variation agreement, the  
7 Commission must:

- 8 (a) issue a refusal notice to the employer; and  
9 (b) give a copy of the refusal notice to the Employment  
10 Advocate.

11 **170VEI Employer must give copies of documents to employee**

12 (1) As soon as practicable after receiving from the Employment  
13 Advocate or the Commission the approval notice or refusal notice,  
14 the employer must give the employee with whom the variation  
15 agreement was made a copy of:

- 16 (a) the notice; and  
17 (b) the variation agreement as approved (if it was approved); and  
18 (c) any material that is taken to be included in the AWA because  
19 of paragraph 170VEG(1)(c) or subsection 170VEG(8).

20 Note: This subsection is a civil penalty provision (see section 170VV).

21 (2) The employer must give the employee any other document  
22 prescribed by the regulations, within the period required by the  
23 regulations.

24 Note: This subsection is a civil penalty provision (see section 170VV).

25 **170VEJ Consequences for variation agreement of failure to apply**  
26 **for approval, refusal of approval or referral to**  
27 **Commission**

- 28 (1) If no application is made for approval of a variation agreement  
29 before the end of the period referred to in subsection 170VEE(2):  
30 (a) if the variation agreement has already taken effect—the  
31 variation agreement ceases to have effect after the end of that  
32 period; and  
33 (b) if the variation agreement has not already taken effect—the  
34 variation agreement does not take effect; and
-



- 1 (c) the Employment Advocate cannot approve the variation  
2 agreement.
- 3 (2) If the Employment Advocate or the Commission issues a refusal  
4 notice in relation to the variation agreement:
- 5 (a) if the variation agreement has already taken effect—the  
6 variation agreement ceases to have effect at the end of the  
7 day when the refusal notice is issued; and
- 8 (b) if the variation agreement has not already taken effect—the  
9 variation agreement does not take effect.
- 10 Note: A variation agreement also ceases to have effect if the Employment  
11 Advocate's approval of the variation agreement is revoked under  
12 section 170WKD.
- 13 (3) If the Employment Advocate refers the variation agreement to the  
14 Commission:
- 15 (a) if the variation agreement has already taken effect—the  
16 variation agreement continues to have effect; and
- 17 (b) if the variation agreement has not already taken effect—the  
18 variation agreement does not take effect; and
- 19 (c) the Employment Advocate cannot approve the variation  
20 agreement.

21 **170VEK Protocol for referring variation agreements to the**  
22 **Commission**

23 In deciding whether to refer a variation agreement to the  
24 Commission, the Employment Advocate must apply the referral  
25 protocol.

26 **Division 6—Terminating an AWA**

27 **Subdivision A—Preliminary**

28 **170VF Terminating an AWA**

29 This Division sets out the 3 ways in which an AWA may be  
30 terminated:

- 31 (a) termination by a termination agreement (see Subdivision B);  
32 (b) termination by the Commission (see Subdivision C);

1 (c) termination in accordance with the AWA (see Subdivision  
2 D).

3 **Subdivision B—Termination agreement**

4 **170VFA Termination agreement**

5 (1) At any time, the employer and employee may make a written  
6 agreement to terminate an AWA.

7 (2) A termination agreement is made when it is signed and dated by  
8 the employer and the employee who are parties to it.

9 (3) The employee may withdraw his or her consent to the termination  
10 agreement by giving written notice of the withdrawal of consent to  
11 the employer before the end of the cooling-off period.

12 Note: If the employee withdraws his or her consent to the termination  
13 agreement after the employer has applied to the Employment  
14 Advocate for approval of the termination agreement, the employee  
15 must also give the Employment Advocate written notice of the  
16 withdrawal of consent (see subsections 170VFB(5) and (6)).

17 (4) The *cooling-off period* is the period of 14 days after the day on  
18 which the employee signs the agreement.

19 (5) A termination agreement must be approved by the Employment  
20 Advocate under section 170VFC. If approved, the agreement takes  
21 effect:

22 (a) at the end of the day on which an approval notice is issued  
23 for the termination agreement; or

24 (b) if a time for termination is specified in the termination  
25 agreement and that time is later than the time under  
26 paragraph (a)—at the time specified in the termination  
27 agreement.

28 If the Employment Advocate refuses to approve the termination  
29 agreement, it does not take effect.

30 Note: A termination agreement ceases to have effect if the Employment  
31 Advocate's approval of the termination agreement is revoked under  
32 section 170WKD.

1 **170VFB Application for approval of termination agreement**

- 2 (1) An employer must apply, in writing, to the Employment Advocate  
3 for approval of a termination agreement to which the employer is a  
4 party.
- 5 (2) The application must be made within the period of 21 days starting  
6 when the termination agreement is made.
- 7 (3) An application must be accompanied by:  
8 (a) a copy of the termination agreement; and  
9 (b) any other information that the Employment Advocate  
10 requires, by notice published in the *Gazette*, for the purpose  
11 of performing his or her functions.
- 12 (4) Two or more termination agreements may be included in the same  
13 notice of application if the same employer is a party to all the  
14 agreements. The agreements need not be in the same terms.
- 15 (5) If:  
16 (a) before the end of the cooling-off period referred to in  
17 subsection 170VFA(4) the employee referred to in subsection  
18 170VFA(3) withdraws his or her consent to the termination  
19 agreement; and  
20 (b) the employer has already applied to the Employment  
21 Advocate under section 170VFB for approval of the  
22 termination agreement;  
23 the employee must also give the Employment Advocate written  
24 notice of the withdrawal of consent.
- 25 (6) The employee must lodge the written notice of withdrawal of  
26 consent with the Employment Advocate within 7 days after giving  
27 notice of withdrawal to the employer.

28 Note: The employee may give the Employment Advocate this notice after  
29 the end of the cooling-off period under subsection 170VFA(4).

