



# Australian Industrial Relations Commission Amendment Rules 2008 (No. 1)<sup>1</sup>

## Select Legislative Instrument 2008 No. 73

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I, GEOFFREY MICHAEL GIUDICE, President of the Australian Industrial Relations Commission, having consulted with the members of the Commission, make the following Rules under the *Workplace Relations Act 1996*.

Dated 6 May 2008

G.M. GIUDICE  
President of the Australian Industrial Relations Commission

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**1 Name of Rules**

These Rules are the *Australian Industrial Relations Commission Amendment Rules 2008 (No. 1)*.

**2 Commencement**

These Rules commence on the day after they are registered.

**3 Amendment of *Australian Industrial Relations Commission Rules 2007***

Schedule 1 amends the *Australian Industrial Relations Commission Rules 2007*.

**Schedule 1 Amendments**

(rule 3)

**[1] Rule 3, definition of *OHS (CE) Act***

*substitute*

*OHS Act* means the *Occupational Health and Safety Act 1991*.

**[2] Subrule 30 (1)**

*substitute*

- (1) An application under subsection 643 (1) of the Act must be made in accordance with Form R27.
- (1A) An application by a trade union under subsection 643 (3) of the Act must be made in accordance with Form R27A.
- (1B) An application by a trade union, or an officer or employee of the trade union, under subsection 643 (4) of the Act must be made in accordance with Form R27A.

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**[3] After Part 11**

*insert*

**Part 11A Collective Agreements**

**54A Termination of collective agreement after nominal expiry date**

- (1) An application under section 397A of the Act to have a collective agreement terminated must be in accordance with Form R48A.
- (2) If the application is made by an appointed representative of a majority of the employees whose employment is subject to the agreement, the application must be accompanied by a statutory declaration, made by the representative, that states the facts on the basis of which the Commission can be satisfied that the representative:
  - (a) has been appointed by the employees concerned; and
  - (b) is acting in accordance with their direction.
- (3) On the Commission fixing a time and place for the hearing of the application, a Registrar must give a copy of the application, and the completed notice of hearing, to the applicant.
- (4) The applicant must serve a copy of the application and of the completed notice of hearing on the other parties bound by the collective agreement.

**[3A] Part 12, heading**

*substitute*

**Part 12 Extension, Variation and Termination of Pre-Reform Instruments**

**[4] Rule 55**

*substitute*

**55 Variation of pre-reform certified agreement on application of person bound by the agreement**

- (1) An application for an order under subsection 170MD (6) of the pre-reform Act, as continued in force under paragraph 2 (1) (i) or 13 (1) (k) of Schedule 7 to the Act, to vary a pre-reform certified agreement must be in accordance with Form R49.
- (2) An application for an order under paragraph 2A (1) (b) of Schedule 7 to the Act to vary a pre-reform certified agreement must be in accordance with Form R49A.
- (3) A Registrar must, if and as directed by the Commission, give notice of the time and place of any hearing of the application to:
  - (a) the parties bound by the pre-reform certified agreement; and
  - (b) such other persons subject to the agreement, in such manner as the Commission directs.

**55A Extension of pre-reform certified agreement on application of person bound by the agreement**

- (1) An application for an order under paragraph 2A (1) (a) of Schedule 7 to the Act to extend the nominal expiry date of a pre-reform certified agreement must be in accordance with Form R49B.
- (2) A Registrar must, if and as directed by the Commission, give notice of the time and place of any hearing of the application to:
  - (a) the parties bound by the pre-reform certified agreement; and
  - (b) such other persons subject to the agreement, in such manner as the Commission directs.

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**[5] After rule 59**

*insert*

**59A Termination of an old IR agreement**

- (1) An application under clause 29A of Schedule 7 to the Act for an old IR agreement to be terminated must be:
  - (a) in accordance with Form R53A; and
  - (b) accompanied by a written statement by each party to the old IR agreement agreeing to the termination.
- (2) A Registrar must, if and as directed by the Commission, give notice of the time and place of any hearing of the application to:
  - (a) the parties bound by the pre-reform certified agreement; and
  - (b) such other persons subject to the agreement, in such manner as the Commission directs.

