

2002

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Workplace Relations Amendment
(Improved Remedies for Unprotected
Action) Bill 2002**

No. , 2002

(Employment and Workplace Relations)

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

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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. Schedule 1	A single day to be fixed by Proclamation, subject to subsection (3)	

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13 repealed as set out in the applicable items in the Schedule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.

1
2 **Schedule 1—Improved remedies for**
3 **unprotected action**

4
5 ***Workplace Relations Act 1996***

6 **1 Subsection 127(3)**

7 Repeal the subsection, substitute:

8 (3) The Commission must, as far as practicable, hear and determine an
9 application for an order under subsection (1) within 48 hours.

10 (3A) The Commission may make an interim order directing that
11 industrial action stop or not occur if:

12 (a) an application for an order has been made under
13 subsection (1) in respect of the industrial action; and

14 (b) the Commission:

15 (i) is satisfied that the industrial action is not, or would not
16 be, protected action; or

17 (ii) has not formed a view in that regard; and

18 (c) the Commission is satisfied:

19 (i) that it will be unable to determine the application within
20 48 hours of the making of the application; or

21 (ii) that the industrial action has not commenced, but is
22 likely to commence not later than 48 hours after the
23 making of the application, and that it will be unable to
24 determine the application before the industrial action
25 commences.

26 (3B) An interim order ceases to have effect if the application is
27 determined.

28 (3C) In considering whether or not to make an interim order under
29 subsection (3A), the Commission must have regard to, but is not
30 limited by, the following:

31 (a) the damage to industry that will be caused by the industrial
32 action;

33 (b) the time that will be needed to determine the application;

- 1 (c) whether the industrial action has escalated since the
2 application was made;
- 3 (d) whether the industrial action forms part of a sequence of
4 related industrial action that the Commission is satisfied is
5 not, or may not be, protected action;
- 6 (e) if the industrial action has not commenced—the time when it
7 is likely to commence;
- 8 (f) whether notice of the industrial action required to be given by
9 or under this Act has been given.

10 (3D) In considering whether to make an order under subsection (1) or an
11 interim order under subsection (3A), the Commission must have
12 regard to:

- 13 (a) whether a person or organisation engaging in the industrial
14 action is a person whose employment is subject to, or is an
15 organisation that is bound by, a certified agreement that has
16 not yet reached its nominal expiry date; and
- 17 (b) the undesirability of the occurrence of industrial action that is
18 not protected action.

19 Note 1: Section 170MN prohibits industrial action by a person whose
20 employment is subject to a certified agreement, or an organisation that
21 is bound by a certified agreement, before the agreement reaches its
22 nominal expiry date, and provides that any such action is not protected
23 action.

24 Note 2: Industrial action that is not protected action may also be a breach of
25 contract or may be a common law tort.

26 **2 Subsection 127(4)**

27 Omit “subsection (1)”, insert “subsections (1) and (3A)”.

28 **3 Subsection 127(5)**

29 After “subsection (1)”, insert “or (3A)”.

30 **4 After subsection 127(5)**

31 Insert:

32 (5A) An order under subsection (1) or (3A) does not apply to protected
33 action.

34 **5 Subsection 127(6)**