1 **170VFC Employment Advocate must approve, or refuse to approve,**  
2 **termination agreement**

3 *Approval if sections 170VFA and 170VFB are satisfied*

- 4 (1) The Employment Advocate must approve the termination  
5 agreement if:  
6 (a) the application for approval of the termination agreement is  
7 made in accordance with section 170VFB; and  
8 (b) the termination agreement satisfies the requirements of  
9 section 170VFA; and  
10 (c) the Employment Advocate is satisfied that the employee  
11 genuinely consented to making the termination agreement.

12 *Approval if no disadvantage to parties*

- 13 (2) The Employment Advocate may approve the termination  
14 agreement if:  
15 (a) the only reason for not approving the termination agreement  
16 is that the Employment Advocate is not satisfied that the  
17 requirements of subsection 170VFA(2) are met; but  
18 (b) he or she is satisfied that the failure to meet those  
19 requirements has not disadvantaged, and will not  
20 disadvantage, either party to the AWA.

21 *Approval notice*

- 22 (3) If the Employment Advocate approves a termination agreement,  
23 the Employment Advocate must issue an approval notice to the  
24 employer.

25 *Refusal of approval and refusal notice*

- 26 (4) If the Employment Advocate is not required to approve the  
27 termination agreement and does not approve the termination  
28 agreement under subsection (2), the Employment Advocate must:  
29 (a) refuse to approve the termination agreement; and  
30 (b) issue a refusal notice to the employer.

1                    *Employer must give certain documents to employee*

- 2                    (5) As soon as practicable after receiving from the Employment  
3                    Advocate the approval notice or refusal notice, the employer must  
4                    give the employee with whom the termination agreement was  
5                    made a copy of:  
6                           (a) the notice; and  
7                           (b) the termination agreement (if it was approved).

8                    Note:        This subsection is a civil penalty provision (see section 170VV).

- 9                    (6) The employer must give the employee any other document  
10                    prescribed by the regulations, within the period required by the  
11                    regulations.

12                    Note:        This subsection is a civil penalty provision (see section 170VV).

13                    **Subdivision C—Termination by Commission**

14                    **170VFD Termination by Commission**

- 15                    (1) After the nominal expiry date of an AWA, the Commission may,  
16                    on application by either party, terminate the AWA if the  
17                    Commission considers that it is not contrary to the public interest  
18                    to do so.
- 19                    (2) The Commission must issue a copy of its determination to:  
20                           (a) the parties; and  
21                           (b) the Employment Advocate.
- 22                    (3) A termination under subsection (1) takes effect at the end of the  
23                    day on which the Commission issues copies of its determination, or  
24                    at such later time as is specified in the determination

25                    **Subdivision D—Termination in accordance with AWA**

26                    **170VFE Termination in accordance with the AWA**

- 27                    (1) After the nominal expiry date of an AWA, the employer or the  
28                    employee may apply, in writing, to the Employment Advocate for  
29                    approval to terminate the AWA in a manner provided for in the  
30                    AWA.

- 1 (2) As soon as practicable after making the application, the applicant  
2 must give written notice of the application to the other party to the  
3 AWA.
- 4 (3) An application must be accompanied by:  
5 (a) details of the manner provided for in the AWA to terminate  
6 the AWA; and  
7 (b) any other information that the Employment Advocate  
8 requires, by notice published in the *Gazette*, for the purpose  
9 of performing his or her functions.
- 10 (4) The termination of 2 or more AWAs may be covered by the same  
11 notice of application if:  
12 (a) the applicant is the employer; and  
13 (b) the employer is a party to all the AWAs.  
14 The terminations need not be in the same terms.
- 15 (5) A termination referred to in subsection (1) must be approved by the  
16 Employment Advocate under section 170VFF. If approved, the  
17 termination takes effect:  
18 (a) at the end of the day on which an approval notice is issued in  
19 relation to the termination; or  
20 (b) if a time for termination is specified in the application and  
21 that time is later than the time under paragraph (a)—at the  
22 time specified in the application.  
23 If the Employment Advocate refuses to approve the termination, it  
24 does not take effect.

25 **170VFF Employment Advocate must approve, or refuse to approve,**  
26 **terminations under AWAs**

27 *Approval if section 170VFE etc. satisfied*

- 28 (1) The Employment Advocate must approve an application made  
29 under section 170VFE if:  
30 (a) the application is made in accordance with section 170VFE;  
31 and  
32 (b) the applicant has notified the other party of the application;  
33 and  
34 (c) the termination is in accordance with the AWA.
-

1                    *Approval notice*

- 2                    (2) If the Employment Advocate approves the application, the  
3                    Employment Advocate must issue an approval notice to the  
4                    applicant.

5                    *Refusal of approval and refusal notice*

- 6                    (3) If the Employment Advocate is not required to approve the  
7                    termination, the Employment Advocate must:  
8                           (a) refuse to approve the termination; and  
9                           (b) issue a refusal notice to the applicant.

10                   *Applicant must give certain documents to other party*

- 11                   (4) As soon as practicable after receiving from the Employment  
12                   Advocate the approval notice or refusal notice, the applicant must  
13                   give the other party to the AWA a copy of the notice.

14                   Note:        This subsection is a civil penalty provision (see section 170VV).

- 15                   (5) The applicant must give the other party to the AWA any other  
16                   document prescribed by the regulations, within the period required  
17                   by the regulations.

18                   Note:        This subsection is a civil penalty provision (see section 170VV).

19                   **2 At the end of subsection 170VV(1)**

20                   Add:

21                          A contravention is not an offence.

22                   Note:        The heading to section 170VV is replaced by the heading “**Civil penalties**”.

23                   **3 Subsection 170VV(3)**

24                   Repeal the subsection, substitute:

- 25                   (3) An application for an order under subsection (1) that relates to an  
26                   AWA or ancillary document may be made by:  
27                          (a) a party to the AWA or ancillary document; or  
28                          (b) the Employment Advocate; or  
29                          (c) an authorised officer.