**[6] After rule 61**

*insert in Part 13*

**61A Extension of a preserved collective State Agreement on application of person bound by the agreement**

- (1) An application for an order under paragraph 16A (1) (a) of Schedule 8 to the Act to extend the nominal expiry date of a preserved collective State agreement must be in accordance with Form R55A.
- (2) A Registrar must, if and as directed by the Commission, give notice of the time and place of any hearing of the application to:
  - (a) the parties bound by the preserved collective State agreement; and
  - (b) such other persons subject to the agreement, in such manner as the Commission directs.

**61B Variation of a preserved collective State Agreement on application of person bound by the agreement**

- (1) An application to vary a preserved collective State agreement under paragraph 16A (1) (b) of Schedule 8 to the Act must be in accordance with Form R55B.
- (2) A Registrar must, if and as directed by the Commission, give notice of the time and place of any hearing of the application to:
  - (a) the parties bound by the preserved collective State agreement; and
  - (b) such other persons subject to the agreement, in such manner as the Commission directs.

**[7] Part 16, heading**

*substitute*

**Part 16 Occupational Health and Safety Act 1991**

**[8] Subrule 80 (1)**

*omit*

OHS (CE) Act

*insert*

OHS Act

**[9] Rule 81**

*omit each mention of*

OHS (CE) Act

*insert*

OHS Act

**[10] Schedule 1, Form R4**

*omit*

**TAKE NOTICE** that the Initiating Party intends to try to make a collective agreement to which s 423 of the Act applies with the Other Negotiating Party/Parties under section 322 [or section 323] of the Act.

*insert*

**TAKE NOTICE** that the Initiating Party intends to try to make a collective agreement to which section 423 of the Act applies with the Other Negotiating Party/Parties under section 327 [or section 328] of the Act.

**[11] Schedule 1, Form R11, before subheading 'Employer'**

*insert*

Is there any existing collective agreement, binding on employees who will be subject to the proposed new agreement, with a nominal expiry date that has not yet passed (subsection 451 (2) of the Act)?

Yes  No

**[12] Schedule 1, Form R11**

*omit*

*Note* A copy of this application (but not the attachments) must be served on the employer and any person nominated to conduct the ballot within 24 hours of lodging this application with the commission (section 454) of this Act.

*insert*

*Note* A copy of this application including the attachments (but not Attachment E) must be served on the employer and any person nominated to conduct the ballot within 24 hours of lodging this application with the commission (section 454 of the Act).

**[13] Schedule 1, Form R27, item headed 'Fee'**

*substitute*

<p><b>Fee</b> Section 644 of the <i>Workplace Relations Act 1996</i> requires a fee to be paid on lodgment of this application with the Commission unless a Registrar has, in effect, approved the waiving of the fee.</p> <p>If an application is lodged by facsimile transaction, credit card details must be provided for payment of the fee (if any).</p> <p>If an application is lodged electronically in accordance with Rule 69, credit card details must <b>not</b> be provided on this form. Payment of the fee (if any) can only be made via the Commission's Internet page at <a href="http://www.airc.gov.au">http://www.airc.gov.au</a>.</p> <p><input type="checkbox"/> <b>Cash</b></p> <p><input type="checkbox"/> <b>Cheque/money order</b> (to be made payable to Collector of Public Monies, Australian Industrial Registry)</p> <p><input type="checkbox"/> <b>Visa</b>            <input type="checkbox"/> <b>MasterCard</b></p> <p style="padding-left: 40px;"><b>Card Number</b> _____</p> <p style="padding-left: 40px;"><b>Card Expiry Date</b> __ __ / __ __</p> <p style="padding-left: 40px;"><b>Cardholder's Name</b> .....</p> <p style="padding-left: 40px;"><b>Signature</b> .....</p> <p style="padding-left: 40px;">Any refund of the lodgment fee (see subsection 644 (8) of the Act) will be forwarded to the applicant at the address nominated in item 2.</p>
<p><b>COMMISSION USE ONLY</b></p> <p>Receipt Number: ..... / Credit Transaction</p> <p>Processed: .....</p>

