Workplace Relations Amendment (Better Bargaining) Bill 2005

No. , 2005

(Employment and Workplace Relations)

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

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Workplace Relations Amendment (Better Bargaining) Act 2005.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
### Commencement information

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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
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<td>2. Schedules 1 to 4</td>
<td>The 28th day after the day on which this Act receives the Royal Assent.</td>
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1. Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

2. (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### Schedule(s)

3. Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Industrial action and lockouts before expiry of agreement etc.

Workplace Relations Act 1996

1 Subsection 170MN(1)
Omit “, for the purpose of supporting or advancing claims against the employer in respect of the employment of employees whose employment is subject to the agreement or award, engage in industrial action”, substitute “organise or engage in industrial action affecting the employer (whether or not that action relates to a matter dealt with in the agreement or award)”.

2 Subsection 170MN(4)
Omit “, for the purpose of supporting or advancing claims in respect of the employment of employees whose employment is subject to the agreement or award, lock out such an employee from his or her employment”, substitute “lock out an employee whose employment is subject to the agreement or award from his or her employment (whether or not that lockout relates to a matter dealt with in the agreement or award)”.

3 Application of amendments
The amendments made by this Schedule apply in relation to these actions:

   (a) engaging in industrial action;
   (b) organising industrial action;
   (c) lockouts;

to the extent that those actions occur on or after the commencement of this Schedule.
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:
(i) the matters referred to in paragraph (1)(c); and
(ii) whether the negotiating parties, during the period of
      suspension, genuinely tried to reach an agreement.

(4) The Commission must not make an order under subsection (3)
      extending the period of suspension if that period has previously
      been extended.

(5) The Commission must not make an order under subsection (1) or
      (3) unless it has given the negotiating parties the opportunity to be
      heard.

(6) If the Commission makes an order under subsection (1) or (3), the
      Commission must inform the negotiating parties that they may
      voluntarily submit the matters at issue:
      (a) to an agreed mediator for the purposes of mediation; or
      (b) to the Commission for the purposes of conciliation.

(7) Anything done by a negotiating party or any other person in
      respect of the proposed agreement is not protected action if it is
      done at a time when the bargaining period is suspended.

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

(1) The Commission may, by order, suspend a bargaining period for a
      period specified in the order if:
      (a) industrial action is being taken in respect of the proposed
          agreement; and
      (b) an application for the period to be suspended under this
          section is made to the Commission by or on behalf of:
          (i) an organisation, person or body directly affected by the
              action (other than a negotiating party); or
          (ii) the Minister; and
      (c) the Commission considers that the action is threatening to
          cause significant harm to any person (other than a negotiating
          party); and
      (d) the Commission considers that the suspension is appropriate,
          having regard to:
(i) whether suspending the bargaining period would be 
   contrary to the public interest or inconsistent with the 
   objects of this Act; and 
(ii) any other matters that the Commission considers 
   relevant.

(2) For the purposes of paragraph (1)(c), in considering whether the 
action is threatening to cause significant harm to a person, the 
Commission may have regard to the following:
(a) if the person is an employee—the extent to which the action 
affects the interests of the person as an employee; 
(b) the extent to which the person is particularly vulnerable to 
the effects of the action; 
(c) the extent to which the action threatens to:
   (i) damage the ongoing viability of a business carried on by 
   the person; or 
   (ii) disrupt the supply of goods or services to a business 
   carried on by the person; or 
   (iii) reduce the person’s capacity to fulfil a contractual 
   obligation; or 
   (iv) cause other economic loss to the person; 
   (d) any other matters that the Commission considers relevant.

(3) The period of suspension specified in the order must be a period 
that the Commission considers appropriate.

(4) The Commission may, by order, extend the period of suspension 
by a specified period that the Commission considers appropriate if:
(a) an application for the period of suspension to be extended is 
   made to the Commission by or on behalf of:
   (i) an organisation, person or body directly affected by the 
   action (other than a negotiating party); or 
   (ii) the Minister; and 
(b) the Commission considers that the extension is appropriate, 
   having regard to the matters referred to in paragraphs (1)(c) 
   and (d).

(5) The Commission must not make an order under subsection (4) 
extending the period of suspension if that period has previously 
been extended.
(6) The Commission must not make an order under subsection (1) or (4) unless it has given the negotiating parties the opportunity to be heard.

(7) If the Commission makes an order under subsection (1) or (4), the Commission must inform the negotiating parties that they may voluntarily submit the matters at issue:
   (a) to an agreed mediator for the purposes of mediation; or
   (b) to the Commission for the purposes of conciliation.

(8) Anything done by a negotiating party or any other person in respect of the proposed agreement is not protected action if it is done at a time when the bargaining period is suspended.

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.
Schedule 3—Protected action and related corporations

Workplace Relations Act 1996

1 After subsection 170ML(3)
   Insert:

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

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.
Schedule 4—Protected action and involvement of non-protected persons

Workplace Relations Act 1996

1 Section 170MM

Repeal the section, substitute:

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

(1) Engaging in industrial action in relation to a proposed agreement is not protected action if:
   (a) it is engaged in in concert with one or more persons or organisations that are not protected persons for the industrial action; or
   (b) it is organised other than solely by one or more protected persons for the industrial action.

(2) Organising industrial action in relation to a proposed agreement is not protected action if:
   (a) it is organised in concert with one or more persons or organisations that are not protected persons for the industrial action; or
   (b) it is intended to be engaged in other than solely by one or more protected persons for the industrial action.

(3) In this section:

protected person for industrial action in relation to a proposed agreement, means:
   (a) an organisation of employees that is a negotiating party to the proposed agreement; or
   (b) a member of such an organisation who is employed by the employer and whose employment will be subject to the proposed agreement; or
   (c) an officer or employee of such an organisation acting in that capacity; or
Schedule 4  Protected action and involvement of non-protected persons

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

2  Application of amendment
3
The amendment made by item 1 applies in relation to these actions:
4
(a) engaging in industrial action;
5
(b) organising industrial action;
6
to the extent that those actions occur on or after the commencement of this Schedule.