30                   **4 Subsection 170VV(4) (definition of *penalty provision*)**

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1 Repeal the definition, substitute:

2 ***penalty provision*** means:

- 3 (a) subsection 170VBA(2); or
- 4 (b) subsection 170VCE(1) or (2); or
- 5 (c) section 170VDB; or
- 6 (d) subsection 170VDC(1) or (2); or
- 7 (e) subsection 170VEB(5) or (6); or
- 8 (f) subsection 170VEI(1) or (2); or
- 9 (g) subsection 170VFC(5) or (6); or
- 10 (h) subsection 170VFF(4) or (5); or
- 11 (i) subsection 170WE(1); or
- 12 (j) subsection 170WEA(2) or (4); or
- 13 (k) subsection 170WF(1); or
- 14 (l) subsection 170WG(1) or (2); or
- 15 (m) section 170WH; or
- 16 (n) subsection 170WKD(5).

17 **5 After section 170VV**

18 Insert:

19 **170VVA Eligible court may order employer to pay underpayment to**  
20 **employee**

- 21 (1) If, in a proceeding against an employer under section 170VV, it  
22 appears to the eligible court that an employee of the employer has  
23 not been paid an amount that the employer was required to pay  
24 under the AWA, the court may order the employer to pay to the  
25 employee the amount of the underpayment.
- 26 (2) An order must not be made under subsection (1) in relation to so  
27 much of an underpayment as relates to any period more than 6  
28 years before the commencement of the proceedings.

29 **6 At the end of section 170VW**

30 Add:



1                   (3) This section does not apply to the extent that the amount of the loss  
2                             or damage has been recovered by the employee who is a party to  
3                             the AWA because of an order made under section 170VVA.

4       **7 Section 170VX**

5                   Repeal the section, substitute:

6       **170VX Compensation for shortfall in entitlements**

7                   (1) If:

8                             (a) an item in the second column of the following table applies  
9                             to an AWA; and

10                            (b) the amount (the *incorrect amount*) referred to in the  
11                            corresponding item in the third column of the table in relation  
12                            to the employee is less than the amount (the *correct amount*)  
13                            referred to in the corresponding item in the fourth column of  
14                            the table in relation to the employee;

15                   then:

16                            (c) the difference between the correct amount and the incorrect  
17                            amount is payable to the employee by the employer; and

18                            (d) the employee (or the Employment Advocate, or an authorised  
19                            officer, on the employee's behalf) is entitled to recover that  
20                            difference from the employer in an eligible court.  
21

**Compensation for shortfall in entitlements**

Item	When shortfalls can arise	Incorrect amounts	Correct amounts
1	The AWA stops operating because the employer failed to apply for approval of the AWA within the period of 21 days after the AWA date, or such longer period allowed by the Employment Advocate under subsection 170VC(3)	The total value of the entitlements to which the employee became entitled under the AWA for the period it was in operation	The employee's non-AWA entitlements for that period

**Schedule 1 AWAs**  
**Part 1 Amendments**

<b>Compensation for shortfall in entitlements</b>			
<b>Item</b>	<b>When shortfalls can arise</b>	<b>Incorrect amounts</b>	<b>Correct amounts</b>
2	The AWA stops operating because a refusal notice is issued in relation to the AWA	The total value of the entitlements to which the employee became entitled under the AWA for the period it was in operation	The employee's non-AWA entitlements for that period
3	The AWA was operating before it was approved, and the Employment Advocate approved it under subsection 170VCB(2) because the employer took action referred to in that subsection	The total value of the entitlements to which the employee became entitled under the AWA for the period it was operating before it was approved	The total value of the entitlements to which the employee would have been entitled for that period if the AWA, as given to the Employment Advocate for approval, had taken account of the action taken by the employer
4	The AWA was operating before it was approved, and the Commission approved an AWA under subsection 170VCB(5) because the employer took action referred to in that subsection	The total value of the entitlements to which the employee became entitled under the AWA for the period it was operating before it was approved	The total value of the entitlements to which the employee would have been entitled for that period if the AWA, as given to the Employment Advocate for approval, had taken account of the action taken by the employer
5	A variation agreement ceases to have effect because the employer failed to apply for approval of the variation agreement before the end of the period referred to in subsection 170VEE(2)	The total value of the entitlements to which the employee became entitled under the AWA, as varied, for the period during which the variation agreement had taken effect	The total value of the entitlements to which the employee would have been entitled for that period under the AWA before it was varied

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**Compensation for shortfall in entitlements**

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<b>Item</b>	<b>When shortfalls can arise</b>	<b>Incorrect amounts</b>	<b>Correct amounts</b>
6	A variation agreement ceases to have effect because a refusal notice is issued in relation to the variation agreement	The total value of the entitlements to which the employee became entitled under the AWA, as varied, for the period during which the variation agreement had taken effect	The total value of the entitlements to which the employee would have been entitled for that period under the AWA before it was varied
7	A variation agreement took effect before it was approved, and the Employment Advocate approved it under subsection 170VEG(2) because the employer took action referred to in that subsection	The total value of the entitlements to which the employee became entitled under the AWA, as varied, for the period during which the variation had taken effect	The total value of the entitlements to which the employee would have been entitled for that period if the variation agreement, as given to the Employment Advocate for approval, had taken account of the action taken by the employer
8	A variation agreement took effect before it was approved, and the Commission approved it under paragraph 170VEG(5)(b) because the employer took action referred to in that paragraph	The total value of the entitlements to which the employee became entitled under the AWA, as varied, for the period during which the variation had taken effect	The total value of the entitlements to which the employee would have been entitled for that period if the variation agreement, as given to the Employment Advocate for approval, had taken account of the action taken by the employer

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**Schedule 1 AWAs**  
**Part 1 Amendments**

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<b>Compensation for shortfall in entitlements</b>			
<b>Item</b>	<b>When shortfalls can arise</b>	<b>Incorrect amounts</b>	<b>Correct amounts</b>
9	The approval of the AWA is void	The total value of the entitlements to which the employee would have been entitled under the AWA (if it was not void) for the period during which it was treated as being in operation	The employee's non-AWA entitlements for that period
10	The Employment Advocate revokes an approval under section 170WKD	The total value of the entitlements to which the employee was entitled under the AWA for the period during which the AWA, or the agreement to which approval related, had effect	The employee's non-AWA entitlements for that period

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(2) In this section:

*non-AWA entitlements*, of an employee in relation to a particular period, means the total value of the entitlements to which the employee would have been entitled for that period (if the AWA in question had not been made) under:

- (a) if the employment to which the AWA relates is covered by a certified agreement—that certified agreement; or
- (b) if that employment is not covered by a certified agreement but is covered by one or more relevant awards within the meaning of Part VIE—that relevant award or those relevant awards; or
- (c) if that employment is not covered by a certified agreement and is not covered by any such relevant award—the one or more designated awards (within the meaning of that Part) that cover that employment.