**[14] Schedule 1, after Form R27***insert***Form R27A**Rule 30 of the *Australian Industrial Relations Commission Rules**Workplace Relations Act 1996 (the Act)*

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**APPLICATION FOR RELIEF IN RELATION  
TO TERMINATION OF EMPLOYMENT****(Section 643 of the Act)****Commission use only**

File number

Date received

**This Form is to be completed by an applicant union in respect of an application for relief in relation to termination of employment on the ground or grounds of an alleged contravention of one or more of sections 659, 660 and 661 of the *Workplace Relations Act 1996*.**

**Details of union making application**

1 Full name of union	
2 Address of union	Postcode:
3 Phone or fax number(s)	Business hours: ( ) After hours: ( ) Mobile: ( ) Fax: ( ) Email:
4 Union contact person for notices from the Commission	

<b>The application is made on behalf of the following employee/s</b>	
5 <i>[Write here name/s of employee/s or attach list]</i>	
6 Date/s of termination of employee/s employment	<i>[write here or attach list]</i>
<b>Details of employer (the respondent)</b>	
7 Name of employer's business, company, corporation, authority or agency Contact person's name	
8 Employer's trading address or registered office	Postcode:  Phone: ( ) Fax: ( ) Email:
<b>Extension of time</b>	
9 This section must be completed if the application is lodged more than 21 days after the day on which the termination took effect (see item 6). In such cases, the Commission may decide to dismiss the application without a hearing (section 647 of the Act).  My reason/s for seeking an extension of time to lodge this application is/are: <i>[write here or attach document]</i>	
<b>Grounds for application</b>	
10 Grounds upon which this application is based	Identify the ground or grounds under subsection 643 (1) of the Act upon which this application is based  On the ground of alleged contravention of:  <input type="checkbox"/> section 659 (discrimination or other prohibited reasons); and/or <i>[write here the paragraph(s) in subsection 659 (2) of the Act on which the applicant relies]</i>  <input type="checkbox"/> section 660 (failure to notify Centrelink); and/or <input type="checkbox"/> section 661 (failure to give notice of termination).

11 In respect of each ground identified, give a statement in summary form of the material facts on which the applicant relies	<i>[Write here or attach document]</i>		
<b>Relief sought</b>			
12 What are you seeking?	<input type="checkbox"/> reinstatement	<input type="checkbox"/> an amount in relation to the remuneration lost, or likely to have been lost, by you, because of the termination	<input type="checkbox"/> other - <i>give details</i>
<b>Declaration</b>			
<b>I declare that all the facts in this application are correct and complete to the best of my knowledge and belief.</b>			
<i>Union representative must sign here</i>	<i>[Signature of union representative]</i>  <i>Name [print]</i>  Date        /        /  <i>Position</i>		

If this application was prepared by a legal practitioner, has a contingency fee agreement (see section 656 of the Act) been entered into?

Yes  No

If this application was prepared by a representative other than a legal practitioner, has a costs arrangement (see section 656 of the Act) been entered into?

Yes  No

*See next page for lodgement fee details*

Commission Matter No. U\_\_\_\_\_

**Fee** Section 644 of the *Workplace Relations Act 1996* requires a fee to be paid on lodgment of this application with the Commission.

If an application is lodged by facsimile transaction, credit card details must be provided for payment of the fee (if any).

If an application is lodged electronically in accordance with Rule 69, credit card details must **not** be provided on this form. Payment of the fee (if any) can only be made via the Commission's Internet page at <http://www.airc.gov.au>.

- Cash**
  - Cheque/money order** (to be made payable to Collector of Public Monies, Australian Industrial Registry)
  - Visa**             **MasterCard**
- Card Number** \_\_\_\_\_
- Card Expiry Date** \_\_\_\_ / \_\_\_\_
- Cardholder's Name** .....
- Signature** .....

