

2002-2003

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Workplace Relations Amendment
(Better Bargaining) Bill 2003**

No. , 2003

(Employment and Workplace Relations)

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

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Workplace Relations Amendment*
6 (*Better Bargaining*) Act 2003.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, on the day or at the
10 time specified in column 2 of the table.
11

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. Schedules 1 to 5	The 28th day after the day on which this Act receives the Royal Assent.	

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 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

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2 **Schedule 1—Industrial action and lockouts**
3 **before expiry of agreement etc.**
4

5 ***Workplace Relations Act 1996***

6 **1 Subsection 170MN(1)**

7 Omit “, for the purpose of supporting or advancing claims against the
8 employer in respect of the employment of employees whose
9 employment is subject to the agreement or award, engage in industrial
10 action”, substitute “organise or engage in industrial action affecting the
11 employer (whether or not that action relates to a matter dealt with in the
12 agreement or award)”.

13 **2 Subsection 170MN(4)**

14 Omit “, for the purpose of supporting or advancing claims in respect of
15 the employment of employees whose employment is subject to the
16 agreement or award, lock out such an employee from his or her
17 employment”, substitute “lock out an employee whose employment is
18 subject to the agreement or award from his or her employment (whether
19 or not that lockout relates to a matter dealt with in the agreement or
20 award)”.

21 **3 Application of amendments**

22 The amendments made by this Schedule apply in relation to these
23 actions:

- 24 (a) engaging in industrial action;
25 (b) organising industrial action;
26 (c) lockouts;

27 to the extent that those actions occur on or after the commencement of
28 this Schedule.

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Schedule 2—Suspension of bargaining periods

Workplace Relations Act 1996

1 After section 170MWA

Insert:

170MWB Power of Commission to suspend bargaining period to allow for cooling-off—application by negotiating party

- (1) The Commission may, by order, suspend a bargaining period for a period specified in the order if:
 - (a) a negotiating party applies to the Commission for the bargaining period to be suspended under this section; and
 - (b) protected action is being taken in respect of the proposed agreement; and
 - (c) the Commission considers that the suspension is appropriate, having regard to:
 - (i) whether suspending the bargaining period would be beneficial to the negotiating parties because it would assist in resolving the matters at issue; and
 - (ii) the duration of the action; and
 - (iii) whether suspending the bargaining period would be contrary to the public interest or inconsistent with the objects of this Act; and
 - (iv) any other matters that the Commission considers relevant.
- (2) The period of suspension specified in the order must be a period that the Commission considers appropriate.
- (3) The Commission may, by order, extend the period of suspension by a specified period that the Commission considers appropriate if:
 - (a) a negotiating party applies to the Commission for the period of suspension to be extended; and
 - (b) the Commission considers that the extension is appropriate, having regard to:

- 1 (i) the matters referred to in paragraph (1)(c); and
2 (ii) whether the negotiating parties, during the period of
3 suspension, genuinely tried to reach an agreement.
- 4 (4) The Commission must not make an order under subsection (3)
5 extending the period of suspension if that period has previously
6 been extended.
- 7 (5) The Commission must not make an order under subsection (1) or
8 (3) unless it has given the negotiating parties the opportunity to be
9 heard.
- 10 (6) If the Commission makes an order under subsection (1) or (3), the
11 Commission must inform the negotiating parties that they may
12 voluntarily submit the matters at issue:
13 (a) to an agreed mediator for the purposes of mediation; or
14 (b) to the Commission for the purposes of conciliation.
- 15 (7) Anything done by a negotiating party or any other person in
16 respect of the proposed agreement is not protected action if it is
17 done at a time when the bargaining period is suspended.

18 **170MWC Power of Commission to suspend bargaining period—**
19 **significant harm to third party**

- 20 (1) The Commission may, by order, suspend a bargaining period for a
21 period specified in the order if:
22 (a) industrial action is being taken in respect of the proposed
23 agreement; and
24 (b) an application for the period to be suspended under this
25 section is made to the Commission by or on behalf of:
26 (i) an organisation, person or body directly affected by the
27 action (other than a negotiating party); or
28 (ii) the Minister; and
29 (c) the Commission considers that the action is threatening to
30 cause significant harm to any person (other than a negotiating
31 party); and
32 (d) the Commission considers that the suspension is appropriate,
33 having regard to:

- 1 (i) whether suspending the bargaining period would be
2 contrary to the public interest or inconsistent with the
3 objects of this Act;
4 (ii) any other matters that the Commission considers
5 relevant.
- 6 (2) For the purposes of paragraph (1)(c), in considering whether the
7 action is threatening to cause significant harm to a person, the
8 Commission may have regard to the following:
9 (a) if the person is an employee—the extent to which the action
10 affects the interests of the person as an employee;
11 (b) the extent to which the person is particularly vulnerable to
12 the effects of the action;
13 (c) the extent to which the action threatens to:
14 (i) damage the ongoing viability of a business carried on by
15 the person; or
16 (ii) disrupt the supply of goods or services to a business
17 carried on by the person; or
18 (iii) reduce the person’s capacity to fulfil a contractual
19 obligation; or
20 (iv) cause other economic loss to the person;
21 (d) any other matters that the Commission considers relevant.
- 22 (3) The period of suspension specified in the order must be a period
23 that the Commission considers appropriate.
- 24 (4) The Commission may, by order, extend the period of suspension
25 by a specified period that the Commission considers appropriate if:
26 (a) an application for the period of suspension to be extended is
27 made to the Commission by or on behalf of:
28 (i) an organisation, person or body directly affected by the
29 action (other than a negotiating party); or
30 (ii) the Minister; and
31 (b) the Commission considers that the extension is appropriate,
32 having regard to the matters referred to in paragraphs (1)(c)
33 and (d).
- 34 (5) The Commission must not make an order under subsection (4)
35 extending the period of suspension if that period has previously
36 been extended.

- 1 (6) The Commission must not make an order under subsection (1) or
2 (4) unless it has given the negotiating parties the opportunity to be
3 heard.
- 4 (7) If the Commission makes an order under subsection (1) or (4), the
5 Commission must inform the negotiating parties that they may
6 voluntarily submit the matters at issue:
7 (a) to an agreed mediator for the purposes of mediation; or
8 (b) to the Commission for the purposes of conciliation.
- 9 (8) Anything done by a negotiating party or any other person in
10 respect of the proposed agreement is not protected action if it is
11 done at a time when the bargaining period is suspended.

12 **2 Application of amendment**

13 The amendment made by item 1 applies in relation to a bargaining
14 period that begins at or after the commencement of this item.

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Schedule 3—Claims not pertaining to employment relationship

Workplace Relations Act 1996

1 After subsection 170ML(6)

Insert:

(6A) For the purposes of paragraphs (2)(e) and (3)(a), a claim is not made in respect of the proposed agreement if the claim is about a matter that does not pertain to:

- (a) if the application for certification of the proposed agreement is to be made under Division 2—the relationship mentioned in section 170LI; or
- (b) if the application for certification of the proposed agreement is to be made under Division 3—the relationship between employers and employees to whom the relevant industrial dispute or potential industrial dispute relates.

2 Application of amendment

The amendment made by item 1 applies in relation to a bargaining period that begins at or after the commencement of this item.

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Schedule 4—Protected action and related corporations

Workplace Relations Act 1996

1 After subsection 170ML(3)

7 Insert:

8 (3A) For the purposes of subsections (2) and (3), 2 or more employers
9 cannot be treated as a single employer under paragraph
10 170LB(2)(b).

2 Application of amendment

12 The amendment made by item 1 applies in relation to a bargaining
13 period that begins at or after the commencement of this item.

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2 **Schedule 5—Protected action and**
3 **involvement of non-protected persons**
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5 *Workplace Relations Act 1996*

6 **1 Section 170MM**

7 Repeal the section, substitute:

8 **170MM Industrial action must not involve persons who are not**
9 **protected for that industrial action**

10 (1) Engaging in industrial action in relation to a proposed agreement is
11 not protected action if:

- 12 (a) it is engaged in in concert with one or more persons or
13 organisations that are not protected persons for the industrial
14 action; or
15 (b) it is organised other than solely by one or more protected
16 persons for the industrial action.

17 (2) Organising industrial action in relation to a proposed agreement is
18 not protected action if:

- 19 (a) it is organised in concert with one or more persons or
20 organisations that are not protected persons for the industrial
21 action; or
22 (b) it is intended to be engaged in other than solely by one or
23 more protected persons for the industrial action.

24 (3) In this section:

25 *protected person* for industrial action in relation to a proposed
26 agreement, means:

- 27 (a) an organisation of employees that is a negotiating party to the
28 proposed agreement; or
29 (b) a member of such an organisation who is employed by the
30 employer and whose employment will be subject to the
31 proposed agreement; or
32 (c) an officer or employee of such an organisation acting in that
33 capacity; or

1 (d) an employee who is a negotiating party to the proposed
2 agreement.

3 **2 Application of amendment**

4 The amendment made by item 1 applies in relation to these actions:

5 (a) engaging in industrial action;

6 (b) organising industrial action;

7 to the extent that those actions occur on or after the commencement of
8 this Schedule.