**8 At the end of subsection 170WE(1)**

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1 Add:

2 Note: This subsection is a civil penalty provision (see section 170VV).

3 **9 Before section 170WF**

4 Insert in Division 9:

5 **170WEA Bargaining agents**

6 (1) An employer or employee may appoint a person to be his or her  
7 bargaining agent in relation to the making, approval, variation or  
8 termination of an AWA. The appointment must be made in writing.

9 (2) Subject to subsection (3), an employer or employee must not refuse  
10 to recognise a bargaining agent duly appointed by the other party  
11 for the purposes of subsection (1).

12 Note: This subsection is a civil penalty provision (see section 170VV).

13 (3) Subsection (2) does not apply if the person refusing has not been  
14 given a copy of the bargaining agent's instrument of appointment  
15 before the refusal.

16 (4) An employer or employee must not coerce, or attempt to coerce,  
17 the other party:

18 (a) to appoint, or not to appoint, a particular person as an  
19 authorised bargaining agent; or

20 (b) to terminate the appointment of an authorised bargaining  
21 agent.

22 Note: This subsection is a civil penalty provision (see section 170VV).

23 (5) In this section:

24 *person* includes a group of persons.

25 **10 At the end of subsection 170WF(1)**

26 Add:

27 Note: This subsection is a civil penalty provision (see section 170VV).

28 **11 At the end of subsection 170WG(1)**

29 Add:

30 Note: This subsection is a civil penalty provision (see section 170VV).

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1 **12 At the end of subsection 170WG(2)**

2 Add:

3 Note: This subsection is a civil penalty provision (see section 170VV).

4 **13 Section 170WH**

5 Repeal the section, substitute:

6 **170WH Information must not be false or misleading**

7 A person must not give the Employment Advocate information for  
8 the purposes of this Part that the person knows, or ought  
9 reasonably to know, is false or misleading.

10 Note: This section is a civil penalty provision (see section 170VV).

11 **14 Subsection 170WHA(1)**

12 Omit “filing,”.

13 **15 Subsection 170WI(1)**

14 Omit “filed with”, substitute “given to”.

15 **16 Paragraph 170WI(2)(a)**

16 Omit “filed”, substitute “given to the Employment Advocate”.

17 **17 Paragraph 170WI(2)(c)**

18 Omit “a filing receipt,”, substitute “an”.

19 **18 After section 170WKA**

20 Insert:

21 **170WKB President may vary the referral protocol**

22 (1) The President may vary the referral protocol.

23 (2) However, the terms of the variation must have the concurrence of  
24 the Employment Advocate.

1 **170WKC Content of notices given by Employment Advocate**

- 2 (1) If the Employment Advocate gives an approval notice, referral  
3 notice or refusal notice under this Part, there must be identified in  
4 the notice the relevant or designated award that applies to the  
5 AWA or variation agreement to which the notice relates.
- 6 (2) In this section:
- 7 *relevant or designated award* means the relevant or designated  
8 award that is used when applying the no-disadvantage test set out  
9 in Part VIE.

10 **170WKD Employment Advocate may revoke approval of AWAs etc.**

- 11 (1) The Employment Advocate may revoke:
- 12 (a) an approval by the Employment Advocate of an AWA,  
13 extension agreement, variation agreement or termination  
14 agreement; or
- 15 (b) a refusal by the Employment Advocate to approve an AWA,  
16 extension agreement, variation agreement or termination  
17 agreement.
- 18 (2) If the Employment Advocate revokes an approval:
- 19 (a) the AWA stops operating; or
- 20 (b) the extension agreement or variation agreement ceases to  
21 have effect; or
- 22 (c) the termination agreement ceases to have effect, and the  
23 AWA to which it relates starts operating again;
- 24 on and from the day specified in the instrument of revocation. The  
25 day may be the day of the revocation or any later day.
- 26 (3) If the Employment Advocate revokes a refusal to approve, the  
27 Employment Advocate must deal with the application to which the  
28 refusal related as if the refusal had not occurred.
- 29 (4) If the Employment Advocate revokes an approval or a refusal to  
30 approve, the Employment Advocate must issue a notice of the  
31 revocation to the employer who is a party to the AWA or the  
32 agreement.

**Schedule 1 AWAs**  
**Part 1 Amendments**

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1                   (5) As soon as practicable after receiving the notice from the  
2                   Employment Advocate, the employer must give the employee with  
3                   whom the AWA or agreement was made a copy of the notice.

4                   Note:        This subsection is a civil penalty provision (see section 170VV).

5                   **19 Paragraph 170WL(d)**

6                   Repeal the paragraph.



1

2 **Part 2—Application and saving provisions**

3 **20 Application of items 1, 4, 7, 9 and 13 to 18**

4 The amendments made by items 1, 4, 7, 9 and 13 to 18 apply to AWAs,  
5 extension agreements, variation agreements and termination agreements  
6 made after the commencement of this Schedule.

7 **21 Application of items 3, 5 and 6**

8 The amendments made by items 3, 5 and 6 apply to AWAs, extension  
9 agreements, variation agreements and termination agreements whether  
10 made before, on or after the commencement of this Schedule.

11 **22 Saving—AWAs**

- 12 (1) This item applies to an AWA if the AWA:  
13 (a) was approved under section 170VPB or 170VPG of the  
14 *Workplace Relations Act 1996* as in force immediately before  
15 the commencement of this Schedule; and  
16 (b) was in force immediately before that commencement.
- 17 (2) The AWA has effect, after that commencement, as if it had been  
18 approved under section 170VCB of the amended Act.