Any refund of the lodgement fee [see subsection 644 (8) of the Act] will be forwarded to the applicant at the address nominated in item 2.

**COMMISSION USE ONLY**  
 Receipt Number: ..... / Credit Transaction  
 Processed: .....

**Note** A copy of this completed form (and any attachments) will be forwarded to your former employer.

PLEASE RETAIN A COPY OF THIS DOCUMENT  
 FOR YOUR OWN RECORDS

**[15] Schedule 1, Form R28***omit***Application details (as stated in Form R27)***insert***Application details (as stated in Form R27 or R27A)****[16] Schedule 1, Form R28***omit*

*Note* This form must be lodged with the Commission within 7 days of receipt of Form R27. As soon as practicable after lodging the form, the employer must give a copy of the form to the applicant.

*insert*

*Note* This form must be lodged with the Commission within 7 days of receipt of Form R27 or R27A. As soon as practicable after lodging the form, the employer must give a copy of the form to the applicant.

**[17] Schedule 1, Form R29***omit*

Does the employer object to conciliation before this motion is dealt with by the Commission?

Yes  No  Not applicable (see section 649)

*insert*

Does the employer object to conciliation before this motion is dealt with by the Commission?

Yes  No

**[18] Schedule 1, Form R30**

*omit*

Does the employer object to conciliation before this motion is dealt with by the Commission?
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable

*insert*

Does the employer object to conciliation before this motion is dealt with by the Commission?
<input type="checkbox"/> Yes <input type="checkbox"/> No

**[19] Schedule 1, Form R40, declaration by proposed permit holder, paragraph (g)**

*substitute*

- (g) I have not been disqualified, by any court, or other person or body, under a State or Territory industrial law or an OHS law, from exercising, or applying for, a right of entry for industrial or occupational health and safety purposes under that law.

**[20] After Form R48**

*insert*

**Form R48A**

Rule 54A of the *Australian Industrial Relations Commission Rules*

*Workplace Relations Act 1996 (the Act)*

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**APPLICATION FOR TERMINATION OF  
COLLECTIVE AGREEMENT IN PUBLIC INTEREST  
AFTER NOMINAL EXPIRY DATE**

**(Section 397A of the Act)**

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IN the matter of:  
[*title of collective agreement*]

## **Applicant**

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Name:

Address:

Contact Person:

[*also include the name of any firm of solicitors or agent acting for the applicant*]

Phone No:

Facsimile No:

Mobile No:

Email address:

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Application is made under section 397A of the Act for the abovementioned agreement to be terminated.

The nominal expiry date of the agreement was [*date*]

The grounds on which this application is made are as follows: [*set out in numbered paragraphs the grounds upon which it is claimed that it is not contrary to the public interest to terminate the agreement*]

Dated 20 .

[*Signature of applicant*]

*Note* If the application is made by an appointed representative of a majority of the employees whose employment is subject to the agreement, the application must be accompanied by a statutory declaration made by the representative which indicates the facts which establish a basis for the Commission to be satisfied that the representative has been appointed by the employees concerned and is acting in accordance with their direction.

**To all parties bound by this agreement**

You are notified that this application will be heard by [*name of member of the Commission*]

at [*time*]

on [*date*]

at [*place*]

and that you may appear and be heard at the time and place so fixed.

Dated 20 .

[*Signature*]

Member of Commission  
[*or Registrar*]

**[21] After Form R49**

*insert*

**Form R49A**

Rule 55 of the *Australian Industrial Relations Commission Rules*

*Workplace Relations Act 1996 (the Act)*

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**APPLICATION FOR AN ORDER TO VARY  
PRE-REFORM CERTIFIED AGREEMENT**

**(Clause 2A of Schedule 7 to the Act)**

IN the matter of:

[*title of certified agreement and code number*]

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## Applicant

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Name:

*[person bound by the pre-reform certified agreement]*

Address:

Contact Person:

*[also include the name of any firm of solicitors or agent acting for the applicant]*

Phone No:

Facsimile No:

Mobile No:

Email address:

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Application is made under paragraph 2A (1) (b) of Schedule 7 to the Act to vary the terms of the abovementioned agreement in the manner set out in the attachment.