19 **23 Saving—extension agreements**

- 20 (1) This item applies to an extension agreement for an AWA if:  
21 (a) the extension agreement was approved under  
22 section 170VPD of the *Workplace Relations Act 1996* as in  
23 force immediately before the commencement of this  
24 Schedule; and  
25 (b) the AWA was in force immediately before that  
26 commencement.
- 27 (2) The extension agreement has effect, after that commencement, as if it  
28 had been approved under section 170VEB of the amended Act.

29 **24 Saving—variation agreements**

- 30 (1) This item applies to a variation agreement in relation to an AWA:
-

**Schedule 1 AWAs**

**Part 2 Application and saving provisions**

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- 1 (a) if the variation agreement was approved under  
2 section 170VPC or 170VPH of the *Workplace Relations Act*  
3 *1996* as in force immediately before the commencement of  
4 this Schedule; and  
5 (b) the AWA was in force immediately before that  
6 commencement.
- 7 (2) The variation agreement has effect, after that commencement, as if it  
8 had been approved under section 170VEG of the amended Act.

9 **25 Saving—termination agreements**

- 10 (1) This item applies to a termination agreement for an AWA if:  
11 (a) the termination agreement was approved under  
12 section 170VPD of the *Workplace Relations Act 1996* as in  
13 force immediately before the commencement of this  
14 Schedule; and  
15 (b) the AWA was in force immediately before that  
16 commencement.
- 17 (2) The termination agreement has effect, after that commencement, as if it  
18 had been approved under section 170VFC of the amended Act.

19 **26 Saving—regulations made for purposes of former**  
20 **sections 170VG and 170VR**

- 21 If:  
22 (a) regulations were made for the purposes of the former  
23 provision referred to in column 2 of the table; and  
24 (b) the regulations were in force immediately before the  
25 commencement of this Schedule;
- 26 the regulations have effect, after that commencement, as if they had  
27 been made for the purposes of the new provision referred to in column  
28 3.

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**Regulations continue to have effect**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Former provision</b>	<b>New provision</b>
1	subsection 170VG(1)	subsection 170VBB(1)
2	subsection 170VG(3)	subsection 170VBB(2)

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**Regulations continue to have effect**

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Column 1 Item	Column 2 Former provision	Column 3 New provision
3	subsection 170VR(4)	subsection 170VDA(4)

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1     **27 Saving—Gazette notices**

2             If:

- 3                     (a) a notice was published in the *Gazette* for the purposes of the  
4                             former provision referred to in column 2 of the table; and  
5                     (b) the notice was in force immediately before the  
6                             commencement of this Schedule;

7             the notice has effect, after that commencement, as if it had been  
8             published in the *Gazette* for the purposes of the new provision referred  
9             to in column 3.

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**Gazette notices continue to have effect**

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Column 1 Item	Column 2 Former provision	Column 3 New provision
1	paragraph 170VO(1)(c)	paragraph 170VC(4)(b)
2	paragraph 170VO(3)(c)	paragraph 170VEE(3)(b)
3	paragraph 170VO(4)(b)	paragraph 170VEA(2)(b)
4	paragraph 170VO(5)(b)	paragraph 170VFB(3)(b)
5	paragraph 170VO(6)(b)	paragraph 170VFE(3)(b)

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11     **28 Saving—prescribed conditions**

12     (1)     This item applies to conditions identified by regulations if:

- 13                     (a) the regulations were made for the purposes of the definition  
14                             of **prescribed conditions** in subsection 170VR(5) of the  
15                             *Workplace Relations Act 1996* as in force immediately before  
16                             the commencement of this Schedule; and  
17                     (b) the regulations were in force immediately before that  
18                             commencement.

19     (2)     The regulations have effect, after that commencement, as if they had  
20             been made for the purposes of the definition of **prescribed conditions** in  
21             subsection 170VDA(5) of the amended Act.

1       **29 Saving—appointment of bargaining agent**

2       (1)       This item applies to an appointment of a bargaining agent if:

3               (a) the appointment was made under subsection 170VK(1) of the  
4               *Workplace Relations Act 1996* as in force immediately before  
5               the commencement of this Schedule; and

6               (b) the appointment was in force immediately before that  
7               commencement.

8       (2)       The appointment has effect, after that commencement, as if it had been  
9       made under subsection 170WEA(1) of the amended Act.

10       **30 Variations of the section 170VPE protocol**

11               Any purported variations that the President purported to make, before  
12               the commencement of this Schedule, to the protocol established under  
13               section 170VPE as in force before that commencement are taken to  
14               have had effect accordingly.

15       **31 Definitions**

16               In this Part:

17               *amended Act* means the *Workplace Relations Act 1996* as amended by  
18               this Schedule.

19               *former provision* means a provision of the *Workplace Relations Act*  
20               *1996* as in force immediately before the commencement of this  
21               Schedule.

22               *new provision* means a provision of the *Workplace Relations Act 1996*  
23               as in force immediately after the commencement of this Schedule.

1  
2 **Schedule 2—Certified agreements**

3 **Part 1—Amendments**

4 *Workplace Relations Act 1996*

5 **1A Section 170LD**

6 Repeal the section, substitute:

7 **170LD Nominal expiry date**

8 For the purposes of this Part, the *nominal expiry date* of a certified  
9 agreement is:

- 10 (a) unless paragraph (b) or (c) applies—the date specified in the  
11 agreement as its nominal expiry date; or  
12 (b) unless paragraph (c) applies—that date as extended or further  
13 extended under section 170MC; or  
14 (c) the date taken under section 170MCA to be the nominal  
15 expiry date of the agreement.

16 **1B At the end of Division 1 of Part VIB**

17 Add:

18 **170LGA Extended agreement**

19 For the purposes of this Part, an *extended agreement* is an  
20 agreement that:

- 21 (a) is made in accordance with Division 2 or 3 (other than  
22 section 170LL); and  
23 (b) specifies a nominal expiry date that is more than 3 years after  
24 the date on which the agreement comes into operation but not  
25 more than 5 years after that date; and  
26 (c) states that it is made as an extended agreement.

27 **1 Paragraph 170LJ(3)(a)**

28 Repeal the paragraph, substitute:

- 29 (a) all the persons whose employment will be subject to the  
30 agreement, and who are employed on the day 14 days before

- 1 approval is given, either have, or have ready access to, the  
2 agreement, in writing, at least 14 days before that approval is  
3 given; and  
4 (aa) any person first employed less than 14 days before approval  
5 is given and whose employment will be subject to the  
6 agreement, either has, or has ready access to, the agreement,  
7 in writing, before that approval is given; and

8 **2 After subsection 170LJ(3)**

9 Insert:

- 10 (3A) The employer must, within the period of 7 days beginning on the  
11 day (the *relevant day*) on which the agreement is approved, take  
12 reasonable steps to inform each person whose employment will be  
13 subject to the agreement that the person may, no later than 28 days  
14 after the relevant day, request the Commission to hold a hearing in  
15 relation to whether the agreement should be certified.

16 **3 Subsection 170LK(2)**

17 Repeal the subsection, substitute:

- 18 (2) The employer must take reasonable steps to ensure that:  
19 (a) all the persons whose employment will be subject to the  
20 agreement, and who are employed on the day 14 days before  
21 the agreement is made, have at least 14 days' written notice  
22 of the intention to make the agreement; and  
23 (b) any person whose employment will be subject to the  
24 agreement, and who is first employed less than 14 days  
25 before the agreement is made, has written notice of the  
26 intention to make the agreement before the agreement is  
27 made; and  
28 (c) before the agreement is made, the terms of the agreement are  
29 explained to all the persons.

30 The agreement must not be made before the 14 days mentioned in  
31 paragraph (a) have passed.

32 **4 Subsection 170LK(7)**

33 Repeal the subsection, substitute:

1 (7) The employer must, within the period of 7 days beginning on the  
2 day (the *relevant day*) on which the agreement is made, take  
3 reasonable steps to inform each person whose employment will be  
4 subject to the agreement that the person may, no later than 28 days  
5 after the relevant day, request the Commission to hold a hearing in  
6 relation to whether the agreement should be certified.

7 **5 Subsection 170LK(8)**

8 Omit “subsections (2), (3), (5) and (7)”, substitute “subsections (2), (3)  
9 and (5)”.

10 **6 At the end of section 170LK**

11 Add:

12 Note: The Commission may still certify an agreement if those steps are not  
13 taken again: see subsection 170LT(11).

14 **7 Paragraph 170LR(2)(a)**

15 Repeal the paragraph, substitute:

16 (a) all the persons whose employment will be subject to the  
17 agreement, and who are employed on the day 14 days before  
18 approval is given, either have, or have ready access to, the  
19 agreement, in writing, at least 14 days before that approval is  
20 given; and

21 (aa) any person first employed less than 14 days before approval  
22 is given and whose employment will be subject to the  
23 agreement, either has, or has ready access to, the agreement,  
24 in writing, before that approval is given; and

25 **8 At the end of section 170LR**

26 Add:

27 (3) The employer must, within the period of 7 days beginning on the  
28 day (the *relevant day*) on which the agreement is approved, take  
29 reasonable steps to inform each person whose employment will be  
30 subject to the agreement that the person may, no later than 28 days  
31 after the relevant day, request the Commission to hold a hearing in  
32 relation to whether the agreement should be certified.

33 **8A After paragraph 170LT(3)(b)**

34 Insert:

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1                   and (c) the agreement is not an extended agreement;

2           **9 Subsection 170LT(7)**

3                   Omit “paragraph 170LJ(3)(b), subsection 170LK(7) or paragraph  
4                   170LR(2)(b)”, substitute “paragraph 170LJ(3)(b), 170LK(2)(c) or  
5                   170LR(2)(b)”.

6           **9A Subsection 170LT(10)**

7                   Omit all the words from and including “cannot be”, substitute:  
8                   cannot be:

- 9                   (a) if the agreement is an extended agreement—more than 5  
10                   years after the date on which the agreement will come into  
11                   operation; or  
12                   (b) otherwise—more than 3 years after the date on which the  
13                   agreement will come into operation.

14           **10 At the end of section 170LT**

15                   Add:

- 16                   (11) Subsection 170LK(8) (which deals with variations of proposed  
17                   agreements) does not prevent the Commission from certifying an  
18                   agreement if:  
19                   (a) the proposed agreement was varied as mentioned in that  
20                   subsection; and  
21                   (b) the requirements of that subsection were not satisfied; and  
22                   (c) the Commission is satisfied that no person whose  
23                   employment would be covered by the proposed agreement  
24                   suffered detriment as a result of that failure.

25           **10A At the end of section 170LU**

26                   Add:

- 27                   (9) Despite section 170LT, the Commission must refuse to certify an  
28                   extended agreement unless it is satisfied that:  
29                   (a) the agreement’s nominal expiry date is appropriate in the  
30                   circumstances; and  
31                   (b) the agreement’s nominal expiry date is in the interests of the  
32                   employer and the employees who will be bound by the  
33                   agreement; and



- 1 (c) the agreement contains a statement setting out the right of a  
2 party to the agreement to apply for a reassessment of whether  
3 the agreement passes the no-disadvantage test.