The grounds on which this application is made are as follows: *[set out in numbered paragraphs the grounds]*

Dated

20 .

*[Signature of applicant]*

Note The application must be accompanied by:

- (a) a copy of the variation; and
- (b) a statutory declaration made by a person authorised to do so which indicates the facts establishing a basis for the Commission to be satisfied that:
  - (i) a valid majority of the employees bound by the agreement at the time of making the variation genuinely agree to the variation of the agreement (see subsections 2A (4) and (5) of Schedule 7 to the Act); and

- (ii) the agreement as varied would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees bound by the agreement (see paragraph 2A (2) (c) of Schedule 7 to the Act); and
- (c) a written statement signed by each party signifying:
  - (i) their agreement to the variation of the agreement; and
  - (ii) that none of the parties have after 14 February 2008:
    - (A) organised or engaged in, or threatened to organise or engage in, industrial action in relation to another party to the agreement; or
    - (B) applied for a protected action ballot under section 451 of the Act in relation to proposed industrial action.

## **Form R49B**

Rule 55A of the *Australian Industrial Relations Commission Rules  
Workplace Relations Act 1996 (the Act)*

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

### **APPLICATION FOR EXTENSION OF PRE-REFORM CERTIFIED AGREEMENT BY A PERSON BOUND BY THE AGREEMENT**

**(Clause 2A of Schedule 7 to the Act)**

IN the matter of:

[*title of certified agreement and code number*]

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**Applicant**

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Name:

*[person bound by the pre-reform certified agreement]*

Address:

Contact Person:

*[also include the name of any firm of solicitors or agent acting for the applicant]*

Phone No:

Facsimile No:

Mobile No:

Email address:

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Application is made under paragraph 2A (1) (a) of Schedule 7 to the Act for the extension of the nominal expiry date of the abovementioned agreement from *[nominal expiry date]* until *[date]*.

Dated

20 .

*[Signature of applicant]*

Note The application must be accompanied by:

- (a) a statutory declaration made by a person authorised to do so which indicates the facts establishing a basis for the Commission to be satisfied that a valid majority of the employees bound by the agreement at the time of making the extension genuinely agree to the extension of the agreement (see subsections 2A (4) and (5) of Schedule 7 to the Act); and
- (b) a written statement signed by each party signifying:
  - (i) their agreement to the extension of the agreement; and

- (ii) that none of the parties have after 14 February 2008:
- (A) organised or engaged in, or threatened to organise or engage in, industrial action in relation to another party to the agreement; or
  - (B) applied for a protected action ballot under section 451 of the Act in relation to proposed industrial action.

**[22] After Form R53**

*insert*

**Form R53A**

Rule 59A of the *Australian Industrial Relations Commission Rules*

*Workplace Relations Act 1996 (the Act)*

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**APPLICATION FOR TERMINATION OF  
OLD IR AGREEMENT**

**(Clause 29A of Schedule 7 to the Act)**

IN the matter of:

*[title of old IR agreement and code number]*

**Applicant**

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Name:

*[party to the old IR agreement]*

Address:

Contact Person:

*[also include the name of any firm of solicitors or agent acting for the applicant]*

Phone No:

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Facsimile No:

Mobile No:

Email address:

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Application is made under subclause 29A(1) of Schedule 7 to the Act for the abovementioned agreement to be terminated.

Dated

20 .

[*Signature of applicant*]

**Note** The application must be accompanied by a written statement by each party to the agreement signifying their agreement to the termination.