4 Note: Subsection 170MCA(2) sets out the right of a party to apply for  
5 such a reassessment.

6 **11 After section 170LV**

7 Insert:

8 **170LVA Hearings not required**

- 9 (1) The Commission must make a decision whether or not to certify an  
10 agreement without holding a hearing unless:  
11 (a) the Commission is not satisfied that it can make that decision  
12 with the information available to it; or  
13 (b) any of the following persons requests the Commission, in  
14 accordance with subsection (2), to hold such a hearing and  
15 the Commission is satisfied that there are reasonable grounds  
16 for doing so:  
17 (i) the employer;  
18 (ii) a person whose employment will be subject to the  
19 agreement;  
20 (iii) if the agreement is made in accordance with  
21 section 170LJ or 170LL or Division 3—one or more  
22 organisations of employees that made the agreement  
23 with the employer;  
24 (iv) if the agreement is made in accordance with  
25 section 170LK—an organisation of employees that has  
26 notified the Commission, and the employer, in writing  
27 that it wants to be bound by the agreement;  
28 (v) a person prescribed by the regulations.
- 29 (2) The request must be made no later than 28 days after:  
30 (a) if the agreement is made in accordance with section 170LJ—  
31 the day on which the agreement is approved as mentioned in  
32 subsection 170LJ(2); or  
33 (b) if the agreement is made in accordance with section 170LK  
34 or 170LL—the day on which the agreement is made; or

- 1 (c) if the agreement is made in accordance with Division 3—the  
2 day on which the agreement is approved as mentioned in  
3 subsection 170LR(1).

4 **11A Division 7 of Part VIB (heading)**

5 Repeal the heading, substitute:

6 **Division 7—Changes to nominal expiry dates**

7 **12 Subsection 170MC(1)**

8 Omit “certified agreement”, substitute “certified agreement made in  
9 accordance with section 170LJ or 170LK or Division 3”.

10 **13 Paragraphs 170MC(1)(a) and (b)**

11 Repeal the paragraphs, substitute:

- 12 (a) if the agreement was made in accordance with section 170LJ  
13 or Division 3—the employer and the one or more  
14 organisations bound by the agreement; or  
15 (b) if the agreement was made in accordance with  
16 section 170LK—the employer;

17 **14 After subsection 170MC(2)**

18 Insert:

- 19 (2A) If one or more organisations are bound by an agreement made in  
20 accordance with section 170LK, the Commission must give each  
21 organisation an opportunity to make submissions before approving  
22 the extension.
- 23 (2B) However, such an organisation may only make a submission if the  
24 organisation has at least one member:
- 25 (a) whose employment is subject to the agreement; and  
26 (b) whose industrial interests the organisation is entitled to  
27 represent in relation to work that is subject to the agreement;  
28 and  
29 (c) who requested the organisation to make a submission.

30 **14A After subsection 170MC(3)**

31 Insert:

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1 (3A) The Commission must make a decision whether or not to extend an  
2 agreement without holding a hearing unless:

3 (a) the Commission is not satisfied that it can make that decision  
4 with the information available to it; or

5 (b) any of the following persons requests the Commission, no  
6 later than 28 days after the day on which the extension  
7 occurred, to hold such a hearing and the Commission is  
8 satisfied that there are reasonable grounds for doing so:

9 (i) the employer;

10 (ii) an employee whose employment is subject to the  
11 agreement;

12 (iii) one or more organisations bound by the agreement;

13 (iv) a person prescribed by the regulations.

14 **15 After subsection 170MC(4)**

15 Insert:

16 (4A) The employer must, within the period of 7 days beginning on the  
17 extension day, take reasonable steps to inform each person whose  
18 employment is subject to the agreement on the extension day that  
19 the person may, no later than 28 days after the extension day,  
20 request the Commission to hold a hearing in relation to whether the  
21 extension should be approved.

22 (4B) In subsection (4A), *extension day* means the day on which the  
23 employer and the one or more organisations bound by the  
24 agreement, or the employer, extended the nominal expiry date of  
25 the agreement under subsection (1).

26 **16 Paragraph 170MC(5)(a)**

27 Repeal the paragraph, substitute:

28 (a) that is an extended agreement; or

29 **16A After section 170MC**

30 Insert:

31 **170MCA Bringing forward the nominal expiry date if an extended**  
32 **agreement fails the no-disadvantage test**

33 (1) If:

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- 1 (a) a certified agreement is an extended agreement; and  
2 (b) an application has been made to the Commission under  
3 subsection (2) for a reassessment of whether the agreement  
4 passes the no-disadvantage test; and  
5 (c) on conducting the reassessment, the Commission finds that  
6 the agreement does not pass the no-disadvantage test; and  
7 (d) the agreement has not, before the end of the period of 3  
8 months after the Commission makes the finding, been varied  
9 so that it passes the no-disadvantage test; and  
10 (e) the day that would, apart from this section, be the nominal  
11 expiry date of the agreement is after that period of 3 months;  
12 the nominal expiry date of the agreement is taken to be the last day  
13 of that period of 3 months.

14 Note: This subsection in effect gives 3 options to the parties to an extended  
15 agreement that is found not to pass the no-disadvantage test. They  
16 may vary the agreement appropriately under section 170MD,  
17 terminate the agreement under Division 7A or allow the agreement to  
18 reach its new nominal expiry date under this section.

- 19 (2) A party to the agreement may apply to the Commission for a  
20 reassessment of whether the agreement passes the no-disadvantage  
21 test if:  
22 (a) the application is made more than 3 years after the date on  
23 which the agreement came into operation, but before the  
24 nominal expiry date of the agreement; and  
25 (b) neither the party, nor any other party to the agreement, has  
26 previously made an application under this subsection in  
27 relation to the agreement.

28 **16B Before section 170MD**

29 Insert:

30 **Division 7A—Varying or terminating certified agreements**

31 **17 Paragraphs 170MD(1)(a) and (b)**

32 Repeal the paragraphs, substitute:

- 33 (a) if the agreement was made in accordance with section 170LJ  
34 or 170LL or Division 3—the employer and the one or more  
35 organisations bound by the agreement; or

- 1 (b) if the agreement was made in accordance with  
2 section 170LK—the employer;

3 **18 After subsection 170MD(2)**

4 Insert:

5 (2A) If one or more organisations are bound by an agreement made in  
6 accordance with section 170LK, the Commission must give each  
7 organisation an opportunity to make submissions before approving  
8 the variation.

9 (2B) However, such an organisation may only make a submission if the  
10 organisation has at least one member:

11 (a) whose employment is, or will be, subject to the agreement;  
12 and

13 (b) whose industrial interests the organisation is entitled to  
14 represent in relation to work that is, or will be, subject to the  
15 agreement; and

16 (c) who requested the organisation to make a submission.