**[23] Schedule 1, after Form 55**

*insert*

## **Form R55A**

Rule 61A of the *Australian Industrial Relations Commission Rules*

*Workplace Relations Act 1996 (the Act)*

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

### **APPLICATION FOR EXTENSION OF A PRESERVED COLLECTIVE STATE AGREEMENT BY A PERSON BOUND BY THE AGREEMENT**

**(Clause 16A of Schedule 8 to the Act)**

IN the matter of:

[*Title of preserved collective State Agreement*]

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## Applicant

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Name of applicant:

Address:

Contact Person:

*[also include the name of any firm of solicitors or agent acting for the applicant]*

Phone No:

Facsimile No:

Mobile No:

Email address:

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Application is made under paragraph 16A (1) (a) of Schedule 8 for the extension of the nominal expiry date of the abovementioned preserved collective State agreement from *[nominal expiry date]* until *[date]*.

Dated 20 .

*[Signature of applicant]*

Note The application must be accompanied by:

- (a) a statutory declaration made by a person authorised to do so which indicates the facts establishing a basis for the Commission to be satisfied that a majority of the employees bound by the agreement at the time of making the extension genuinely agree to the extension of the agreement (see paragraphs 16A(2) and (4) of Schedule 8); and
- (b) a written statement signed by each party signifying:
  - (i) their agreement to the extension of the agreement; and
  - (ii) that none of the parties have after 14 February 2008:
    - (A) organised or engaged in, or threatened to organise or engage in, industrial action in relation to another party to the agreement; or

- 
- (B) applied for a protected action ballot under section 451 of the Act in relation to proposed industrial action.

## **Form R55B**

Rule 61B of the *Australian Industrial Relations Commission Rules*

*Workplace Relations Act 1996 (the Act)*

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

### **APPLICATION TO VARY A PRESERVED COLLECTIVE STATE AGREEMENT BY A PERSON BOUND BY THE AGREEMENT**

**(Clause 16A of Schedule 8 to the Act)**

IN the matter of:

*[Title of preserved collective State Agreement]*

#### **Applicant**

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Name of applicant:

Address:

Contact Person:

*[also include the name of any firm of solicitors or agent acting for the applicant]*

Phone No:

Facsimile No:

Mobile No:

Email address:

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Application is made under paragraph 16A (1) (b) of Schedule 8 to the Act for the variation of the abovementioned preserved collective State agreement in the following terms:

*[Set out the terms of the variation sought]*

The grounds on which this application is made are as follows:  
*[Set out in numbered paragraphs the grounds]*

Dated 20 .

*[Signature of applicant]*

Note The application must be accompanied by:

- (a) a copy of the variation; and
- (b) a statutory declaration made by a person authorised to do so which indicates the facts establishing a basis for the Commission to be satisfied that:
  - (i) a majority of the employees bound by the agreement at the time of making the variation genuinely agree to the variation of the agreement (see subsections 16A (2) and (4) of Schedule 8 to the Act); and
  - (ii) the agreement as varied would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees bound by the agreement (see paragraph 16A (2) (c) of Schedule 8 to the Act); and
- (c) a written statement signed by each party signifying:
  - (i) their agreement to the variation of the agreement; and
  - (ii) that none of the parties have after 14 February 2008:
    - (A) organised or engaged in, or threatened to organise or engage in, industrial action in relation to another party to the agreement; or
    - (B) applied for a protected action ballot under section 451 of the Act in relation to proposed industrial action.

**[24] Schedule 1, Form R63, preamble***omit*

*Occupational Health and Safety (Commonwealth Employment)  
Act 1991*

*insert*

*Occupational Health and Safety Act 1991*

**[25] Schedule 1, Form R63***omit*

OHS (CE) Act

*insert*

*Occupational Health and Safety Act 1991*

**[26] Schedule 1, Form R64***omit each mention of*

*Occupational Health and Safety (Commonwealth  
Employment) Act 1991*

*insert*

*Occupational Health and Safety Act 1991*

**[27] Schedule 1, Form R65, preamble***omit*

*Occupational Health and Safety (Commonwealth Employment)  
Act 1991*

*insert*

*Occupational Health and Safety Act 1991*

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.