17 **19 After subsection 170MD(5)**

18 Insert:

19 (5A) The employer must, within the period of 7 days beginning on the  
20 variation day, take reasonable steps to inform each person whose  
21 employment is subject to the agreement on the variation day that  
22 the person may, no later than 28 days after the variation day,  
23 request the Commission to hold a hearing in relation to whether the  
24 variation should be approved.

25 (5B) In subsection (5A), *variation day* means the day on which the  
26 employer and the one or more organisations bound by the  
27 agreement, or the employer, varied the agreement under  
28 subsection (1).

29 **20 Paragraphs 170MG(1)(a) and (b)**

30 Repeal the paragraphs, substitute:

31 (a) if the agreement was made in accordance with section 170LJ  
32 or 170LL or Division 3—the employer and the one or more  
33 organisations bound by the agreement; or

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- 1 (b) if the agreement was made in accordance with  
2 section 170LK—the employer;

3 **21 After subsection 170MG(2)**

4 Insert:

- 5 (2A) If one or more organisations are bound by an agreement made in  
6 accordance with section 170LK, the Commission must give each  
7 organisation or organisations an opportunity to make submissions  
8 before approving the termination.
- 9 (2B) However, such an organisation may only make a submission if the  
10 organisation has at least one member:
- 11 (a) whose employment is subject to the agreement; and  
12 (b) whose industrial interests the organisation is entitled to  
13 represent in relation to work that is subject to the agreement;  
14 and  
15 (c) who requested the organisation to make a submission.

16 **22 At the end of section 170MG**

17 Add:

- 18 (5) The employer must, within the period of 7 days beginning on the  
19 termination day, take reasonable steps to inform each person whose  
20 employment is subject to the agreement on the termination day that  
21 the person may, no later than 28 days after the termination day,  
22 request the Commission to hold a hearing in relation to whether the  
23 termination should be approved.
- 24 (6) In subsection (5), *termination day* means the day on which the  
25 employer and the one or more organisations bound by the  
26 agreement, or the employer, terminated the agreement under  
27 subsection (1).

28 **23 Subsection 170MH(1)**

29 Repeal the subsection, substitute:

- 30 (1) Any of the persons mentioned in subsection (1A) may apply to the  
31 Commission to have a certified agreement terminated:  
32 (a) after the agreement's nominal expiry date; or

1 (b) if the Commission has found under section 170MCA that the  
2 agreement does not pass the no-disadvantage test.

3 (1A) The persons are:

4 (a) the employer; or

5 (b) a majority of the employees whose employment is subject to  
6 the agreement; or

7 (c) if the agreement was made in accordance with section 170LJ  
8 or 170LL or Division 3—an organisation of employees that  
9 is bound by the agreement and that has at least one member  
10 whose employment is subject to the agreement.

11 Note: The heading to section 170MH is altered by omitting “after nominal expiry date”.

## 12 **24 After subsection 170MH(2)**

13 Insert:

14 (2A) However, the Commission may only obtain the views of an  
15 organisation that is bound by an agreement made in accordance  
16 with section 170LK if the organisation has at least one member:

17 (a) whose employment is subject to the agreement; and

18 (b) whose industrial interests the organisation is entitled to  
19 represent in relation to work that is subject to the agreement;  
20 and

21 (c) who requested the organisation to give the Commission  
22 views about whether the agreement should be terminated.

## 23 **25 Paragraph 170MHA(2)(c)**

24 Before “an organisation”, insert “if the agreement was made in  
25 accordance with section 170LJ or 170LL or Division 3—”.

## 26 **26 After subsection 170MHA(3)**

27 Insert:

28 (3A) If one or more organisations are bound by an agreement made in  
29 accordance with section 170LK, the Commission must give each  
30 organisation an opportunity to make submissions before approving  
31 the termination.

32 (3B) However, such an organisation may only make a submission if the  
33 organisation has at least one member:

- 1 (a) whose employment is subject to the agreement; and  
2 (b) whose industrial interests the organisation is entitled to  
3 represent in relation to work that is subject to the agreement;  
4 and  
5 (c) who requested the organisation to make a submission.

6 **27 At the end of Division 7A of Part VIB**

7 Add:

8 **170MHB Hearings not required**

- 9 (1) The Commission must make a decision whether or not to vary or  
10 terminate an agreement without holding a hearing unless:  
11 (a) the Commission is not satisfied that it can make that decision  
12 with the information available to it; or  
13 (b) any of the following persons requests the Commission, in  
14 accordance with subsection (2), to hold such a hearing and  
15 the Commission is satisfied that there are reasonable grounds  
16 for doing so:  
17 (i) the employer;  
18 (ii) an employee whose employment is subject to the  
19 agreement;  
20 (iii) one or more organisations bound by the agreement;  
21 (iv) a person prescribed by the regulations.
- 22 (2) The request must be made no later than 28 days after:  
23 (b) if the agreement was varied under subsection 170MD(1)—  
24 the day on which that variation occurred; or  
25 (c) if the agreement was terminated under subsection  
26 170MG(1)—the day on which that termination occurred; or  
27 (d) if an application under subsection 170MH(1) or 170MHA(1)  
28 was made to the Commission to have the agreement  
29 terminated or to have the termination approved (as the case  
30 may be)—the day on which that termination or approval  
31 occurred.



1

2 **Part 2—Application provisions**

3 **28 Application of items 1A to 11**

4 The amendments made by items 1A to 11 apply in relation to any  
5 agreement where the application to certify the agreement is made after  
6 the commencement of this Schedule. The amendments also apply in  
7 relation to the applications to certify those agreements.

8 **29 Application of items 12 to 27**

9 The amendments made by items 12 to 27 apply to a decision made by  
10 the Commission after the commencement of this Schedule about the  
11 extension, variation or termination of a certified agreement in respect of  
12 applications for the extension, variation or termination made after that  
13 commencement.  
14

(160/02)